

Work *With* Us

Under growing corporate pressure, law firms must, finally, embrace diversity or lose clients.

BY LESLIE T. THORNTON

Not everybody makes partner. And it isn't always because a particular law firm lacks sufficient commitment to expanding diversity or ensuring minority retention. That's part of the advice I've been giving to young black lawyers lately. Not to be mean, I swear. But to try to help provide a realistic sense of what the whole partnership thing is about—the good, the bad, the ugly.

People fail to get promoted to partner for all kinds of reasons, and all kinds of people fail to get promoted. But sometimes it is because the law firm fails—to practice a meaningful commitment to diversity. And that is a problem.

Not just because of the obvious (the times they are a-changin'). But because such firms have not recognized or grappled with a growing trend in the legal marketplace: The business case for diversity is basically proved—and it's showing up in the bottom line.

THE PLAYING FIELD

Here's what has happened to date. In 1999, Charles Morgan, then general counsel of the BellSouth Corp., wrote a "Diversity Statement of Principle" urging law firms and corporate law departments to hire more women and minorities. More than 500 general counsel signed Morgan's letter agreeing to give "significant weight to a law firm's commitment and progress" toward diversity when choosing their outside counsel.

Four years later, however, the number of minority partners in law firms remained startlingly low. In 2003, minorities comprised only 4 percent of partners at major law firms and women represented only 16.8 percent, according to the National Association for Law Placement. Black lawyers in particular comprised only 1.6 percent of partners, according to *Minority Law Journal*. Clearly, the playing field had not been leveled by 2003.

Roderick Palmore, general counsel at the Sara Lee Corp., concluded that law firms had hit "a disappointing plateau" in their diversity efforts, and he decided to up the ante both at his company and in external efforts. Last fall, Palmore circulated a letter asking GCs to reaffirm their commitment to diversity and, further, "to end or limit [their] relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse."

Palmore's "Call to Action" is being supported by the American Bar Association, the Association of Corporate Counsel, and the Minority Corporate Counsel Association. As of December 2004, the general counsel of 72 companies had agreed to consider firing law firms when they failed to meet certain criteria.

The companies ready to take action include American Airlines, Bear Stearns, Boeing, DuPont, General Motors, Goodyear, Oracle, Pepsi, Pfizer, Procter & Gamble, Sears, Shell Oil, Starbucks, TIAA-CREF, Goodyear, Tysons Food, UPS, and Wal-Mart.

In Palmore's own shop, outside counsel who remain in the bottom



third of a three-tier quality and diversity ranking system must improve within a year or lose Sara Lee's business.

DuPont, a longtime leader in these issues, has gone a step further: Recently the company added a category to its annual Primary Legal Providers Benchmark Survey that poses specific questions concerning the level of responsibility granted to attorneys of color on DuPont matters. The revised survey also asks each outside law firm to share its strategies and practices for ensuring that its attorneys of color have the opportunity to play a meaningful and measurable role in the representation of DuPont. The intent of the inquiries "is to generate a continuum of improvement towards diverse legal teams and to further the [primary legal providers'] desire to give their attorneys of color the opportunity to perform substantive work on DuPont matters."

Stacey Mobley, DuPont's general counsel, says, "The corporate world deals in different cultures. In the law business, we deal with juries of people of different hues. I'm at a loss to see why we even pause on the business case for diversity."

The same refrain is heard from other general counsel. As PepsiAmericas Inc. Senior Counsel Jason Brown told *Diversity & the Bar* magazine in the January/ February 2005 issue, "We made the commitment [and signed it] without hesitation. The Call to Action takes us to the next level by displaying our commitment to diversity as a determining factor in counsel selection."

Importantly, Brown continued, "Law firms consistently promote their devotion to 'exceptional client service.' We're sending the message that service to PepsiAmericas must include diversity as a top priority."

Already, some law firms have lost business or failed to win new business because they were fielding teams completely lacking in diversity. And some of these corporate decisions were made even before the formality of Palmore's letter.

