



THE DRI DIVERSITY AND INCLUSION MANUAL

*Valuing Diversity and
Inclusion:
Retaining and Advancing
Top Talent in Your
Legal Organization*





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ABOUT DRI— VOICE OF THE DEFENSE BAR

DRI is the leading organization of defense attorneys and in-house counsel. Membership in DRI provides access to resources and tools for attorneys who strive to provide high-quality, balanced and excellent service to their clients and corporations. DRI is host to more than 25 substantive committees whose focus is to develop ongoing and critical dialogue about areas of practice. DRI provides access to resources and tools to grow your practice—members can search a database of more than 65,000 experts, attend renowned CLE seminars, conferences and webcasts, network with 22,000+ like-minded defense practitioners and more. DRI has served the defense bar for more than 50 years and focuses on five main goals:

Education: To teach and educate and to improve the skills of the defense law practitioner

Justice: To strive for improvement in the civil justice system

Balance: To be a counterpoint to the plaintiff's bar and seek balance in the justice system in the minds of potential jurors and on all fields where disputes are resolved

Economics: To assist members in dealing with the economic realities of the defense law practice, including the competitive legal marketplace

Professionalism and Service: To urge members to practice ethically and responsibly, keeping in mind the lawyer's responsibilities that go beyond the interest of the client to the good of American society as a whole

DRI STATEMENT ON DIVERSITY

DRI, the largest international membership organization of attorneys defending the interests of business and individuals in civil litigation, is committed to diversity and inclusion.

Diversity is a core value at DRI. Indeed, diversity is fundamental to the success of the organization, and DRI seeks out and embraces the innumerable benefits and contributions that the perspectives, backgrounds, cultures, and life experiences a diverse membership provides. Inclusiveness is the chief means to increase the diversity of DRI's membership and leadership positions. DRI's members and potential leaders are often also members and leaders of other defense organizations.

Accordingly, DRI encourages all national, state, and local defense organizations to promote diversity and inclusion in their membership and leadership.

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DRI expresses its sincere gratitude to the following firms for their sponsorship of this manual and for their commitment to diversity.

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FROM THE PRESIDENT



W.H. Auden said, “Civilizations should be measured by the degree of diversity attained and the degree of unity retained.” His words apply just as well to law firms—where diversity is not only a moral imperative but a business necessity and where teamwork is increasingly necessary to attract and retain clients and to compete in a tough legal environment.

In today’s global world, clients may trace their family origin to many cultures and countries. They may be citizens of the United States or of some other country in which a global corporation is headquartered. They may adhere to one of the many religions practiced in the United States, Canada, and around the globe, or none at all. Their life histories may well be disparate. They may be men or women, black or white or brown, gay or straight. But the lawyers who serve them continue to uphold the rule of law, to advise them about their options, counsel them on wise strategy, and represent them in the courts or other tribunals.

As lawyers, DRI members are privileged to engage in the meaningful work that members of our profession have done for centuries—representing our clients with dedication and tenacity and skill. And we do so in a global world enriched by its diversity.

At DRI, we recognize and applaud diversity. Law firms have made great strides toward inclusiveness. But empirical and anecdotal evidence suggest that diverse lawyers sometimes still struggle for an equal opportunity in law firms, and many drop out along the way to law firm partnership and success. DRI has therefore focused its attention on ways to assist our members and their law firms to retain the diverse lawyers that they hire. This manual is intended to provide a useful tool to help ensure that when a law firm is measured, as Auden says, it has a highly diverse workforce and client base along with unity toward shared goals and ideals.

Mary Massaron Ross
2013 DRI President
Plunkett Cooney PC
Bloomfield Hills, Michigan

A NOTE FROM THE CHAIR

In 2005, DRI published its first *Law Firm Diversity Retention Manual* to provide guidance and support to DRI members and their firms who needed help in developing their own diversity programs and retaining those diverse lawyers in their practice. In 2005, most legal organizations espoused the business case for diversity as a way to promote the change clients were increasingly demanding. However, we have learned that while the business case for diversity was and is still an admirable argument to support diversity and inclusion in the legal profession, it is not the overarching argument that has driven law firms to achieve the diversity and inclusion that was originally envisioned.

What we have found, which the statistics have supported,* is that achieving actual and sustained diversity and inclusion is a complex challenge; one that requires a more focused approach. As a result, DRI decided that it was necessary to update its *Law Firm Diversity and Retention Manual* to help DRI members and their firms navigate the difficult challenges that are encountered during the quest for meaningful diversity and inclusion. This updated manual is designed to discuss the complex challenges facing law firms and provide the tools and resources to establish, modify or maintain your firm's diversity efforts so client expectations can be met.

It is our sincere hope that DRI members and their firms utilize this updated *Diversity and Inclusion Manual* to help attain significant and meaningful diversity and inclusion required by clients. It is our belief that those who use and implement the strategies in this updated manual will gain a competitive edge in the highly competitive legal environment.

Douglas K. Burrell
Chair, DRI Diversity Committee
Drew Eckl & Farnham LLP
Atlanta, Georgia



* The Demographics of Equity—An Update—NALP Bulletin, February 2013; Representation of Women Associates Continues to Fall, Even as Minority Associates Make Gains—NALP December 13, 2012 Press Release; Women and Minorities in Law Firms—By Race and Ethnicity—NALP Bulletin, January 2012.

FOREWORD

From the Diversity Committee

Buoyed by the success of the *DRI Law Firm Diversity Retention Manual*, published in 2005, the Large Law Firm Subcommittee of DRI's Diversity Committee undertook to update the manual so that it would remain a viable, relevant resource for DRI members. The following manual is designed to be useful for in house counsel leadership as well as law firm management. We have taken the liberty of suggesting "best practices" and "tips" to make the manual more practical.

Many firms, corporate clients, and bar associations have set goals to increase diversity and inclusion among lawyers. These include, of course, increasing minority lawyers as equity partners, on boards, on committees, leading practice groups, on law firm management, and diverse lawyers as an integral connection to clients within the organization. The goals are terrific and many corporations and firms have signed on to them. We join and applaud those good works. However, more needs to be done. It is time to move beyond theory to action to take steps to achieve measureable goals and measure progress. We wish to challenge those in business, the legal profession and corporate America to maintain a true conviction that diverse lawyers can be as successful as their non-diverse colleagues and have the courage to implement measurable goals. A successfully managed diversity program will make all the difference. Set forth in this manual are the recommended actions ready for your implementation.

We hope that you will find this material useful as you pursue the development and implementation of a customized diversity and inclusion strategic plan for your organization. It is our hope that this revised *Diversity and Inclusion Manual* will help guide the way to well managed and effective diversity and inclusion initiatives within your organization.

As with all DRI publications and seminars, we welcome your thoughts and suggestions on this manual. Please feel free to forward your comments and ideas to the leaders of the DRI Diversity Committee at any time.

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1 DIVERSITY AND INCLUSION: LOOKING BACK AND MOVING FORWARD

HISTORICAL CONTEXT

For this second DRI diversity manual, we wanted to provide a historical background on diversity and inclusion within law firms and corporate America. By first taking a look at where we came from and recognizing the valiant efforts of organizations before us who made it their mission to address issues of diversity and inclusion in their workplace, we can better understand the path forward.

CALL TO ACTION—PURPOSE, PAST AND PRESENT

Corporate America has led the push and demand for diversity and inclusion in the legal profession. In 1988, then General Counsel of General Motors, Harry J. Pearce, sent a letter to outside law firms stating that GM wanted to see more traditional minorities and women handling its legal matters. A decade later, then General Counsel of BellSouth Corporation, Charles R. Morgan, drafted a document entitled “Diversity in the Workplace: A Statement of Principle,” which was eventually signed by more than 500 general counsel. The Statement of Principle read, in pertinent part: “We expect the law firms which represent our companies to work actively to promote diversity within their workplace. In making our respective decisions concerning selection of outside counsel, we will give significant weight to a firm’s commitment and progress in this area.” The Statement of Principle was intended to serve as notice to law firms coveting the legal business of its signatories that diversity would be an important consideration in the selection of outside counsel.

Then, in 2004, seeking to establish an unequivocal commitment to make diversity a priority, then Chief Legal Officer at Sara Lee, Rick Palmore, drafted and circulated “A Call to Action, Diversity in the Legal Profession,” urging general counsel to demand diversity in the law firms representing them as well as in their legal departments. The Call to Action stated: “As Chief Legal Officers, we hereby reaffirm our commitment to diversity in the legal profession. Our action is based on the need to enhance opportunity in the legal profession and our recognition that the legal and business interests of our clients require legal representation that reflects the diversity of our employees, customers and the communities where we do business. In furtherance of this renewed commitment, this is intended to be a Call to Action for the profession generally, in particular for our law departments, and for the law firms with which our companies do business.”

The Call to Action went further than the Statement of Principle, incorporating a pledge in its second paragraph: “In an effort to realize a truly diverse profession and to promote diversity in law firms, we commit to taking action consistent with the referenced Call to Action. To that end, we pledge that we will make decisions regarding which law firms represent our companies based in



“Clients expect that firms will provide opportunities to all employees at all levels within the firm, including women, minorities, individuals with disabilities, LGBT individuals and covered veterans. We believe that a culturally sensitive workplace that fosters and capitalizes on diversity of perspective is better able to serve Altria’s needs and can produce better results.”

Denise Keane, Executive Vice President & General Counsel, Altria Law Department

significant part on the diversity performance of the firms. We intend to look for opportunities for firms we regularly use which positively distinguish themselves in this area. We further intend to end or limit our relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse.” For more information on the Call to Action, please visit: <http://www.clocaltoaction.com>.

To date, over 200 signatories have made the commitment to the Call to Action along with several resource groups:

LEADERSHIP COUNCIL ON LEGAL DIVERSITY

An outgrowth of the Call to Action, the Leadership Council on Legal Diversity (LCLD) was formed in May 2009. The LCLD is an organization of corporate chief legal officers and law firm managing partners dedicated to diversity in the legal profession. LCLD’s vision “is to significantly advance diversity and inclusion in the legal profession.” Its mission is “to continue the work of the Call to Action initiative by having its organizations hire, retain, promote and engage the best talent. A critical and necessary element of having the best talent is having diverse talent.”

LCLD works to drive material change in its institutions, with others in its circles of influence, and in the profession generally. It operates through four member-led teams: Talent Pipeline; Talent Development; Partnerships and Teams; and Strategy and Innovation.

For more information on LCLD, please visit: www.lclldnet.org.

INSTITUTE FOR INCLUSION IN THE LEGAL PROFESSION

The Institute for Inclusion in the Legal Profession (IILP) is an organization dedicated to improving diversity and promoting inclusion in the legal profession through comprehensive outreach and original programming. Formed in June 2010, the goal of IILP is to provide programs and tools to legal, judicial, professional, educational and governmental institutions to eliminate bias in the legal profession.

In 2011, the IILP, with assistance from the Association of Legal Administrators, launched the “Business Case for Diversity Research Project: Reality or Wishful Thinking?” to examine how the business case for diversity has impacted three primary stakeholders: corporate clients, law firms, and diverse partners. The data collected by the IILP revealed more work needs to be done if we are to meet the challenge set forth in the Call to Action. For instance, despite the concern among law firms that corporations will penalize them for a perceived failure to live up to diversity metrics or objectives, only 12.5 percent of responding corporations stated they had in fact penalized outside firms.

