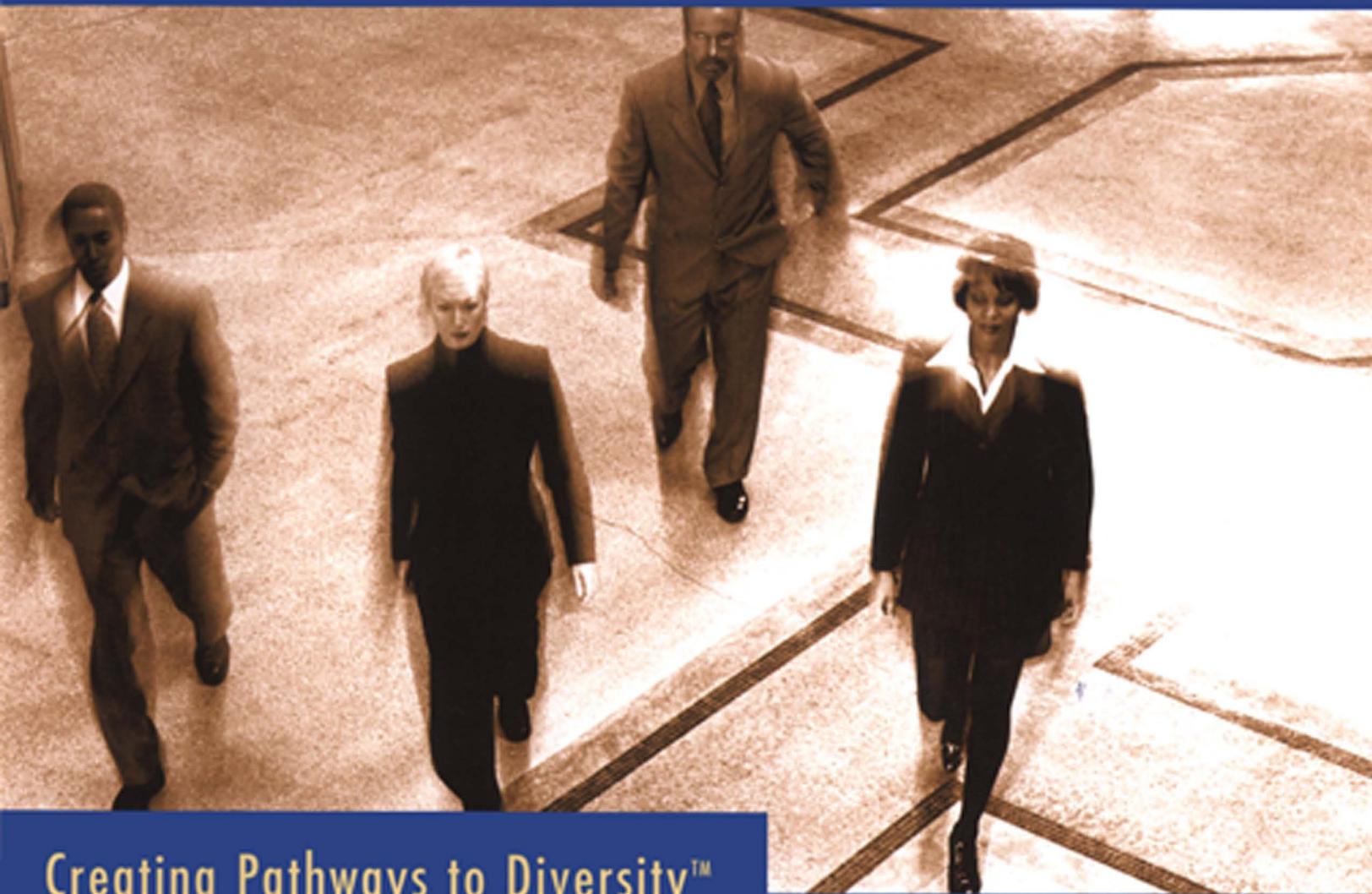


A Set of Recommended Practices for Law Firms



Creating Pathways to Diversity™

An Overview

INTRODUCTION

Law firms hang their reputations on serving their clients well and making their profession more inclusive. Yet, today law firm diversity is still an oxymoron. Attorneys of color represent only 3.2 percent of all law partners and 12 percent of all associates nationwide.¹ In a nation where one of every three Americans is a person of color, the marginal presence of minority attorneys in law firms can no longer be ignored.

Diversity is becoming a "disappearing act" at the top levels of many law firms. As a steady stream of attorneys of color exit law firms, it leaves a shrinking core of minority senior associates and an even smaller number of minority partners. Recruitment costs escalate as firms must spend more to lure "superstar" minority attorneys.

Recruitment of minority attorneys traditionally has been the biggest challenge to law firms, and it will continue to be difficult, especially given the impact of recent decisions in Texas and California to ban affirmative action from all law school admission policies. However, retention of all attorneys is the number one problem that law firms today must confront.



“Good intentions aside, many law firms do not treat diversity as a strategic factor that contributes to the bottom line. That lack of understanding, nonetheless, impacts their bottom line in missed opportunities, wasted resources, and costly turnover.”

This report lays out barriers that impede diversity progress in law firms and coordinated actions that can overcome forms of exclusion embedded in the rules, attitudes, and environment of law firms. Good intentions aside, many law firms do not treat diversity as a strategic factor that contributes to the bottom line. That lack of understanding, nonetheless, impacts their bottom line in missed opportunities, wasted resources, and costly turnover. If diversity programs are to succeed in law firms, then a strong business case must be made to ensure the firm’s commitment and sustained participation

Minority and women participants in this study repeatedly voiced their frustration with the sense of isolation, the absence of mentors or role models, the constant questioning of their abilities, the old boy’s network, and the inflexible work/family schedules. Shockingly, nearly 86 percent of women of color leave law firms before their seventh year—just when their legal careers should be blossoming.²

In addition, this report will elucidate the recommended practices to make diversity programs effective and successful—active senior partner involvement, a well-designed and monitored plan, incentives for staff participation, access to a trusted feedback channel for attorneys. The tenacity, creativity and results achieved by law firms that have embraced diversity inspires hope for more change. This report concludes with a model for others to get started. This document is an overview of the *Creating Pathways to Diversity*TM study on law firms; the full report is available online at www.mcca.com.

