

BY KORIS CAREW

# The Heat Is On: How Law Firms Should Respond to the Increased Calls for Diversity from Clients

## Part One

**T**he last year has seen increased focus on better ways to push diversity accountability. ABA Resolution 113 urges legal service providers “to expand and create opportunities at all levels of responsibility for diverse attorneys and urges clients to assist in the facilitation of opportunities for diverse attorneys, and to direct a greater percentage of the legal services they purchase, both currently and in the future, to diverse attorneys.” In addition, the ABA 360 Diversity and Inclusion Commission released several tools to help increase diversity, including a Model Survey that many corporations have supported. The Model Survey allows corporations to evaluate the diversity metrics of law firms

and the ABA to collect aggregate data and uniformly measure industry progress.

Consider, also, companies that have demanded higher levels of diversity from their counsel, such as (i) HP, which has announced it can withhold 10 percent of fees from law firms that do not meet diversity and inclusion goals; (ii) Facebook, which announced on April 2 that it will require 33 percent diversity of women and minorities working on its matters by outside counsel and will “actively identify and create clear and measurable leadership opportunities for women and minorities”; (iii) MetLife will require its outside counsel to provide a formal talent development plan on how they will promote and retain diverse talent by June 18 and (iv) other general counsel who have encouraged that firms be fired for failure to improve their diversity numbers and for this firing to be publicly shared.

Corporations and law firms have partnered to advance diversity and inclusion in the legal profession for a while now. At times, the relationship has been framed as a challenge from clients to those who do their work, and at other times a partnership with common goals and challenges. In 1998, BellSouth Executive Vice President and General Counsel Charles Morgan initiated “Diversity in the Workplace: A Statement of Principles,” to which more than 500 corporations committed. In 2004, Rick Palmore, then CLO of Sara Lee, issued a Call to Action that again was joined by hundreds of corporations as a result of the slow progress on diversity in the legal profession. Microsoft has had a long-standing diversity and inclusion bonus program that rewards law firms for meeting its diversity and inclusion goals, and it recently updated the program to reward firms with at least one diverse relationship partner and more diverse lead attorneys on its matters.

Given that law firms and corporations have made many efforts over the years to advance diversity and inclusion, how should law firms respond to this renewed push for **results**? If these client-driven measures are to yield meaningful progress, we must tackle embedding inclusion and improving diversity as an organizational issue in a more cohesive and strategic way than many organizations have in the past. This series will focus on various aspects of organizational strategies necessary for us to move the needle forward meaningfully in diversity and inclusion.

***Progress is not the responsibility of women, minority and LGBT attorneys alone***

For too long diversity strategies have focused on telling attorneys from underrepresented groups what to do to succeed in the legal profession. The advice and programs focus on a premise, stated or implied, that attorneys from these underrepresented groups would be successful if they only knew the rules, played by the rules, or conformed to the culture. Frankly, for many attorneys of color, cultural differences and other barriers have played a role in their career trajectory and whether they achieved “success” in majority law firms despite their ability and willingness to conform and follow the rules. Conformity has proven to clearly not be enough.

It is important to provide transparency on success strategies, especially when an organization shares information informally and is relationship-driven. Transparency on success strategies, however, is merely a beginning step. We must also look at the firm culture, processes and systems and assess structural barriers. **Our organizations were not built by a diverse group for a diverse group.** And often we find that our systems in organizations are well-meaning but fail to evaluate where they impede diversity or have barriers built in for some (an earlier draft described these systems as well thought-out, but my editor pointed out that a process is not well thought-out if it does not account for diversity. She is right). The solution, then, must include an organizational analysis and focus on strategies beyond what people from underrepresented groups must do to assimilate. The first step is getting leaders to understand that the problems are also embedded in our cultures, structures and accepted behaviors before moving any further.

The questions every organization should frequently be asking are, “Do our leaders know what inclusion looks like and what is expected of them in being inclusive? Are we behaving in ways consistent with our stated values?” We must ask ourselves these questions repeatedly as we work through making

changes toward our diversity and inclusion goals.