When corporations actually changed their relationships with law firms because of poor diversity performance, only 16.6 percent terminated the relationships with the law firms. The rest relied instead on a reduction in the use of the law firm as outside counsel. And, among the responding law firms, 72.7 percent reported that they receive only 0 to 5 percent of their gross revenues from clients who ask about the firm’s diversity. An astounding 80 percent of the responding law firms reported they had never been told they had received business, in whole or in part, because of the diversity of the lawyers in the law firm or the firm’s diversity efforts.

The IILP report concludes that while a business case for diversity exists, understanding what it means and the expectations that flow from it differ dramatically from the differing perspectives of the three stakeholders groups. For corporate clients, the impression may exist to outside counsel that business will flow from their commitment to greater diversity, but in reality corporations use diversity performance as one of many factors for selecting and rewarding outside counsel that succeed in their diversity initiatives and meeting other selection criteria. For law firms, the lack of significant rewards from corporate clients has resulted in ineffective diversity programs and activities, perpetuating lackluster efforts toward diversity with little momentum to try anything innovative. For diverse partners, law firm expectations of the amount of business to be generated by a commitment to greater diversity can prove unrealistic and disheartening.

The IILP report concludes by providing recommendations for law firms and diverse partners. The recommendations include: supporting diverse lawyers' membership and participation in national and local organizations whose programs and meetings could benefit their business development efforts; engaging diverse partners in firm management beyond diversity and hiring committees; tracking conversion and promotion rates for diverse categories; adopting internal policies wherein upper firm management shares direct responsibility for the firm's diversity efforts; implementing business development strategies that emphasize personal contact rather than scattershot mass marketing approaches; and, including lawyers with ADA-recognized disabilities in efforts to promote diversity.

To learn more about the IILP, please visit: www.TheIILP.com.

MINORITY CORPORATE COUNSEL ASSOCIATION

The Minority Corporate Counsel Association (MCCA) was founded in 1997 to advocate for the expanded hiring, retention, and promotion of minority attorneys in corporate law departments and the law firms that serve them. Furthering its mission through the collection and dissemination of information about diversity in the legal profession, the MCCA takes an inclusive approach to the definition of "diversity." Its research addresses issues of race/ethnicity, gender, sexual orientation, disability status, and generational differences which impact the legal profession's workforce. In 2000–2007, the MCCA commissioned a series of studies, *Creating Pathways to Diversity*, aimed at developing a portfolio of recommended "best practices" at law departments and law firms to guide in the design, implementation, and measurement of successful diversity initiatives.

Among other things, the Pathways Study found that most corporate law departments fall into one of three categories: (1) compliance—demonstrating a general commitment to increasing minority representation within the department; (2) diversity—involving a higher level of commitment to diversity activities, accompanied by the strong support of senior management and the development of programs designed to recruit and retain minority and women attorneys; and (3) inclusion—demonstrating the highest level of commitment and characterized by the integration and measurement of diversity initiatives with the corporation's long-term strategic goals.

The study further identified several factors critical to a law department's successful move from compliance to inclusion, and chief among those are:

"Diversity is the gold standard for quality in our profession and aspiring to diversity is what will make our organization certain to be a 'best in class' company."

Eddy Jimenez, Director of International Support, Kahala

- the alignment of diversity activities with long-term, corporate-wide strategic initiatives;
- commitment from senior management that translates to measurable objectives at the business unit level;
- the establishment of metrics for accountability;
- compensation of senior management in legal departments tied to results of diversity efforts; and
- substantive training programs.

The Pathways Study found that the corporate law departments they studied demonstrated a deep commitment to meeting the challenges of diversity head on, and are actively working to establish programs that can give them a competitive edge. These organizations have found creative means to recruit, retain, develop and structure programs that encourage productivity, inspiration and enjoyment in the workplace.



On the other hand, the MCCA Pathways Study noted that diversity is becoming a “disappearing act” at the top levels of many law firms. Citing a report by the ABA Commission on Opportunities for Minorities in the Profession, the Study reported that attorneys of color represent a small fraction of partners and associates at firms nationwide, even though one of every three Americans is a person of color. The report found that many law firms do not treat diversity as a strategy contributing to their bottom line, and that lack of understanding impacts their bottom line in terms of missed opportunities, wasted resources and costly turnover. According to the MCCA report, “If diversity programs are to succeed in law firms, then a strong business case must be made to ensure the firm’s commitment and sustained participation.”

Among the primary barriers to success encountered at law firms is a dearth of understanding of the link between diversity and inclusion and the bottom line or its connection to strategic business objectives. Diversity and inclusion must be integrated into the law firm structure. Indeed, the lack of an established business case for diversity explains why it is not fully supported by senior law firm management. The MCCA further enumerated critical success factors including the assurance of senior partner commitment and firm-wide buy-in. Law firms must develop a written plan that clearly makes the business case for diversity. Those that grasp the needs and economic potential of an increasingly diverse marketplace and workforce will work to expand their firm’s market share, strengthen relationships with current corporate clients, and retain talented diverse staff.

Other tools for success noted by the MCCA include holding senior partners accountable for the success of an effective diversity and inclusion strategy; collaboration between partners, staff and knowledgeable experts; firm-wide ownership and participation in diversity pursuits; and confidential resources made available to all attorneys to voice their concerns, questions and ideas in a confidential or even anonymous forum without fear of retaliation or retribution from senior management.

For more information on the MCCA and the Pathway Studies, please visit: www.mcca.com.

Since the late 1980s much has been done to move the ball forward on diversity and inclusion within law firms. There has been a significant amount of attention

paid to diversity and inclusion efforts through the creation of organizations, such as IILP and MCCA, which have chosen to dedicate themselves to diversity and inclusion issues within law firms. This has resulted in many individuals establishing similar organizations and programs on a local and regional level to tackle diversity and inclusion efforts and hopefully see some positive results in the way of more diverse attorneys in the legal profession and law firms.

THE GREAT RECESSION AND MOVING FORWARD WITH DIVERSITY

The “Great Recession” of 2008 took a toll on not only the financial and housing markets, but also the job market and the face of the legal profession. The job market became dire as companies laid off employees in mass numbers. By December 2010, the U.S. unemployment rate had increased to 9.8 percent and the legal profession was not spared—from December 2007 to June 2009, summer programs for law students were reduced or eliminated altogether, some job offers were rescinded, and legal services employment suffered by a drop of 4 percent or a loss of 46,000 jobs, as reported by the Monthly Labor Review (April 2011).

Many in the legal industry worried about the recession’s impact on the demand for legal services and how law firms could respond to the challenging economic climate. Law firms laid off attorneys, eliminated summer associate programs, and cut salaries, perks and bonuses. These measures helped many firms weather the storm while others were forced to close their doors. As a consequence of taking such actions, surviving law firms encountered a new problem: diversity numbers declined.

In the nine years that the Diversity Scoreboard has compiled data on the diversity count of attorneys in the U.S. offices of more than 200 large law firms, the percentage of minority attorneys has increased, rising from less than 10 percent in 2000 to 13.9 percent in 2008. Large law firms shed 6 percent of their attorneys between 2008 and 2009, and lost 9 percent of their minority attorneys during the same period.

In 2009, the annual survey conducted by Vault.com and the MCCA revealed, for the first time in the survey’s seven-year history, virtually no increase in the percentage of minority equity partners. Minority recruitment was down at all levels. Meanwhile, the percentages of minority associates who left their firms have continued to climb since 2007.

As recovery from the recession takes hold and the markets rebound, many legal employers are taking stock of their diversity and inclusion goals and plans. Though many law firms and legal departments claim to support diversity and inclusion and can tout the formation of committees and strategies to improve diversity, very few have taken the time to confirm that they are actually yielding results. Many of those that have taken a hard look at their numbers have realized that over the years they have not consistently diversified their ranks. The measures that can be taken to demonstrably recruit, retain and promote a talented and diverse workforce also include institutional controls and programs that can be created to sustain diversity and inclusion during challenging economic times and going forward. The chapters that follow are intended to move diversity and inclusion goals forward.

“We at DuPont, expect that every one of our colleagues will be treated with respect. We expect that they will have the ability to grow, personally and professionally. Respect for people has been a core value of our company for over 206 years. It is just as relevant to business success today as it was at our founding. Diversity is more than the right thing to do, it’s good for business. Our ability to connect with deal makers, politicians and juries must be better than our competitors. And besides that, diversity generates better and more creative thinking. With varying perspectives brought to the table, better bottom-line results are achieved.”

Thomas L. Sager, Sr. Vice President and General Counsel, DuPont

2 ROADMAP TO DIVERSITY SUCCESS

A STRATEGY FOR DIVERSITY AND INCLUSION WITHIN LAW FIRMS

Law firms are now recognizing what corporations have known for some time: diversity and inclusion is a business strategy. It can be a way to enhance organizational performance through talent strategies, marketplace strategies, and other pillars. A law firm's strategy for diversity and inclusion should be long term and can be easily distinguished from compliance—*i.e.*, equal employment opportunity measures and affirmative action.

Set forth below are the key components of a representative strategy for diversity and inclusion within a large law firm context.

To get started on putting a solid diversity and inclusion strategy in place, here are a few preliminary questions your organization's leadership should consider:

- What does “diversity” mean to us? What does “inclusion” mean to us?
- How do we define diversity and inclusion success at our organization?
- Do we track the percentage of women and minorities entering our organization and the percentage in leadership positions?
- Have we incorporated hours billed for diversity pursuits and individual diversity enhancement efforts into evaluation and compensation determinations for firm leaders, including management and practice group leaders?
- Are women and minorities affirmatively included as a part of our organization's succession plan?
- Are women and minorities on key committees, task forces, and other highly visible leadership roles?
- Have we identified diversity and inclusion as one of the firm's key strategic objectives or core values?
- Do we have annual internal seminars, retreats, conferences, or similar programs for women and minority lawyers, including sessions and panels on business development, networking and leadership? Have we formalized a diversity strategic plan with measurable action steps and defined leadership and management roles or have we incorporated diversity into the firm's strategic plan and business model?
- Has our organization engaged its leaders in internal minority lawyer and women lawyer business development meetings and programs?
- Do we conduct attorney-directed compensation audits to ensure fairness and gender equity?
- Do we appoint diverse lawyers to serve on the organization's key leadership committees, such as Executive Committee, Management Committee, Hiring Committee, Partner Compensation Committee and Associate Evaluation Committee?
- Who is leaving and why? Are women and minority lawyers leaving our organization in disproportionate numbers?
- Who are we hiring and who are we not hiring?

- What does our organization look like from a racial/ethnic representation standpoint today versus five years ago? What are our future projections? Do we resemble the community we serve?
- Do our customers, clients, or other stakeholders and their representatives look different today than five years ago?
- Do we participate in or develop talent pipeline programs to introduce diverse high school, college, and law school students to the legal profession?
- Do we have a fully inclusive formal mentoring program? Do we unintentionally exclude members of certain under-represented groups?
- Have we fostered strong relationships and strategic alliances with external organizations such as the MCCA, NBA, HNBA, LGBT Bar Association, other affinity, women and minority associations, and local community outreach organizations committed to diversity and inclusion?
- Do we monitor progress made on diversity goals by utilizing metrics, soliciting feedback from the firm's internal affinity groups, and maintaining diversity attrition statistics?

STRATEGIC COMPONENTS

(1) Leadership—Managing Partners and Management Committees

The commitment of leadership to a diversity and inclusion strategy must be evident. The strategy must be developed, announced and supported by the most senior management person (e.g., Managing Partner, General Counsel, Solicitor, etc.) or team (e.g., Management Committee). Every large law firm has a general business strategic plan. The formation of the firm's diversity and inclusion strategy should follow the same model.

