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**IT CAN BE DONE: A PRIMER FOR  
DIVERSE ATTORNEY RECRUITMENT,  
RETENTION, AND PROMOTION  
EFFORTS IN SMALL AND MID-SIZED  
FIRMS**

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# IT CAN BE DONE: A PRIMER FOR DIVERSE ATTORNEY RECRUITMENT, RETENTION, AND PROMOTION EFFORTS IN SMALL AND MID-SIZED FIRMS

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Diversity and inclusion efforts for small to mid-sized firms are a difficult proposition. There. We said it. It is no secret that the Twin Cities specifically, and the legal profession generally, struggle with recruiting, retaining, and promoting attorneys from diverse backgrounds. But the fact that it is difficult for firms and our community does not mean small to mid-sized firms should neglect to work to diversify the profession. Promoting diversity in the legal profession is the right thing to do — it is right ethically, it is right

morally, and it is right financially for firms. This article will explore the issues of recruitment, retention, and promotion of diverse attorneys in the Twin Cities legal community. It will offer practical advice for small to mid-sized firms that struggle with their diversity and inclusion efforts, with an eye toward focusing on the structural strengths and unique opportunities working at such a firm provides to diverse attorneys.

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## RECRUITING AND HIRING DIVERSE ATTORNEYS: THE TIME FOR EXCUSES IS OVER

The value diverse attorneys bring to law firms and clients is undeniable. Recently, Acritas Research, Ltd. conducted a comprehensive survey of general counsel and found that they knowingly provide more work and pay higher rates for diverse attorney teams. (Study available for download at <http://www.acritas.com/diversity-insight>). The reason is simple — diverse attorneys bring unique perspectives and added value to legal teams. Although the value is clear, many firms still struggle with recruiting diverse attorneys. That reality is especially apparent in small to mid-sized firms, which argue that hiring diverse counsel is near impossible because they cannot offer the same compensation package as larger, higher paying firms. That mindset is a crutch that impedes efforts towards diversifying the attorney ranks in small to mid-sized firms. The truth is, there are practical solutions and benefits that such firms can offer to entice and hire diverse attorneys. This article and the strategies outlined in it are not presented in a vacuum; the authors acknowledge and take into account the fact that not all firms can offer identical compensation benefits. However, there is a great deal that firms can do — and are not currently doing — to recruit and hire diverse attorneys.

## RECOGNIZE THAT NOT EVERY LAW STUDENT/ATTORNEY IS FAMILIAR WITH ALL FIRMS IN MINNESOTA

For many diverse law students and attorneys, the first introduction they have to Minnesota firms is through the law school on-campus interview process. If your firm is not there, how do you expect to be known? Perhaps small to mid-sized firms do not see particular value in attending on-campus interviews because they do not have a formal summer clerk program. While this reasoning is understandable, small to mid-sized firms need to take proactive steps to gain exposure to diverse law students and attorneys. So, if the formal on-campus interview process is not for you, what can you do?

- **Become a known organization to law school affinity bar associations.** All of the law schools in Minnesota have student chapters of affinity bar associations. For instance, the Latino Law Student Alliance at the University of Minnesota Law School is an extremely active organization that welcomes the opportunity to partner with law firms and other bar associations. Consider hosting a social networking event for the law school affinity bars. Think outside the box — perhaps your firm could partner with other similarly situated firms, or a bar association to which your firm belongs, to co-sponsor an event in an effort to mitigate the associated overhead costs. The point of this type of activity is to get your firm and your leaders on the radar of diverse law students who may not otherwise have an opportunity to learn about your firm while in law school.

- **Establish relationships with local affinity bar associations.** You do not need to reinvent the wheel to be successful at increasing your firm's exposure to diverse law students and attorneys. There are already a significant number of well-organized affinity bar associations who share the same interest as your firm in increasing the exposure of its members to members of the legal community. To illustrate this point, consider the sheer diversity within the Minnesota affinity bar community which includes: the Minnesota Hispanic Bar Association, Minnesota Lavender Bar Association, Minnesota Asian Pacific American Bar Association, Minnesota American Indian Bar Association, Minnesota Association of Black Lawyers, Minnesota Women Lawyers, the Minnesota Hmong Bar Association, and the recently created North American Somali Bar Association. These organizations are driven to provide increased opportunities and exposure for their members. It could not be any simpler. They want to work with you! There are numerous opportunities to support, partner, and engage the affinity bars; from hosting a meeting, to attending a gala, or partnering in creating a CLE program. Take advantage of the pre-existing structure and organization of affinity bars, and plug your firm and leadership into these communities. You will undoubtedly bring recognition to your firm.

