Articulating the Business Case

for Inclusion

By Jane DiRenzo Pigott*

In its recently published guide, Sustaining Pathways to Diversity: The Next Steps in Understanding and Increasing Diversity and Inclusion in Large Law Firms, the Minority Corporate Counsel Association ("MCCA") found that while the leaders at many law firms have communicated a "commitment to diversity," many lawyers at those firms are not clear why diversity and inclusion are and should be a priority for the firm. Consequently, even though many organizations are at least a decade into their diversity agenda, it remains important to clearly articulate the business case for diversity and ensure that all attorneys, not just those directly involved in the diversity effort, communicate consistently regarding the organization's goals and objectives.

As with any well reasoned business case, the business case for inclusion has a revenue side and an expense side. Two material points serve to summarize the rationale on each side.

1. The Revenue Side.

Legal service organizations compete for two things: clients and talent. Both groups have indicated an increasing interest in diversity performance.

A. Client Demands. In 2004, Roderick Palmore, then General Counsel of Sara Lee, issued *A Call to Action: Diversity in the Legal Profession*. Over one hundred Chief Legal Officers of major corporations have become signatories, thereby committing their organization,

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among other things, to (1) send work to legal service providers who have superior diversity performance, and (2) stop sending work to legal service providers with inferior diversity performance. Corporate legal departments want to have the best teams servicing their matters, and today that equates to attorneys who are different genders, races and sexual orientations. In addition, many corporations have vendor supplier diversity goals. The incentive compensation for many high ranking corporate employees depends upon their legal service providers meeting or exceeding these goals.

Corporations use a variety of approaches in monitoring the diversity performance of their legal service providers:

- designation of the diversity demographics of timekeepers on the invoices,
- annual reports on diversity demographics from legal service providers,
- meetings between corporate management and billing partners at the legal service providers to discuss diversity best practices,
- bonuses to legal service providers who are the best diversity performers, and
- replacement of key historic relationship partners with diverse partners.

Superior diversity performance offers legal service providers two key opportunities. First, they have the strong likelihood of increasing the level of business received from an existing client. Second, they have the ability to “take” business from an underperforming legal service provider, even if that provider has a longstanding relationship with the company. Even with regard to potential clients, most requests for proposal include requests for information about the diversity performance and programs of the legal service provider.

In addition to the valuable perspectives and attributes that diverse attorneys bring to organizations, they also provide unique business generation opportunities. For example, E.I.

DuPont de Nemours and Co. ("DuPont") provides networks for the women lawyers and attorneys of color who work on its matters. Through these networks they have direct access to attorneys in the DuPont legal department and are rewarded for sending business opportunities to other attorneys in the network.

B. Demographics of Legal Talent. There is a material demographic disconnect between partners of law firms and students graduating from law schools. The national averages published by the National Association for Law Placement ("NALP") for all legal services organizations interviewing at law schools in 2008 demonstrate that 94.08% of law firm partners are white, 81.26% are male and 98.81% are straight. Law student demographics are dramatically different.

Given the demographic differences, creating a more inclusive environment becomes an imperative for the sustainability of the business model. Available research, including the MCCA report referenced in the opening sentence of this article, demonstrates that the existing organizational structures do not work as well for those who do not look like the law firm leaders as they do for those whose diversity demographics mirror those of the majority of the partners.

Law firms attrition rates have skyrocketed, even before the legal industry layoffs and law firm failures of 2008. The estimated cost of losing an associate that a firm wanted to retain is twice the attorney's total compensation (salary plus bonus). Before 2008, there was a disparity in the attrition rates of white male associates and the attrition rates of women associates, associates of color and women associates of color. Any professional services organization suffers financially when it loses the wrong people for the wrong reasons.

It remains to be seen how the economic crisis will impact the diversity demographics of legal service organizations. To the extent that diverse attorneys have been disproportionately impacted, organizational structures should be closely examined.

2. The Expense Side.

Especially in these trying economic times, ensuring that expenses are rational and rationalized is a key metric to businesses. Ensuring that money spent on diversity efforts has a high return on investment has never been more important. Avoiding the added expenses of investigations and litigation is another material positive impact on an organization's balance sheet.

A. High Return on Investment Spend. Many legal service organizations have a significant budget devoted to supporting their diversity and inclusion efforts. It makes even more sense in today's economy to ensure that this spend is strategically connected to the organization's goals and objectives. Understanding and measuring the return on investment becomes an important communication vehicle with regard to the organization's diversity programs. It also serves as a rational factor for evaluating all expenses. Especially if expenses related to diversity and inclusion programs face reductions, a strategic analysis of return on investment should become a key component of the decision-making process.

B. Reducing Legal Risk. Failing on the diversity or inclusion front can have legal ramifications. Investigations and legal actions negatively impact the organization's reputation, use attorney time in ways that do not produce revenue, and create added, unbudgeted expenses for legal fees, settlements, judgments, training and other litigation expenses. In addition, they are distracting and embarrassing to the organization and have a high probability of negatively impacting the perception of the organization by clients, potential clients and talent. Even without the initiation of actual legal proceedings, diversity gaffes become the fodder of blogs and tweets and quickly form a widespread perception of the organization.

3. Conclusion.

The necessity for a consistent and specific articulation for the business case for inclusion continues to be an important attribute of a successful inclusion effort. As organization's diversity efforts increasingly include everyone in the organization, the business rationale bears repeated emphasis. Moreover, many people may wonder what impact the economic times will have on the organization's commitment to an inclusive workplace. Fortunately, the business case for diversity remains an important part of a sustainable business model for professional service organizations even in a tough economy.