(2) Mission/Vision—Where are we going with this?

Large law firms didn't get to be large law firms without first developing a vision for success and articulating a mission for its survival. When there is a commitment to diversity, the firm's diversity and inclusion strategy must be integrated into the existing Vision/Mission. On the other hand, if the firm vision has become a little blurry and its mission is not fully articulated or disseminated to its members, then the law firm must determine its goals and purpose. After the firm decides who it will be, a strategy of diversity and inclusion can be incorporated into its mission and metrics can be put in place to determine if the law firm is being true to its vision. This is important to provide the necessary foundation for a successful diversity and inclusion strategy.

(3) The “Business Case”—Why are we doing this?

The reasons law firms have for considering diversity are varied. Some may think that diversity is the “right” thing to do. It may be; however, in order for it to be a successful strategy, diversity AND inclusion must tie directly into the firm's business objectives. Each firm, organization or agency has its own unique business objectives. They are the *sine qua non* for success. Integrating a strategy for diversity and inclusion into a firm's business objectives will ensure continued commitment to diversity and provide long-term goals for inclusion.

(4) Definitions—What do we mean by “diversity” and “inclusion”?

Just like the previous elements of the strategy, the applicable definitions must be developed and tailored to each individual organization. Misunderstandings and assumptions abound about what is meant by the term “diversity.” An organization should be clear from the very beginning of the development of the

strategy to articulate precisely what “diversity” means to the firm. It is equally important to define “inclusion” for purposes of the strategy.

Diversity: “Diversity” means more than equal employment opportunity and should not be defined to include only the Title VII and other protected categories. There are many dimensions to diversity. They include a broad spectrum of characteristics including, but not limited to, race, color, ethnicity, national origin, gender, age, religion, culture, language, disability, sexual orientation, gender identity or expression, socioeconomic status, family structures, geographic differences, diversity of thought, perspectives, talents, technical expertise, and life experiences. Tapping into this broad spectrum of “diversity” will enable law firms and law departments to reap the full performance potential

and competitive advantages that a diversity and inclusion strategy has to offer.

Inclusion: The term “inclusion” has been used to describe the active, intentional, and ongoing engagement with diversity—in people, in curriculum, and in communities (intellectual, social, cultural, geographical). Inclusion describes the ways in which individuals might connect that increase one’s awareness, content knowledge, cognitive sophistication, and emphatic understanding of the complex ways individuals interact. When an organization embarks on a process of culture change that seeks to incorporate “diversity and inclusion” as part of that change, it is a recognition that the organization’s most valuable assets are its people and its clients or customers.

(5) Scope of Strategy

Recommendation: the diversity and inclusion strategy should include workforce (people, employees, and talent), workplace (environment), and marketplace (clients, community, suppliers) elements. The strategy should apply broadly and not just to attorneys employed at the firm.

(6) SMART Goals

The strategic objectives should be framed in the form of SMART goals: Specific, Measurable, Achievable, Results-oriented, and Time-bound.

(7) Accountabilities and Budget

To further demonstrate its commitment to diversity and inclusion, an organization must be willing to hold its partners and others in leadership “accountable” for achieving the goals and objectives developed under the strategy and must be willing to commit funding to support such efforts. A strategy without a leader or champion who will be evaluated based on the success of the strategy or lack thereof, has little chance of gaining long-term traction. Likewise, commitment of funding in the form of a budget, or similar process, is a signal to the organization’s employees that the organization is serious about the strategy.

(8) Metrics

The adage “what gets measured, gets done” is especially applicable in the case of diversity and inclusion. To have long-term success, a diversity and inclusion



strategy must have meaningful benchmarks and metrics. The operative word here is “meaningful.”

Some may think it prudent—or at least efficient—to measure success in the diversity and inclusion arena through “representation,” *i.e.*, by reference to the headcount of people of diverse ethnic groups at a certain point in time. But this should not be the only measure. Such “snapshot” references should be understood as just that, a single point of reference. The number of people an organization employs in any demographic category at any point in time says little about the long-term effectiveness of the overall diversity and inclusion strategy. For instance, economics permitting, an organization can “hire” its way to representational diversity, by recruiting laterals with specific demographics or participating in diversity legal career fairs (such as Vault/MCCA, Lavender Law and Sunbelt) where qualified “diverse” law students and attorneys are ready to be hired.

An organization focused solely on representational diversity could hire diverse candidates at will and accumulate impressive representation statistics. This organization could hire its way to surpass all reasonable benchmarks—law school representation, peer organization representation, census representation, etc. And while this may sound impressive and on the surface look impressive, without an investment in retention efforts such as professional development, mentoring, business development, effective performance evaluations, sponsorships, and other organizational infrastructure elements (as more fully discussed in the following chapter), this approach lacks sufficient grounding to sustain success over time. Such an organization may actually be creating a revolving door of diverse lawyers to no one’s benefit.

When a well-trained attorney leaves one organization for another, that departure could be called a retention “failure.” However, a more sophisticated examination of the facts would focus on the attitude of the departing attorney toward the “home” organization as well as the destination of the departing attorney. For example, it would not be sensible to characterize as failure instances where an attorney leaves a corporation to become a judge or where an attorney in a law firm leaves to become an in-house counsel for a current or prospective client. The reality is that such metrics require more effort, but the outcome of the effort should produce a more “meaningful” indicator of success.

For metrics to be meaningful, they must be tailored to a specific organization and be consistent with cultural norms. With this process in mind, here are examples of metrics that an organization may customize and adopt:

- Tracking the demographics of candidates in an applicant pool
- Tracking the demographics of candidates at traditional recruiting sources—law schools, general recruitment fairs
- Measuring the representation of women and people of color in key leadership positions within the organization
- Including demographic diversity measures in the development of succession plans
- Quantifying the organization’s investment in diversity and inclusion sponsorships, programs, professionals’ time commitment (billed hours)
- Measuring what is spent (by percentage or dollar value) on diverse suppliers

“It’s easy to say you support a concept or a principle when nobody objects. The real test of commitment is how one reacts when there are those who disagree. We can’t change the state of diversity in this country, but we can and we will make a difference with our outside counsel spending, which will affect a sector of the economy that is . . . far less integrated than others.”

**Marc Firestone,
Executive Vice President,
Corporate and Legal
Affairs and General
Counsel, Kraft Foods**

- Developing employee assessment tools (e.g., surveys) on issues related broadly to diversity and inclusion
- Measuring the number of hours spent by employees in diversity and inclusion training
- Developing tools to assess the quality of decision-making and performance with diverse teams

In the end, each organization should develop a way to monitor and evaluate its progress over time that is meaningful to that organization, focusing on its customized “business case.”

(9) Communication Plan

Each organization has its own communications style and culture. Once developed, the diversity and inclusion strategy must be effectively communicated to all employees and other relevant audiences. For example, appropriate messages and articles could be written and shared via the organization’s internet website, intranet, newsletters, and training courses. Indeed, a well-developed communications plan supports the accountability principles discussed in subsection on accountabilities and budgets referenced above because its commitment to diversity and inclusion will become widely-known. To the extent an organization’s culture permits or even better, encourages questions to senior leadership about policies and practices, firm leadership may be asked about progress on content contained in these communications.

(10) Strategic Alliances

A law firm should consider lending financial and other support to a “strategic alliance” as a means to advance its commitment to diversity and inclusion.

Moving forward from Rick Palmore’s “Call to Action” for corporate general counsel to increase the representation of diversity in their respective law departments, there are numerous organizations whose missions align with or are complementary to a law firms that are committed to diversity and inclusion, including:

- Association of Corporate Counsel (www.acc.com)
- Corporate Counsel Women of Color (www.ccwomenofcolor.org)
- Council on Legal Education Opportunity (www.cleoscholars.com)
- Hispanic National Bar Association (www.hnba.com)
- Human Rights Campaign (www.hrc.org)
- Institute for Inclusion in the Legal Profession (www.TheIILP.com)
- Just the Beginning Foundation (www.jtbf.org)
- Leadership Council on Legal Diversity (www.lclldnet.org)
- Minority Corporate Counsel Association (www.mcca.com)
- Minority In House Counsel Association (www.MyMIHCA.org)
- NAACP (www.naACP.org)
- National Asian Pacific American Bar Association (www.napaba.org)
- National Association for Urban Debate Leagues (www.urbandebate.org)
- National Bar Association (www.nationalbar.org)

- National Black Pre-Law Conference (www.blackprelawconference.com)
- National LGBT Bar Association (www.lgbtbar.org)
- National Urban League (nul.iamempowered.com)
- Sponsors for Educational Opportunity (www.seo-usa.org)
- United Negro College Fund (www.uncf.org)

CORPORATE DIVERSITY AND INCLUSION PROGRAMS: ACHIEVING SUCCESS

Corporations have led the way in incorporating the business case into their own diversity and inclusion programs and initiatives. Here are some examples:

DuPont Legal Department: Setting the Tone on Diversity Efforts

DuPont has several initiatives aimed at increasing diversity and inclusion in the legal profession. The Company has made valuing people of all backgrounds a core corporate value and extended its commitment into every segment of its operation, from organizational renewal to professional development. DuPont's Legal Department undertook a convergence effort to select primary providers of legal services where diversity objectives and accomplishments were top considerations. Providers of legal services were asked to demonstrate a commitment to forging a long-term strategic business alliance, employing new technologies, using alternative fee structures and hiring, retaining and actively involving minorities and women in the firm's representation of DuPont.

In 1997, the DuPont Legal Minority Counsel Network (MCN) was created as a collaborative, cohesive body of attorneys of color, who work for DuPont or for one of DuPont's Primary Law Firms or Service Providers. The objectives of the MCN are, among other things, to build relationships and network with fellow diverse attorneys, enhance the expertise of members, foster positive and welcoming workplace environments, advance proactive and intentional recruiting activities and support, encourage and cultivate meaningful mentoring relationships, and support promotions of diverse attorneys to visible positions of leadership. The MCN members convene for an annual conference at DuPont headquarters or in the home city of one of its primary law firms.

DuPont further established other programs to foster these objective and overall diversity and inclusion efforts, including: (1) DuPont Women Lawyers Network, whose mission is to positively impact the business of DuPont by promoting legal excellence through the success, development and professional advancement of the women lawyers representing DuPont; (2) Legal Minority Job Fairs, first organized in 1994, to assist its primary law firms with their minority recruitment efforts bringing in hundreds of resumes from minority law students around the country who interview with DuPont's primary law firm providers; and (3) DuPont Legal's pipeline programs, such as its work with the Association of Corporate Counsel (ACC) in creating the ACC Diversity Pipeline Kit designed for corporate law departments and law firms that wish to establish their own "pipeline" programs to help interest and educate minority youth about career opportunities in the legal profession as well as Street Law, a nonprofit organization that partners corporate legal departments with nearby, diverse high school law classes to provide education programs about law,



democracy, and human rights and increase students' knowledge and interest in the law and legal careers.

The legal departments of DuPont, General Motors, Sara Lee, Shell Oil, and Wal-Mart, five of America's leading corporations, announced initiatives in 2005 to increase the amount of corporate legal work being sent out to minority-owned law firms. These corporations were catalyzed by a DuPont Legal study, entitled "Study on the Status of Minority-Owned Law Firms," which revealed that the number of successful minority-owned law firms representing U.S. corporations had dwindled over the past 15 years. The DuPont study identified problems that the initiatives are meant to address: (1) Development of best practices to guide general counsel in driving the use of minority-owned law firms by both their in-house staffs and majority firms; (2) Creation of a national directory of minority-owned firms with the resources and expertise required by corporate America; and (3) Collaboration between minority-owned law firms and majority owned firms on corporate legal matters. The legal departments of these companies pledged to promote these initiatives and invite others in the corporate legal community to include more minority-owned law firms in the departments' circles of firms to whom they send legal work. In 2008, the resulting roster was published at www.minorityandwomenlawfirms.com.

