

Walk the Walk: Creating an Inclusive Legal Workplace, Part II

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How can a legal organization “walk the walk,” so to speak, in achieving diversity? Diversity, like any sustainable change within an organization, requires clear-

ly articulated goals. If diversity goals are tied directly to the business case for diversity and to the mission-critical goals of an organization, there can be widespread buy-in of these goals. A diversity program will produce significant results if an organization’s management clearly and consistently communicates its diversity goals to those who are responsible for achieving them and holds them accountable for achieving these goals. Creating goals and objectives, a baseline, and specific measurements and timetables are necessary for an organization, legal or otherwise, to “walk the walk” in achieving diversity.

While the business case for diversity is convincing and the baseline level of diversity in the legal profession clearly demonstrates the need for more progress (see Part I of this article in the Fall/Winter 2004 issue of *MTL*), closing the gap between the present reality and a future vision requires a commitment to implement best practices in connection with the organization’s strategic plan for inclusion. Best practices are tactics used to achieve an organization’s goals and objectives with regard to the recruitment, utilization, retention, and promotion of a diverse group of attorneys. The implementation of any particular best practice will involve customizing it to the organization’s culture and politics. Goals should be established for each best practice implemented. The success of each best practice implemented can and should be measured and evaluated in light of an organization’s articulated diversity goals.

Commitment to Diversity

The commitment of the organization’s senior management team and all practice

group and office leaders to the necessity of achieving diversity at all levels of the organization is a prerequisite to success. The organization’s top management must integrate diversity into the organization’s strategic objectives. This commitment must be clearly and consistently articulated and communicated throughout the organization. Sustainable change within an organization only occurs when it is driven from the top down.

The level and strength of this commitment can be demonstrated in a number of ways, including:

- Developing and promulgating, internally and externally, a mission statement with regard to inclusivity;
- Developing and promulgating a strategic plan with regard to inclusivity that contains specific time frames, goals, objectives, and measurements;
- Allocating a budget for implementing the strategic plan;
- Clearly establishing responsibility for execution of the plan;
- Periodically benchmarking policies concerning flexible hours, parental leave, leaves of absence, workplace harassment, and equal opportunity to keep them at or above market levels; and
- Periodically updating the organization’s management on the status of implementation and the results achieved.

Moreover, an organization’s management must have a well-publicized and practiced “zero tolerance” policy for acts of discrimination or workplace harassment. Litigation on these issues is costly in terms of lost time, money, and damage to the organization’s reputation.

Accountability

Accountability is critical to achieving the organization’s strategic objectives, including inclusion. The organization must establish goals, objectives, and measurements for its strategic plan. In addition,

the organization should establish a mechanism to encourage behavior consistent with its strategic plan. It is impossible to create change in an organization in which its leaders say that inclusion and diversity are important, but do not reward people who assist the organization in achieving diversity (or do not “punish” people who inhibit progress).

Accountability structures for achieving diversity can be achieved in a number of ways, including:

- Establishing financial incentives to contribute meaningfully to the accomplishment of the goals and objectives of the strategic plan for inclusion;
- Assessing the commitment of the organization’s leaders at all levels to the inclusivity mission and strategic plan and replacing leaders who lack the requisite commitment;
- Considering contributions, or the lack thereof, to the organization’s implementation of its strategic plan in all performance and compensation evaluations;
- Establishing billing numbers to record time spent on activities that are consistent with the objectives of the strategic plan (e.g., affinity groups, the diversity committee, mentoring, recruiting, lateral integration) so that the hours spent and the results achieved can be tracked;
- Establishing metrics and a baseline for each element of the strategic plan and measuring each action item on a periodic basis; and
- Periodically reporting to leadership on the implementation of its strategic plan and the measurements of its goals to allow the organization to determine progress, modify action plans as necessary, reward performance that enhances the implementation of the plan, and deal with performance that inhibits progress.

Progress in achieving diversity is difficult to sustain when there are no mechanisms to measure it and determine those who contribute to achieving diversity.

