

Diversity's Next Step: Developing Minority Partners

By **M. Christian King, Bridget Harris and Amber Hall** January 17, 2019, 5:52 PM EST

Diversity consultant Verna Myers once said, “Diversity is being invited to the party; inclusion is being asked to dance.” And, we all want to be asked to dance, right? Most legal industry observers would likely agree that law firms are doing a better job of diversifying their associate classes and inviting diverse talent to the party. Yet, that is not the case when it comes to inclusion — retaining minority lawyers until partnership — which is where the dancing begins.



Christian King

The numbers spell it out. A 2018 National Association for Law Placement study, for example, found that approximately 23 percent of associates are racial minorities,[1] yet, shockingly, only 3.6 percent are racial minority equity partners.[2] In addition, according to a 2016 New York City Bar report, minorities face a 61 percent higher voluntary attrition rate, compared to Caucasian males,[3] because they have fewer opportunities to advance in the legal profession.



Bridget Harris

Why is this attrition happening? As Jean Lee, the president and CEO of the Minority Corporate Counsel Association has stated, “One of the main things that holds minority attorneys back is the lack of opportunity to develop a book of business.[4] To do that, you’ll need an ally, a larger equity partnership member to take you under their wing. That’s not happening because minority associates do not have those relationships with senior attorneys.”



Amber Hall

This lack of minority partners comes at a cost to firms. Clients are now demanding that diversity extend throughout the firms they hire and not just at the associate level. Equally important, firms are missing out on the ability to have attorneys with whom diverse clients, juries and judges will identify.

So, once we acknowledge there is a minority associate retention problem, how do we fix it? There are several practical ways that firms can tackle the problem.

Client Interaction

As was the case with diversifying law firms at the associate level, the incentive for firms to take steps to retain minority lawyers has been driven largely by clients. For example, Metlife Inc. has required its outside counsel to create a formal talent development plan detailing their firms' plans to retain and advance minority lawyers.[5] [Facebook Inc.](#) has a similar initiative, requiring their outside counsel to “actively identify and create clear and measurable leadership opportunities for women and minorities” when they represent the company.[6]

This demand by clients is likely a result of their recognition that minority associates often leave their firms because they do not have the opportunity to engage with clients and perform challenging legal tasks as they advance in seniority. Nothing is more demoralizing to an associate, especially an experienced one, than to receive a steady diet of discrete research projects with no continuity and no opportunity to be a part of the strategic decisions that go into representing a client.

There is a practical solution to this problem, which often seems to affect minority associates disproportionately. Partners should have someone review on a periodic basis not just the associates' billable time and matter descriptions, but also the substance of their entries to see whether any are doing more discrete tasks on random files than their peers. Such a review will allow firm leaders to identify that a particular associate, perhaps as a result of unconscious bias or just bad luck, is not doing as much meaningful work as her or his peers before the associate becomes dissatisfied to the point of leaving. This would be well worth the effort if it results in the firm's ability to adjust the work mix and, therefore, retain minority associates — which is exactly what clients are demanding.

Mentorship

Recall an event (i.e., a party, luncheon or other social gathering) where you felt out of place. You may have felt this way because everyone dressed differently than you, you did not know the majority of the people attending or the other attendees may not have included you in the group discussion.

Now, imagine going to the event you just recalled five days a week, 10 hours a day, for the

duration of your legal career. That's how some minority lawyers feel when walking into their respective law firms. Specifically, racial minorities cannot hide their skin color; instead, they are visibly different than their coworkers.

This feeling of being out of place is more than just skin deep. Minority lawyers may have different backgrounds and outside interests that their nonminority colleagues may not share. Those differences can make social interactions with other attorneys more challenging. There is no doubt that feelings of isolation are a major contributor to high attrition rates among minority associates.