Microsoft Pay for Performance Incentive Program

In 2008, Microsoft adopted a pay for performance incentive called the Law Firm Diversity Program ("LFDP"), to enhance legal diversity and to encourage law firms that represent Microsoft to diversify their ranks. Under the LFDP, Microsoft changed its fee structure for the 17 preferred provider law firms that handle over \$150 million of legal work for the company annually. Seeking to reward its outside counsel who demonstrated quantifiable progress in diversity, either in total attorney population or in the number of diverse professionals working on the Company's legal matters, Microsoft created a bonus structure for law firms that achieved: (1) a 2 percent increase in the hours worked by U.S.-based diverse attorneys as a percentage of total hours worked on Microsoft matters; or (2) a 0.5 percent increase in the total number of U.S.-based diverse attorneys employed by the firm.

Simultaneously with this program, Microsoft launched new internal initiatives to aid in working with these law firms on diversity. Microsoft's diversity initiatives seek constant innovation and focus in four main areas: recruiting, the development of diverse attorneys, partnerships with outside counsel, and outreach in the profession in general. Notably, Brad Smith, Senior Vice President/General Counsel, agreed to have 5 percent of his annual bonus and the bonuses of his senior leadership team depend on the level of success the preferred firms achieve in improving diversity. In "Microsoft General Counsel Makes His Case for Diversity," (The Recorder, 8/2012), Smith explained that the general counsel community has become much more focused on expecting law firms not only to talk the talk but to walk the walk when it comes to promoting diversity, and increasingly this will be reflected in the hiring as well as the firing decisions clients are making with respect to their choice of outside counsel. Since the program's launch in 2008, Microsoft has seen a measureable increase in the aggregate percentage of hours worked on its matters by diverse attorneys in participating firms.

Smith has stated that bonuses and billing reviews provide hard data and real results intended to give teeth to diversity initiatives and avoid people just paying lip service to the idea without making substantive changes. Simply by making diversity part of the bonus equation, Microsoft has influenced its outside counsel to make diversity and inclusion part of their business models. Smith adds: "And, personally, I think it's really helpful to have something that is more graduated than simply a hire or fire decision. But the truth is, if you put your money where your mouth is, people know what you care about, and law firms tend to do a good job of paying attention to what their clients care about."

Altria Diversity Programs and Efforts

Altria Group, a family of companies including Philip Morris USA, has developed and supported several programs to attract and cultivate a diverse base of employees and future leaders.

Altria's law department hosts a CLE that spotlights diverse attorneys in their substantive practice area from its outside counsel firms. The purpose of the CLE is to give diverse outside counsel more exposure to the Altria law department. The company asks its law firms to nominate diverse speakers (preferably attorneys who do not currently do work for them) and Altria's diversity committee selects the speakers. That way, the law department receives substantive CLE credits and the diverse presenting attorney is provided with a potential business development opportunity.

Altria holds an annual diversity roundtable for its outside counsel. As reported in In-House Quarterly (Winter 2012), quoting Altria Assistant General Counsel, Kamran Khan, who chairs the company's diversity committee, the purpose of the annual roundtable "is to foster a diversity dialogue and encourage firms to share diversity best practices and ideas." During the roundtable, the law department reviews the diversity reporting and invites external diversity speakers and experts to advise and propose joint solutions to diversity related issues. As a follow-up, the law department individually meets with each of its outside firms to discuss their diversity efforts, as well as the diversity challenges each firm faces. In some instances, Altria had difficult conversations with the firms that were not providing the diversity Altria considered necessary to work on its matters. Each of the outside counsel firms is evaluated through a diversity scorecard, seeking

"The fundamental message of diversity: Not rigid categories, not quotas, not head-counting, but diversity of thought, innovation and creativity driven by diverse and multicultural teams. Diversity is a strategy to win!"

**PD Villareal, Sr.
Vice President of
Global Litigation,
GlaxoSmithKline**

to measure, among other things, diversity of representation on Altria matters, engagement of all partners/attorneys in diversity issues, and partnering with Altria on diversity and inclusion issues.

Caesars' Entertainment Is Designing and Managing Diversity

Caesars' Entertainment is making sure the company is evolving to survive in a changing world by stressing diversity, in all its forms. This means more than just hiring people from a variety of backgrounds. The company has taken a business approach to capitalizing on diversity. "It's our ability to manage diversity that brings value. From this perspective, diversity means hiring people with different human experiences, skill sets and ways of thinking—and then putting them to work in ways that challenge conventional thinking," says Fred Keeton, Vice President of Finance for External Affairs and Chief Diversity Officer for Caesars' Entertainment. Legal organizations must become diverse by design and by intention. That means occupational, functional and cognitive diversity. It is important to mix people in who view things differently. It could even mean asking a finance maven to look at a construction problem to insight a different view. For Caesars' the goal is to change the diversity conversation. "So often when we talk about diversity and inclusion, we think about just external identity issues like race and gender. What we really have to think when we think about diversity and inclusion is how people think. We need to ask ourselves, 'How do you create a diverse group of folks in terms of how they view the world?' And then we need to ask, 'How do you take that diverse group of folks and focus their diverse cognitive toolboxes toward a business outcome?'" says Keeton.

Diversity is only good when it is properly managed. Why? Because diversity management affects the bottom line. The conceptual literature provides several plausible explanations. See Cox, T.J. and Blake, S., *Managing cultural diversity: Implications for organizational competitiveness, Academy of Management Executive*. 5(3), 45-55 (1991). First, diversity increases ingenuity and innovation. According to this view, attitudes and beliefs vary in tandem with demographics variables such as age, race, and gender. Second, diversity encourages more effective problem-solving. While heterogeneity may initially produce less cohesion in the decision making process, the variety of outlooks that emerges from a diverse group causes managers to consider more perspectives and therefore leads to more informed decision making in the long run.

Keeton says Caesars' "cultural dexterity" has helped it win casino licenses in Cleveland and Cincinnati recently, and he believes that diversity of all kinds is essential. "We need to get beyond how people look externally and understand that where people are brought up, their experiences, education levels and occupational histories all go into how they view the world. That's what diversity is all about. For Caesars, a wealth of diverse backgrounds and approaches doesn't just feel good—it makes good business sense.

WalMart Making an Impact with Diversity

Wal-Mart is challenging law firms and showing its commitment to promoting minority and female involvement in all facets of its business, including its corporate legal department. Currently, 26 percent of the attorneys in WalMart's U.S. legal department are minorities and 42 percent are women. Half of the officers in the legal department are women and minorities. Wal-Mart is making an

impact with diversity and has ensured that that minorities and women hold key leadership positions—placing them in line for promotions.

Following the Call to Action, WalMart wrote each of its top 100 law firms, as determined by invoices for legal services, informing them that WalMart would end or limit their relationship if they failed to demonstrate a meaningful interest in the importance of diversity. WalMart then began to measure the firms' institutional diversity performance by measuring the following:

- Number of minority and women attorneys/partners/associates in the firm
- Retention rates for minority and women lawyers
- Percentage of minorities and women promoted to partner
- Diversity promotion activities within the firm and legal profession
- Firm and attorney participation in diversity organizations
- Leadership positions held by women and minorities

Each law firm was required to submit a slate of candidates to be considered for appointment as the new relationship attorney at the firm. The relationship attorney is the person primarily responsible for overseeing WalMart's legal matters within the firm. The slate had to include at least one female and one attorney of color. WalMart's initiative resulted in the changing of 40 relationship attorneys at its top 100 law firms, representing a shift of \$60 million worth of legal work to be managed by women or minority attorneys. Additionally, WalMart instituted several programs, events and activities that foster participation by diverse groups with the intent to drive diversity in the legal profession.

3 RECOMMENDATIONS AND BEST PRACTICES

Diversity and inclusion is an essential strategy for success in DRI. The leadership of DRI is providing this issue of diversity and inclusion to encourage law firms and businesses to tap into the legal excellence we have throughout the legal community. We encourage the inclusion of all sectors of our community, regardless of ethnicity, gender, religion, disability, sexual orientation or generation. There is no denying that the moral and social reasons for diversifying law firms and law departments are important. What are the leading strategies and tactics for achieving maximum results around diversity and inclusion? Organizations should assess their diversity and inclusion efforts through comprehensive questions about representation, recruitment, hiring, retention, advancement, and company culture to see how they can continue to progress for the benefit of the legal profession as a whole.

This Chapter is designed to assist law firms and law departments in moving from abstract discussions about diversity and inclusion to practical implementation of diversity best practice strategies and pursuits. The following is a compilation of suggested best practices and recommendations for diversity and inclusion, but does not purport to be an exhaustive list. Rather, it strives to provide a resource for legal employers aiming to institute or update diversity and inclusion plans that best fit their organizational goals.

DRI hopes that you discover new ideas within these pages to assist your organization's efforts to further diversity.

DEFINING DIVERSITY AND INCLUSION

As stated above, there is no single, universally-accepted definition of “diversity” or “inclusion.” As a best practice, “diversity” should be defined broadly and reflect the culture of the community an organization serves. Likewise, “inclusion” should be defined to strengthen diversity efforts.

In many ways, the future success of the legal profession demands that law firms and law departments engage all resources in creating an organizational culture where diversity and differences are valued. Diversity and inclusion encourage an environment where individuals work to their fullest potential, and the workplace presents a respectful, productive environment for everyone. In this manner, the

talents and differences of all employees are respected and valued for their professional successes, which should translate into organizational success.

In this world of strong competition and high client expectations, firms are under growing pressure to retain top talent along with a desire to attract and maintain good clients. Many firms are meeting the challenges and aggressively moving toward a greater commitment to expanding diversity and inclusion within every area of their organizations from support staff to law firm leadership. As the population of the U.S. workforce



grows more ethnically diverse, firms are increasingly expected to understand the unique needs and goals of their clients, especially those clients who reflect ethnic and other dimensions of diversity. The ability to understand, incorporate and appreciate differences is more important than ever to compete successfully. Law firms are learning to enhance their bottom line by recognizing, valuing, and promoting diversity and inclusion. By recruiting, retaining and promoting the most talented professionals, and benefiting from their broad and diverse thinking, law firms and law departments will position themselves to achieve success with an increasingly diverse client or other customer base.

LINK DIVERSITY AND INCLUSION TO PERFORMANCE EVALUATION

Diversity and inclusion can be treated like other business objectives by creating diversity and inclusion metrics, incorporating them into performance reviews, and linking them to business objectives. Organizations should make it clear that career advancement and bonus awards could suffer from unsatisfactory results on diversity and inclusion matters. Organizations can achieve this objective by embedding a diversity scorecard into the firm's strategic scorecard and tying it to individual accountability. This should be an integral component at all levels, beginning with top management. The Vault provides examples of law firms that have well-earned reputations for diversity and inclusion in terms of implementing

policies and measurements linked to hiring, welcoming, nurturing and promoting diversity and inclusion at all levels of firm life. See www.vault.com (law firm diversity database).