¹ABA Commission on Opportunities for Minorities In The Profession, *Miles To Go 2000: Progress of Minorities in the Legal Profession*

²ABA Commission on Opportunities for Minorities In The Profession, *Miles To Go 2000: Progress of Minorities in the Legal Profession*



Creating Pathways to Diversity™

In 2000, MCCA completed the first phase of a three-year effort to provide solutions for law departments to increase the diversity of their legal staff through internal and external collaborative initiatives. In the first year, *Pathways* revealed that, with respect to their diversity efforts, most corporate law departments can be placed on a spectrum from compliance with federal regulations to inclusion. The *Pathways* concept is as follows:

- **Compliance** brings people into an organization.
- **Diversity** demonstrates an appreciation for their differences.
- **Inclusion** creates an environment in which people want to stay.

Their transition and progress through these stages is facilitated by integrated initiatives that align diversity goals with strategic business goals.

Furthermore, *Pathways I* revealed that all attorneys, not just minorities and women, benefit from a successful diversity program.

1. The company gains a strategic advantage by leveraging differences to tap emerging markets and solve complex business problems.
2. Productivity and innovation are improved by eradicating communication between people of different backgrounds, ages, sexual orientation, ethnicity and/or culture.
3. Resources that were previously unavailable to attorneys, such as flexible work arrangements or on-site day care, which make balancing work and personal commitments easier, become accessible.
4. Career growth opportunities are enhanced through mentoring and developmental training.
5. Peer or affinity groups (e.g. Gay and Lesbian Task Force, Muslim Employee Network), which are very important to diverse attorneys are provided support and resources.

Study Overview

Creating Pathways to Diversity™: A Set of Recommended Practices for Law Firms is an in-depth, data-driven analysis that balances quantitative and qualitative findings about the diversity practices and plans in law firms. This study was launched with the following objectives:

- To provide a database and profile of current law firm diversity planning, implementation and representation.
- To qualify and illuminate the recommended practices for the design and implementation of diversity initiatives in law firms.
- To identify the business case for diversity in law firms.
- To outline a diversity plan template that law firms can use to increase the recruitment, retention and promotion of minority and women attorneys.

Methodology

The methodology consisted of two parts:

1. Focus groups of law firm attorneys conducted in four major regional cities—Chicago, Illinois; Washington, D.C.; San Francisco, California; and Houston, Texas.
2. An extensive diversity benchmarking survey.

Focus Groups

The focus groups provided qualitative data from the open expression of opinions and anecdotes concerning the diversity efforts of their respective law firms. To ensure that all participants were comfortable, MCCA conducted four sets of focus groups consisting of the following demographic groups: men of color, women of color, white women, and white men. A total of 141 attorneys participated in all four cities (33 white men, 35 white women, 37 women of color, and 36 men of color).

“The focus groups provided qualitative data from the open expression of opinions and anecdotes concerning the diversity efforts of their respective law firms.”

Each group was asked the same set of 18 questions, which focused on several areas including: existing initiatives within their firms that focused on the recruitment, retention, and/or advancement of women/minorities; challenges and barriers to creating a diverse and inclusive law firm; and recommended practices that could help other firms. Most of the questions in the interview were designed to be open ended, which provided a depth and richness of data not otherwise possible. To encourage focus group members to speak candidly and thoughtfully, MCCA guaranteed their anonymity. Consequently, this report makes no reference to the source of comments—either from individuals or firms.

Diversity Benchmark Survey

MCCA, in collaboration with www.ElawForum.com³ administered an extensive survey to law firms about their diversity efforts. Participants were asked 20 questions about their firm’s demographic representation from 1998 - 2001, as well as the structural components and activities that address recruitment, retention, career development and attrition. Some 104 firms responded to the survey (77 online and 27 via fax). Not all the firms that submitted a response participated in the MCCA focus groups.

Analysis of survey results included voluntary turnover or attrition, structural components of the diversity program, and demographic change over the last four years (1998 - 2001). The responses to the benchmark survey were analyzed and reported in the aggregate, without identifying information. This quantitative information will be used to evaluate and update a list of best practices, which will be further refined using the feedback received from the focus groups.

Research Team

The research which underlies this report, *Creating Pathways to Diversity™: A Set of Recommended Practices for Law Firms*, was led by MCCA's Research Director, Scott Mitchell. Mr. Mitchell was responsible for the overall management and execution of this project, including the design of the research protocol, analysis of the survey data, and integration of both the quantitative and qualitative findings into this final report of recommended practices. This research is the result of a year-long collaboration between MCCA and J. Howard & Associates, the independent consultant retained to assist MCCA with conducting the focus groups and preparing a qualitative report of the discussions that took place. MCCA acknowledges the contributions of Mr. Mitchell and J. Howard & Associates, in addition to those of Ms. Ellen Kim of Graphek, the graphic artist who was responsible for the design and lay-out of this report.

³eLawForum is a B2B exchange for professional services where corporate legal departments post requests for proposals (RFPs) for legal services and invite law firms they select to respond to these requests through eLawForum’s web site to provide their qualifications, availability, and pricing, in order to be considered for a new business opportunity.

EXECUTIVE SUMMARY

Business Case For Diversity

Change that will affect profits will drive the case for diversity in law firms. Without an understanding of how diversity impacts the bottom line, diversity programs are short-lived, inadequately funded and not taken seriously by either the firm management or those responsible for implementing diversity initiatives.