Firms must address those feelings. This is not a piece advocating that every non-racial minority attorney should brush up on black, Hispanic, or Asian cultural references to better connect with racial minority lawyers. However, it is critical that firms acknowledge that minority associate isolation is real and take steps to help minority lawyers feel more comfortable in their work environment. One way to accomplish this undertaking is by implementing an effective mentoring program.

Mentoring programs exist to some degree at nearly every large firm. However, effective programs involve much more than walking an associate around the office on his or her first day of work and making sure that he or she bills hours. A true mentor must serve as the mentee's confidante — the person the associate is comfortable talking with about a work question that may be too embarrassing to ask anyone else, those inevitable mistakes that will be made or about the type of assignments the associate is receiving.

That comfort level can only be created by a real relationship, which takes more effort on the part of the mentor if the mentee is from a different culture or background. It involves taking the time to learn about the associate's background, culture and interests outside of work. There is simply no substitute for having a mentor take the mentoring job just as seriously as an important assignment from a client.

Authentic relationships between mentors and mentees pay real dividends to firms. Having one person at the firm who is tasked by the institution to serve as a safe haven will lead to a minority associate feeling less isolated at work and can help address issues before they become reasons to make the associate leave. In addition, if a minority lawyer has received great mentoring from someone at the firm, he or she will speak positively about the experience to other diverse associate candidates. And building a critical mass of diverse

attorneys is obviously the most effective way of dealing with the feelings of isolation discussed above.

Any effective mentoring system must also include accountability. Therefore, firms should implement an evaluation system to gather data on mentor-mentee relationships. Just as the firm owes associates the duty to evaluate their work, they also owe them the duty to ensure that mentors are investing the appropriate amount of time and energy into their mentee relationships.

Meaningful Interaction with Clients, Judges and Juries

While firms need diverse lawyers for a multitude of reasons, the three most important are sitting on the other end of a client call, on the bench and in the jury box. It is human nature for decision-makers, whether they be clients deciding which firm to hire, or judges and juries in determining fault and penalties, to want to see people with whom they have an ethnic or other affinity at the negotiating table or in the courtroom. According to researcher Hayley Roberts, “More than 85 percent of all Americans consider themselves to be unprejudiced. Yet researchers have also concluded that the majority of people in the [U.S.] hold some degree of implicit racial bias.”[7] Implicit bias is all around us and it is what drives our human tendency to view the world in groups.

However, more and more, minorities are assuming positions of power in both law and business. For example, in 2014, when Judge Staci M. Yandle was appointed as United States District Judge for the Southern District of Illinois, she became the first openly gay judge in the United States Court of Appeals for the Seventh Circuit. The judge herself is “intentional and unapologetic,” when it comes to hiring and retaining minority talent. In fact, she actively encourages white-male colleagues to look at every opportunity as an opportunity for inclusivity.

Judge Yandle is not alone. According to [CNN](#), 17 judicial candidates were elected under a campaign they called “Black Girl Magic Texas” in Houston in late 2018.[8] Just two years prior, nine black women were elected to become judges in Jefferson County, Alabama. This is a nationwide movement.

With an explosion of minority judges ascending to the bench, firms must ensure that they match this expansion in terms of experienced minority advocates. Firms who have

experienced minority advocates may well have an advantage in dealing with these judges that their peer firms do not have. This is not to say that the color of one's skin or one's sexual preference will carry the day with any judge, but study after study has proved that affinity bias among all demographics is real, and judges are human after all.[9]

Juries also reflect the makeup of their communities, which are increasingly diverse, especially in urban areas. All other things being equal, it is undeniably easier for jurors to have empathy for, and thus listen to, someone with whom they feel comfortable. A juror's ability to identify with an advocate is, of course, advantageous to a firm and its client. It makes no sense in 2019 for all of the advocates a firm can send to interact with a jury to look alike.

Given the hard truth that most minority attorneys at firms are associates who do not have the experience to have prominent roles in important jury trials, what can firms do to tap into the experiences of these diverse attorneys now? They can include those associates in strategy meetings in preparing case themes. Partners should seek the advice of minority attorneys at the firm before presenting in front of a diverse judge or jury, no matter the minority associates' seniority.