***Take a look at where problems hide in the organizational DNA***

After acknowledging that a significant part of your diversity and inclusion problem is the organization, culture and processes, then you are ready to begin analyzing for blind spots. Follow up your implicit bias training with an analysis of blind spots in your most critical talent-development processes. Do this with all training you deem to be important and impactful for your leadership and the organizational culture. Look at everything from your forms to your informal practices, unspoken rules and expectations. Do the same for cultural competency and how well your organization works across differences. Cultural fluency is a key aspect of creating inclusion that often gets neglected and is why so many diversity and inclusion strategies have historically focused on what I call “fixing the minorities.” **It is one thing to invite diverse talent to your organization. It is another thing altogether to have leaders and teams that are able to work across cultural differences and have those cultural differences be integrated to the culture of the firm.** Assess your leaders, those in key talent-management committees and decision-making roles, as to how they work and flex across differences. A useful tool that we have used at Shook, Hardy

& Bacon is the Intercultural Development Inventory (IDI). Once you have assessed your leaders, tell the organization how it is doing with welcoming and leveraging differences effectively.

Use metrics and analysis that show where you lose people to assess what aspects of your business practices contribute to the problem. As a diversity professional and inclusion strategist, my ability to persuade for change has been heavily enhanced by my ready use of current data, information from pulse surveys, stay interviews I have conducted (although I don't tell people it is a stay-interview when I converse with them), and personal stories that capture the experiences of our diverse talent. After you have obtained your metrics and analyzed them, create a solution from there. It is critical that we move beyond education; education and awareness should tie to the implementation of concrete individual and organizational strategies.

### ***Accountability, accountability, accountability***

I will be frank: we have all worked at firms where there is that problem partner who does everything discussed in the implicit bias session. The problem partners tend to skip the valuable equipping and awareness sessions organized by the D&I Committee or firm leadership. And in many of our

organizations, we knowingly give them a pass on their behavior and the impact on our talent because the partner is a good trial attorney or big rainmaker. We don't factor in their impact when addressing issues of engagement and advancement to mitigate the outcomes. It may be the partner who gives all the women attorneys the "office housework," or the one who considers attorneys of color only for the pitch where the client is diverse or diversity is important, conveniently forgetting them when other work comes in, or even the partner who only sponsors and grooms "good ol' boys" who remind him of himself despite having star performers from underrepresented groups on the team. How we respond to the actions of such partners in our organization communicates the organization's values more than the mission statement and leadership professions. This process should not be about shaming or blaming individuals but rather providing a safe environment that intentionally promotes and insists on growth and positive change.

**Accountability is not just about penalties and restrictions—we should also reward and encourage the behavior we want to see.** Accountability can also be fun. As part of Shook's "It's All About Inclusion" Campaign, we had people in the firm write a note of thanks to someone who has been inclusive towards them or invested

in their career. Those who received a card were delighted. We did not anticipate the level of positive energy this activity would elicit. It was a simple way to encourage people to notice inclusive behavior and to express gratitude. We chose this activity also knowing that expressing gratitude has an impact on morale. Since we initiated this activity in December 2015, employees continue to request cards to use, and some of our partners even use them with clients. The lesson? Make accountability fun, positive and infectious.

Other accountability measures include consistent measurement as well as interpretation and discussion of those measurements to determine how the organization can improve. Accountability also includes communicating progress and obstacles to the organization. Some people establish financial incentives for progress and tie progress in diversity and inclusion on teams to compensation for leaders. Each organization must assess what level of accountability is effective. Let's place more energy on this aspect of change management at our firms.

Part two in this series will explore additional strategies for increasing and fostering diversity and improving inclusion in law firms, including investing in long-term plans and customizing solutions to better fit the needs of the organization.

