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The Demographic Challenge – Does Your Organization Mirror Your Client and Customer Base?

I. Why does diversity matter?

Diversity is a topic that has garnered much attention over the years. The thinking on why diversity matters has shifted over time—from a moral imperative to a business one.

According to the American Bar Association, only two professions (the natural sciences and dentistry) have less diversity than law. Although women constitute over one-third of the profession, only one-fifth of law firm partners, general counsel of Fortune 500 corporations, and law school deans. Men are two to five times more likely to make partner than women. Even women who never take time away from the labor force and who work long hours have a lower chance of partnership than similarly situated men. This situation is particularly pronounced in firm management: Women constitute only 17 percent of equity partners. Only seven of the nation's one hundred largest firms have a woman as chair or managing partner. (Fordham Law Review, Vol. 83, 2015; *Diversity In The Legal Profession: Perspectives From Managing Partners And General Counsel*, Deborah L. Rhode* & Lucy Buford Ricca ("Rhode/Ricca").)

Although African-Americans, Latinos and Asian Americans now constitute about one-third of the population and one-fifth of law school graduates, they still only account for fewer than 7 percent of law firm partners. In major law firms, about half of lawyers of color leave within three years. Attrition is highest for women of color; about 75 percent depart by their fifth year and 85 percent before their seventh. (Rhode/Ricca.)

Given these depressing statistics, it is not surprising that a 2010 survey by the New York City Bar Association reports that "persistent challenges" exist with respect to hiring and retaining a diverse work force and that it will take "several decades before either women or minority attorneys are represented among partners commensurate with their total representation among all" attorneys at the firm.

Before addressing how to improve these numbers, it is important to ask why this matters.

Affirmative action programs were often, in their inception, based on the notion that hiring diverse talent was “the right thing to do”—in other words, it was a moral imperative, not a business one. Veta Richardson, then the executive director of the Minority Corporate Counsel Association (currently she is the president of the Association of Corporate Counsel), called this “Diversity 1.0.” (See *Diversity in High Places*, Lisa Linsky & Nicole Pearl, September 2011 issue of *California Lawyer* (“Linsky/Pearl”).)

Although perhaps well-intentioned, this “it’s the right thing to do” justification for hiring diverse work forces poses problems. As David Wilkins, a law professor at Harvard University who consults on diversity issues has noted, attorneys who are hired because it’s the “right thing to do” can suffer if they are perceived as having been hired to further a social justice agenda, rather than because they are capable and well-qualified to do the job. (Linsky/Pearl.)

The current thinking on why having a diverse workforce matters focuses instead on the *business* reasons. This shift from a moral imperative to a business imperative— “Diversity 2.0”—in Richardson’s parlance (Linsky/Pearl), has been spearheaded by clients in many instances. For example, in 1999 Charles Morgan, then general counsel at BellSouth Corporation, published “Diversity in the Workplace—A Statement of Principle,” which put law firms on notice that the signatory corporations would weigh law firms’ commitment to diversity when selecting outside counsel. In 2004 Rick Palmore, then general counsel of Sara Lee Corp., penned a “Call to Action,” which stated that signatories would “end or limit relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse.”

The U.S. Supreme Court explained the reason for this movement: “[M]ajor American businesses have made clear that the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas and viewpoints.” (*Grutter v. Bollinger*, 539 U.S. 306, 330 (2003).)

In other words, having a diverse workforce means having a broader range of solutions to business problems. Companies—including law firms—need people who can speak the language of their customers, both metaphorically and literally. They need people who understand the experiences of their customers and, thus, who can create trust that they can address those customers’ issues. Simply put, companies need people who can connect and, in a world that is not 100% white and male, companies need workforces that are not 100% white and male.

The bottom line: As corporate clients become more diverse, so must the lawyers that serve them. Having a diverse workforce means having the ability to attract and best serve clients who are diverse.

II. Diversity in the workforce

While having a diverse workforce may be good for business, the question remains what can or should be done to attract and retain workers of many different backgrounds. In answering this question, any company seeking a diverse force must tackle a series of issues, including taking a hard look at where its workforce diversity presently stands.

What does your workforce look like now?

When you look around the table, is everyone the same race, the same gender, the same age? Is your company a place that someone looks different than the rest of your workforce would aspire to join? If so, you may need to consider making some adjustments.

Where do you recruit?

Is your recruiting self fulfilling? Ergo, do you look to find and replicate what and who you already have, or do you use outreach into new sources? If you are getting results in the same demographic over and over, the answer is self evident. Sources that typically yield broader recruiting results are online postings, campus job fairs and recruiting events, and diversity recruiting events.

How do you recruit?