With corporate law departments growing more diverse and these departments now expressing more concern about the efforts of law firms to increase the number of minorities and women on their staff, law firms that only pay lip service to diversity may pay a stiff economic price. Law firms that do not take diversity seriously are already losing money:



- Forfeiting the best legal talent to competitors by doing nothing about the unacceptably high levels of attrition among all attorneys, which disrupts client relationships and the firm work environment.
- Paying high recruitment costs for diverse candidates, money squandered when those attorneys leave within four years for a more supportive environment or more attractive positions at law firms or in-house departments.
- Sustaining damage to their reputation from discrimination litigation, which generates negative publicity and increases the costs of recruitment and retention of new associates.
- Not receiving the full return from employees, either by failing to make diversity a strategic advantage in tapping emerging markets or by failing to increase productivity through more open communication and problem-solving.
- Sustaining work environments out of step with corporate clients, who increasingly may request that more minority and women attorneys be assigned to their work.

Barriers to Success

1. Little understanding of the link between diversity and the bottom line or its connection to strategic business initiatives

The lack of an established business case for diversity explains why it is not fully supported by senior law firm management.

2. Myth of the meritocracy

The legal profession still traditionally views its institutions as being governed by a "meritocracy"—where success is the result of an individual's "innate" ability to perform well in such areas as law school GPA or law review participation. While these credentials are acceptable measures of academic performance by a law student, they have yet to be proven reliable yardsticks to measure success as a practicing attorney. This cultural bias frames diversity negatively, as coming at the *expense* of quality of legal service instead of *enhancing* quality legal service.

3. Revolving door for incoming attorneys of color

Diversity at the associate level is not reflected in the senior partnership or management of most firms. Consequently, a steady stream of minority associates enters the pipeline but leaves within four years. That leaves a shrinking core of minority senior associates and an even smaller number of minority partners.

4. Lack of senior partner commitment and involvement in the planning and execution of diversity initiatives

Partners drive law firm culture and change. Without the participation of management, inadequate resources are committed to the diversity program. Each initiative then depends on the free time of women or minority attorneys, who are already over-burdened but are still assigned to spearhead internal diversity initiatives and recruit diverse candidates, while meeting the demands of day-to-day practice.

5. Insufficient infrastructure and resources

Many of the participants said their firms had a diversity committee or council and/or a recruiting committee with a diversity component, as well as other committees dealing with various aspects of recruitment and retention. But in many cases, there was no central focus or coordinated firm-wide set of goals. Instead, these structures were decentralized and sometimes lacked the authority to make a real difference. Results were not measured regularly nor were they tied to the compensation of the attorneys responsible for implementing each initiative. In fact, because hours spent on diversity management are non-billable, staff members who are assigned this responsibility often take a negative financial hit.

“It is still assumed that a woman will not be as committed to her profession as a man and that she will either leave or ask for “special treatment.”

6. Attrition of women attorneys driven by lack of viable work/ life programs

Many female attorneys feel unable to maintain family commitments and high-pressure, time-intensive legal careers. They also note the lack of role models and the strained relationships with clients and senior firm management.

7. Stereotypes and assumptions

There was evidence from the focus group data that stereotypes and assumptions about women and minorities still exist, stifling their career growth and a firm’s diversity progress. Participants said because of family demands, it is still assumed that a woman will not be as committed to her profession as a man and that she will either leave or ask for “special treatment.” Such stereotypes in law firms often do become “self-fulfilling prophecies.”

8. Emphasis on entry-level recruitment of minority attorneys

Most of the initiatives that participants described focused on entry-level recruitment. Even when these efforts were successful, any gains that a firm made often were wiped out within a few years due to the attrition of the same people they had spent so much effort and money to hire.

9. Good intentions but little willingness to examine specific issues at each firm historically

Most law firms do not conduct an internal audit on firm hiring, culture, or promotion practices. Neither do diversity plans usually focus on internal causes that historically might have contributed to attorney attrition, particularly among women and attorneys of color. For example, a firm that hires exclusively from Ivy League schools or the alma mater of firm partners has unnecessarily limited their selection pool of minority candidates. To increase its staff of attorneys of color, a firm may have to extend its recruitment activities to law schools that regularly graduate a large number of minority law students.



10. External consultants design and implement a diversity training program that is not owned or understood by the firm's senior management

A training program that is not custom-designed but conducted in an "off-the-shelf, one-size-fits-all" manner for the organization will be an expensive failure. Typically, no staff members are designated to monitor the firm's progress toward the program's diversity goals. Such one-shot approaches fall short of expectations, further frustrating employees who want change to occur.

Critical Success Factors

1. Understanding the business case for diversity

To ensure senior partner commitment and firm-wide buy-in, a firm must develop a written plan that clearly makes the business case for diversity. Law firms that grasp the needs and economic potential of an increasingly diverse marketplace and workforce will change to expand their firm's market share, strengthen relationships with current corporate clients, and retain talented diverse staff.

2. Senior partner commitment

An effective diversity program must be directed by a senior partner who is held accountable for the program's success and who is given the authority and resources to implement a firm-wide diversity program. Active involvement by management will ensure adequate resources are allocated to implement and regularly monitor the diversity program.

3. Collaboration between partners, staff and knowledgeable experts

Successful programs are collaborations between external diversity experts and internal staff, including an advocate who is part of senior management. This team should be responsible for the implementation, evaluation, and follow-up of the diversity program.

4. Firm-wide ownership and participation

The entire firm shares ownership of the implementation and results of diversity initiatives, similar to other firm-wide commitments. Budget resources are provided to facilitate the entire firm's involvement and ownership in the diversity program.

5. Confidential resources for all attorneys

A firm should earmark resources that allow all attorneys to voice their concerns, doubts and ideas in a confidential or even anonymous forum, where they are not fearful of retaliation or retribution from senior management. Firms that are receptive to the issues raised by all attorneys will be able to change their culture, policies or practices. Those that stifle feedback will have reticent and unhappy associates who may depart whenever the first good opportunity knocks.