That process serves the nonminority partner well, because it allows them to receive important and varying perspectives that may be critical when presenting a matter to a decision-maker. And, it serves the minority associates well because it addresses the frustration of all associates, especially minority ones, that they are not more involved in the strategic aspects of handling important matters. There is no doubt that making associates feel invested in the success of the firm's endeavors is the best retention tool.

Of course, firms should also look for opportunities for minority associates to present directly to clients, judges and juries where circumstances allow. Our experience is that both judges and clients are appreciative and supportive when they see firms taking bold steps to provide their minority associates with real, meaningful opportunities at a young age. Pushing higher profile work down to these associates, therefore, is a win-win. It aids retention and generates goodwill among important decision-makers.

Conclusion

Law firms have made great strides when it comes to increasing associate diversity. Now it's

time to pave the way for transforming their partnerships. Retention is where it begins.

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[1] NALP Bulletin, <https://www.nalp.org/0218research>, February 2018 (stating that “this figure continues to lag behind minority enrollment and graduation from law school.”).

[2] NALP Bulletin, <https://www.nalp.org/0418research>, April 2018.

[3] Renwei Chung, NYC Bar Report Reveals Minorities Have a 60% Higher Attrition Rate; Asian Attorneys Leaving At An Alarming Rate, <https://abovethelaw.com/2016/10/nyc-bar-report-reveals-minorities-have-a-60-higher-attrition-rate-asian-attorneys-leaving-at-an-alarming-rate/?rf=1>, Oct. 21, 2016.

[4] Sindhu Sundar, Minority Lawyers on Why They Left BigLaw, Law360, <https://www.law360.com/articles/1053577/minority-lawyers-on-why-they-left-biglaw>, June 17, 2018.

[5] Daniel S. Wittneberg, Corporate Clients Demand More Diversity From Law Firms, [American Bar Association](#), <https://www.americanbar.org/publications/litigation-news/business-litigation/corporate-clients-demand-more-diversity-law-firms/>, Aug. 1, 2017.

[6] David Hellier, Ruth David, and Thomas Buckley, Now Clients Ask: Got Anyone Other Than White Males, Bloomberg, <https://www.bloomberg.com/news/articles/2018-01-29/u-k->

[boards-try-to-make-diversity-challenge-everyone-s-business](#), Jan. 29, 2018.

[7] Hayley Roberts, Implicit Bias in the Legal Profession, <https://www.ipo.org/wp-content/uploads/2017/11/Implicit-Bias-White-Paper-2.pdf>, Dec. 18, 2011.

[8] According to Judge Latosha Payne, one of the 17 elected Democratic Judges in Houston, a diverse bench provides “equal opportunity for justice — regardless of who you are,” and this sentiment proves true within the firm setting, too. Judge Payne further believes that, “having an African-American judge or having a female judge ... [brings] an understanding of a person who may come from that similar background.”

[9] Daniel A. Yudkin & Jay Van Bavel, The Roots of Implicit Bias, N.Y. Times, https://www.nytimes.com/2016/12/09/opinion/sunday/the-roots-of-implicit-bias.html?_r=0, December 9, 2016. (stating that “[p]eople frequently form group memberships on the basis of race, the same biases that emerge along group lines may underlie many instances of racial discrimination); see also Stella Tsai and Debra Rosen, Know Thyself: Affinity Bias in the Legal Profession, <https://apps.americanbar.org/litigation/committees/womanadvocate/articles/winter2015-0315-know-thyself-affinity-bias-legal-profession.html>, American Bar Association, March 9, 2015 (“It is human nature to seek the company of others who fall within our “comfort zone” and to flee from those who trigger our “danger detectors.” Our positive response to people who are similar to us is known as “affinity” bias.”).