

# DIVERSITY AT LAW FIRMS IN THE POST-RECESSION ERA

*By Tom Forestier and Jane DiRenzo Pigott*

Law firms' efforts to achieve diversity in their ranks, especially at the partner level, began as long ago as the early 1990s. They ramped up in the early 2000s as many firms invested heavily in programs designed to recruit and retain minority and women lawyers. This was an economic boom time in the legal world and also a time when most of the firms' corporate clients were promoting diversity not only in their own management ranks, but also in the ranks of their service providers. However, the recession hit in 2008 and significantly challenged law firm diversity efforts. This article explores some of the reasons for the current state of diversity with respect to minority and women attorneys in law firms, and provides some insight on how law firms can work their way to better results with their diversity-focused efforts.

## **I. 2008 Recession Moved Diversity Efforts Backwards or to a Standstill**

In late 2008, major law firms found that they had to cope with a "new normal" situation in which their economic power was significantly limited and their diversity efforts suffered. The majority of the nation's large law firms had less work to do. As revenues declined, so did firm headcounts and the amount of resources that could be devoted to diversity programs. Partners were limited in the number of opportunities they could share with their protégés, and the quality and quantity of work was not giving lawyers, including minority and women lawyers, a chance to grow and develop in their legal careers, so many of those attorneys left law firm practice.

Yet even with the recession, law firms' corporate clients still had expectations that their service providers' diversity efforts would continue. Thomas Sager, Senior Vice President and General Counsel of DuPont Legal and long a national leader in the diversity effort, stated earlier in 2008, "I believe we get better results if our lawyers reflect the diverse nature of the communities with which they may be involved. Their diversity makes them better able to connect with juries, judges and governmental bodies." Sager added, "... diversity needs to be addressed daily." He reiterated these sentiments in 2009 at the Houston Hispanic Bar Association Presidents' Day Banquet.

As law firms slowly recovered from the effects of the recession in 2009, many were recharging the batteries that energized diversity efforts.

Data show that the recession had a negative impact on some diversity efforts, but not all. In 2010, Veta Richardson, then the Executive Director of the Minority Corporate Counsel Association ("MCAA") (and now President and CEO of the Association of Corporate Counsel), said, summarizing a Vault/MCCA diversity survey, "[t]he study is encouraging for women lawyers. Despite the recession, they continue to advance in leadership roles in their firms. However, the data is more troubling for minority attorneys. The recession has hit them harder, especially law students, and the decline in their ranks may linger for years."

Statistics from 2012 reaffirm that diversity efforts are benefitting women more so than minorities in law firms. According to National Association of Law Placement ("NALP"), in 2012 only 15.3% of equity partners in major U.S. law firms were women, and only 4.8% of equity partners were members of racial minorities. This was based on an extensive survey of 259 offices or

firms that responded to a NALP survey. The percentage of non-equity partners who were minorities was 8.4 % and the percentage of women at the same rank was 27.3%.<sup>1</sup>

The trends in minority partnership, both for equity partners and non-equity partners, are not encouraging. A Vault/Minority Corporate Counsel Association Law Firm Diversity Survey found in 2008, before the recession began, that minorities made up 5.6% of equity partners and 8.5% of non-equity partners at large firms. That means that in the period between 2008 and 2012, diversity at the partner level declined or remained flat.

And, it is not as if law firms have few minorities or women at their disposal to promote. In 2012, according to a NALP survey, 45.1% of associates in major law firms were women, and 12.9% were minorities. A separate American Lawyer Media “Diversity Scorecard” survey in 2011 found that 13.6% of major law firm attorneys were minorities, which is quite close to the NALP figure.

Clearly, there is a major gap between the numbers of minority attorneys at major law firms, who of course form the pool eligible for partnership, and the numbers who actually become partners who hold a financial stake in their firms.

The percentage of minority attorneys in the largest firms is consistent with the percentage of minority attorneys in general in the United States: According to the American Bar Association, African Americans account for 4.8% of all the nation’s attorneys, Hispanics for 3.7 %, and Asians for 3.4% – a total of 11.9% minority attorneys. So the issue does not seem to be who is hired by the major firms; it is who stays long enough and does well enough to become a partner.

Corporations, on the other hand, have done significantly better than law firms, as the percentage of minority general counsels in major U.S. companies has risen to an all-time high of 9.4% in 2012. In the same year, the percentage of women general counsels in the Fortune 500 rose to 21%, according to an MCCA survey.

## **II. Diversity Efforts Challenged to Move Forward in 2013**

For both minorities and women the equity partner numbers remain quite low. Law firms are challenged once more to focus their efforts on diversity. How can they prepare for a new wave of diversity efforts in a legal economy that, although improving, has been permanently altered by developments such as the large law firms’ reduced head count, the reduced opportunities for mentoring, and the need to staff matters much more leanly than before?