Mentoring Relationships

A material contributor to the likelihood of success for all attorneys, but especially for women and attorneys of color, is whether they have healthy mentoring relationships. Assignments that involve the enhancement of substantive skills provide a forum for informal mentoring relationships to develop. What these relationships miss most often are critical professional development and personal growth aspects. For this reason, a formal mentoring program should be established at organizations. An organization should train all attorneys on mentoring and include specific training on what is necessary to create and maintain a healthy mentoring relationship and techniques for effectively communicating across generations, gender, and race. The organization should measure the success of its formal mentoring program and seek feedback from its participants. The organization should also consider effective ways to enhance participation in mentoring, both informally and formally.

Healthy mentoring relationships provide access to a large number of benefits for attorneys:

- The “secrets” of an organization—information that is not publicly available about the practice group, people, politics, and pathway to success;
- A direct assessment of how they are perceived by the organization and its thought leaders;
- High-visibility assignments;
- Stretch assignments;
- Client relationship opportunities;
- Client acquisition opportunities;
- Business “inheritance” opportunities; and
- Modeling opportunities that are essential for implementing their career development game plan.

Organizations have become so large and complex that mentoring relationships do not naturally develop for all young attorneys. Creating and maintaining healthy mentoring relationships have a material positive impact on the retention

and promotion of all attorneys—especially women and attorneys of color.

Access to Good Assignments

Assignments give attorneys access to opportunities for substantive skills development, high-visibility tasks, important clients, and important supervisors. Assignments also supply the “currency” for acceptable billable hours. Consequently, the assignment process at an organization is a key factor in establishing a culture where diverse attorneys succeed. It is important to focus on and monitor the type and quality of assignments given to women and attorneys of color, their utilization rates, their billing rates, and their profitability.

Women and attorneys of color are often excluded from the informal feedback systems at firms.

The organization can create transparency by creating and promulgating a substantive skills expectation grid for each level of attorneys. This grid then can be incorporated into the assignment and evaluation system, ensuring that all attorneys have equal access to assignments that will allow them to develop the necessary substantive and professional expertise in a timely fashion.

An assignment system where *all* assignments are posted on an “intranet” site and attorneys select their own assignments serves to break up any inequity in the manner in which assignments are handed out. Even without this type of system, an organization can ensure that its assignment system is not gender- or race-biased. The organization can appoint a person who will monitor:

- The distribution of client hours and address any disparities in the distribution that impact adversely women and attorneys of color (especially with the top clients of the organization);
- The type and quality of assignments distributed within the group and address any disparities in the distribution that adversely impact women

and attorneys of color; and

- The personal profitability and utilization rate for each attorney and address any disparities noted in those key indicators that adversely impact women and attorneys of color.

The assignment system provides billable hours, substantive skills development, and access to key clients and supervisors. Any racial or gender disparities must be identified and eliminated.

Feedback and Evaluations

Constructive feedback that is accurate and timely is essential to an attorney’s success. While the formal evaluation/review process can be an essential tool in providing this type of feedback, that process is usually not timely and is much more of a compensation review than a session in which constructive feedback is given. Moreover, most organizations have no feedback process, either formal or informal, for their most senior attorneys.

To the extent that an informal feedback system exists at a legal organization, women and attorneys of color are often excluded from the system. There are a number of potential reasons for this exclusion. First, the most likely manner in which attorneys receive informal feedback is through a mentoring relationship, and women and attorneys of color are less likely to have a mentor who is providing advice on professional development issues. Second, men often fear giving feedback to women because they worry that women will become emotional when presented with the constructive input. Third, people fear that giving feedback to women and attorneys of color may result in a discrimination claim. To succeed, women and attorneys of color need the same timely feedback that their white male counterparts are receiving.

Lack of timely feedback is detrimental to women and attorneys of color because they are unable to correct mistakes of substance or style until the formal review process—a process that is likely to occur long after an issue arises. By that time, it is usually too late to recover. The organization should establish a feedback system for attorneys that ensures a specified level of feedback after each completed assignment, especially for young attorneys. In addition, no attorney should learn about a problem

for the first time in the formal review process. The organization should provide training for those who will be in a position to give feedback so that assumptions and stereotypes do not create inequalities in the level and value of the feedback received.

