

Impediments to Diversity and Inclusion in Law Firms

By Sarah Garvey, BCG Attorney Search Diversity Director

There has been a tremendous amount of energy and attention devoted to increasing diversity and inclusion and yet women, attorneys of color, LGBTQ attorneys, and other diverse attorneys continue to lag behind. Women account for less than a quarter of all law firm partners. The percentage of African-American associates has just this year surpassed 2009 levels, and attrition is a problem, as diverse attorneys are leaving law firms at disproportionate rates because they feel marginalized, undervalued, and without any meaningful future in those institutions.

There are many causes of the persistent lack of diversity and inclusion in law firms. Some of the main ones include:

Bias and implicit bias;

Homophily;

Lack of accountability;

Lack of mentors, sponsors, leaders, and role models;

Attrition;

Stagnated vision; and

"Pipeline issues" and systemic racial, gender, social, and economic imbalances.

Bias and Implicit Bias

We may think we have progressed as a society when it comes to how we perceive members of diverse groups, but prejudices plague law firm culture. Women, attorneys of color, LGBTQ attorneys, and other diverse attorneys, continue to be plagued by of untrue and unfair stereotypes such as that female attorneys are less valuable investments because they will leave mid-career to have children or that attorneys of color are less well-educated and will not perform as well as their counterparts.

According to the MCCA and ABA Commission on Women in the Legal Profession's recent groundbreaking study [Change What You Can't See: Interrupting Racial & Gender Bias in the Legal Profession](#), diverse attorneys report experiencing "prove-it-again" bias (having to go "above and beyond" to get the same level of respect) and "tightrope" bias (pressure to behave in stereotypical ways). Women of color report being mistaken for administrative, janitorial, or court personnel at disproportionate levels, and women of all colors report experiencing a "maternal wall" (being treated worse after having children).

When people hold negative stereotypes consciously, it is outright bias. When people hold negative stereotypes unconsciously, it is implicit bias. Whether conscious or unconscious, such bias is very destructive. Bias and implicit bias inevitably creep into law firm hiring, assignment, advancement, and compensation decisions and harm the careers of diverse attorneys. Bias and implicit bias also creeps into the informal culture of a firm, tainting the working environment and leaving diverse attorneys feeling unwelcome, excluded, and without prospects.

Learn More About This Video

When not actively addressed and combated by efforts like "bias interrupter" training and structural changes to the way candidates are interviewed and attorneys are assigned work, bias and implicit bias can lead to discrimination, intellectual and professional stagnation, and attrition. It also can adversely impact the work product, which hurts clients because bias discourages people from giving their best effort and because it may result in clients not getting the best for the matter (or matters that may come in the future).

Homophily

Homophily refers to the phenomenon of people feeling most comfortable with those who are similar to them. Male attorneys within law firms, for example, may gravitate towards mentoring or giving the best assignments to other male attorneys because they are male and not for any other reason. [If a male partner does this, it does not necessarily mean that there is a bias or implicit bias towards female attorneys](#), but rather than he is just more used to being around other men.

Even when no bad motive is involved, however, homophily is highly problematic. It breeds a self-perpetuating culture that is homogenous and in which the dominant group stays in power and from which the less dominant group is excluded.

Lack of Accountability

Part of any system of change is goal-setting, data-gathering, and accountability. The reason why some firms are successful in the D&I space is because they are not making the effort to track their progress with respect to diversity and inclusion.

goals to do better, and then hold themselves accountable for failure to meet those goals.

Lack of Mentors, Sponsors, Leaders, and Role Models

The scarcity of law firm mentors, sponsors, leaders, and role models who are diverse is a major reason why law firms are slow to diversify. Because of bias, implicit bias, and homophily, as well as lack of accountability and systemic issues, the status quo in law firms is one of relative homogeneity, which without diverse leaders and others who are interested in the future of diverse lawyers and firm leaders just leads to more homogeneity.