FINDINGS



Common Themes

When focus group attorneys were ranking their own firm’s current situation, they shared several important observations:

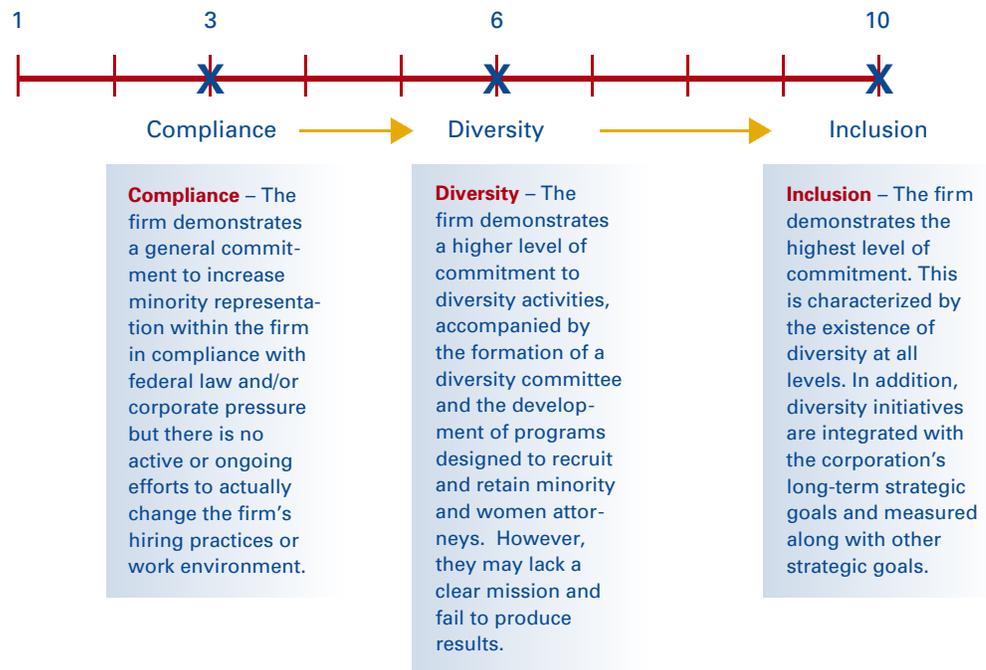
- Participants rate their own firm’s intentions higher than actual results.
- Law firms are much further along in diversity progress for women than for people of color.
- Recruitment of women and minority attorneys is much more successful than retention or advancement of either group of attorneys.
- Their firm has some initiatives in place, but not a sense of real senior partner commitment.

These issues were important themes in all of the focus group discussions.

Where Law Firms Stand On Diversity

Participants in the sixteen focus groups were asked to rate their own firm’s **current situation** on diversity and inclusion, based on a 10-point scale that incorporated MCCA’s evolutionary stages of Compliance, Diversity, and Inclusion.

Figure 1: The Pathways Concept: Compliance to Inclusion



The questions asked and the responses received focused almost exclusively on the reasons minority and women attorneys leave law firms, including isolation, lack of opportunity, work/ family imbalance, cultural bias, and non-diverse firm leadership.

The following table presents the average rating of inclusiveness for each focus group, by city, race, and gender.

Table 1: How Attorneys Rate Their Firms on Diversity

City	Attorneys of Color		White Attorneys		Averages
	Men	Women	Men	Women	
Chicago, IL	3.8	5.0	5.4	4.2	4.6
Washington, DC	4.2	4.0	6.6	5.2	5.0
San Francisco, CA	5.8	5.0	6.5	8.5	6.5
Houston, TX	5.6	5.4	5.4	5.6	5.5
Average	4.9	4.8	6.0	5.9	
Combined Group Average	4.9		6.0		5.4

Are all attorneys unhappy at their law firm?

While white men are no more likely to be satisfied with lifestyle issues such as long work hours or the inability to balance professional and personal responsibilities, most women and minority focus group participants felt white men stood to gain the most from the status quo in law firms. *“For white men, partnership is theirs to lose.”* Indeed, one of the chief complaints of attorneys of color relates to the lack of mentors and guidance from partners. A frequent theme was senior managers are most comfortable with others like themselves and informal relationships among white male associates formed the basis for mentors to pass on their “books” to their protégés, a key factor in the attainment of partner status.

“For people of color, inheriting clients is difficult. The partners will give their work to other white males. People of color end up fending for themselves.”

The ratings of law firm inclusiveness from the focus groups support this assertion. The overall average for the sixteen focus groups was 5.4. But white men had the highest average rating (6.0), followed by white women (5.9), men of color (4.9), and women of color (4.8). These ratings show that white attorneys rate their firm’s inclusiveness higher than attorneys of color. Furthermore, white men are more inclined to feel that their firm provides developmental opportunities, career satisfaction and the conditions to maintain their family and work commitments. Attorneys of color are less likely to feel that way.



The Retention Challenge

1. Why Do Women Attorneys Leave?

“We have a problem retaining women—no role models” Both minority and white women focused many of their discussions on the experiences of women in their respective law firms. Generally, there was consensus on some key themes.