SMARTER DIVERSITY AND INCLUSION TRAINING

While almost every large law firm, many law departments, and many smaller firms provide some sort of traditional diversity training, the profession must be more creative in enabling employees to identify their own unconscious biases. Smarter diversity and inclusion training must help employees at all levels consider how the world may look through someone else's cultural lens. Create an environment that allows employees to speak honestly about issues of difference and embrace new types of leadership training so that every manager and every partner learns how to lead inclusively. Educating minority and majority employees can open the firm culture to diversity by making employees aware of different perspectives. Such efforts must be a two-way street. Often, diversity advocates focus primarily on helping majority professionals better appreciate the issues that confront minorities when entering a white-dominated culture. It is also important for diverse professionals to understand how the dominant culture perceives the world. Partners at small as well as large firms can become entrenched in the existing firm culture and may question the wisdom of diversifying their staff. But success is always a good motivator, and a diverse group is better able to service a diverse world.

IMPLEMENTING YOUR DIVERSITY AND INCLUSION STRATEGY

The profession needs to raise its diversity profile to appear to be an attractive career choice for young women and racial and ethnic minorities who are unrepresented or under-represented in the profession. Social media and other web tools are indispensable for reaching people today. For example, the visual component of firm marketing campaigns should showcase the ethnic and other diverse elements of the community it serves. Organizations should encourage their employees to get involved in the community as teachers, tutors and mentors to young people who are interested in the legal profession, thereby building a diverse talent pipeline for the profession.

DIVERSE PATHWAYS TO SUCCESS

The challenge for law firms is to create an environment that supports a range of models in which all people have an equal opportunity to be successful. At today's law firms, success is measured by one's business generating or "rainmaking" ability, and to become rainmakers diverse lawyers need access to and control of the building blocks, including key business development opportunities, quality assignments, and meaningful mentoring/sponsorship relationships.

Successful firms should undertake efforts to reshape their cultures (to the extent feasible) and educate those within the firm about the damaging assumptions and misconceptions that systematically work against diverse lawyers. Law firm management should develop ways to allow their women and minority attorneys to effectively manage their assignments while also providing them with access to new and existing clients for their professional development and non-stigmatized flexible, balanced-hours programs.

From a hiring perspective, the organization should identify a diverse slate of candidates for all open positions. In addition, all associates should be assessed for partnership potential with detailed explanations.

SET CLEAR INCLUSION GOALS

Law firms that have demonstrated progress on the diversity landscape have created strong firm leaders and their success is due to their commitment of resources to diversity and inclusion. Even the best diversity programs, however, have little chance of success without mechanisms to measure accountability and evaluation. Law firms should create a strategic plan and vision with concrete steps and expectations, from senior management down, of what the diversity and inclusion strategic plan is designed to achieve. For example, an organization could design and implement a 3-to-5 year career development and leadership plan for women and minority lawyers with a measurement to track attrition, lateral hires and promotion rates.

Having diverse lawyers fill management positions is beneficial for several reasons. First, it demonstrates that quality work brings promotion and achievement. Second, having a significant number of diverse lawyers in important leadership positions benefits the business by assuring the value of these lawyers' voices and perspectives as a part of effective decision making. Assess your professional priorities and constantly reevaluate those priorities. Successful diversity and inclusion strategies establish clear accountability for planning, monitoring and evaluating progress and action steps. Identify the leaders in your organization who will take responsibility and play a role in making the case for diversity and inclusion and monitoring the goals.

LEADERSHIP COMMITMENT AND RESOURCES

Determine who will spearhead the efforts. From working with clients in recruiting diverse lateral partners, to working with law firms to hire senior level in-house counsel, to setting diversity recruitment goals consistent with management's priorities, continuous leadership buy-in and support is needed for a successful diversity and inclusion strategy.

To be successful the diversity and inclusion strategy needs committed leaders and resources. Leadership commitment to the strategies is critical to retention for at least two reasons. First, if diverse lawyers believe the organization is serious about increasing their advancement opportunities, they are more likely to stay. Second, majority attorneys will understand the role they should play in retaining and advancing diverse lawyers within the organization.

Organizations should devote support staff to diversity and inclusion projects and law firms should consider treating diversity and inclusion project time as billable hours in the same way that pro-bono hours are valued and considered. It is also necessary that you get a high level of buy-in from senior leadership, assignment managers and those individuals within the firm who actually distribute the case assignments. It is those who distribute the work that determine the success of associates.

A key ingredient to leadership support and buy-in of diversity and inclusion pursuits within your organization is for the management team to understand how an effective diversity and inclusion strategy will impact profitability, growth

Michele Coleman Mayes, Vice President/General Counsel, The New York Public Library

“When I think about inclusive diversity, I am reminded of an observation by someone who said that if you don’t like change, you’ll probably dislike being irrelevant a lot more. I am convinced the world order is changing. It simply will not be as long as some think before those deemed in the “minority” will wield considerable influence. One only needs to take stock of the results of the 2012 Presidential election to grasp this. If the strategy is to wait until you are forced to face this fact, you will simply be too late to take advantage of this shift. My advice: work at including those who are not in the in-group to reap the immeasurable benefits ahead of time. The operative word is “work” as it demands effort to create a welcoming environment where different voices are heard, and where respected and power is shared.”

projections, and other strategic business goals. The success of a diversity and inclusion strategy will depend on the level of commitment and participation from each and every segment of the organization—from senior counsel, to rainmakers who distribute the work assignments, to mail clerks and other support staff. In addition, leadership should support required training, making the training readily accessible to all with a goal of 100 percent participation.

RECRUITMENT AND HIRING STRATEGIES

Diversity recruiting should be part of a comprehensive strategic plan to increase the diversity within the organization. Diversity in recruiting requires that organizations attract candidates who bring a variety of ideas, backgrounds, experiences, and characteristics to the team. A law firm can utilize the resources of other organizations that mentor future professionals early in their educational career, such as when they are in high school or college, as a way of becoming and staying active within the ethnic minority and/or LGBT community.

To recruit law students, organizations should include recruiting at those law schools not typically visited by major law firms during interview season. These efforts should be carefully planned, monitored, annually evaluated and revised as appropriate.

Once you have a diverse workforce, it’s up to you to keep it. Finding the diverse talent your organization needs is only one part of the challenge. Retaining the talent is equally important. Think of it as “re-recruiting” and continue efforts to engage the workforce on a regular basis—especially high performers.

BETTER MENTORING PROGRAMS

One highly effective retention strategy is mentoring. Several formal and informal mentoring programs have been identified as significant strategies to support women, minority, and other diverse lawyers in their career advancement.

Mentoring efforts can be integral to the success of a diversity and inclusion strategy. If mentors lack commitment, interpret the job too narrowly, or are not be effective at mentoring, the program can fall short. Not every good lawyer can be a good mentor. Mentors should be trained in effective techniques and rewarded for their success. Options for improving mentoring include increased selectivity in assigning mentors, specialized training to develop mentoring skills, rotating new hires among mentors until a relationship clicks, and assigning the firm’s best performers as mentors. One observation is critical here: informal mentoring is

likely the most effective type of mentoring, but an organization may require the structure of a formal mentoring program to create the environment for successful informal mentoring partnerships to develop—especially where diverse attorneys are seeking mentors.



One of the success factors for an excellent mentoring program is the development and communication of a clear mission and purpose for the program. Set out a clear well-defined leadership structure for mentors where there is an alignment of interests between mentors and mentees. Identify resources and provide training for mentors and mentees and set factors of expectations, roles, accountability and evaluation for mentoring programs. Survey mentees to determine the success or failure of your program.

Organizations can complement mentoring through other strategies. For example, to ensure that underrepresented minorities have a fair shot

at good assignments, some firms use a blind assignment system so that every first-year professional who comes into the firm must have the same number of hours working on a top client matter as a veteran partner has working with the same type of client. Placing women and minorities on top client accounts can help them build confidence, increase their commitment to advance within the organization, and increase their exposure to the best direct supervisors, managers, and partners.

Creating choices in career direction is a key component to the future growth of your organization. It is important to provide opportunities for women and minority lawyers to be exposed to senior attorneys in positions of power so that mentoring relationships can form organically. For example, business development is a necessary skill that is honed and nurtured by coaching and shadowing successful senior law firm partners.

If you have a formal mentor assignment system, monitor it on a quarterly or semi-annual basis. Highlight mentoring success stories and strategies by communicating them to the firm as a whole. Consider permitting non-partner mentors to count time spent on mentoring as billable time.

Organizations should also consider “sponsorship” programs. The idea of instituting sponsorship in lieu of mentorship programs has been adopted by several firms. Sponsors are typically more senior than most mentors and have the ability to source work either directly or indirectly. Essentially, having more pull or power within the organization, sponsors can help junior attorneys navigate the unwritten rules, and get “plugged in” to obtain quality work assignments. Sponsorship is about advancing a young attorney’s talent and ensuring that the attorney has what he or she needs to achieve their goals. Sponsors, in contrast to some mentors, also have the internal influence and position to advocate for a mentee when the mentee is not in the room.

Setting up a successful sponsorship program requires carefully matching sponsors with protégés. One way to do that is to have a professional development team that creates profiles of potential protégés, highlights their goals, strengths, interests, and personal characteristics, and circulates the profiles to a group of potential

sponsors. Another important component is training. Sponsors should be trained on the roles of a sponsor and be made aware of the potential impact of unconscious bias as it is likely that most of the sponsors will not understand and appreciate the experience of women and diverse attorneys. To keep the sponsors accountable, it helps to have a program coordinator or coaches with whom sponsors check-in on a regular basis and who provide periodic reports on written plans established at the beginning of the sponsor-protégé relationship.

CREATE A MULTICULTURAL ENVIRONMENT

Most if not all organizations already have policies regarding workplace environmental practices relating to the treatment of others, such as EEO, Non-Discrimination or Anti-Harassment Policies. Effective enforcement of these policies will enable the organization to proactively create a workplace environment that welcomes and respects individuals from different backgrounds. A well-functioning multicultural work environment can be achieved if leaders are held accountable. The organization should reward successful efforts and consider bringing in a diversity consultant for ideas and diversity training.

AFFINITY/EMPLOYEE RESOURCE GROUPS

Affinity and employee resource groups first appeared in corporate America about 30 years ago based on the realization that employees can gain strength through networks of those with similar experiences and interests. They are currently present in over 90 percent of *Fortune* 500 companies, where it is not uncommon to have such groups represent the needs, interests, and concerns of diverse segments of the workforce.

Affinity groups started showing up in law firms about 15 years ago and are most often seen in the largest U.S. law firms. Many of the initial groups focused on women's initiatives, while others focused on race, gender, ethnicity and even religion. Increasingly, affinity groups are representing other diverse populations, including the physically challenged, gays and lesbians, and new mother groups.

The benefits of such groups are tangible and intangible. Their existence demonstrates a firm's commitment to fostering a welcoming environment and creates an inclusive environment for lawyers and staff. They provide an outlet to address issues affecting certain groups in the firm and provide a number of benefits, including improved retention, informal mentoring and coaching, two-way communication with management, and assistance with recruiting efforts. Two such groups are discussed below.

WOMEN'S INITIATIVES

Women are increasingly knocking down barriers to advance in law firms, but they are not reaching the highest levels of large-firm practice or leadership in significant numbers. According to the National Association of Women Lawyers, women still hold only 20 percent of the positions on firm's highest governance committee, and only 4 percent of firms have a female as the firm-wide managing partner. One of the reasons for this relatively low representation is that the pipeline of women available for advancement is shrinking due to women attorneys leaving the practice of law at an alarming rate. Women attorneys are leaving law firms for a variety of reasons, many noting their dissatisfaction with the lack of support from management and perceived sacrifices to achieve

"Diversity talk in America today is superficial and largely tactical . . . We can no longer afford the luxury of intellectual laziness but must think more deeply and systematically about what diversity means, how it should be managed, and how law and other social processes can best contribute to that endeavor."