- **Innovate your outreach efforts.** Firms consistently fail to take advantage of simple opportunities for diversity outreach; for example, the affinity bars maintain job boards and provide new postings to their membership. It is completely free to post a job opening and have it sent to the affinity bars' contact lists. At a minimum, this is something small to mid-sized law firms can start doing *immediately*, at no additional cost, that will provide exposure to a potential applicant pool intended to promote diversity. This strategy is straightforward — to transform the appearance of your law firm, you need to recruit in a manner different than you previously have because change begets change.

## RECONSIDER THE METRICS USED FOR SCREENING APPLICANTS

Like the firm decision of where to advertise a new firm job opening, the metrics used in interviewing and evaluating applicants frequently result in the hiring of attorneys that match the background, experience, and culture, of those in positions of power within a firm. It is impractical to think that a firm's composition will change without an overt intent to effect change. It is therefore worthwhile to reconsider the criteria firms most often use in making hiring decisions.

- **Traditional metrics for evaluating applicants are inadequate.** A firm does both itself and diverse applicants a disservice when it focuses solely on allegedly objective

law school grades and class rank. Often times, diverse law students are at a disadvantage when progressing through law school. For instance, even if your IQ is over 200, you may still struggle with an essay exam when English is your third language. There is a disconnect between traditional education systems and non-majority cultures that can result in lower "objective" results. In addition, relying solely on those results fails to properly value other skills that diverse applicants can bring to a firm.

- **Consider applicants' non-traditional metrics.** To better appreciate the attributes an attorney applicant will bring to your firm, it is imperative that you develop questioning that allows an applicant to explain the unique skill set and values he or she can bring to the firm. For example, consider the value of practical real-world experience prior to becoming a lawyer. To the extent possible, try to understand the specific experiences of each individual applicant. Should the fact that an applicant had to work full-time through law school to support his or her family impact how a firm evaluates "objective" criteria? Likewise, consider evaluating an applicant's community involvement. Should a firm reflect on an applicant's leadership activities with a non-profit organization, or within a church? These experiences, unique to each applicant, can provide indications of the character and skills of an applicant that are not addressed if a firm evaluates applicants solely on "objective" criteria.
- **Train your recruiters.** The individual or group responsible for your firm's recruiting efforts should be trained in how to make diverse candidates feel comfortable and should be well-versed in discussing the firm's culture and diversity policies. If your recruiter cannot easily explain the benefits your firm offers to a diverse applicant, then your opportunity for a successful interview experience diminishes.

#### **REFOCUS ON WHAT YOUR FIRM CAN OFFER**

Law firm management understand the need to market to existing and potential clients. To that end, firms often develop business development strategies and branding campaigns that seek to inform clients of the benefits of retaining the firm. A similar approach to illustrate the value your firm would provide to a diverse attorney applicant should also be employed. In short, play to your strengths and make it readily apparent that your firm offers unique opportunities!

- **Quality of life considerations.** If your firm has lower billable hour requirements for its associates than the "big" firms in the Twin Cities, then make sure to highlight that fact! Work/life balance and flexibility is becoming increasingly more important to young attorneys. But, **make sure** that if you tout lower bill-

able hours that there is no unofficial expectation that associates bill substantially more than the highlighted requirement. Moreover, small to mid-sized firms often have family friendly environments and more collegial atmospheres than "big law" counterparts. To many diverse attorneys, the feeling of a friendly, family-oriented, atmosphere is more inclusive and can be a strong factor in selecting a firm at which to work.

- **Professional development.** In addition, small to mid-sized firms can offer enticing unique professional development opportunities. For instance, small to mid-sized firms are: (1) perfectly situated to provide unparalleled mentoring opportunities from key partners; (2) able to provide client contact and meaningful business development involvement; and (3) are distinctively structured in a way that allows newer attorneys to obtain file responsibilities much sooner than at larger firms. These few examples of potential opportunities your firm can offer are attractive to diverse law students and attorneys. It is imperative that your firm stress these opportunities to diverse attorney candidates, and help them to understand the incredible value to their careers associated with these professional development benefits.

#### **REDEFINE YOUR COMMITMENT TO DIVERSITY**

Word of mouth is a powerful marketing, business development, and recruitment tool. Take our word, people in the affinity bar communities discuss local law firms' diversity initiatives, cultures, and demographics. If your firm is lacking in its diversity program or struggles hiring diverse attorneys, now is the time to redefine how you recruit and hire attorneys. To change the "box," you need to think outside of it.

