

The State of Law Firm Diversity



Since 2020, we have experienced a global pandemic that has had a disproportionate impact on communities of color and exposed disparities in our healthcare system. There has been an increase in violence and toxic rhetoric directed toward members of the Asian-American and Pacific Islander communities. The deaths of George Floyd, Breonna Taylor, Ahmaud Arbery, Duante Wright, and others propelled the issue of racial justice into the spotlight. Members of the Latinx Community were targets of a mass shooter in Texas because of their ethnicity. And the United States Supreme Court extended Civil Rights Act protections to members of the LGBTQ+ Community and seemingly fueled a backlash as “Don’t Say Gay” bills and legislation targeting transgender youth

were introduced in State Houses around the country.

These issues have created dialogue related to issues of diversity, inclusion, and belonging. But has this dialogue resulted in meaningful change in society as a whole or in one of the least diverse professions—the legal profession? Even today, diversity in law firms remains elusive. The topic of diversity (or the lack of it) in law firms has been bantered about, mulled over, debated, and discussed for decades. And while some noble efforts have been undertaken to reach the goal of diverse and inclusive law firms, those efforts have produced only moderate improvements, or they have failed completely. Most law firms still lack the level of diversity necessary to reflect the diversity

of their clients’ in-house legal departments or of society more broadly.

Every law firm is different. Likewise, each region of the country has different demographics. So, while no single set of statistics on diversity can be deemed definitive for all firms or all geographic regions, the reports published by the National Association of Law Placement (“NALP”) [<https://www.nalp.org/uploads/2021NALPReportonDiversity.pdf>] and the Minority Corporate Counsel Association (“MCCA”) [<https://mcca.com/2021-mcca-law-firm-diversity-survey/>] provide insight on the current state of diversity in U.S. law firms.

The 2021 NALP Report on Diversity in U.S. Law Firms (“NALP Report”) does report some positive trends from 2020, generally in the ranks of summer associ-



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ates. The report notes that there was a 5 percent increase in the number of summer associates of color, and the percentage of LGBTQ+ summer associates rose to the highest percentage ever recorded by NALP. However, as noted by the report, “[t]he challenge for the industry is to retain, train, develop, and promote this talented and diverse pool of new lawyers so that 5 years from now the associate ranks as a whole reflect similar diversity and representation, and 10 or 15 years from now we can celebrate a partnership class that is similarly diverse.” Law firms still face increasing attrition rates for most underrepresented groups. For instance, the 2021 MCCA Law Firm Diversity Survey Report (“MCCA Report”) notes that the attrition rate for women of color, Hispanic/Latinx, African American/Black, and LGBTQ+ attorneys all increased, with nearly 5 percent of all associates who left law firms in 2020 being LGBTQ+.

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The statistics in the MCCA Report further illuminate a still-lackluster state of diversity in U.S. law firms. According to the report (1) Hispanic/Latinx attorneys account for just 4.7 percent of all law firm attorneys (compared to 18.5 percent of the general population); (2) African American/Black attorneys account for just 4.2 percent of all law firm attorneys (compared with 13.4 percent of the general population); and (3) female attorneys account for just 38 percent of law firm attorneys (compared to 50.8 percent of the general population).

Even though the United States Census Bureau has not collected data to establish the percentage of the population identifying as LGBTQ+, in 2021 it did start collecting data as part of its Household Pulse

Surveys, indicating that the percentage is approximately 8 percent. According to MCCA data, 3.9 percent of law firm attorneys are LGBTQ+. The NALP Report makes clear that geographic diversity regarding LGBTQ+ attorneys in law firms is drastically limited. Four cities—New York, Washington, Los Angeles, and San Francisco—account for the places of employment for more than half of all LGBTQ+ attorneys in U.S. law firms.

Additional information gleaned from the MCCA and NALP Reports paints an even bleaker picture regarding the state of diversity for women of color and attorneys with disabilities. The number of African American/Black and Hispanic partners also remain shockingly low. Overall, the statistics contained in both the NALP and MCCA Reports belie any assertion that diversity in U.S. law firms is anywhere close to being a goal attained.

Why Has there Been No Better Success at Increasing Law Firm Diversity?

If law firms had good intentions over the years when they expressed a desire to increase diversity, why has no more progress been made on the hiring, development, and elevating to partner those attorneys from traditionally underrepresented categories? Myriad excuses have been proffered to explain why law firm diversity has remained stagnant; some examples of these include: (1) there are no “qualified” minority candidates in certain geographic markets or in certain specialized practice areas; (2) diverse candidates are more attracted to work in the corporate or public sectors than they are to law firms; or (3) diverse attorneys lack a sufficient client base to make them profitable.