But here is the challenge: Will law firms start taking effective steps to increase diversity and to retain and promote minority partners before they lose important clients?

As Nica Val-Hackett, counsel in the Aon Corp.'s law department, explained to *Diversity & the Bar*, she worries that "[t]he call on law firms to up their diversity efforts may not be effective unless it affects their bottom line and/or their client base. Therefore, if law firms are satisfying their clients' needs without having a diverse work force, the law firms will have little reason to be as responsive to a call to up their diversity efforts unless their clients demand that they institute diversity and inclusion policies."

While Aon didn't hesitate to sign on to Palmore's letter, Val-Hackett warns, rightly, that if companies like hers and others do not actually insist upon changes, law firms may still see little reason to make any.

But change is hard. R. Bruce McLean, managing partner of Akin Gump Strauss Hauer & Feld, has pointed out a persistent problem at the law firm end. "What is often ignored . . . is the turnover rate of minorities and women once they are inside major firms. The high number of departures does not receive nearly as much attention as the statistical diversity firms have achieved predominantly through recruiting," he wrote in *Legal Times* last November.

"Recent surveys demonstrate that while firms aggressively woo minority and female attorneys," McLean added, "they have yet to figure out how to retain them."

This is a critical point. If firms can't figure out how to retain minority lawyers, not only do they run the risk of losing prized clients' business, but also they jeopardize the chance of attract-

ing more minority lawyers and eat the well-established costs of replacing a departing lawyer.

WHERE DO WE GO FROM HERE?

So what happens now? If 72 general counsel (and counting) start putting their law firms on notice that improvement is required, not just desired, there could be a mad dash to find minority lawyers. But in order to sustain that effort after an initial burst of hiring, law firms have to find a way to keep those lawyers. If McLean is right that firms continue to struggle with this issue because they "cling to the belief that they are pure meritocracies that reward the best performance," then the answer is pretty simple:

Minority attorneys have to be offered the same chance to work on significant client matters, the same range of choice assignments, the same sustained contact with top partners, the same opportunities to prove themselves by the quality of their work.

That performance of high-quality, substantive work at top levels over extended periods of time is critical to the demonstration both that we minority lawyers have earned our places at the table, and that we deserve to stay here. Make no mistake: There are plenty of people in the industry—in all industries, really—who still ask the question, "Is she here because she's black?" And we experience their hesitation, their lack of confidence, as if they had expressed them out loud.

So it is not enough for law firms to just decide to aim for higher minority numbers. Law firms must be persistent in their hiring and resolute in their staffing of top matters.

Recognize also that this is a building process. A top-notch antitrust or employment practice isn't built overnight, and neither is a diverse law firm. But if a firm has minority partners (plural, not singular) who are clearly running major matters for the firm or have their own significant books of business, that firm will be more attractive to other minority lawyers. And, of course, it will also be more attractive to the 72 GCs who have joined Palmore in raising the stakes.

MILES TO GO BEFORE WE SLEEP

We minority attorneys have our share to do as well. I don't know a single black partner who rests the responsibility of retaining minority lawyers entirely on his nonminority counterparts. We know we have our part to do, and frankly, we know we have to do better at it. It is our job, too, to support, mentor, and, most importantly, include the young minority associates coming along behind us in our own projects. Many of us are doing it, but many more of us need to.

In January, my firm, Dickstein Shapiro Morin & Oshinsky, promoted lateral partner Milton Marquis to equity status. In gushing about it to one of my not-black partners, I was taken aback, though impressed, by his lack of (my level of) enthusiasm.

"It's simple," he said when I persisted about the significance of this event. "He's excellent. He does excellent work, and he's profitable. That's how it's supposed to work."

And he was right, of course. Milton has done extraordinary work, the firm appropriately recognized his contribution, and the fact that the decision was a no-brainer for the firm is in part why I came here.

But at many law firms throughout the country, the other reality is true too. My overexcitement was grounded as much in that reality as in my partner's—and my firm's—admirable matter-of-factness. And it is not until those reactions become one that we should be done.

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