Peter Schuck, Professor Emeritus of Law and Adjunct Professor at Yale Law School.

success in a law firm. In addition, many have found the law firm environment to be inhospitable, insensitive and unfair to women.

In response, law firms have established women's initiatives to address these concerns. Some programs are national or global in scope, while others focus on a small group in a single office. Ranging in size, scope and focus, they seek to offer skill-building and related training opportunities, assistance in developing business networks, a safe environment for women to discuss issues of concern, and a strong internal management support system for addressing these issues.

Women's initiatives should be the product of significant input. The meaning of this sentence is unclear. Time should be spent looking at the firm's internal culture and identifying the unique factors in the firm that may contribute to the low percentage of female equity and income partners, the dissatisfaction, and/or low morale of female associates. While some firms may resist the internal assessment process, seeking instead to skip to the "fix it" stage, much knowledge can be gained from an internal assessment in designing a plan of action. Once an assessment has been completed, the initiative's leadership must prioritize goals. Leadership should remain focused on the purpose of the initiative which is to provide greater opportunities for advancement and leadership for women attorneys at the firm.

To ensure greater opportunity for the success of the women's initiative, male attorneys must be active participants in the process. Law firm leaders must: (1) understand the subtle ways in which unexamined biases thwart the success of women lawyers; and (2) ensure the needed management support, accountability structures, and resources to ensure change. Devising a system of shared origination credit that acknowledges all contributions in bringing in business is an important part of diversity and inclusion strategy.

Once the foundation has been established, typically a variety of programming options are developed, including speakers and training opportunities to meet the goals and objectives identified in the assessment process. This may include firm-wide training focused on diversity and inclusion, "awareness," workplace issues, and a gender-equal evaluation process. In addition, many women's initiatives feature speakers of interest to meet with women attorneys on a variety of topics ranging from client development and negotiation skills to gender issues and work/life integration or "control." Other programming can include social outings, seminars on business development and networking opportunities with in-house counsel.

When time and energy are adequately spent on setting up and administering a program, it can help women develop skills, business strategies, and the power base to rise in their law firm and within the profession, create a sense of community and mutual support that make women feel committed to each other and to the firm, and can lead to cultural and institutional changes to make the work environment more conducive to the success of all who work there.

LGBT INITIATIVES

Historically, law firms have been conservative environments. As a result, LGBT attorneys have largely kept their sexual orientation to themselves out of fear of being ostracized, rejected and discriminated against. Consequences could range from very subtle, like whispers in the hallway and feeling distance from colleagues, to more professionally damaging consequences, such as no longer

working with the top attorneys in the firm or finding the quality of one's work plummeting after the disclosure.

Recently, law firms have been working to ameliorate the negative consequences and stigma towards LGBT attorneys. While such change may be difficult, it is vitally important for firms seeking to remain competitive in the marketplace. Attrition rates in law firms, especially at the associate level, have been relatively high in recent years, and firms cannot afford to lose gay attorneys, (who may represent a significant segment of the firm's population), because those attorneys do not feel comfortable at their firms. Laura Rusche, author of "The Importance of Attracting and Retaining Gay Attorneys," noted that firms that welcome LGBT attorneys "convey a loud message that the culture of the law firm is one of inclusion," and as a result, the firm "is bound to attract the best attorneys from all walks of life." When firms create an environment where the top LGBT attorneys as well as their straight counterparts are comfortable practicing law together, they give themselves an advantage over those law firms that do not.

In addition, an employer's acceptance of LGBT attorneys has become increasingly important to today's law students and prospective lateral attorneys, even if the prospective employee is not gay. Having diversity among the firm's attorneys and providing quality benefits to all attorneys is perceived as the "right thing to do," and many attorneys are attracted to firms that hire diverse attorneys and provide open environments of teamwork. The ABA and MCCA, among other associations, have made recommendations identifying external and internal best practices for promoting LGBT diversity.

Examples of recommended external best practices include: (1) Firm Participation within the LGBT Community—Implement concrete initiatives which demonstrate firm promotion and support of attorney and staff involvement in LGBT organizations, including sponsoring local diversity bar association membership and events, reimbursing membership fees/dues in LGBT bar associations and committees, sponsoring events at area law schools which address the LGBT community, and sponsoring events with local LGBT community organizations, either financially or by providing volunteers or speakers; (2) LGBT Related



Marketing and Press—Implement marketing initiatives identifying and celebrating LGBT activities and efforts with the firm, such as developing a firm web page focused solely on diversity and promote firm LGBT diversity/statistics by reporting the firm statistics on the annual NALP form, available and used by law students and laterals during recruiting; and (3) Client-directed activities—Identify ways in which the firm can communicate to clients their commitment to LGBT issues by offering/touting LGBT friendly legal services, developing an expertise in LGBT issues, and advise/train clients on LGBT legal compliance. In addition, law firms should voluntarily report LGBT statistics when responding to RFP's or diversity questionnaires, even if not specifically requested, and encourage clients to add LGBT statistics to their outside counsel questionnaires.

Examples of recommended internal best practices include: (1) Leadership—Identify LGBT diversity as one of the firm's key strategic initiatives or core values and incorporate LGBT diversity into the firm's plan and/or business model, with representation of LGBT attorneys at all leadership levels, meaningful participation in client service teams, active monitoring by utilizing metrics, soliciting feedback from the firm's internal affinity groups, and maintaining LGBT diversity attrition statistics; (2) Communication—Communicate the importance the firm places on LGBT diversity internally and externally, including the firm's goals, programs, and progress, encourage participation at national LGBT conferences, both within the legal industry and multi-industry events, and utilize firm e-mails and intranet to discuss the firm's diversity priorities and plans; and (3) Resources—Provide leadership training/diversity management training for firm leaders to enable development of strategic management plan for diversity including training specifically focused on LGBT issues. Where feasible, it may also be helpful to hire a diversity professional to serve on the Diversity Committee, facilitate the implementation of the firm's diversity initiatives, serve as a development resource for diverse lawyers, and assess whether LGBT associates have access to opportunities and quality work. And periodic face-to-face meetings should be held among firm leaders and LGBT lawyers and staff to discuss diversity and inclusion issues, concerns, and successes.

While changing a culture and environment can be difficult, it can be done by implementation of a well thought out plan of action which is supported by all members of the firm, most importantly firm management. This will lead to firms attracting and retaining the best and brightest attorneys, regardless of gender, race/ethnicity, sexual orientation, or any other characteristic that could otherwise serve to divide rather than unite.

ASSIGNMENT REVIEW PROCESS

Delivering a quality work product and good work assignments with senior attorneys of influence are the *sine qua non* of good evaluations and promotion in a law firm or law department. The creation of assignment committees has been used by some firms as a method to regulate the matching of lawyers with assignment projects. Close monitoring of how assignments match up to the lawyer's capabilities and development goals significantly helps retention and actively works against implicit bias. Some firms task partners as mentors with this specific objective. Others use a looser central assignment method.

Organizations may consider moving from traditional tasking systems to implementing a centralized assignment system which encourages partners or

senior counsel to distribute work more impartially. Such centralized assignment systems reduce randomness, permit associates or staff attorneys who are less visible to secure challenging work from significant partners or senior counsel, and negate the effect of circumstances that may disfavor the growth of women and minority attorneys. Organizations should educate supervising lawyers about the existence and impact of biases on their judgments about appropriate assignments. Make the bias-free distribution of work assignments a pivotal focus point of firm management. Review the representation on teams for the firm's most high-profile, interesting, and complex matters for the purpose of ensuring that those teams are diverse and inclusive. Indeed, many law departments are already monitoring the diversity of the teams utilized by their outside counsel.

In the end, organizations should ensure that high-visibility and challenging assignments are distributed equally among more junior attorneys. Organizations should consider rotating women and minority lawyers into other practice group teams to increase their exposure to senior attorneys of influence and to create advocates for their promotions. This process encourages firm-wide or department-wide cross training and marketing. It also establishes a network within the law firm, increasing the visibility of diverse attorneys, and facilitates a better understanding of the organization's practice groups.

THE FUTURE

We encourage firms, corporations, and governmental agencies to make use of the resources available to them through DRI and other organizations to promote diversity and inclusion. At this juncture, it is hoped that the merging of prominent diversity voices within the legal profession (DRI, MCCA, ABA, LCLD, IILP, NBA and HNBA, among others) on issues of diversity and inclusion will maximize the use of these resources and the sharing of ideas and best practices as the business framework for discussion as this most important topic takes shape.

In today's global marketplace, having a diverse workforce is critical for any successful business that wants to remain competitive. However, attracting and retaining diverse talent cannot happen without thoughtful and proactive attention. Today's candidate pool is constantly expanding culturally, so to ensure that your organization is taking full advantage of the changing workplace landscape, we have identified best practices for consideration by DRI's members.

"I stepped into a well-oiled machine. I was presented with a group of diversity champions who said here is what we want to do. An intensive orientation is essential. There is a deep, deep culture in place. You must get the cultural currents quickly to do well. Respect for people are not just words on a wall. Respecting people involves respecting differences, you do not devalue ideas based on title or some other superficial aspect of being."

**Christopher Reynolds,
Vice President and
General Counsel, Toyota
Motor Sales, U.S.A. Inc.**

4

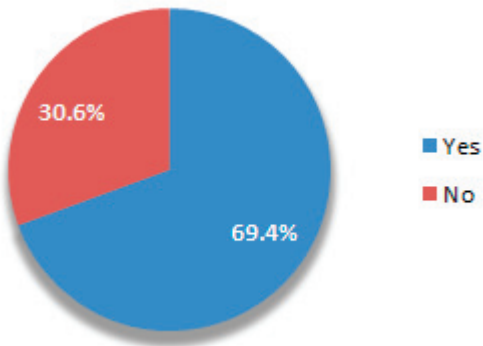
SURVEY RESULTS

To provide additional context for the best practices contained elsewhere in this document, and to offer the statistical basis for data relied upon previously, DRI collected research from two sources to provide the following statistics relating to diversity in the legal workplace. The primary source of statistics for this Publication was the Institute for Inclusion in the Legal Profession's 2011 study entitled *The Business Case for Diversity: Reality or Wishful Thinking?* The second source of information was a law firm diversity survey conducted by the Minority Corporate Counsel Association in 2009.

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The following data are comprised of responses from 49 Fortune 500 corporations:

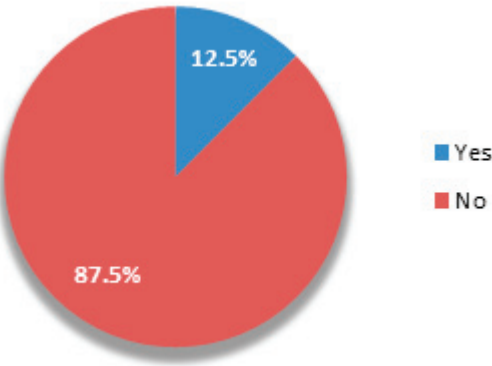
Is diversity a criterion for selecting outside counsel?



Source: IILP, *The Business Case for Diversity: Reality or Wishful Thinking?*

However, once selected, corporations seem less concerned about the diversity of their outside counsel. In fact, the overwhelming majority of corporations reported that there was no change in their relationship with firms that performed against established diversity metrics.

