

Incorporating DEI Into an Evolving Litigation Practice

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There is a growing need to facilitate diversity, equity and inclusion (DEI) efforts into the evolving area of litigation. DEI in any workplace promotes an environment of fair treatment, open collaboration and, ultimately, better outcomes and understanding. Fostering an environment that aligns with these goals can enhance your role as a litigator by helping you to become self-aware and mindful when representing diverse clients, trying cases before a diverse jury, and collaborating on complex cases with other diverse attorneys and staff.

It is our social and professional responsibility to foster a diverse and inclusive workforce. When these interests merge, implicit biases are reduced in both the workplace and the courtroom, and everyone benefits. Differing perspectives in the workplace, including from attorneys, paralegals and administrative professionals, unite to provide the most optimal representation for clients through innovation and creative thinking.

Recent Trends in the Legal Profession

The benefits of promoting a diverse and inclusive workplace are clear. However, despite the fact that the United States has become increasingly diverse over the past decade, progress to increase diversity in the legal field has been slow, with only small gains for women and almost none for most minority groups over the last 10 years. See, Dev Stahlkopf, “Why Diversity Matters in the Selection and Engagement of Outside Counsel: An In-House Counsel’s Perspective,” American Bar Association, May 6, 2020.

According to a recent National Association for Law Placement (NALP) survey, representation of women, people of color and women of color among associates continued to improve, but still lagged behind other industries and behind the overall U.S. figures. See, 2020 Report on Diversity in U.S. Law Firms, National Association for Law Placement (NALP), February 2021. The recent modest rise in the number of associates of color can be attributed to increased representation of Asian

associates, who now comprise 12.12% of all associates, with representation rising 2.8%, from 9.28% in 2009. Additionally, although the representation of Black or African American associates fell every year from 2010 to 2015, those numbers have grown since 2015. In 2020, the percentage of Black or African American associates surpassed the 5% mark and the share of Black women associates (3.04%) finally exceeded the 2009 figure of 2.93%.

With regard to law firm partners, women, people of color and women of color only made small improvements in representation at the partner level in 2020. Women of color remain the most underrepresented group, with Black and Latina women each making up less than 1% of all partners. However, similar to the figures pertaining to associates, most of the increase in representation of partners of color since 2009 can be attributed to an increase in the number of Asian partners, particularly Asian men. Representation of Black or African American partners has only increased by approximately 0.4%, finally surpassing the 2% threshold for the first time in 2020. Black and Latina women each still account for less than 1% of all partners, at 0.80% and 0.90% respectively, in 2020, according to the NALP survey.

Even though there is a push in the United States for more DEI efforts in the workplace, the legal field falls drastically behind, especially considering that the number of lawyers identifying as African American, Asian, Hawaiian/Pacific Islander, Hispanic and Native American has been stagnant for the past decade. See “Glass Ceiling Report (2019);” Law360, Diversity Snapshot (2019).

Steps Law Firms Can Incorporate to Promote DEI

When law firms focus on recruiting, retaining and mentoring diverse attorneys, a diverse team of professionals is created to better represent clients. Legal work product benefits when prepared by a team possessing diverse backgrounds and perspectives. In the scope of litigation and trial advocacy, diverse perspectives will foster a deeper understanding of complex and differing issues, which will allow litigators to better resonate with a diverse jury by breaking down complex legal issues to relatable narratives. Legal teams are better suited to advocate for clients through teamwork that draws on a wider variety of life experiences and backgrounds.

Incorporating DEI efforts into law firms requires a three-step approach: recruitment, retention and mentorship. Although the numbers of diverse attorneys in law firms have been increasing, greater efforts are needed to normalize these figures to ensure a well-rounded and diverse workplace. Firms need to be involved with recruitment, either with lateral hires or law school candidates, and should have a focus on hiring diverse candidates early on. Firm participation in professional associations will foster the likelihood of recruiting diverse candidates. Firm involvement with diverse bar associations, such as the Asian Pacific American Bar Association of Pennsylvania, The Barristers’ Association of Philadelphia and the Hispanic Bar Association of Pennsylvania, among others, promotes education and networking with an emphasis in recruiting diverse candidates. Firms should consider sponsoring educational events within local minority bar associations and should participate in

mentorship programs to provide guidance to diverse young lawyers.

Law firms committed to fostering increased DEI should also focus on diversity internally to retain top talent, beginning with firm leadership and trickling down to each individual employee. In connection with this, various law firms and companies are making a push to promote DEI efforts and to mentor diverse professionals. For example, my firm has a dedicated DEI committee in order to further these efforts. This committee aims to create and foster a workplace that reflects and contributes to the diverse, global communities in which the firm does business. In lockstep with our executive committee, the team is charged with developing strategies and initiatives with the express purpose to enhance the hiring, retention, and advancement of diverse attorneys and professionals across the firm.

Final Takeaway

Although law firms are trending in the right direction with efforts to promote DEI,

more work is needed to make the litigation workplace more inclusive to all professionals. Fostering an environment that promotes DEI will enable litigators to become mindful when representing diverse clients, trying cases before a diverse jury, and collaborating on complex cases with other diverse attorneys and staff. Differing perspectives in the workplace will converge to provide the most optimal representation for clients through innovation and creative thinking.



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