



DiversityNow

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Fifteen years ago when the Bar Association's Minorities in the Profession committee drafted the Statement of Goals for Increasing the Retention and Promotion of Minorities, the committee's moniker reflected the focus of diversity efforts of the time — racial diversity. Diversity has since taken on a broader definition — organizations look to diversify in terms of race, ethnicity, sexual orientation, gender, physical ability — the list continues to grow. As this definition has evolved over time, a new set of challenges has emerged.

While many organizations have implemented well-intentioned programs to increase diversity of all kinds, the results of efforts to increase racial, ethnic and gender diversity have shown only limited success in the legal profession. Broadening the definition of diver-

sity necessitates a more nuanced understanding of how to measure the success of diversity programs. Current statistics reveal that minority representation in law firms has improved, but only to a small degree, and there is still more work ahead. Looking back to 1993, the diversity landscape has nevertheless changed, and to move forward requires an examination of what diversity looks like today.

Diversity is now considered by most organizations a common goal, the achievement of which benefits the entire business community. Law firms, particularly, understand the need to reflect their business clients, who tend to employ a higher percentage of minority groups of all types. The National Association for Law Placement (NALP) reports that only 18 percent of law firm associates and 5.4 percent of law firm partners are minorities, while 32 percent of the employed private industry workforce are minorities, according to 2006 data from the Equal Employment Opportunity Commission. Myriad obstacles to diversity at law firms remain,

however, and many of them – according to anecdotal accounts by Philadelphia attorneys – have acquired subtle differences in the last two decades. The blatant intolerance of the past has been replaced in many organizations by the gradual accumulation of barely perceptible but consistent slights, or microinequities, that contribute to the still-lagging numbers of minorities, women, LGBT and disabled attorneys among partnership and executive ranks in law firms and corporations.

Whereas many years ago the simple lack of familiarity in working relationships between majority and minority groups led to fewer advancement opportunities, the current situation is a little less obvious. More minority groups are gaining access, although at a slow rate, and conscious efforts to limit their advancement have been replaced by programs intended to help retain them, including mentoring, coaching and formal networking events. Informal networking, however, appears to continue to present an advantage to majority groups. For example, at a firm golf tournament, picture two young male first-year associates, one white and one black. Both associates are paired with white male senior partners for the day and graduated together from a top ten law school. The white partner strikes up a conversation with his associate pair, and when the partner begins putting together a team for his next big case, he remembers that associate and assigns him to the team. Meanwhile, the black associate's partner, assuming he had very little in common with his golf partner, limits his chit-chat with the associate to the game at hand despite the associate's efforts at more substantive conversation. This associate does not benefit from the development opportunity the golf outing was intended to be. This type of uneven footing early on in these associates' careers sets the white associate up for advancement, and the black associate begins a game of catch-up when a year later he finally gets more substantive work as a part of the firm's formal mentoring program.

Another example of progress is the firm environment. Gone (for the most part) are epithets and slurs – definitely an improvement. Current attitudes, though more open-minded when it comes to firm policy, are often not so liberal in practice. Take for example, a scenario where two Latina associates are called each others' names consistently by colleagues, senior partners and firm management. Whether this happens because of ignorance, accident or design, the result of treating these associates as indistinguishable from each other because they are minority women is the same – they will likely not stick around because this treatment shows that their colleagues and superiors do not value them as individuals and therefore can't objectively evaluate their individual contributions. Such behavior can be observed even in people who consider themselves quite progressive in terms of diversity and often results from a combination of inexperience with minorities and unintentional egocentrism. Law firm diversity programs that now only give face time to diversity could address this challenge by promoting increased awareness among *all* firm employees — regardless of seniority or formal participation in a diversity initiative — about how such offenses are inappropriate and difficult to perceive as a member of a majority group. This policy augmentation might increase the chance of reducing this behavior and subsequent attrition of minority employees, and is likely to be most effective with the buy-in of firm management.

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Some minority attorneys who achieve traditional success by breaking into the partnership ranks find that the reward is often tempered by their peers' subconscious resistance to them. Imagine a minority female partner who offers a proposal at a partnership meeting, only to have it ignored. Later in the meeting, a white male partner offers the same proposal, only to have it praised and accepted by the group. Another colleague may remark to the group that it was originally someone else's idea, but the damage is done – both to the partner's relationships with many of her colleagues as well as to her credibility in the partnership. Again, this type of slight often appears to not be intentional but instead points to the majority group's inherent and often subconscious assumptions – namely, that they have more comfort accepting an idea presented by someone who is like them and with whom they feel an affinity based on their shared majority identity. Being aware that this type of "safety" behavior goes on is the first step toward eliminating it and encouraging honest assessments of employees' work products.

The changing face of diversity efforts today presents an opportunity to assess progress and use that information to tailor programs to the current environment. While none of these incidents is egregious alone, the accumulation of these instances has a meaningful negative impact on the minority attorney. Most survey research shows that members of minority groups find that discrimination, blatant or subtle, is more prevalent than majority people do, and many minority attorneys report that a lack of acknowledgement of these microinequities contributes to their frustration with the current environment. Many diverse individuals conclude that the lack of progress in diversity and inclusion has more to do with lack of interest and genuine effort on the part of the respective legal organizations. This notion is reinforced by the shared experiences of minority attorneys, who indicate, for example, that they have the unspoken equivalent of a standing invitation to a seat at VIP firm events solely based on their minority status because their presence will give the appearance of diversity within the firm, regardless of the firm's actual diversity culture.

Experts in the field of diversity advocate that comprehensive, firmwide diversity training may help overcome current obstacles. The training would entail multi-day sessions at which employees review and discuss scenarios and circumstances gathered in interviews conducted by trainers with firm employees. Certain examples from the interviews may occur regularly at the firm, but relatively few people may be aware of it. Training sessions should also provide a comfortable environment for all firm members to speak about their perspective on diversity issues and to engage in discussion about creative solutions for the firm. Training must be backed by visible support from senior management and consistent enforcement of firm diversity and inclusion policies in order to succeed. Moving forward in the next fifteen years, a meaningful and sincere buy-in by law firm management to commit to diversity and inclusion principles — not only in hiring and retention policies but also to support everyday employee and client relations — can help paint a more lifelike portrait of the future of the legal profession. ■

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