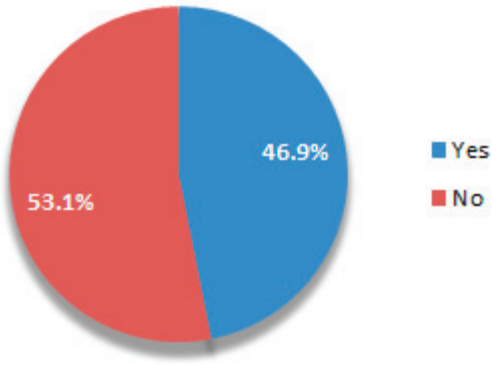
Did poor diversity performance affect the firm's relationship with the corporation?



Source: IILP, *The Business Case for Diversity: Reality or Wishful Thinking?*

DRI also reviewed research regarding whether corporate clients encouraged law firms to continue or expand their commitment to diversity. The pie chart below represents responses from 147 law firms.

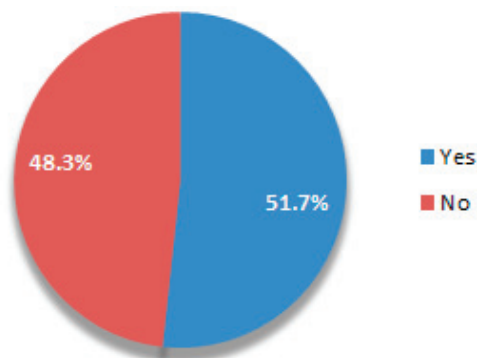
Has your firm received questionnaires or surveys related to diversity at your office(s)?



Source: IILP, *The Business Case for Diversity: Reality or Wishful Thinking?*

The following statistics are derived from a survey of 205 law firms:

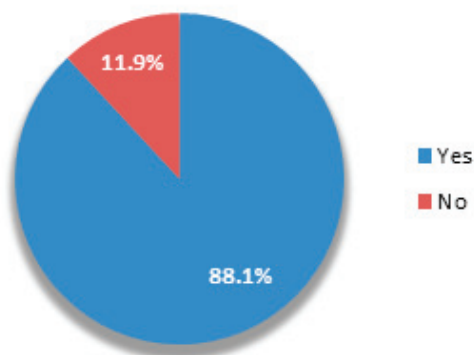
Does your organization have a diversity component in its Request for Proposals/ Responses (RFPs)?



Source: IILP, *The Business Case for Diversity: Reality or Wishful Thinking?*

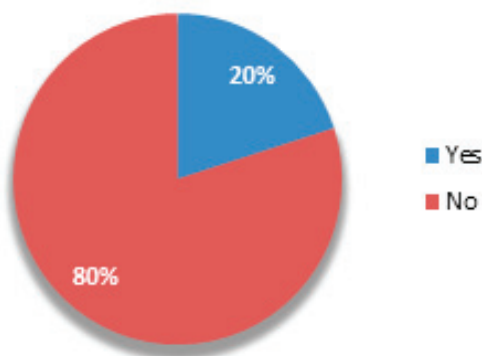
The same study found that firms with over 50 lawyers were much more likely to include a diversity component in their responses to RFPs from clients or prospective clients. The statistics below represent the responses from all firms with over 50 lawyers out of the 205 firms represented in the above chart.

Does your firm have a diversity component for its Responses to Requests for Proposals?



Source: IILP, *The Business Case for Diversity: Reality or Wishful Thinking?*

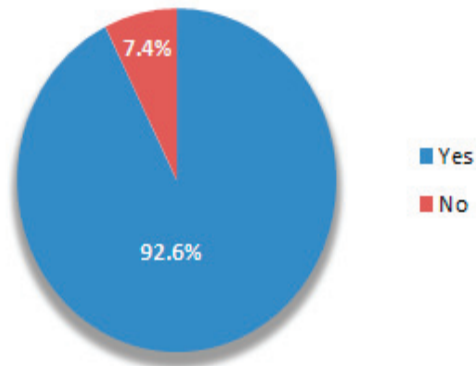
Has your firm ever been told that it received business, in whole or in part, because of the diversity of the lawyers in the firm or the firm's diversity efforts?



Source: IILP, *The Business Case for Diversity: Reality or Wishful Thinking?*

These statistics represent responses from 94 law firms.

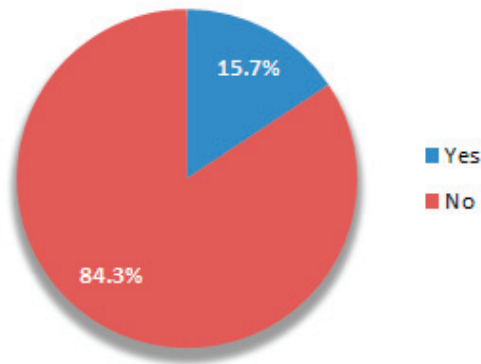
Does your law firm have a diversity committee?



Source: MCCA, 2009 Law Firm Diversity Professional Survey

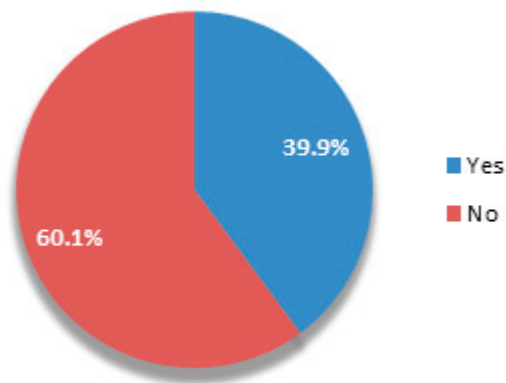
The following statistics come from a survey of 965 diverse (defined in the study as females, African American, Asian, Hispanic, ADA recognized disability, and openly LGBT) partners in law firms of various sizes:

Were you ever a summer associate at your current firm?



Source: IILP, *The Business Case for Diversity: Reality or Wishful Thinking?*

Have you ever received business from a client who has previously expressed a commitment to hiring diverse counsel?



Source: IILP, *The Business Case for Diversity: Reality or Wishful Thinking?*

A CHANGING LANDSCAPE?

The results of these more recent surveys suggest some shift in the emphasis placed on diversity from the previous 2005 Edition of the DRI manual on law firm diversity. In the prior edition, 68 percent of surveyed law firms included diversity in their strategic plan. According to results from the MCCA survey just years later, over 92 percent of law firms report having a committee specifically for the purposes of promoting diversity within their respective law firms.

Corporate clients seem to have increased concern for the diversity of their counsel. In 2005, 58 percent of law firms reported that their corporate clients had encouraged increased diversity in their representation. In the more recent statistics, over 69 percent of large corporations responded that diversity was important to their choice of outside counsel.

Though, anecdotally, major corporations have reported increasing business with a law firm or discontinuing business with a firm because of diversity efforts or the lack thereof, the statistics suggest that only a modest portion of corporations actually reward or punish their counsel based on diversity. Only 12.5 percent of those same corporations report changing their relationship with counsel due to poor diversity efforts. Likewise, in the survey of 965 diverse partners, only 40 percent have received business from clients expressing a commitment to diversity.

Law firm diversity recruiting also remains relatively flat. In 2011, NALP reported that many of the positive diversity hiring trends that had occurred since 2005 were damaged during the recession period from 2008 through 2010. The NALP information suggests that this number has remained relatively stagnant since 2005.

Larger law firms, however, appear more committed to promoting diversity. Of the firms surveyed, 52 percent stated that they included a diversity section in their responses to clients' or prospective clients' requests for proposals (RFP). Those firms with over 50 lawyers were more inclined to include diversity in their responses to RFPs. Over 88 percent of these firms included a diversity section. Stabilization in the legal economic market coupled with law firms' and corporations' increasing commitment to diversity and inclusion should yield progress in the coming years.

EXERTING INDUSTRY INFLUENCE FOR BETTER RESULTS

Overall, today's numbers are not encouraging. Based on the statistics presented, diversity and inclusion for the most part are treated as a very nice, expensive accessory. It would be nice to sport a diamond tie clip, but your outfit is complete without it. And who is going to fault you for not having it?

Lack of diversity may not have a significant effect on your bottom line today, but think about tomorrow. A March, 2011 publication of The Congressional Research Service indicates that the population of the United States is getting "bigger, older and more diverse." A business plan that contemplates future customers and clients is just good sense, not something you do because it is "right" or fashionable. An important first step in planning today for tomorrow is to encourage the members of your organization or your profession to take an honest look at how prevalent diversity is in your industry and use the information gathered to implement practical solutions that will keep you competitive in the future.

One of the biggest industries in this country is the insurance industry. We all need it and defense firms certainly could not survive without it. The insurance industry, because it is ubiquitous is uniquely positioned to have a significant impact on promoting diversity and inclusion. An example of one segment of the insurance industry taking a bold and decisive step for diversity and inclusion is the industry's cooperation with the California Department of Insurance in supplying useful statistics about diversity and inclusion.

In 2011, California Insurance Commissioner Dave Jones requested that insurance companies participate in a *voluntary* special-purpose data call to assess insurer diversity practices. All admitted insurers that wrote in excess of one hundred million dollars in California premiums for year 2010 were encouraged to report. Of the 203 insurance companies that underwrote in excess of \$100M in premiums in California in 2010, fifty-eight companies (29 percent responded). Of the 112 insurance groups that were eligible to respond, 35 groups (or 31 percent) submitted the requested information. The result: half the insurance companies that responded to the data call reported having a supplier diversity program. The challenge: only 29 percent of insurers responded.

In an effort to obtain more complete data on diversity in the industry, the California insurance industry supported the State Department of Insurance in passing Assembly Bill 53 which requires each insurance company that collects more than 100 million in premiums from Californians to report on the company's procurement efforts from minority, women, and disabled veteran-owned businesses. The first report is due July 1, 2013 and updates are required biennially. The extent of each company's commitment to diversity will be a matter of public record and the industry's dedication to its growing diverse base will be evident and appreciated.

This kind of public self-reporting is an excellent standard. Professional associations in the legal, insurance, claims, and other related industries should consider using this kind of data call as a way of assessing where they are in regard to diversity and inclusion and in what direction they should go.

5 BEST PRACTICES FOR NAVIGATING THE DIVERSITY CHALLENGE

"Diversity and inclusion" as a concept can be difficult to define, easy to dismiss, and consequently too often gets short shrift in strategic business planning. The business benefits of creating a more diverse and inclusive workforce and workplace environment have been proven, and harnessing a diverse pool of talent is becoming more important with globalization and the digital age. Nevertheless, those working to develop and implement a diversity and inclusion strategy in the legal environment may encounter a number of barriers.

In addition to the discussions elsewhere in this Manual, below are a few of the major challenges many diversity committees or other leadership teams face along with a few pointers and best practices for navigating through them.

MISSING OR INADEQUATE COMMITMENT AT THE TOP

If a diversity and inclusion strategic plan is going to succeed, it must have strong and visible support from those responsible for the overall strategic planning

and success of the organization: the senior management. A diversity committee will struggle vainly to accomplish its goals without the commitment of top management to its endeavor. Senior partners, general counsel, and C-suite executives must be on board, engaged, and involved, and they must regularly discuss diversity measures along with other business metrics in their strategic planning and other business operations meetings. Mid-level management and other employees will take their lead on diversity and inclusion matters from those at the top, and govern themselves accordingly. Conversely, if senior management does not participate or engage in the diversity strategy, lower level employees will likely follow suit, and the strategy will fail to gain traction.