Lingering dominance of male behavior norms

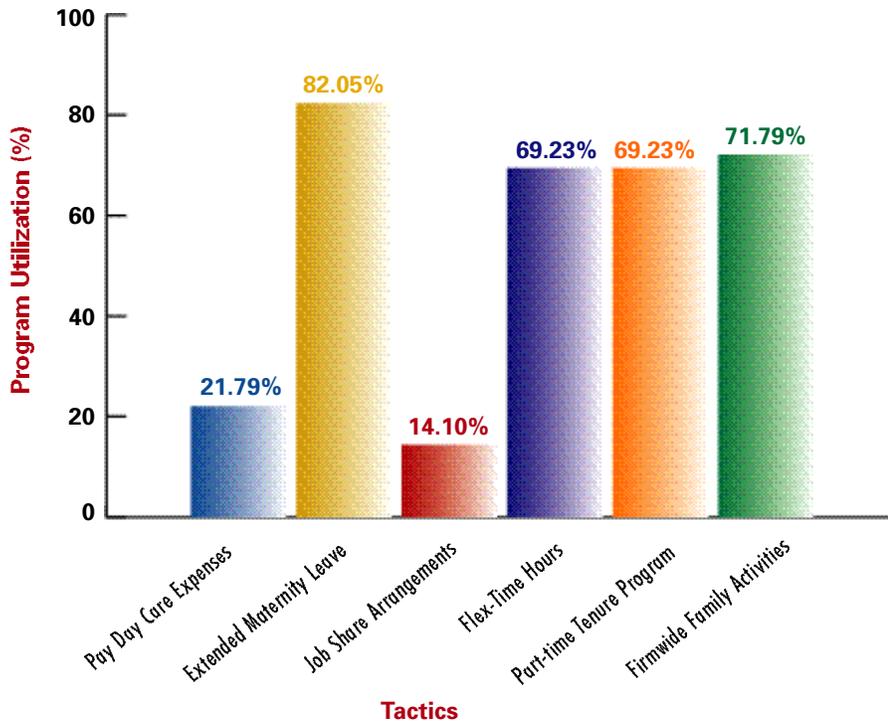
Women are graduating from law schools, even the “top” schools, in record numbers (over half of all graduates in some schools). Consequently, for many law firms, recruiting women is no longer the challenge it once was. Accordingly, the competence of women is not challenged as much as it was in earlier years when there were fewer of them in the profession. Several participants, however, did note that there are still older male partners, especially in the larger firms, who are uncomfortable working with women. These partners also assume—right or wrong—that their long-time clients would be uncomfortable with young women attorneys as well.

“In some firms and departments within firms, it’s still an ‘old boy’s club’ where women have to prove themselves much more than men.”

When discussing what it takes to advance in their respective firms, many women noted the importance of behavior and personality that conforms to the norm. Several women added that the range of acceptable behavior is much narrower for women (and for minorities) than for white men. For example, a white male attorney can be very demanding with a staff member (usually a woman) on work-related issues and his behavior is accepted. But if a woman associate behaved the same way, she would be labeled negatively by her colleagues—female as well as male. *“The band changes depending on gender—narrower for women. Don’t be an aggressive bitch, or too sexy or ugly. Don’t swear, but don’t be shocked when men do. And God forbid that you are an aggressive black woman.”* A few women attorneys also talked about the lack of respect and even common courtesy from male peers, such as not having their telephone calls returned or not being informed about meetings. In some practice areas such as litigation or corporate finance, respect from clients might also be lacking. *“Respect is a big issue—respect from clients. They scream at me but not at an older male colleague. Or they don’t trust my opinion, saying ‘Check with...’.”*

Another issue that women (and minority) associates face is the expectation that they will staff the committees that deal with diversity, recruitment, community outreach and other “soft” topics. These assignments, often very time consuming, are not billable and generally do not involve client contact. Thus, valuable time and energy is being expended in areas that do not “count” toward performance and advancement. This is particularly true with minority women who might be expected to participate in race and gender-related recruitment and retention activities. *“All the committee work—no recognized BILLABLE TIME. Administrative spots are not money spots.”*

Figure 2: Work/ Life Tactics of Survey Respondents



Even though law firm participants did offer their staff a variety of options to balance work responsibilities with family commitments, attorneys complained that taking advantage of these programs removed them from the partnership track or from being taken seriously by firm management. Thus, the reality is that while these programs are available, few take advantage of them for fear of the detrimental effect that participation may have on their careers.

Work/Life balance

“With women, the numbers are not a problem. The glass ceiling is a problem—promotion, getting into the capital partner ranks. Women are diverted more to family.” Although these issues are important, most women and men emphasized that the major and continuing challenge that women associates face is balancing the demands of motherhood (especially caring for infants and small children) with the long hours and grueling work schedules often required to make money for a firm. Both male and female participants, but especially women, agreed that not enough adjustments have been made to successfully resolve this issue in their law firms. *“The perception in my firm is that the only way to be successful is to bill 2,200 hours. A thirty-two year old woman with a law degree has lots of job opportunities that are more creative about defining success.”*

It is true that some law firms offer flexible schedules and even part-time work. However, according to some participants, if an associate accepts these options, that attorney is no longer seriously considered for partner or an equity position because of the common assumption that *“You can’t lead and be part time.”* Several women concurred with the view that *“There is really no such thing as ‘part time.’ You end up doing almost as much work at a much lower salary.”* Eventually, many women decide to leave firms for more flexible and rewarding options.

Given the high number of women who do leave law firms, male partners may be reluctant to invest the time and resources necessary to develop a promising young female attorney or to pass along clients to her. Such assumptions and related behavior can influence a talented woman attorney’s decision to seek employment elsewhere.



Few senior women role models and mentors

Participants said there are not enough senior women who can serve as mentors to young women attorneys and not enough role models who have successfully resolved the work/life challenge. Several participants said their firms either had no women at the partner or equity partner level or had women without children who did advance. *“Even some of our women partners who ‘want to be one of the men’ may not have children and are viewed as a negative mentor to younger women [who do desire to or already have children].”*

Relevance of practice area

Others reminded the group that the type of law practiced at a firm is an important variable in achieving work/life balance. One participant in Employee Relations Law said flex-time was not an issue for women in her department—a department headed by a woman who supported this issue. The discussion pointed to mergers & acquisitions or litigation as two areas where flex-time or part-time options seem less realistic.

