



Diversity & The Bar

Jump-Starting Your Law Firm's Diversity Program

By Mauricio Velásquez

At a recent firm retreat it is evident to everyone that there is a real conspicuous absence of visible diversity among your partners. There seems to be consensus of a shared concern among the partners, but no one comes forward to take the bull by the horns. This could be called a moment of truth or an "internal driver" or motivator. Your company could also be dealing with the marketplace realities where some of your clients are beginning to point out that they don't see representative talent from all walks of life in your firm's attorney ranks, and it is beginning to concern them and their stakeholders. This is what I could call an "external driver."

For years, you, your colleagues, and your firm leadership has noticed this developing reality, but the firm hasn't seemed able to "move the diversity needle." What are you lacking? A formal diversity strategy and plan, the backbone of any diversity program, is typically the first place a diversity consultant looks upon consulting with law firms regarding their emerging internal and external diversity issues.

The success of a diversity program is measured through several factors, such as the nurturing of an inclusive workplace culture, growth in the hiring, retention, and promotion of women and minorities, and the increase in business with clients that explicitly value and reward diversity.

But sometimes growth can stagnate, momentum can stall, and programs that were once received with great enthusiasm disappear. What's the solution? It's going to require more than putting the key in the ignition. It's going to take a jump-start, which requires four essential components: supportive and committed leadership, an understanding of what a diversity issue is, a challenge of the status quo, and a firm-wide assessment.

Supportive and Committed Firm Leadership

It is not enough to have leadership that is merely supportive. If firm leadership is not committed to addressing internal and external diversity issues in the short, medium, and long term, the program will not succeed. Unsupportive firm leadership "signs the check" so to speak. They are there in body but not in mind and spirit. Committed firm leadership is accessible, out in front, and wants to hold people accountable. Those committed want to see results and are asking the difficult questions and demanding answers. Committed firm leaders are completely in touch with the increasingly diverse new marketplace landscape. Firm leadership must understand that acknowledging and addressing diversity issues will take an unyielding effort and an unwavering commitment to long-term change. Leadership must admit the firm needs to change certain policies, procedures, and business practices—both those that are formal and, more importantly, those that are informal (written and unwritten rules of the firm).

The typical first reaction of many organizations is denial. They are in denial that they have issues and that there are any intentional or formal causes for the diversity issues they face as an organization. Law firms have to move beyond the root causes if they feel they cannot do anything about the contributing factors. Don't get fixed on the root causes; focus instead on actions and solutions to address these issues. Denying the issues exist will not make them go away. Quite the opposite; the diversity issues typically fester when not addressed and can grow out-of-control and unfettered, which will garner increasing client scrutiny. For any law

firm, diversity issues are an opportunity when addressed and a mounting problem when ignored.

Understanding and addressing diversity issues is not a short-term process. Committed support requires consensus among the partners and, in particular, among firm leadership as to what, how, why, and when internal and external diversity issues will be addressed. This process demands time and hard work. Without it, the jump-start will falter.

Understanding the Differences Between EEO/Affirmative Action and Diversity

Major differences between EEO/AA and diversity are:

- EEO/AA is government-initiated while diversity is voluntary and company-driven.
- EEO/AA is legally-driven while diversity is productivity-driven.
- EEO/AA is quantitative and diversity is qualitative.
- EEO/AA is problem-focused, whereas diversity focuses on opportunities.
- EEO/AA assumes assimilation among its participants, but diversity assumes integration.
- EEO/AA has a strictly internal focus, while diversity focuses on internal and external issues.
- EEO/AA is reactive, but diversity is proactive

Understanding What is a Diversity Issue is Crucial

If you don't know what a diversity issue is, how will you know when you have come across one? What is the criterion that a situation must meet to be defined as a diversity issue?

A firm has a diversity issue (opportunity or problem) when:

- A policy or business practice (formal, informal, internal, or external) has a **different impact** on a particular group (for example, do billable hour requirements disproportionately penalize certain associates?);
- The firm practice **happens more frequently** to a particular group (for example, who gets to go to pitches-who makes them, who is present to observe and who is not, or who gets real feedback on their briefs and who does not); or
- The potential barrier is **more difficult for one group to overcome** (upward mobility for a particular group within a firm, including who is represented in leadership positions and who is not-"glass or color ceilings").