There is no question that diversity is good business. As respected law firm economist and blogger Adam Smith, Esq., has written, “There’s a fairly sizable management literature on the financial and performance impact of increased diversity. While the financial results are slightly more tenuous and subject to the inevitable reservation that we can’t perform ‘double-blind’ experiments with real people and real companies in the real world, the literature on diversity’s beneficent impacts on creativity, innovation, and agility is, to this reader, utterly compelling.”

A Forbes Insights study on diversity, furthermore, indicates that diversity is a key driver of innovation and is a critical component of being successful on a global scale. It also shows that a diverse and inclusive workforce is crucial for companies that want to attract and retain top talent.

An MCCA study indicates that a growing set of data shows that businesses that succeed financially have a higher number of women and minorities at the highest rank of leadership. And, DuPont's Sager and many others have noted that diversity is especially important for law firms, since attorneys need to connect daily with judges, juries, government officials, and other representatives of a community that is growing more diverse all the time.

There remain significant challenges to increasing the percentage of minority and women partners in law firms and increasing it even to the 9.4% level that exists among corporate general counsels (a percentage that is itself below the percentage of minorities in the U.S. population and in the legal profession generally).

First, many diverse candidates do enter law firms right out of school, but as an MCCA study has noted, these minority and women lawyers are often not given the same opportunities for growth and advancement as their non-diverse peers. One common explanation is that law firm partners subconsciously devote more mentoring time to other lawyers with whom they identify more closely, which often equates to people of similar racial, ethnic, and economic backgrounds.

Second, perhaps as a result, minority and women attorneys tend to leave large law firms earlier and in larger numbers than men. As the New York City Bar's sixth Diversity Benchmarking Report noted in November 2012, "[w]hile new hires across levels [of associates and partners] are more diverse than attorneys at [major law] firms, elevated turnover for women and minorities continues to erode the gains."

Third, there are greater incentives for public companies to become more diverse, as they face government regulation and accountability from their shareholders and customers; law firms do not have that type of transparency built in. Yet.

Fourth, like all other attorneys, there are only a limited number of diverse attorneys who have the experience and skill to become law firm partners, and many of them are in high demand to move to in-house legal positions, government positions, and other jobs.

While there is no one infallible way to produce a steady stream of diverse partners in a major law firm, there are certainly some best practices that will increase any firm's chances of doing so.

### **III. Best Practices**

The leading firms that succeed in the diversity arena view the issue as an internal strategy, driven by the desire to be a firm that is a destination for talent. They do not develop diversity programs because clients are pushing them to have higher numbers of diverse partners; they embrace the diversity efforts organically and champion their own cause for having more diversity in their firm.

Second, since attrition of diverse lawyers is a serious issue, these law firms focus on retaining the diverse attorneys whom they already have. A large majority of major law firms start with diverse lawyers at the associate level; the question is what comes next.

Many firms have formed committees, led by senior members of the firm in order to convey the importance of the goal, to address retention of minority attorneys. Some have even established systems that provide monetary incentives for their partners who are able to successfully retain diverse attorneys in their teams and practice groups.

Firms have developed internal practices and policies to include minority attorneys in marketing efforts, including client contacts, since the ability to attract clients is invariably a key component of an associate's growth and potential to become a partner.

Many firms have established formal mentoring programs, often monitored by their diversity committee, that often pair a senior partner with a young, diverse associate who works and travels frequently with the senior partner.

Third, the best firms have developed clear, transparent standards for partnership track that define the quality and quantity of an attorney's work that will continue to qualify him or her to start out on the path to make partner. This permits the firms to identify the lawyers who are falling behind and, if possible, help them return to the partnership path.

Fourth, these law firms make sure that their diverse lawyers are given opportunities to do work that matters and to interface with the firm's most important clients. This increases the lawyers' access to the quality of work and experience that will develop them and bring them job satisfaction.

Finally, many smart law firms see the opportunity to create a relationship where a diverse associate can serve in a secondment arrangement with a client who needs the legal support but can't hire another lawyer. Many firms have said that this secondment relationship has resulted in diverse lawyers having the opportunity to build a strong relationship with a strong client, benefitting the firm and leading to greater job satisfaction for the lawyer.

#### **IV. Conclusion**

Ultimately, strong nationwide demographic trends in the 21<sup>st</sup> century may lead law firms to embrace diversity. After the 2012 elections, a political commentator wrote, "[t]he most significant event of this presidential contest might very well have been the 2010 census," because it showed that the nation is becoming steadily less white and that minorities' numbers and influence are increasing. A recent projection declared that by 2050, Hispanics will constitute 29% of the U.S. population, and that non-Hispanic whites will be only 47% of the nation.

Hints of these changes can already be seen in the ranks of law school graduates. According to the American Bar Association, in 2011 the percentage of minorities among graduates of ABA-accredited law schools was 24.2%, continuing a steady increase over the decades. In 1991, that figure was 11.8%, and in 2011, it was 19.6%.

So, the diversity goals that have proved tantalizingly difficult to achieve since the 1990s may actually be made much more possible by the broader trends that are changing the society that we live in.

#### **ENDNOTES**

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<sup>1</sup> Non-equity partners are the second tier in two-tier partnerships and are not the equivalent of full equity partners.

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