- **Commit to interviewing at least one candidate you might not otherwise interview based on your "traditional" criteria.** It should go without saying, but if your interview pool is a reflection of your firm, then your new hires will look the same as your current attorneys. It takes purposeful conduct to diversify your candidates and create the potential to hire diverse attorneys. A good first step that does not take much in the way of firm resources is to commit to interviewing at least one "non-traditional" candidate. Most firms have certain criteria they take into account when selecting who to interview — e.g., grades, class rank, and law review experience. Challenge your firm's recruitment and hiring committees to look deeper at candidates and explore their full résumés to better understand an applicant's background, journey to becoming a lawyer, and unique abilities that he or she may bring to your workplace — abilities that your current attorneys may not have. Next, actually meet with the person and, as opposed to only discussing law school performance

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and areas of practice, take the extra time to learn about the individual applicant. This will allow you to recognize strengths that may not be apparent in a résumé or writing sample. At a minimum, committing to interviewing one “non-traditional” candidate will introduce your firm to new cultures and personal experiences, and will introduce the applicant to your firm. The commitment can change the reflection of your firm — and change is good.

- **Honestly assess your firm’s “real” culture.** Finally, as a practical pointer, understand the culture of your firm. Leadership at your firm needs to have a hand on the pulse of the firm’s culture and morale — from associates to staff — to ensure that what you preach is the same as what you practice. For instance, if your firm is dominated by a single culture, do not make representations that there is an abundance of diverse viewpoints. It is okay to admit that your firm is not where it should be, or wants to be, when it comes to diversity. Recognize the lack of diverse representation, identify potential solutions, and create a place for implementing the solutions. Successful diversity and inclusion policies, including hiring practices, require that firms have a clear and objective understanding about who they are, how they operate, and what it means to work there. If, after an introspective look, you do not like what you see at your firm, do not be afraid to brainstorm ways to change. If this is an uncomfortable discussion for people in your firm to have, then that is a good indication that there is work to be done.

#### **RETAINING DIVERSE ATTORNEYS: PRACTICAL STRATEGIES FOR BETTER RETENTION RESULTS**

Once a law firm has recruited and hired diverse attorneys, how does the firm retain them? Like the goal of retaining any new employee, ensuring that your firm fosters employees’ professional development begins long before the new attorney is hired.

To develop a successful plan to keep diverse attorneys, it is helpful to know why they leave. In 2007, the Level Playing Field Institute conducted “The Corporate Leavers Survey”; the national study found that each year more than two million professionals and managers voluntarily leave their employer solely as the result of unfairness in the workplace. Level Playing Field Institute, *The Corporate Leavers Survey: The Cost of Employee Turnover Due Solely to Unfairness in the Workplace*, 2007, <http://www.lpfi.org/wp-content/uploads/2015/05/corporate-leavers-survey.pdf>. In addition to determining why employees left a workplace, the study also examined what employers could have done to retain those employees. *Id.* People of color responded that having better managers who recognized their abilities was the top reason they would have stayed with their employers,

and having better benefits was the top concern of gay and lesbian employees. *Id.* In contrast, only heterosexual Caucasians, male and female, indicated that a fair salary was the most important concern that would have made them more likely to remain with their employers. *Id.*

The good news for small to mid-sized firms trying to retain diverse attorneys is that the survey demonstrates that money is not the only motivating factor for an attorney to stay with his/her firm. Law firms can succeed in retaining diverse talent by addressing unconscious or implicit bias in the firm, creating an inclusive workforce, and investing in attorney performance and development through mentorship and sponsorship.

#### **UNDERSTAND IMPLICIT BIAS AND HOW IT IMPACTS YOUR DECISION-MAKING PROCESS**

An important thing a firm can do is address implicit or unconscious bias from within. Implicit bias is “the bias in judgment and/or behavior that results from subtle cognitive processes (e.g., implicit attitudes and implicit stereotypes) that often operate at a level below conscious awareness and without intentional control.” National Center for State Courts, *Helping Courts Address Implicit Bias: Frequently Asked Questions*, 2012.