The formal review/evaluation process in most organizations is little more than a salary review. Even as such, it has a high potential to derail the career of an attorney who receives a bad review. Such a review raises two issues. First, the process should be examined to see if there is gender and/or racial bias in the review process or the reviewer's comments. Then, the process for rehabilitation of any issue needs to be examined. A review/evaluation system that does not allow an attorney to succeed is not useful. A review/evaluation system that does not give access to the resources the attorney will need to address the issue is a self-fulfilling prophecy of failure.

Few organizations have a viable system for evaluating senior attorneys' performance outside of their billable hours and billings. If an organization has a two-tiered partnership, the lack of such an evaluation system may detrimentally impact non-equity partners who are women or attorneys of color because they are less likely to have a mentor who is communicating with them and championing them on their progression to equity partnership. A review system that includes a performance evaluation and a discussion concerning remaining on track to equity partnership has unique value in getting women and attorneys of color into the equity partner ranks in organizations. The organization should consider a system for gathering feedback for senior attorneys at the organization on such skills as mentoring, giving feedback, inclusion, providing access to clients, assigning work, and team building. Positive contributions by senior attorneys to the organization's strategic plan and inclusion goals should be rewarded financially.

Inclusive Client Management Strategy

A key to long-term success in a legal organization is the ability to create, develop, expand, and maintain client relationships. There are a number of factors that affect access to clients and a lawyer's abil-

ity to develop client relationships. High-visibility assignments allow attorneys to develop and demonstrate substantive skills. Assignments in which attorneys work with influential senior managers have a likelihood of leading to informal mentoring relationships. Client contact enhances the development of good client relationship skills. Getting the call from the client with the next matter, a form of business development, is the combined result of substantive skills and client relationship skills.

A substantial amount of business and billing relationships in most large legal organizations is inherited. The business and client billing relationship typically

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passes from mentor to mentee, which is another benefit of a healthy mentoring relationship in an organization. Women and attorneys of color must be put in the line of succession for inheriting key client relationships. The legal service teams for important clients should be examined to determine if there are any racial or gender disparities in the hours billed for these clients.

Access to meaningful participation in organization-wide client acquisition teams is essential for women and attorneys of color to be successful. Putting a woman or lawyer of color on the acquisition team without a meaningful role misses the opportunity for the lawyer to build a relationship with the client. Women and attorneys of color need to be integral participants in all client acquisition efforts and then receive equal credit for originating and servicing the work from these efforts.

The personal marketing styles of women and attorneys of color may be quite different from those of their white male counterparts. The marketing plan for the organization must allow for different

approaches to client entertainment and client development. Savvy legal organizations recognize these differences and overtly capitalize on them. Equal access to marketing dollars should be assured. The organization's marketing event calendar and its budget should be examined to make sure that biases are not present.

The organization should examine the communications vehicles used with clients (including internal and external websites) and ensure that every vehicle contains information and photographs (if used) about both men and women attorneys and attorneys of color as well as white attorneys. The organization should ensure that the search engine of the organization's website has a destination when such words as "diversity," "woman," "women," "minority," "attorney of color," "inclusion," "African-American," "Hispanic," "Asian," "Native American," "GLBT," and "disabled" produce relevant results when searched.

Leadership, Time, and Money

An inclusive environment does not just happen. Sustained change in an organization requires leadership, time, and money. Creating a diversity initiative that is tasked with the creation, implementation, and measurement of an inclusion strategic plan allows for a focused and tended effort. Results cannot be achieved without a commitment of resources—people and money.

An organization-wide diversity initiative can have a number of issues managers, allowing a large number of diverse constituencies to bring issues and opportunities to the attention of the organization.

There are a number of ways to benchmark an organization's diversity program:

- Review best practices on a regular basis and adjust programs and policies to take advantage of the best practices;
- Set specific goals for the program and periodically measure progress on each;
- Use external "calls to action" as goal-setting opportunities;
- Gain third-party endorsements/comparisons (awards and ranking that are important in the legal industry); and

- Use an independent oversight group.