## Part Two

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Part one of this series focused on how law firms can meet the increasing diversity and inclusion expectations of their clients by recognizing that improving diversity and inclusion is an organizational issue, assessing how the structures within the firm can suppress diversity rather than foster it, and holding leaders accountable for failing to meet the diversity goals of the firm. The series continues with further exploration into organizational strategies to help firms address calls for improved diversity.

### *Invest in long-term strategies*

It is not uncommon that a crisis, exodus or other wake-up moment precipitates change. We must resist implementing quick solutions that end up short-changing long-term strategies to embed inclusion into our practices and culture. Quick fixes and measures to have quick results are not bad. For example, consider my efforts to be healthy: I am cutting the amount of carbohydrates I am ingesting, and I am also increasing my exercise and behaviors during the work day from movement to packing my lunch. My efforts include short-term investments and long-term strategies that involve commitment, planning, and new habits. Similarly, short term + long term +

consistency + education + accountability = the diversity and inclusion results we want. We can hire laterals to increase diversity, but we must address our culture and leadership to keep those laterals. We can create a bold goal of increasing diversity hiring by 50 percent, for example, but we must invest in development programs to invest and develop these attorneys and support them effectively to success. **We must have a plan that goes beyond now.** We can send everyone to implicit bias training but we must follow up with organizational changes to promote new behaviors, measure changes, incentivize and provide tools for individual behavior change, and tweak our systems as needed to create consistently new results.

### *It starts with leaders—and not just their speech*

The billable culture, focus on business development and traditions behind old-school lawyer development impact diversity and inclusion in real and practical ways. People don't stay at their jobs because the Diversity & Inclusion Committee launched a fantastic initiative—they stay when they are engaged and belong. Engagement requires that we equip, invest in, respect and value our diverse talent. The job of the D&I committee and firm leaders is to focus on implementing systemic change, educating to raise aware-

ness, equipping leaders to lead diverse and cross-cultural teams, and providing solutions that engage a diverse workforce. How people feel day to day, however, is impacted by whether they have access to opportunities, whether their talents are leveraged, if they have a voice on their teams, if they feel respected and included by colleagues, and if their leaders show cultural competence. There are all critical components of creating belonging for diverse talent. For this reason, I frequently ask that we stop talking about retention; instead, we should talk about engagement and advancement. **Our talented professionals are not passive receptacles waiting to be kept in an organization, retained but unseen and undervalued. People want their strengths and abilities leveraged, to be part of healthy and competitive high-performing teams, and to belong.** Engagement is the difference between a thriving career and one where you are waiting to escape. Diversity and inclusion efforts should then include supporting leaders in their development and growth as effective, inclusive leaders.

What this means, then, is that we must spend more time looking beyond the education we provide on diversity and inclusion. Implicit bias training will create awareness, and leaders interrupting bias or behaving better will

make a difference in the experiences of team members. Cultural intelligence competency training will educate leaders on why team members may behave the way they do, but culturally competent processes and behavior will make space for different ways of showing the same skill and not being penalized. As the leader goes, so goes the team. It is imperative, then, that we emphasize the role that leaders play and pay attention to their behavior. Leaders should be evaluated based on their commitment and participation in inclusion initiatives as well as whether they model inclusion competencies. Organizations should reward those who are inclusive and behave in ways consistent with the culture the organization is seeking to create.

As I end this point, it is important to note that I believe most people want to do the right thing. I have never hosted a diversity and inclusion program at my firm where two things haven't happened: 1) several people say everyone should be required to attend the seminar; and 2) people respond positively to my request to pick one to three things to work on to change their behavior or implement what they have learned. Include in your education programs an opportunity for people to identify action items they can begin to implement right away, and then follow up with

them on how they are doing and if they need help. This process helps individuals follow through with their commitments better than just going to a session and walking out.