A diversity issue exists when the firm policy or business practice affects attorneys of different backgrounds unequally. In other words, certain firm practices produce outcomes that affect the majority differently from the up-and-coming minorities in the attorney ranks. If the practice is inclusive, everyone benefits. If the practice is exclusive of difference, certain underrepresented attorneys might suffer adversely. Is there a trend or pattern that impacts certain groups of attorneys and staff disproportionately? For example, look at the top 10 rainmakers in your firm. Who are these leaders mentoring? Is the next generation of "mega-billers" different from the current "in group or dominant group" in the firm? Does your firm have diverse bench strength? Do your clients see your firm as an inclusive firm promulgating diversity of thought, background, and legal problem-solving innovation, or "more of the same?"

Having a diversity issue is not necessarily a bad thing. Doing nothing about it is where firms go wrong. Denial does not make these issues go away, and will not keep clients from scrutinizing business practices. When you have identified your diversity issues, you come to a fork in the road. You can thus address them or deny they exist and not take action. Question why the firm has the diversity issue, and what actions would correct and improve the situation. This process requires challenging the status quo.

Eight Major Myths About Diversity

By Mauricio Velásquez

Leaders committed to diversity are sometimes confronted with myths that challenge programs' worthiness and effectiveness. To ensure long-term, firm-wide change, these myths must be debunked with passion and purpose.

Myth 1: Diversity is a problem. No, it is an opportunity. You can't understand and take advantage of something "you don't know you don't know." Your diversity strategy and plan is an opportunity to differentiate your firm from the competition-don't blow it.

Myth 2: Diversity is our human resource department's responsibility. No, it is your responsibility. Too many people say, "That's not my problem; our personnel people have to handle the diversity issues." Wrong. Everyone (partners, associates, administration, staff) plays a significant role.

Myth 3: Diversity is just about race and gender. No, it is much broader than that. It used to be called cultural diversity, but the conversation has become more inclusive.

Myth 4: Diversity is about minorities and women in the workplace. No, diversity is about your internal (employees) and external (prospects and clients) customers. Understanding the diversity in your employee and customer ranks and anticipating needs can make or break your firm (most likely break if you subscribe to this myth). Diversity marketing-targeting new, increasingly diverse "emerging markets" is a hot new field.

Myth 5: Diversity is about exclusivity. No, it is about inclusivity. In other words, diversity is about all of us. If you feel diversity is about attacking the white male, you are mistaken. Diversity is not about getting "them" into your corporate culture (assimilation). Diversity is about creating a culture where everyone can thrive and contribute to your firm, and understand and serve your increasingly diverse clients.

Myth 6: Diversity is about lowering standards. Be very careful with this notion. Many people take great offense to this perception. Firms that are committed to diversity are not lowering standards, but are widening the pool-and sometimes raising standards or rewriting them.

Myth 7: Diversity is just another fad. Look at your workforce and client marketplace today and compare it with five and ten years ago. Then try to look five and ten years into the future. Do the same analysis for your customer base. Look at the demographic projections for the future. You'll see that diversity is not a fad, but a preview.

Myth 8: Diversity is another version of Equal Employment Opportunity/Affirmative Action. No, it is very different from EEO/AA. Diversity concerns all employees and customers. Minorities and women are the context for EEO/AA.

Challenging the Status Quo

Acknowledging the firm might have diversity issues is the first step to challenging the status quo. Adhering to the status quo-doing the same things the firm has always done, yet

expecting better results-is organizational suicide.

Challenge the status quo by studying or assessing where the diversity issues lie within the firm and how to address them. Be prepared to question firm policies and procedures, especially those that have a disproportionate impact on minorities and women. Keep nothing sacred because this practice prepares firm leadership for the diversity needs assessment.