Excuses without introspection ring hollow and too often serve as cover for an unwillingness to do the work necessary to find solutions. Firms must be willing to drop excuses and to ask potentially difficult questions: *Does our “diversity” program lack any true inclusion component? Are underrepresented attorneys given neither a reason to stay nor the tools to succeed as a diverse attorney in our majority firm? Is “diversity” merely a term used on our recruiting or marketing materials*

and not truly a part of every facet of our organization?

If firms are willing to conduct this self-analysis, depending on the answers, they may find themselves in a position where it’s clear they must make wholesale changes regarding what they thought all along had been the right approach to increasing diversity. But change can be hard. Some firms may find themselves grappling with not only how to transform their methods but also how to do it in a rapidly evolving legal environment. Talk can be easy, and it may be that firms are not serious about implementing the changes necessary to achieve real change. Are firms conducting the necessary self-analysis to determine the right path to diversity and inclusion? Are firms not only “talking the talk” but also “walking the walk?”

Are Law Firms Serious About Diversity and Inclusion?

Certainly, many firms are making a legitimate effort to promote diversity even in situations when those efforts may not be creating change as rapidly as one might hope. Even though change may be happening, albeit slowly, firms can still improve by analyzing what is preventing their efforts from bearing diverse fruit more quickly. For instance, if firms are able to recruit diverse talent but are not able to keep those attorneys, consideration should be given to why they are leaving. Is there an issue with lack of inclusion? Is a firm selling the diverse attorneys on something on the front end that it can’t deliver when the diverse attorneys arrive? As data from the MCCA and NALP Reports indicate, reversing the attrition rates of diverse attorneys is crucial.

Without thoughtful consideration of how to include diverse attorneys and make them feel as though they belong once they are recruited to a law firm, real success at diversifying the firm will likely remain elusive. One harsh reality that we must consider is whether some firms are not ready to celebrate and embrace full diversity because they are not comfortable with a truly inclusive environment. There may be concern about diverse attorneys fully expressing racial, ethnic, gender, and other differences while at work. Protestations

by firms that any effort to expand diversity must not do anything to disturb the firm “culture” or “history” must be examined to make certain those statements are not just polite or veiled ways to demand that those who are “different” *blend in* as much as possible with how the majority of the firms looks, thinks, and acts. “Culture” and “history” can sometimes be bastions of the past that do not promote a diverse and inclusive future.

What Does Lack of Inclusion Look Like?

Diversity without inclusion can manifest in a variety of ways, such as: (1) when a non-Christian feels uncomfortable attending some firm events because a Christian prayer is offered, and while the prayer is not “mandatory” any display of non-participation might be frowned on; (2) when a woman of color feels compelled not to wear her natural hair to work and to make efforts to have her appearance conform to white norms; or (3) when a lesbian feels that her wife would not be welcomed at law firm functions—despite the fact that heterosexual attorneys bring their spouses and even non-married opposite-sex dates or partners to the events without scrutiny. These are examples of instances in which an attorney from an underrepresented group may sense that she or he is not truly accepted for who she or he is.

But the most insidious way inclusion may be denied to diverse attorneys is in the context of work. While these denials of inclusion may not be intentional, it is this work-related lack of inclusion that has the potential to do the most damage to a diverse attorney’s chances of advancement in the profession. For instance, firms may not provide diverse attorneys with the opportunity to have meaningful contact with firm clients or to work on those clients’ matters. Firms may reserve the most high-profile and coveted projects for those attorneys with whom they feel the most comfortable. Finally, firms may not ensure that diverse attorneys work on files received by way of a request for proposal (RFP) or “pitch” even though the diverse attorneys’ data was used as a means of making a firm’s diversity numbers appear more palatable. Ultimately, lack of opportunity in terms of work and quality of

work at a firm can send a message that a diverse attorney is not likely to succeed in the long run.

Have There Been Efforts to Promote Diversity & Inclusion?

Over the years there have been various calls for and initiatives to increase diversity in U.S. law firms. These efforts largely have been championed by the leaders of corporate law departments. In 1999, Charles Morgan, who was at that time the general counsel of BellSouth Corporation, took the laboring oar on an initiative called “Diversity in the Workplace—A Statement of Principle.” Ultimately, the chief legal officers of approximately 500 major companies signed on to the “Statement of Principle.” By agreeing to the statement, chief legal officers were pledging that they would give significant weight to a law firm’s commitment to diversity when they made decisions on which law firms to hire. But despite these assurances, progress was minimal, if at all.