Law firms need to make more proactive efforts to increase their numbers of diverse attorneys in influential positions. They can experience change from the "top-down" as well as from the "ground up." For law firms to become truly diverse and inclusive institutions, they need to be places in which women, attorneys of color, LGBTQ attorneys, and other diverse attorneys can look around and see more people like them, who can mentor them and represent them in decisions, and who are their kindred spirits.

Attrition

Attrition is the phenomenon in which diverse attorneys leave law firms after just a few years because they feel undervalued or feel as if they cannot have the kind of future they want and deserve there. Attrition is a major problem when it comes to diverse attorneys and it is caused by all of the other impediments discussed in this article (especially bias, homophily, lack of leaders, sponsors, mentors, and role models).

According to the [2019 NALP Report on Diversity](#), "Women and people of color continue to be well represented in law firm equity partner and in the summer associate class, but at each year after that women and people of color leave the lawyer ranks at a higher rate than white men, and women of color remain the most underrepresented of all, with Asian women making up 1.46% of law firm partners, Latinx women making up just 0.80% of law firm partners, and Black or African-American women making up just 0.75% of law firm partners. Women overall remain grossly underrepresented among the equity partners in law firms, with just one in five equity partners being women (worse, only 7.6% of equity partners are people of color).

Attrition is unfortunate for the lawyers, of course, given the amount of time and energy they have dedicated to their law careers and their hopes for success in the firms they end up leaving. It is also counterproductive for law firms, as they are unable to get a return on their investment (assuming they have actually made an appreciable investment in the attorney in the first place, which may not be the case and may be the cause of the attorney's departure).

To deal with the D&I impediment of attrition, law firms need to make additional efforts to cultivate the talent they bring in and nurture an inclusive culture where everyone gets access to the opportunities and support they need to blossom.

Stagnated Vision

Law firms lack a certain creative vision when it comes to hiring and advancement decisions. They rely too heavily on "paper credentials" like law school prestige, grades, and time-based billable hour requirements, even though these factors do not necessarily reflect the value of an attorney as a candidate, attorney, or team member.

Many diverse attorneys have excellent paper credentials, but not all do. Diverse attorneys may be overlooked even if they have other important qualities that firms would be advised to seriously consider in their hiring and advancement decisions. Diverse attorneys often have highly-developed interpersonal skills and the incredibly useful talent of being able to get along with many different kinds of people. Diverse attorneys also can be exceptionally energetic, enthusiastic, entrepreneurial, and gifted in the area of networking and business development.

Other qualities diverse attorneys can bring to the table--often but not necessarily as a result of experiences they have in their lives or careers related to being diverse--are grit and tenacity and the character that comes from having had to overcome adversity. Similarly, diverse lawyers can be exceptionally creative and out-of-the-box thinkers. Because many have had textured life experiences, and have had to negotiate and adapt successfully to a variety of environments, they offer valuable perspectives as well as practical life skills involving adaptation.

"Pipeline" and Systemic Issues

One of the major reasons for the continued lack of diversity and inclusion in the legal profession is a historical reality that involves long-standing and entrenched systemic issues of inequality. Attorneys from every diverse group suffer from issues that linger today and act as an impediment to their success, but attorneys of color suffer disproportionately from any other diverse group. Because of a past marked by slavery and segregation in the case of African-Americans and economic, political, and social disadvantages (and a lack of "white privilege") in the case of African-Americans and it has been more difficult for people from these groups to get access to educational, economic, and other resources necessary and conducive to a successful legal career. This is what is known as the "pipeline" problem, and when we talk about this they mean that there are not enough qualified attorneys of color in the "pipeline" to draw from to diversify the profession.

Many organizations now have pipeline programs to identify talented yet disadvantaged people of color in high school or law school, or in their early years of practice, and help mentor them in various ways so they will have a greater chance of succeeding in their firms and the profession. These are extremely important and valuable programs and firms that are committed to diversity and inclusion would be well-advised to learn about them and participate.

Please see [Law Firms' Continued Lack of Diversity: Scholars Provide Insight on Reasons and Solutions](#) for more information on the impediments to diversity and inclusion in law firms.