

## By-Lined Article

### DIVERSITY MANAGEMENT MATTERS: A 2010 FORECAST

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As the new year begins, those who follow diversity management in the legal profession cannot help but be concerned about whether the percentage of lawyers of color working in the region's large law firms will grow in 2010. The recessionary economy that began in 2008 has negatively impacted Philadelphia firms' diversity programs. More specifically, it is generally accepted that law firms have cut back on lateral and summer hiring programs, which has directly affected the percentages of minority attorneys within big firms. It seems, as the economy goes, so goes the level of commitment for recruiting diverse lawyers at some large law firms.

Added to this economic reality, "diversity fatigue," which implies exactly what it says, has become a new and potentially popular term in the legal lexicon and the subject of debate when diversity success is discussed. Some want to move beyond the diversity discussion. They even contend that with an African-American in the White House, there is no need for diversity programs.

Those who recognize that a diverse legal profession is in the vital interest of every American know there is much still to do — even in an economic downturn. Those firms that have reduced their diversity budgets, laid off minority lawyers and staff, and buried, either de facto or de jure, their diversity programs should reassess their commitment to diversity and whether it is a part of their strategic business plan or merely the expenditure of discretionary funds for non-vital activities.

It is apparent that many programs, including diversity management, are subject to budgetary reductions because of reduced revenues. Dollars expended that do not return high value — in the form of new or expanded business opportunities — are no longer available. So, what should law firm managers, committed to a greater presence of diverse attorneys within their organizations, be doing?

Investing resources in attorneys of color who are already working in firms should be the first plank of every diversity platform. Too many minority lawyers who have been practicing long enough to be considered for partnership are working in firms in a world "unto themselves." With most of their clients either individually developed or assigned, lawyers of color generally do not represent their firm's most important or so-called institutional clients. They are not assigned to perform services for legacy clients and are not part of the strategic management decisions of their respective practice groups. We know from the Association for Legal Career Professionals' statistics that lawyers of color do not stay in large firms as long as non-diverse attorneys. The statistics for women of color are even more dismal.

In this economic environment, one goal in 2010 should be to encourage law firm leaders to make new investments in minority attorneys, especially in those who have demonstrated superior skills. Opportunities for working on the most significant cases within the practice group are vital for growth within a firm. Whether those investments are in the form of training, coaching, attendance at industry meetings or other client-focused activities, they are vital for improving retention statistics.

If lawyers of color are not a part of their respective practice groups' future, practice group leaders need to ask, "Why?" I start with the assumption that every lawyer at a firm was hired because of his or her talent. At some point during a lawyer's career development, talent must be mixed with business-development skills and opportunities. The practice group leader, or a deputy, has the power to ease the transition into sophisticated business development.

It has become evident that coaching, training and mentoring are not occurring with sufficient urgency to create new lawyers of color who are going to be successful. The well-respected Minority Corporate Counsel Association released a 2009 report titled "Sustaining Pathways to Diversity: The Next Steps in Understanding and Increasing Diversity & Inclusion in Large Law Firms." This survey of 217 firms — 200 of which constitute the Am Law 200 list of top firms by revenue — with responses from more than 4,400 lawyers, confirms that much work is warranted. The report states: "Minorities who attended Top 10 schools reported having less access to mentoring, coaching, and sponsorship than did all white lawyers without regard to what law school they attended. These responses underscore a startling fact: The reality experienced by 'top minorities' (i.e., graduates of elite law schools) in law firms is inferior to that of whites who graduated from second- and third-tier law schools. This finding evinces a level of disparate treatment and/or discrimination that is entirely inconsistent with the assertion of a meritocracy within law firms."

If law firms want to retain their minority attorneys and see them grow into successful partners, there has to be intervention at the practice group level, with business-development opportunities, coaching, mentoring and overall prospects to grow a practice for the firm. Beyond the practice group, firms should try to improve their diversity management. Again, starting on the assumption that everyone in the firm is qualified, differences among people should not result in attrition figures that are substantially higher for lawyers of color than whites. Diversity managers must have a material role in resolving differences involving the evaluation of diverse attorneys within the firm, be a part of the process that helps diverse talent succeed and have the ability to speak out when a partner decides "that X is just not working out" without verifiable supporting evidence.

None of these proposed measures begin to compare with the cost of recruiting fees or the fees expended to develop a new attorney for any large firm in Philadelphia. Nevertheless, they reach the heart of diversity management and require a firm's commitment to being diverse, from the top to the bottom.

Improving diversity statistics in the 2010 law firm landscape must also be viewed from the perspective of those desiring employment. Law students and those seeking lateral employment in 2010 must recognize that these economic times have changed recruiting standards — and learn what it takes to get hired. For those coming out of law school, taking the right steps to get hired is much more difficult than it was three or four years ago.

For law firms, successfully recruiting diverse students from law school is likely to be challenging. Because fewer firms are recruiting and those firms that are recruiting are interviewing and willing to hire fewer students, the pool is larger for firms. However, the available slots are fewer. While diversity is a goal to which many firms aspire, the focus is to hire only those students who are ready, willing and able to hit the ground running on the first day of work. Students need to sell themselves as being ready now to perform. My personal observation is that many students of color are not certain — perhaps because of an absence of career guidance in law school — which practice area they wish to enter and frequently are looking for a variety of professional opportunities, both from a firm and in making a long-term determination of a career. This approach is unlikely to be in favor with firms in 2010, or beyond.

Those seeking lateral positions at the partnership level must realize that most firms will hire laterally only if it is justified by a solid financial profile. A lawyer of color who does not have the financial data to support his or her practice's fitting within the firm's business and financial goals is unlikely to receive serious consideration, even if he or she is diverse.

Because of the economy in many firms, diversity will be less of a factor in who is hired and who is retained. The diversity commitment will become something firms aspire to achieve, instead of working policy. For a smaller number of firms that think more strategically, they will spend 2010 diversity funds on building and developing the individual value of lawyers of color within their firms. These expenditures are likely to be far more vital than sponsoring luncheons or attending dinners, which provide scant long-term value toward facilitating the success of lawyers of color.

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