Harvard University provides a free Implicit Association Test (IAT) that measures attitudes and beliefs that individuals may be unable or unwilling to express. The IAT can be accessed at: <https://implicit.harvard.edu/implicit/education.html>. Once firm members are aware of their implicit biases and the affect those biases may have on the culture of the firm, the firm can work to combat those biases to create an inclusive firm culture. See CDO Insights, *Proven Strategies for Addressing Unconscious Bias in the Workplace*, Diversity Best Practices, August 2008 (Vol. 2, Issue 5), p. 15 (discussing ten ways to combat hidden bias in the workplace).

#### **FOCUS ON CONCRETE AND ACHIEVABLE INCLUSION GOALS**

Creating an inclusive culture means that firms must do more than simply hire diverse attorneys; they must also make sure those attorneys are meaningful participants in the business and culture of the firm. Encouraging diverse attorneys to develop skills and relationships by joining affinity bar organizations or professional organizations is one easy way to demonstrate that the firm is invested in their development. Two other ways to ensure that diverse attorneys are truly members of the firm are through mentorship and sponsorship. A mentor can help the new attorney navigate the unwritten rules and conduct of the firm, from explaining how much office time is required or what the “casual Friday” dress code *really* means to demystifying

the partnership track and how to get there. Sponsorship takes the advocacy for a diverse attorney a step further. A sponsor can help the new attorney create meaningful relationships within the firm and with clients, can advocate for the diverse attorney, and has the power to help advance and develop the diverse attorney's career.

**SUPPORT OPEN LINES OF COMMUNICATION**

Finally, firms should encourage open dialogue with their attorneys. Clearly communicating the expectations of each attorney and pathways to success, and providing a mentor/sponsor who will help the attorney navigate those pathways are tools that any size firm can implement. Demonstrating to the diverse attorneys that the firm wants them there and wants them to succeed will go a long way toward retaining those attorneys so that they are in a position for promotion.

**TIPS FOR RETAINING DIVERSE ATTORNEYS**

- Identify and address implicit/unconscious bias by taking the Implicit Association Test: <https://implicit.harvard.edu/implicit/education.html>.
- Combat implicit/unconscious bias and create an inclusive firm culture by using these suggestions: <http://www.cookcross.com/docs/UnconsciousBias.pdf>.
- Establish a mentoring and/or sponsorship program for all attorneys within the firm. A discussion of the differences between mentoring and sponsorship can be found at: [http://www.americanbar.org/publications/law\\_practice\\_magazine/2012/september-october/associate-development.html](http://www.americanbar.org/publications/law_practice_magazine/2012/september-october/associate-development.html).
- Conduct "stay" interviews to give diverse attorneys an opportunity to share what keeps them at the firm and/or why they would leave. Tips for conducting stay interviews <https://www.linkedin.com/pulse/why-hr-should-use-stay-interviews-increase-retention-rates-os-burn>.

**PROMOTING DIVERSE ATTORNEYS: STRATEGIES FOR CULTIVATING DIVERSE LEADERS IN YOUR FIRM**

Promotion of diverse attorneys presupposes some success in the hiring and retention of a diverse attorney staff. If you do not hire you cannot promote; if you do not promote it is hard to retain; and if you do not retain you have no candidates to promote. So what should we do to make sure we are promoting diverse candidates?

First, recognize that the lack of promotion of diverse attorneys is a problem. In a recent article in the *Star Tribune*, Neal St. Anthony reported on a McKinsey & Co. study of 366 companies. At its core, the study found that companies add 1 percentage point of operating profits when they increase

management diversity by 10 percent — i.e., add one woman or person of color for every 10 in management. ("Report: Equal Pay Worth \$2.1 Trillion," *Star Tribune*, Business Section, May 2, 2016.) The article also noted that "companies that employ minorities and women in executive ranks in numbers that at least approach their representation in the population tend to perform better because they attract more talented job applicants; improve decision-making through different perspectives and backgrounds; motivate employees who see that people other than white males can advance, and improve the company's popularity." *Id.*

**THE STATE OF DIVERSE PARTNERS IN THE STATE OF MINNESOTA**

How do Minnesota law firms stack up when it comes to diversity in promotion? Not well. A February, 2014, National Association for Law Placement (NALP) Bulletin evaluated minority promotion in the 40 largest legal markets in the United States. Below is a chart of results from the NALP study that identifies the percentages of minority and minority women partners in select legal markets, including the Twin Cities.