***Do the analysis, follow the data***

It is tempting to send a headline about a flashy new initiative at another law firm or corporation to your head diversity and inclusion professional to ask if your firm should institute it. Don't. Each initiative and program at your organization should have a concrete, holistic strategy behind it, and that strategy should be linked to the needs of the organization. What does your data tell you—quantitative and qualitative? What are the experiences of your talent? To find out, do a climate survey, host focus groups and conduct interviews—talk to people about why they stay at the organization, what contributed to their success, and whether they can identify the reasons they have struggled. Review metrics and data from multiple viewpoints, and slice the data to parse the information. After you've gathered and assessed your data, carefully craft your initiatives to meet those needs and offer narrowly tailored solutions to the problems at hand. **Bottom line: resist the impulse to focus on output over impact or follow the headlines and buzz instead of conducting a thorough internal assessment and considering your core priorities and**

**strategic approach or plan.** If you read about a firm implementing an attention-getting diversity initiative, understand that the initiative should be part of a broader strategy and analyze whether you think it will help your firm meet the needs of its diverse talent.

***Customize the solutions—one size doesn't fit all***

With limited time and resources, you may be tempted to craft programs and require everyone to participate in them. But while many underrepresented groups share some experiences, those experiences are often distinct. **The myth of inclusion is that if you are inclusive you must include everyone in everything. Sometimes the solution for one group is only effective and meaningful if restricted to that group.** In addition, failing to recognize the differences between groups (and intersectionality, for that matter) leads to crafting one-size solutions that may work for many women, but not for women of color or minorities, for example. For a number of years, Shook has offered a Diversity Retreat exclusively for minority and LGBT attorneys. After each retreat, I get a deluge of questions on why others could not attend. It is humbling that others want to benefit from the content of our Diversity Retreats, but I stand firm (with the support of my firm's leaders) that the retreat is only

for minority and LGBT attorneys. Shook offers an amazing array of programs, opportunities and initiatives that are open to everyone. We can stand to sometimes let our underrepresented professionals focus on their own needs and create a safe space to discuss their unique challenges as minorities.

We must also pay attention to intersectionality. One flaw of previous feminist movements and women's initiatives in many organizations, for example, has been the failure to address intersectionality. The topic on its own could be a book and certainly its own article. The point, though, is that we must pay attention to the many ways intersectionality shows up when crafting programs and initiatives. Race impacts the experiences of women, as does being LGBT or differently abled. We must ensure that our women's initiatives address all women. We must also have the courage and wisdom to say no to making programs all-inclusive if the driving need for the program or initiative is not all-inclusive.

That said, in most instances, an inclusive approach serves the organization better by bringing in those from the underrepresented group and allies, creating a circle of belonging that emphasizes that are all needed and should be involved. It is critically important to include white men in the stra-

tegic planning, communication and implementation of diversity and inclusion initiatives. Allies and others in the organization also must be educated on inclusion challenges within the organization. But we must be mindful of when specific initiatives created to give a safe space for people from underrepresented groups to discuss and navigate challenges unique to them are vulnerable to being co-opted.

### **Conclusion**

We can develop organizations that have diverse, high-performing teams delivering excellent results for a changing world. Getting there requires an intentional strategy as well as consistent, patient and bold leaders. We must be ready and willing to help our time-constrained partners and leaders find innovative, practical and effective ways to be more inclusive. It also requires execution because having a great strategy is only the start; we need people in the organization who take responsibility for effective implementation. The demands for diversity from clients and the ABA are an invitation to make the legal community welcoming to every qualified person who seeks to join it, and now is the time for us to commit to making a difference. Taking the time to step back and evaluate our efforts

to be sure we address organizational and structural barriers is well worth our time. Implement a process to:

- Commit to having organizational solutions based on organizational causation;
- Analyze how your culture contributes to the problem;
- Question the level of accountability and make changes accordingly;
- Invest in long term strategies;
- Make Diversity & Inclusion a leadership issue and responsibility;
- Follow the data; and
- Customize solutions to address the need raised and the challenge to be resolved.

After all, it really is all about Inclusion.

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