*“We have more women and our department head is a woman.
The type of work we do, employee benefits, encourages people to have a life.”*

Several white female participants expressed optimism about “working the system” or changing it. Some said that work/life balance was becoming a “generational thing,” as their firms hired younger men who expect realistic working hours. Some white male participants expressed similar opinions about the changing work ethic. *“I’ve seen a greater willingness to be flexible with younger lawyers—using technology that allows telecommuting. There is not as much of a premium on ‘face time’.”*

Women participants who either were pregnant or had recently become mothers said they waited to start their families until they became partners in their firms and were then able to modify their work schedules. Even they acknowledged, however, that advancing further—to senior or equity partner—could be very difficult if a partner continued to work flexible or part-time hours.

Special challenges faced by women attorneys of color

The perspectives of white women and women of color were very similar on all of the issues discussed above. Still, it was clear that women attorneys of color face the dual challenge of gender and race. In their discussions, they drew on personal experiences that spoke to both issues. White women focused primarily on the challenges of balancing motherhood and work. For women attorneys of color, the acute stress of being isolated at work as a person of color and the pressure of balancing family demands as a working mother can lead to early burnout and high attrition rates, even for “high performers.” *“We had an African-American associate who was great! But she left after two years. She was under too much pressure as the African-American ‘superstar’.”*

The sense of isolation from informal networks within a law firm, the lack of respect and the frustration of trying to balance career and family demands all explain why nearly 86 percent of women of color leave law firms before their seventh year of practice—just when their legal careers should be blossoming.⁴ Even the most inclusive law firms deal with issues associated with race or culture separately from those more frequently linked to gender. This approach fails to adequately address the unique dilemma of women attorneys of color.

2. Why Do Minority Attorneys Leave?

When discussing retention of minority attorneys, some white participants said they believe it is a “seller’s market,” because minority attorneys are in great demand. Others said that the type of law they practiced (in this case, litigation) was very stressful for some minorities and some women, who either left for other areas of the legal profession or accepted more lucrative positions outside of law. *“We serve as a training ground for five-six years then lose minorities to other firms. They use the skills taught here, but were lured away for more money.”*

Many white participants also shared this perspective held by most minority attorneys—that the major reasons for the alarming attrition of attorneys of color are isolation, the lack of mentors, and the lack of opportunity.

Isolation

When participants discussed the careers of minority associates, one theme that dominated in all the focus groups was the burden of being “the only one” or one of a very few in a firm where implicit rules and informal relationships dominate the organizational culture. *“Historically, it is an informal system where you develop relationships. When there is no one there like you to develop a relationship with, you fail.”* Some participants acknowledged that people generally tend to be most comfortable with others like themselves, or at least with those with whom they are most familiar. Consequently, minority attorneys can experience acute isolation, which is unhealthy and counterproductive for the law firms that are wasting their talent. For example, minority attorneys might be excluded from some of the peer camaraderie, socializing, and support that make the first few years more tolerable. *“People of color may have a hard time feeling like ‘one of the guys.’ Maybe they feel like they are in the spotlight because they are ‘the only one’ and decide to go elsewhere.”*

*“Historically, it is an informal system where you develop relationships.
When there is no one there like you to develop a relationship with, you fail.”*

Even minority partners are leaving law firms for better work environments. Many struggle to get clients from the outside. Eventually, minority partners get tired of this pattern of exclusion and take their expertise to another firm, or they take the plunge into a new profession. Their departure is costly to a law firm’s diversity effort because it depletes the “critical mass” of senior minority attorneys necessary to retain incoming attorneys of color and to create an inclusive work environment.

⁴ABA Commission on Opportunities for Minorities In The Profession, Miles To Go 2000: Progress of Minorities in the Legal Profession

Lack of mentoring

Perhaps even more relevant to career success is having an effective mentoring relationship. Yet, there were few (if any) minority attorneys at the partner or senior partner level who filled this vital role in the law firms represented in the focus groups. This critical void has been created not only by attrition but by insufficient lateral recruiting. Consequently, minority associates (and women associates) lack access to senior partners who can act as mentors and advocates for their upward mobility. *“Some of us have compensated to make it ok, but it’s still not enough. I have mentors outside of the firm, and other minorities have done the same.”* Not all partners, minority or white, female or male, necessarily make effective mentors. At the very least, a minority partner or senior partner symbolizes the possibility of advancing in a particular law firm. Because minority mentors have “been there,” they are vital sources of information, strategy, advice, encouragement, desirable assignments, and access to informal networks.

Stereotypes about ability

The implicit but incessant questioning of a minority attorney’s ability leads to that person having to “prove” himself or herself beyond what is normally expected of other attorneys. Some white women also expressed this concern, but it was more prevalent among minority attorneys. For example, many minority participants felt they are judged more harshly than white associates, and their mistakes are not forgiven or forgotten as quickly. They also said senior attorneys are more reluctant to select minority associates for important projects or share their clients—key stepping stones in career advancement and success.

“You get tired of having to prove yourself. The bar is higher for minorities.”