**PERCENTAGE OF PARTNERS**

Location	% Minority	% Minority Women
Nationally	7.1	2.26
Nationally-Firms, less than 100 Attorneys	6.27	2.14
Atlanta	7.46	2.16
Chicago	6.31	2.22
Detroit	4.92	1.97
Milwaukee	2.97	.99
Minneapolis / St. Paul	2.68	1.14

Of all 40 major markets studied, the only markets with less diversity among partners than the Twin Cities were Grand Rapids, Nashville, Pittsburgh, and Raleigh-Durham. Although Minnesota firms perform slightly better in the hiring of associates, we ranked ahead of only Cleveland, Grand Rapids, Milwaukee, Nashville, Pittsburgh, and Salt Lake City in the percentage of minority candidates hired. How can firms do a better job promoting diverse associates that they worked hard to recruit and retain?

## **BE S.M.A.R.T. WITH YOUR DIVERSITY AND GENDER EQUITY GOALS**

In the Minnesota State Bar Association (MSBA)'s June 2008 Diversity and Gender Equity in the Legal Profession "Best Practices Guide," the MSBA advocates establishing "S.M.A.R.T." diversity and gender equity goals. What does S.M.A.R.T. mean?

- **Specific** rather than general goals (not "improve retention" but "increase retention of diverse candidates from 50% to 75%");
- **Measurement** of current performance, recruitment, and retention goals (e.g., do we track the percentage of women minorities and other underrepresented groups entering our organization and the percentage in leadership positions?);
- **Agreement** upon the goals within the organization (i.e. do we have widespread organizational "buy in"?);
- **Realistic** but challenging diversity goals that are tracked and evaluated at least annually by the firm's Diversity and Management Committees; and
- **Timetable** for accomplishing goals.

## **CONSIDERATIONS FIRMS SHOULD KEEP IN MIND WHEN DEVELOPING DIVERSITY PLANS**

The MSBA has a Diversity and Inclusion Strategic Plan for 2016-2019. MDLA member law firms should likewise consider having their own S.M.A.R.T plans for achieving diversity and inclusion goals. It is helpful to consider the following questions when developing a diversity plan that focuses on retention and promotion of diverse attorneys:

- Where are we now in terms of the diversity of our hiring, and management/partnership structure? Take a strong, objective look at your firm and evaluate its outward appearance.
- Do we have specific, quantifiable goals for hiring, retention, and promotion of minority candidates? It is easy to simply say a firm supports diversity efforts, but the proof of such a commitment exists in the formalized and structured diversity program by which the firm, and its attorneys, holds itself accountable.
- What leadership, management, and marketing skills, and development opportunities are offered to *all* of our lawyers?
- Perform an honest assessment on how current firm policies and procedures impact diverse attorneys' abilities to develop. Are you limiting access to opportunities to

develop skills and abilities? To what extent has your firm engaged its diverse lawyers in business development and leadership training programs?

- Do all attorneys have mentors or sponsors whose goal is to help that associate progress to partner and/or firm management? Does your firm appreciate the difference between sponsorship and mentorship and ensure that the decision-makers are cognizant of the diversity of their protégés?
- Is your firm and its leaders willing not only to mentor, but to "sponsor" protégés from diverse backgrounds? When it comes to promotion, helping attorneys to be great associates and recognizing what they bring to the firm helps them become great partners.
- Does your firm regularly conduct compensation audits to ensure fairness and gender equity in compensation?
- Does your firm do everything it can to support the diverse candidates it hires? Do you encourage involvement in MDLA, MSBA, and affinity bar associations? Do you take a personal interest in your diverse attorneys and leverage your network into opportunities for them to feel comfortable and thrive?
- Is your firm looking at quality of life, firm politics, and other cultural issues that may create barriers to increased retention and promotion of diverse candidates?
- Most importantly, how transparent is your firm's promotion criteria? Nothing undermines a firm's ability to tout its diversity and inclusion program more than having a secret, unclear promotion policy. Firms need identifiable, quantifiable, achievable, and fair criteria for promotion that are made available to all associates.

## **CONCLUSION**

Change is not easy, but it is necessary. Law firms of all sizes need to mirror the changing demographics of the communities they serve. Moreover, as the population continues to diversify, the clients that MDLA member firms serve are starting to require that their firms support diversity and inclusion efforts, track performance, and staff matters with diverse attorneys. You do not want to be scrambling to meet these client expectations. Accordingly, it is critical to your firm's continuing success to take a frank inward look at what you are and how you operate, and to develop a structured plan to recruit, retain, and promote diverse attorneys. With a plan to achieve greater diversity, your firm will be able to meet current client expectations, and will be positioned to take advantage of future opportunities with clients that look for firms that are addressing diversity and inclusion requirements. Do not let this opportunity pass you by.