Conducting a Firm-wide Assessment

A diversity needs assessment or audit will establish a baseline and define the firm's current status on all diversity-related firm matters. The assessment gathers data in many ways: a firm-wide survey, individual interviews with partners and associates, and focus groups consisting of both homogeneous and heterogeneous participant groups. Here, it is important to ask the same questions of different audiences and compare the results, which is called validating the data.

What are we hearing in the interviews and focus groups and does this data jive with the interview results? Are there patterns? It's key to reach out to people in the dominant or in-group and compare their answers to the same questions posed to individuals in the out-group. In other words, what are the new associates saying versus partners in response to a particular question? Compare what the men said versus the women, or what the majority said in comparison to what the new emerging minorities are saying. Do all of the partners identify similar emerging diversity issues, or is there disagreement? If so, why? There are issues you know you have, issues you suspect you have, and issues you have no clue you have as a firm. Until you conduct some kind of audit or assessment of the firm, you don't have your bearings.

Additionally, always listen to the feedback. Are the focus groups agreeing with comments in the one-to-one interviews? Comparing the interviews, focus group, and survey data will reveal what is consistent across the firm and what might be unique to a particular office or region. The bigger the firm, the higher the probability that there are local, regional, and national diversity issues that beg a diversity strategy and plan that has local, regional, and national action items.

Once all of the feedback is gathered, look for themes, trends, and recurring diversity issues. These data points will form the backbone of the design and development of the firm's diversity strategy and plan, and give the firm a baseline from which to measure future success.

Critical Success Factors

What does it take to ensure the long-term success of a diversity program? The critical success factors include developing and communicating a diversity strategy and plan, and executing it for long-term change.

Developing a Diversity Strategy and Plan

A diversity strategy outlines all of the areas within and outside of the firm that impact the firm's diversity. These areas typically include:

- Firm image in local, regional, and national markets;
- Sourcing and recruiting of attorneys (first years and laterals);
- Screening and selection of attorneys;
- Development of all attorneys (not just minorities or women);
- Upward mobility of all attorneys;
- Developing and nurturing an inclusive workplace culture;
- Minority or diversity supplier procurement program; and
- Marketing of diversity efforts internally and externally.

The accompanying plan is the detail behind the strategy, which includes all of the initiatives, activities, policies, procedures, and actions that the firm is purposely and formally executing to undergo the transformation to a more diverse and inclusive law firm.

Never seen a firm-wide diversity strategy and plan? Diversity consultants are often hired to present sample strategies and plans—a menu of potential action items, so to speak. The leading firms are out in front attempting to differentiate themselves from traditional firms with their diversity endeavors. Be ready for the day a client shares the plan of another firm as the high-water mark. Remember, studying what other firms are doing only tells you how they are addressing their unique diversity issues. Your issues may differ; however, you might like the way some of your competitors addressed similar issues.

Communicating Firm Strategy and Plan

Once there is a diversity strategy and plan in place, it should be communicated both internally and externally. Develop a brochure to use both for new hires as well as for existing and prospective clients. Refer readers to the firm's web site. Produce a video—a "fireside chat" with your managing partner—that can run on the web site and be distributed to new hires. While the plan itself will be more detailed, these products show that the firm has a strong diversity strategy in place.

It is imperative that firms promote their diversity initiatives. The competition is already there. Associations provide a forum for firms that have had diversity successes, thus clients and prospective employees who are committed to diversity look to such organizations first.

Executing for Long-term Change

A firm's diversity strategy and plan should include clear goals and benchmarks. Without them, the firm has no way of measuring its progress. Progress should also be measured through the business case—a detailed look at the impact that diversity programs have on the bottom line. These benefits include lowering turnover (and decreasing training costs), attracting new business, achieving higher billable hours, and even lowering health costs, because happier employees are less stressed. Publicize these accomplishments. Make sure the firm keeps its eye on the prize.

A diversity strategy and plan is about creating a better firm for all attorneys and staff, not just minorities and women. The diversity journey is a long one, with a destination that may at times seem elusive. But the rewards are well worth it: a productive, passionate staff; a strong, growing bottom line; and recognition and admiration by clients and competitors. Jump-starting a diversity program ensures that a law firm's goals do not stall out in neutral.

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