With the public availability of a large amount of diversity information, clients and potential recruits are making distinctions among legal organizations based on the degree of diversity within an organization and the length of time that diversity has been sustained. In other words, even if an organization is not benchmarking and measuring progress in achieving diversity, outsiders are.

In order to be strategic, a diversity program must have specific goals, and management approval and partner ownership of the goals are essential to success. Once goals are set, the organization can decide what actions to take, set time frames, and establish baselines and measurements for each goal. Management can then develop and approve a budget for the implementation of the program and appoint appropriate people to take responsibility for the plan's implementation.

An affinity group is one means by which an organization can foster and sustain diversity. An affinity group is a group of similar individuals based on shared interests or characteristics who usually represent a small percentage of the employees of an organization. Corporations have supported employee affinity groups for some time. Law firms have not adopted the practice in as wide a fashion as their corporate clients. Firms with women's networks or minority networks have found that these networks reduce the isolation that can occur before critical mass is achieved within the organization. Affinity group events can include internal events such as retreats or events for summer associates as well as external events such as client marketing events. They also can provide critical information on how an organization's diversity efforts are being perceived among members of the group.

Diversity in Leadership

Grooming people for leadership in the future starts with identifying promising people, helping them plan their careers, introducing them to clients, ensuring them access to high-visibility assignments with important clients, being attentive to salary and bonus rewards, and ensuring that they participate outside the organization in relevant activities. Formal succession plans and

mentoring programs facilitate this grooming process. Organizations must ensure that the grooming process is inclusive.

Grooming women and attorneys of color for leadership starts with management buy-in of the proposition that women and attorneys of color should have leadership positions and be groomed for leadership positions. All committees and task forces should have women and attorneys of color as members. In addition, organizations must be in a position to have leaders of some committees and task forces be women and attorneys of color. Department and office leaders who are women and attorneys of color are also necessary. There is a serious detrimental impact on the cred-

Encourage men to use the flexible-hours and parental-leave policies.

ibility of the leadership that hires a class of new attorneys that has significant representation of attorneys of color and women, yet has a leadership team that does not include women and attorneys of color in meaningful numbers. A similar credibility gap is created when senior attorneys who are women and attorneys of color do not have a significant role with important organization clients. To the extent that an organization does not now have women and attorneys of color in key leadership roles within the organization and with its clients, the organization should have an announced succession plan aimed at resolving these deficiencies within a short time frame.

Succession planning provides a formalized way to consider a wide range of candidates for future leadership openings and to make sure that potential candidates obtain the necessary skills and experiences to be ready to assume leadership positions when opportunities develop. Succession planning includes not only grooming a successor, but also grooming a class of successors, all of whom are ready to assume the position. By insisting that this class of

successors be diverse, the organization ensures that women and attorneys of color will be leaders of the organization.

Encourage Leadership Outside the Organization

Women and attorneys of color have an opportunity to create a public persona for themselves, develop leadership skills, and create unique networks by participating in outside professional and civic activities. There are also opportunities to create mentor relationships, find role models, and reduce the impact of isolation through these outside activities. All of these benefits are in addition to the business development opportunities afforded by such activities. Moreover, the organization benefits from having a visible female and minority presence in the community. The organization should openly facilitate and support such activities and should ensure that opportunities on civic and professional boards are available to women and attorneys of color. The organization should examine how opportunities are distributed and correct any gender and/or racial disparities.

In addition, the organization should actively sponsor activities by organizations that support women and people of color, especially if the organization's attorneys are involved in the organizations. To the extent that the organization participates in pro bono activities, it should ensure that some of the matters in which it is involved positively impact diverse communities. The organization's civic commitments should also include diverse communities and benefit its women and attorneys of color in a proportionate fashion.

Viable and Equitable Flexibility

The organization's personnel policies and employee benefits must be gender and race neutral. The policies should be benchmarked to the organization's peers on a periodic basis. Policies and benefits that are critical to an organization interested in creating an inclusive environment are: (1) flexible hours; (2) parental leave; (3) short-term leave; (4) domestic partner benefits; (5) emergency childcare; (6) workplace harassment; and (7) equal opportunity. An organization that chooses not to be "at market" with regard to these policies will detrimentally impact its ability to attract

and retain talent, including women and attorneys of color. These types of policies should be promulgated internally as well as included on the organization's website.