Do you place ads, have job postings on a website, use recruiters, use Linked In, participate in job fairs and diversity organizations, do on campus recruiting and interviewing? Your yields and responses will point you in the direction required to appeal to a broader base of prospective hires.

How do you promote?

What are the paths to leadership in your organization? If they are unclear or are a complete mystery, perhaps some clarity is needed. If your workers do not know how to achieve management and supervisory positions, or firm partnership, the great likelihood is that your workers may eventually leave. Are the paths made known? Definable standards or subjective choices based on relationships will determine outcomes. Having leaders who are more than functional and are examples and mentors will affect and create positive change in your culture.

How do you retain?

Money cannot buy love. This rule applies equally in the workplace as anywhere else. Keeping a diverse workforce happy means treating people with respect while they're employed, and by learning the reasons for their departure if they leave. Being capable of hearing those reasons and acting on them in a positive way after an exit interview can be valuable. Likewise, it is important to consider what incentives exist for underrepresented groups to stay in your organization. Some homework may be required, and it may be necessary to make changes to accommodate the answers to that homework. Looking at what people are saying online about working at your company can be informative, too.

What are your goals?

What are the defined metrics for diversity in your organization? A commitment to diversity requires more than just spin.

What are your aspirations?

A commitment to diversity is good business. It's not only the right thing to do but it can make your enterprise a survivor in changing times. Your commitment has to translate into tangibles and progress you can see or measure.

Are your policies and procedures attractive?

Your leave policies, telecommuting policies, vacation policies, and promotion and hiring procedures must be in line with your values and competitive with organizations in your industry. Changes may be necessary when you compare and talk to current and prospective employees. Organizational will to make changes is required, as the world, and the competition, continues to evolve.

Are you conscious of how you present to your colleagues and customers as a 21st Century business?

If you look in the mirror, you must look like your customers and your competitors. People can detect tokenism and stereotyping.

What would be the result of a frank look at stereotypes, biases, and prejudices?

If you flipped through a diverse picture book, what are your assumptions, your initial thoughts, about what you see? You should see customers and co-workers. If you do not, that contrary perception will, consciously or subconsciously, influence hiring, promotion, mentoring in your organization.

What are the barriers in your company that exist to recruiting, hiring, developing, promoting and retaining diverse workers?

Putting yourself back in the hiring pool, if you were to apply for a position in your organization today as a diverse applicant, how would you attain your position? If you couldn't, you need to think about changes would need to occur so that you could. Education, mentoring, better dissemination of information about promotional opportunities might be the answer, as well as truly objective rather than subjective evaluations.

What does your workforce need to look like to mirror your customer base?

What metrics do you possess about your customers and clients vis a vis diversity? If you do not know, you need to find out. How does your workforce align with your customers and clients? If it is out of sync, you may want to consider what it will take to achieve a better fit.

What do you need to do to expand your recruiting?

If you are using the same old sources and getting the same old results, what can you do differently to reach out to the applicants you want to hire to grow your organization? A word with some of your applicants might be of assistance. Again, listening to feedback and being open to new ways of doing things is a good way to begin.

How seriously does your organization take diversity?

Is your organization leading from in front or from behind? Do you need to catch up? Is this even on the radar? If evolution in demographics has so far escaped notice, perhaps it is time to come up with a plan.

How to translate commitment into action?

Is progress being made? Measured? Tweaked? What steps are you taking to reach out to diverse applicants? Without resort to metrics and a look at the world beyond your company's walls, you may find there is no change regardless of your good intentions.

What initiatives work, and which do not?

What has worked? What has failed? What frustrations exist? Without squarely addressing these issues, and measurable goals and outcomes, you may lack adequate information to make the changes to keep you on track.

III. Diversity in the customer base

Another essential series of questions arise when targeting customers/clients. The answers to these, too, will inform your company's efforts to reach out to new customers/clients:

What do your customers and clients look like now?

What is your perception of how your clients are customers are changing? That might require some thought and investigation. What hard evidence do you have or can you obtain to track that? How does that intersect with your aspirations for your own organization's diversity? As a consumer, what are your own expectations and experiences with providers of insurance and legal services? The answers to these questions are excellent starting points for beginning a conversation that may yield stronger client/customer relationships.

What are the trends for the future?

Are you tracking the trending/changing demographics? What do you make of them? The danger is that if you don't keep pace with the changing demographics, you will be left behind and may become irrelevant, or have competitors who appear more user friendly and desirable.

Do you have someone in your organization who monitors diversity?

How do you acquire and utilize/employ the information about your customer base? Are you in silos or is it a cross-organization effort? A successful commitment to diversity requires a multi-pronged approach that includes feedback loops so that you can discover what works and what doesn't.