With no real advancement in law firm diversity from the 1999 “Statement of Principle,” a 2004 “Call to Action” was endorsed by the Board of Directors of the Association of Corporate Counsel. The “Call to Action” asked chief legal officers to pledge to “reaffirm our commitment to diversity in the legal profession.” As with the 1999 “Statement of Principle,” the “Call to Action” asked that decisions on “which law firms represent our companies [be] based in significant part on the diversity performance of the firms.” However, the “Call to Action” asked companies to take additional steps to *seek opportunities affirmatively* for firms that distinguish themselves regarding diversity. As they had done with the 1999 effort, some of the largest and most prestigious corporations in the country signed on to abide by the principles of the 2004 “Call to Action.”

Was the concern related to diversity in U.S. law firms resolved by the 2004 “Call to Action?” If it had been, the action that would later be taken by the American Bar Association (ABA) House of Delegates would have been unnecessary. In 2016, the ABA House of Delegates adopted Resolution 113 which deals specifically with

diversity in the legal profession. The resolution states:

RESOLVED, That the American Bar Association urges all providers of legal services, including law firms and corporations, to expand and create opportunities at all levels of responsibility for diverse attorneys; and

FURTHER RESOLVED, That the American Bar Association urges clients to assist in the facilitation of opportunities for diverse attorneys, and to direct a greater percentage of the legal services they purchase, both currently and in the future, to diverse attorneys; and

FURTHER RESOLVED, That for purposes of this resolution, “diverse attorneys” means attorneys who are included within the ambit of Goal III of the American Bar Association [minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities].

Resolution 113 has a message of both diversity and inclusion. The focus is not only on diversifying the ranks of underrepresented attorneys but is also on inclusion of those attorneys by providing them with opportunities to do the legal work directed from the clients wishing to abide by the Resolution’s principles.

After the adoption of Resolution 113, correspondence followed from the ABA to the chief legal officers of the Fortune 1,000 companies to encourage those companies’ chief legal officers to sign on to support and implement the Resolution. The chief legal officers were asked to have law firms hired by their companies to complete the ABA Model Diversity Survey and for the companies to use the information from this survey as a tool in deciding which law firms to retain. The ABA Model Diversity Survey asks pointed questions and is designed to elicit data detailing how the answering law firm is doing on a wide variety of diversity-related topics. More than 180 companies have signed the pledge to hold law firms accountable for diversity based on information contained in the survey.

Because the ABA Model Diversity Survey has been in place for a few years and because it has begun to see widespread use, many law firms have been asked to

complete it. Regrettably, despite providing correct answers on the survey, some firms might have been able to work around the real goal of providing opportunities to and promoting the work of diverse attorneys. For instance, the survey asks law firms to detail how many diverse attorneys work in the law firm, but it does not guarantee that those diverse attorneys will receive any credit for or the opportunity to work on any files brought into the firm as a result of the data in the main body of the survey. However, the “Non-mandatory ‘Client Matters’ Supplement” to the survey has been used by companies to elicit specific information on how firms staff matters and provide credit on that company’s matters specifically; this information can be invaluable in making certain that law firms are truly including underrepresented attorneys and fulfilling the stated purpose of Resolution 113.

What’s Next?

Some law firms are working to promote diversity by implementing the Mansfield Rule as a means of diversifying law

firm leadership. And some corporate legal departments that are not satisfied with the largely stale state of diversity in law firms are taking matters into their own hands to advance diversity. Some companies are beginning to be more proactive to make certain that numbers on a survey translate to numbers of diverse attorneys working on the clients’ files. Walmart, Macy’s, MetLife, HP, Microsoft, Oracle, Starbucks, and Northwest Mutual are just a few of the companies that have received media attention for their efforts to make certain their teams of outside attorneys more closely resemble the diversity of the general population. A variety of “carrot” or “stick” methods are being used to help prod law firms to promote diversity and inclusion more effectively; these include bonuses for those firms that meet diversity goals and penalties or reduction in fees for those firms that do not. The old business model for law firm diversity (*put a diversity policy into place and clients will be satisfied*) is likely to be replaced with what appears to be the emerging business case for diversity (*build a diverse team to work on a cli-*

ent’s matters or kiss business from that client goodbye).

Law firms are in business to make a profit and are not likely to continue expending resources on diversity programs and initiatives that do not reap rewards. If more companies hold firms accountable for not only their diversity numbers overall but also the diversity of the teams working on the company’s matters, firms will by necessity take a closer look at their diversity and inclusion efforts and make changes to meet their clients’ demands. If firms do not, they may find themselves losing business to firms that celebrate the uniqueness of their attorneys and that are willing to showcase teams more closely reflecting the diversity of most in-house legal departments and society as a whole. Those firms that change may find that diversity can be a reality and not just a goal; in the end they may be rewarded with business in addition to the unique perspectives brought to the table by diverse attorneys from traditionally underrepresented groups.



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