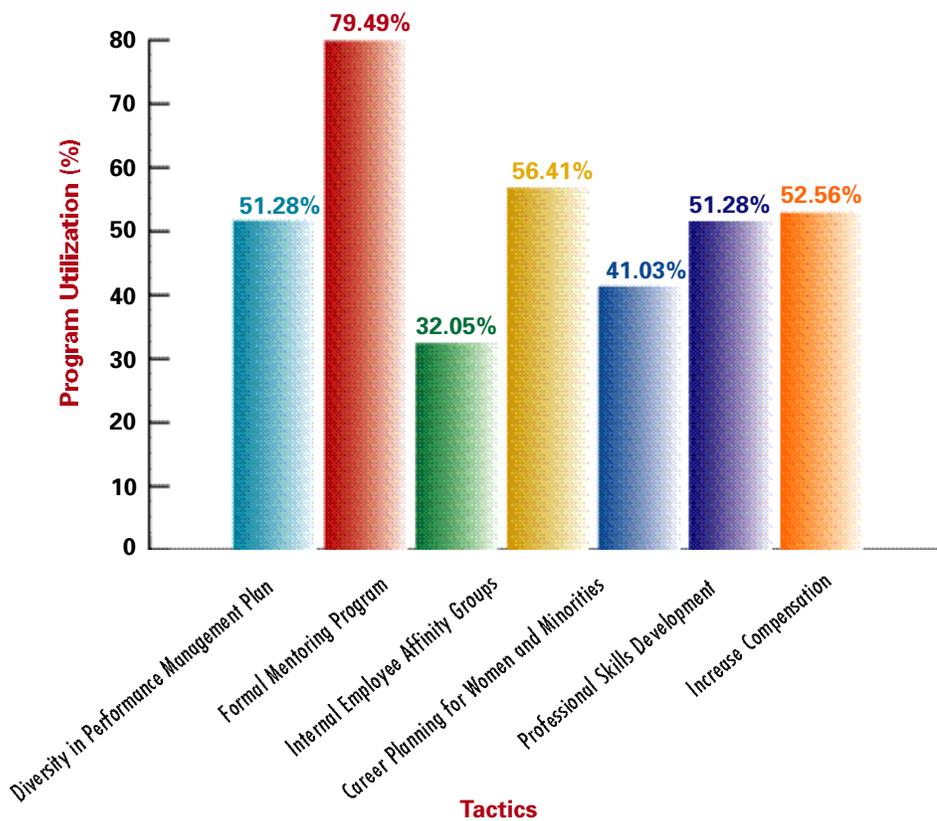
African American and Latino attorneys felt victimized by the stereotype of having less ability than white colleagues, regardless of their academic background. *“When retaining African Americans, it is almost always a performance issue of not meeting requirements. Asians work harder than African Americans and Latinos.”* This bias intensifies if a firm has broadened its recruitment scope or is perceived to have “lowered” its requirements to hire more minority students.

The issue of “lowering standards” surfaced a few times in the white focus groups when some participants expressed concern about adopting different hiring criteria for minorities as a recruitment tactic. They described situations where this recruitment strategy did increase their minority numbers. They added, however, that several minority associates were having performance problems, and their firms did not know how to address them. *“Minorities are very difficult to keep especially if they were hired below standards. It’s usually not their choice when they leave.”* A related comment was that disciplinary situations involving minority attorneys were much more difficult because the firm or the participating white attorneys feared being accused of racial bias. Such concerns might even affect recruitment, with firms being leery of hiring minorities, because they view them as potential liabilities. The partners also might believe their “hands would be tied” if performance problems arose. *“Diversity is seen as a luxury, and many lawyers felt that they need to be more careful about hiring minority attorneys than when hiring white attorneys.”*

Communication was another barrier targeted by many minority and some white participants. Minority attorneys do not always receive the same timely and constructive feedback as their white counterparts. Several factors come into play—the lack of a mentor, a senior attorney’s discomfort with differences, and the fear of white attorneys being labeled “biased.” Whatever the reasons, the outcome is still the same. The feedback that is crucial to steady improvement and career success is less available to minority attorneys than to their white counterparts. So, if a minority attorney continues to make the same errors or does not develop at the same rate as his or her white counterparts, the assumption of “lower standards” becomes a self-fulfilling prophecy.



Figure 3: Retention Tactics of Survey Respondents



RECOMMENDED PRACTICES

MCCA launched this project with the objective of identifying a core set of diversity recommended practices that law firms could implement to hire and retain minority and women attorneys. The search for diversity recommended practices began by identifying the common elements of successful programs. The challenge, ultimately, is devising a strategy, choosing the tactics, and creating objectives that realistically will increase the inclusiveness of a law firm.

Diversity Recommended/ Best Practices

An employment tactic, initiative or program that promotes diversity and addresses one or more barriers that adversely affect individuals with diverse backgrounds in the workplace.

Not only does a diversity recommended practice signal serious commitment from management to diversity objectives, it also addresses management accountability for diversity and embraces fairness to all employees. A diversity recommended practice is implemented conscientiously to achieve lasting results.

Top Ten Diversity Recommended Practices

1. Develop and communicate the business case

The most important driver to an active commitment to diversity is a strong business case. Most participants agreed that their key driver was client demand, but there may be other existing or potential business reasons as well. It is imperative that these are examined and the strongest business case possible is presented to senior partners along with the rest of the firm.

2. Have senior partners take the lead

Designating a senior partner to lead this effort removes several obstacles, such as the lack of senior partner involvement and ownership, or weak, decentralized efforts with few results, or diversity committees staffed primarily by women and minorities.

3. Mandate top-down diversity training

Training in diversity and inclusion is essential to build awareness and create a common language and understanding within the firm.

4. Establish accountability

Firms serious about diversity have to reward and hold staff accountable for the success or failure of the recruitment and retention initiatives. Incentives include creating a time bank to reward attorneys for their work on the firm's diversity programs or tying the results to incentive pay for senior partners.

5. Develop mechanisms to have an effective mentoring program

In most law firms, mentoring occurs all the time, through informal relations at work and social networks outside the office, for example, on the golf course. The challenge is to make effective mentoring accessible to all attorneys. Group mentoring sessions and reciprocal mentoring should be explored.

6. Emphasize lateral hires

The more senior minority attorneys, the greater a firm's chances of recruiting and retaining new attorneys of color. With more senior attorneys, a firm will be more desirable to entry-level attorneys and better positioned to minimize attrition. This practice is much more likely to succeed as an integral part of a firm-wide diversity strategy.