Tip: Law firms could harness the influence of clients to emphasize the importance of a successful diversity plan to any reluctant members of management.

According to a recent survey of law firms conducted by the IILP, 51.7 percent received RFPs that contained a diversity component. Between one-third and one-half of law firms surveyed indicated that they received formal or informal queries from clients about their use of lawyers who are women, ethnic or racial minorities, disabled, or openly LGBT. What is important to clients is important to the law firm, and presenting statistics that make diversity an important part of a client service package will help a law firm garner buy-in from senior leadership. Also, emphasize that creating a more inclusive workplace can lead to less employee friction, which can minimize the disruption and potential risk caused by inter-employee disputes and complaints. Should an in-house legal department experience resistance in moving forward with a diversity and inclusion strategic plan, a strong ally likely could be found in the Human Resources or other executive level department. The motivation for supporting implementing the plan would be that it would help achieve the overall business objectives of the corporation.

EMPHASIS ONLY ON RECRUITMENT AND REPRESENTATION

Given the statutory compliance requirements applicable to recruiting—Title VII, affirmative action, *et al.*—recruitment tends to be the focus of many diversity efforts. Recruitment strategies are important and useful tools—but they are only a piece of the broader diversity landscape. Hiring lawyers and support staff with different perspectives may increase diversity “representation,” but it only brings value when a firm or company uses those different perspectives to its advantage. Bringing new employees with diverse backgrounds into a workplace that is not already an inclusive environment will make for unhappy lawyers, increased attrition, and a waste of potential resources.

The IILP survey questioned those current law firm partners who had left their previous firms after becoming an equity partner. Responses revealed that twice

Sheryl Willert, 2003 DRI President

“As a long time and committed member of DRI, I have had the pleasure of seeing the transformation of DRI from a largely homogeneous group to one that reflects the many facets of American and international cultures. This transformation has occurred because the organization and its constituent members have embraced diversity, not only at the organizational level but also within its member firms. This journey has been one that has been supported from the top of the organization. The commitment to diversity stems from what is clearly the belief within the organization that to be a strong organization and relevant organization, DRI must do the right thing.”

as many women as men left within five years of becoming an equity partner, and more than 80 percent of minority equity partners left their firms within that five year time frame. As a practical matter, these statistics represent a large pool of talent, investment in training, and books of business exiting a firm. Strategically, firms should identify ways to slow that rate of attrition and retain those resources.

The key point is that the representation of the workforce should only be one prong of a business's diversity and inclusion strategy. Creating an inclusive workplace (for employees) and marketplace (the clients, vendors, and community) are two other important considerations that dovetail with attention on the diversity of the workforce. Diversity and inclusion should be taken into account when making significant business decisions. Recall the statistic on responses to RFPs noted above—and note that many legal clients are requesting that their service providers have diversity plans or otherwise demonstrate their commitment to diversity and inclusion. Law firms and in-house counsel can and should do the same for their vendors.

Tip: Conduct an employee survey. Ask employees what they would like to see to improve diversity and inclusion—in the workforce, workplace, and marketplace. Hiring an outside consultant and conducting anonymous employee interviews can help assure that answers are candid and useful. If the firm is small, then find a regional or nationwide survey in which to participate—employees will be guaranteed anonymity and the organization will receive the benefits of a wide pool of responses.

FAILURE TO ACKNOWLEDGE ORGANIZATIONAL CULTURE

An organization's culture was not built in a day. The implementation of a diversity and inclusion strategy more often than not represents “change” from a cultural standpoint. Business entities hoping to engage in the improvement of inclusive tactics will do well to candidly acknowledge just where the firm or business environment lies on the diversity continuum. In fact, these assessments should continue throughout the process, as strategies may change depending on what stage of the plan is being developed or implemented.

Tip: A survey, formal or informal, will help. Consult with a team of seasoned employees who are both candid and fully engaged in improving diversity and inclusion in the organization. This team can include both attorneys and support staff—the key is finding participants who know the office environment and its culture, and are willing to share what they know. In exchange for full confidentiality, this team may be able to suggest how to tailor the organization's approach to diversity and inclusion to the culture of the organization, especially with respect to the timing of the implementation of the phases of the strategy.

LACK OF UNDERSTANDING OF THE PHASES OF A DIVERSITY AND INCLUSION PLAN

Many business entities fail to view diversity and inclusion strategy as an evolutionary and developmental process. A diverse workplace develops over time. It is essential for all members of the workforce, especially the diversity committee members themselves, to recognize the temptation to push for immediate action and immediate “results.” To achieve lasting success over time,

diversity and inclusion strategy must be developed and implemented in phases, over time.

Tip: The diversity committee should have regular meetings, at least quarterly or perhaps monthly, to assess the plan's status. These meetings should include information about changes, however incremental, that have made the workplace more inclusive. The changes should also be communicated to the other employees. This will help all employees know that the firm or legal department is working on becoming more inclusive, and will be a good way for the committee to recognize that they are bringing about positive changes.

FAILURE TO ESTABLISH SPECIFIC TACTICS

To achieve the goals of the diversity and inclusion strategic plan, the organization must identify specific tactics for attaining the objectives and must understand how such tactics are used. This is important: while many firms and business entities are interested in creating a more diverse and inclusive workplace, few of them are actually making significant decisions aligned with that interest.

For example, the IILP survey found that while 69.4 percent of corporate legal departments use diversity as a criterion in selecting outside counsel, less than 5 percent include any diversity factors when making decisions internally about promotions, salaries, or bonuses. Further, only about 6 percent of firms indicated that a response to an RFP was rejected, in whole or in part, because of a failure to meet a client's diversity expectations. These statistics illustrate the ongoing problem for diversity committees in all types of businesses: firms and business entities recognize the importance of diversity and want to create an inclusive workplace, but that desire does not translate into actual, on-the-ground business decisions and tactics that have bottom-line enhancements.

Tip: Marketplace power drives a lot of major decisions, such as whether to give or take business, or whether to demand or include diversity-related criterion in business dealings. The larger the entity, the more it can demand. But any size business entity can make diversity-driven decisions. The diversity committee has to recognize its entity's position in the marketplace, and then develop tactics that reflect that position—whether they be incorporating a requirement for diversity for all responses to RFPs, or deciding to purchase some office supplies from a local minority-owned business. The most important takeaway here is that the diversity committee must select something appropriate, make it specific, make someone accountable for it, give it a due date, and follow up to see that it is completed. What “it” turns out to be will vary from business to business. Making sure that “it” gets done, however, is something that a business of any size can strive to achieve.

IGNORING THE IMPORTANCE OF TRAINING AND DEVELOPMENT

Firms and businesses frequently fail to link training and development with firm-wide diversity objectives. A diversity committee and other accountable leaders should work with the professional development, organizational development, and the human resources departments, and ask that training requirements for each job description be updated to include diversity training. It is also important to remember that diversity training and development should be for *all*

“As a business leader, the value of workplace diversity and inclusion for me lies not in the compliance application of a program. Rather, I look at effective diversity and inclusion strategies as a means to drive innovation and achieve positive business results. It is more than a slogan. Our human resources are truly our most valuable asset, but only if their full potential, shaped by their individual diverse talents and strengths, can be realized.”

Fred Keeton, Chief Diversity Officer and Vice President of External Affairs, Caesars Entertainment

members of the workforce—not just the employees who belong to traditionally underrepresented groups.

Tip: Training efforts, like the diversity and inclusion strategy itself, should take place in phases. For example, the curriculum should begin with “Awareness” and “Cultural Competency” training and move on to skill development training such as “Understanding Diversity and Inclusion” and then “Valuing Diversity and Inclusion.” Participation should be required for as many employees as feasible.

FAILING TO APPRECIATE THE COMPLEXITIES OF CHANGING DEMOGRAPHICS

The terms “diversity” and “inclusion” often call to mind the concern for women and people of color in the workplace. However, these terms can incorporate any number of different demographic categories: for example, one major source of tension in the workplace today arises from interactions between members of different generations. The United States is on the cusp of a major demographic change, as Baby Boomers exit the workforce and enter retirement, taking their experience and knowledge with them. On the other hand, the world is experiencing a major digital revolution that is being embraced and exploited by the young “Millennials” who have never known a world without the internet.



A simple, broad-brush picture like this one makes it easy to see how (1) conflicts between these two groups are inevitable, and (2) each group has something vital to offer the workplace, and the contributions of each should be valued and included. However, without including “generational” diversity in the diversity and

inclusion strategic plan, a diversity committee may miss opportunities to mitigate these conflicts and maximize each group’s potential. Other areas of potential tensions and therefore potential opportunities could come from differences in socioeconomic status, sexual orientation, religious upbringing, family structure, parental status, and so on. The list is long, and the most successful diversity committee will devote some time to brainstorming different target groups.

Tip: Diversity committees should understand that “inclusion” has a broad scope, and one of the goals should be to define diversity and “inclusion” broadly, taking into account the variety and complexity of demographics in the marketplace. The definitions used in diversity and inclusion strategic plan should reflect the needs of the business.

Diversity committees must understand intersectionality—that demographic categories intersect in each individual person, and that a person’s inclusion in one category impacts his/her inclusion in another, creating unique perspectives. By specifically identifying differences that can become sources of conflict, the committee will be better poised to anticipate and mitigate problems. By focusing on the complexities of demographic changes and the unique perspectives that may be created by having an inclusive workplace, employers may be able to realize the business value and benefits of a diversity and inclusion strategy.

CONCLUSION

The authors of this manual hope that DRI members find the material and resources referenced herein to be useful as the member organizations begin or further their journey. We share the same goal: to make diversity and inclusion a rewarding business strategy for organizational success. For such is the reality of a diversity and inclusion strategy—it is a process whose benefits and value will be realized over time.

In addition to the resources cited herein, the authors are available to assist DRI member organizations with elements of the journey.

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• ABA Commission on Racial and Ethnic Diversity	www.abanet.org
• American Corporate Counsel Association	www.diversecounsel.org
• Asian Bar Association	www.abaw.org
• Association for Legal Career Professionals (NALP)	www.nalp.org
• Association of Black Women Attorneys	www.abwa.org
• Center for Legal Inclusiveness	www.centerforlegalinclusiveness.org
• Council on Legal Education (CLEO)	www.cleodiversitynetwork.org
• Disability Rights Bar Association	www.DRBA-Law.edu
• Diversity Inc.	www.diversityinc.com
• Dominican Bar Association	www.dominicanbarassoc.org
• Garden State Bar Association	www.gardenstatebar.org
• Equal Justice Society	www.equaljusticesociety.org
• Hispanic National Bar Association	www.hnba.org
• Institute for Corporate Diversity	www.diversityonline.org
• Lawyers for One America	www.lfoa.org/diversity
• Legal Council on Legal Diversity (LCLD)	www.lclldnet.org
• Minority Corporate Counsel Association	www.mcca.com
• Muslim Bar Association of New York	www.muslimbarny.org
• National Asian Pacific American Bar Association (NAPABA)	www.napaba.org
• National Association of Women Lawyers (NAWL)	www.nawl.org
• National Bar Association	www.natoinalbar.org
• National Bar Association Commercial Law Section	www.nbacls.org
• National Native American Bar Association	www.nativeamericanbar.org
• National LGBT Bar Association	www.lgbtbar.org
• Practicing Attorneys for Law Students Program, Inc., (PALS)	www.palsprogram.org
• Puerto Rican Bar Association	www.prba.net

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