Providing flexibility as a viable and equitable option is critically important to retention. Balance/quality of life is an issue that concerns all lawyers without regard to gender. In general, however, female attorneys are more at risk of having to make a career-altering decision based upon other priorities in their lives. Women are also more likely to need a period of time in their career when they require some flexibility in order to meet all of their commitments. In addition, given the biological imperatives, women are more likely to utilize the parental leave policy. Providing flexibility without punishing attorneys who utilize the flexibility by removing them from promotion track earns the organization loyalty, retains valuable employees, and reduces the expenses associated with losing trained attorneys. Organizations that do not allow for flexibility and an acceptable quality of life lose attorneys, and—experience demonstrates—the attorneys lost disproportionately will be women.

The organization should ensure that use of the flexible-hours policy is fairly and equitably administered and that there is no disparity in the availability of the policy between offices, practice groups or partners. The organization should ensure that all managers understand the organization's commitment to the use of its flexible-hours policy. The organization should ensure that people who use these policies have access to high-visibility assignments, key clients,

the feedback/evaluation process, mentoring, support for outside civic and professional activities, and consideration for partnership. The organization should meaningfully encourage men to use the flexible-hours and parental-leave policies.

The organization should benchmark its policies and ensure that any necessary modifications are made. The organization should ensure that all arrangements conform to the policies and that attorneys have equal access to use of the policies. The organization should ensure that use of the policies does not foreclose success within the organization.

Conclusion

Committing to a strategic plan that involves the implementation and measurement of best practices is a crucial step. For a program to succeed at any organization, the program must:

- Be integral to the mission-critical goals of the organization;
- Be integrated into the strategic plan of the organization;
- Be consistent with and not redundant of other organizational efforts;
- Have specific goals; and
- Measure its progress.

Without these components, success at achieving the goals will occur only by happenstance; in fact, it is more likely that time and money will be expended without any results. "Walking the walk" and measuring the impact of the steps taken are the only ways to provide sustained positive change.

In addition, a comprehensive communications plan is a key element to the suc-

cessful implementation of an organization's strategic plan and the effective use of any best practice. An organization's communications efforts should be part of the strategic plan and include both internal and external communications. An organization cannot create an inclusive environment without strategically using internal communications. Conversely, any implementation effort will be immediately undermined by internal communications directly from management or tolerated by management that are inconsistent with the organization's diversity strategic plan. Moreover, the organization's external communications send a clear message regarding the organization's values to clients, potential clients, and legal talent. An external communications plan is an invaluable tool in achieving the strategic objectives of the organization's inclusion efforts.

Legal organizations benefit from an inclusive culture. Diversity efforts must be strategic, measured, communicated, and broadly owned to be successful and sustainable. In connection with such diversity efforts, the implementation of best practices can materially positively impact the organization's achievement of its inclusion goals.

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Part I of this article appeared in the Fall/Winter 2004 issue.

Chairs' Column

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most influential leaders. Askew discusses her experiences and defining characteristics as both a leader and practitioner in the legal profession.

Of course, as minority trial lawyers, we all also face the practical, legal, and ethical issues associated with law practice. In his article, John C. Martin examines whether hard-charging "Rambo" tactics violate ethical rules. His article will give all of us pause the next time we consider refusing to answer for a party because ser-

vice was not exactly correct or the precise corporate entity was mislabeled. Martin's article shows that the reach of our ethical obligations may extend a bit further than we thought.

Finally, Tamika Langley Tremaglio and Wanda Forrest look at the effect of the U.S. Supreme Court's now more than ten-year-old decision in *Daubert v. Merrell Dow Pharmaceuticals*. The authors use a variety of data to look at whether the Court's limitations on the use of expert witness testimony have changed the way experts are actually being used.

We hope that in this issue of *Minority*

Trial Lawyer, you will learn about how we can help law students succeed on the path to becoming lawyers, what our organization can do to become more diverse, and what we can do to be better informed and more effective and ethical practitioners.