**7. Promote work-life balance**

Firms must find creative ways to retain women who are both mothers and attorneys and committed to succeeding at both. Firms also must ease the dissatisfaction that all attorneys report with their work environment. Options include an on-site day care center, establishing flexible hours and other options, like telecommuting. Firms should make the quality of life of all attorneys a valid, urgent work issue. Part-time partners are important role models who provide a positive incentive for women who worry that the price for a successful career in a law firm is sacrificing family commitments.

8. Expand recruitment

Recruitment tactics may include: advertising in minority professional publications; offering scholarships to first-year minority law students; increasing recruitment at historically black law schools; revising outdated hiring criteria; and becoming more involved in community activities to enhance name recognition. Campus recruiters should have diversity training to help them interact more effectively with diverse students. Involve minority attorneys in the firm's decision-making process, for example, reviewing minority resumes. Also, the firm could take advantage of professional and personal networks by offering a bonus for referrals of talented minorities and women who can be recruited to the firm.

9. Make diversity-related activities billable

Law firms that understand the business case for diversity will make these initiatives worthwhile for the attorneys who drive the firm's diversity program. By making a portion of the hours spent on diversity activities billable, management acknowledges that diversity contributes to the firm's bottom line and to the advancement of its attorneys.

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10. Equal treatment programs

Focus on creating a plan to ensure each minority attorney gets significant client visibility and gets to develop relationships with senior law firm management.

STEP 1

Get senior partner commitment

STEP 2

Get a handle on where the firm stands and why

STEP 3

Make the current environment hospitable to all attorneys

CRITICAL TACTICS AND OPTIONS

1. Develop business case for diversity – assign an attorney who will report directly to senior management and assess the current client base and other prospective clients for their interest in this issue. Include an analysis of past hiring and retention practices as well as estimates of the cost of attrition.
2. Realize that diversity addresses specific issues of women and minority attorneys but benefits all attorneys and that diversity includes other issues such as work/life balance, mentoring, communication and career development.

1. Conduct a thorough analysis of the firm's employment records, including pay equity analysis, voluntary termination by demographic group, exit interview trends, employee utilization of current programs (mentoring, maternity and paternity leave, diversity training, etc.), demographic representation at each level, and employment policies that might adversely affect minorities and women. Establish a "success profile" based on analysis of the background of the firm's partners (education, gender, race or other relevant credentials/ experiences).
2. Identify weaknesses (e.g. geographic area or non-diverse leadership). An internal, confidential audit of attitudes about the firm's work environment will help target problem areas and elicit suggestions for improvement. Instead of asking, "Why won't they [minorities] stay?" ask, "Why are we here? Why are we comfortable? Do we think about or treat certain people differently? If so, why? How do our expectations effect their behavior?"

1. Mandatory top-down diversity training for all employees at every level.
2. Managing partner communicates to the entire staff the importance of diversity to the firm's success.
3. Retention of all associates becomes a core law firm value and a shared goal.

OUTCOME

Designate a senior partner to be responsible for the effort, tie compensation to results and create a diversity steering committee or task force. Assignment of responsibility for initiatives should include women and attorneys of color on the diversity committee as well as a white senior attorney. Develop a time bank for the time allocated for the diversity effort that will allow accumulated hours to be multiplied by a factor determined by success of effort and yield some fraction of a billable hour that can be factored into performance evaluation.

Outline a specific plan with roles, responsibilities, timeline, and accountability based on the results of the audit and the analysis.

Create a work environment where attorneys have confidential outlets to express their opinions to firm management and training resources are available to improve communication between all employees.

FROM LIP SERVICE TO DIVERSITY

STEP 4

Invest in lateral minority or women hires

1. Sincerity in addressing issues and recruiting senior attorneys of color.
2. Aggressive and pro-active approach to finding qualified candidates.
3. Networking at minority bar association events and using current staff to expand the pool of diverse candidates.

STEP 5

Enact viable work/life programs

1. Communicate that staff members who take maternity or paternity leave won't be disqualified from the partnership track (and mean it).
2. Implement flextime or telecommuting options to help attorneys meet their billable hours requirement and balance family commitments.
3. Make the transition gradual for new mothers returning to work, with an incremental increase in workload as maternal duties decrease.
4. Establish or partner to provide on-site day care or an arrangement with a childcare facility or service for all staff.

Create multiple options for attorneys to balance their family or personal responsibilities with their professional commitments and the firm's requirement for billable hours.

STEP 6

Expand recruitment at law schools

1. Re-assess hiring criteria that are based on the firm's "success profile" (not all rainmakers possess law review or Ivy League credentials). Then re-evaluate what the firm is really looking for. Redefine competence to filter out racial or culture-based abilities or other factors that don't predict individual success within the firm.

OPTIONS

1. Create a minority student internship or summer associate position.
2. Participate in minority law student job fairs.
3. Involve minority attorneys on the hiring committee, on recruitment visits to law schools, and/or on call-back visits by minority law students.
4. Work with recruiters experienced with conducting searches for diverse candidates.
5. Provide diversity training to the firm's recruiters.

Hire minority law students, not just interview them.

STEP 7

Encourage informal relationships between partners, senior attorneys and associates

1. Ensure associates' quality of life issues are addressed in a confidential forum, letting them know management is receptive to outside ideas.
2. Encourage senior attorneys to help junior associates, by providing feedback, assessment of work product, advice on career choices, intervention on their behalf with other partners, and delegation of challenging work.
3. Financially support the participation of minority and women attorneys in bars of color or other programs that facilitate career development, networking and pairing with mentors.
4. Ensure all attorneys develop relationships with clients outside of the firm in an informal setting and minority and women partners receive the firm's support as they develop "rainmaking" skills.

Create networks of minorities and women within the firm that support these attorneys and provide them with outlets to express their concerns and to receive feedback from senior managers. Minorities and women should be encouraged to work with management to keep the firm moving towards successfully implementing its diversity programs. Responsibility for the program's success, however, does not rest solely on their shoulders.