

A Call For Greater Collaboration Among Attorneys of Color Within Law Firms

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There is now a general consensus among law firms that diversity and inclusion matters.¹ Law firms, big and small, comprehend that having diversity in their lawyer ranks is no longer simply an issue of cosmetics, but more importantly, that it makes business sense and further enables law firms to have a more competitive edge in the market.²

With that aside, the discussion on increasing diversity within law firms centers mainly on two areas: (1) recruiting attorneys from diverse backgrounds; and (2) placing the burden on law firm management to provide adequate resources to diverse attorneys so there is better opportunity to move up the firm's ladder. While these are both important and necessary, there is also a flip side that remains to be explored in order to combat the rising attrition of diverse attorneys from firms—namely, the need for attorneys of color within firms to work together collaboratively and collectively to achieve common ends.

However, while we talk about cross-racial collaboration, this article is not advancing the position that this work should only occur at a firm's management level, but rather, this concept should be integrated throughout the firm and occur at all levels. This article will discuss the reasons for greater collaborative efforts among diverse attorneys and the potential benefits that can be achieved through these interactions through the lens of this article's authors.

Collaboration Is Important

Data Suggests Gloomy Outlook for Attorneys of Color

You may be asking, "Why should attorneys of color within law firms care about greater cross-racial collaboration?" It is true that numerous law firms engage in various collaborative efforts between and among their attorneys of color in order to address many of the issues that exist within these environments. These law firms may have diversity and inclusion committees, councils, and initiatives that grapple with their firms' recruitment strategies, retention efforts, and diversity and inclusion policies. However, despite the seemingly widespread employment of such groups, there remains a disconnect between the aims of these entities and the inconsistent results that pervade the law firm industry. Moreover, the data also shows that there is a growing disparity between different racial groups within law firms.

¹ Sharla C. Toller, *The Call to Action Ten Years Later: A Look at the Effects on Retention of Women and Racial Minorities at Law Firms*, INST. FOR INCLUSION IN THE LEGAL PROFESSION REV. 67 (2014).

² *Id.* at 66.

According to NALP's 2016 Report on Diversity, the gains in the number of attorneys of color in law firms have been marginal at best.³ In its Report, NALP tracked percentages of Asian, Black/African American, and Hispanic partners and associates within law firms from 2009 through 2016.⁴ The data, for the most part, reflects small increases in the percentages of these groups in the partner ranks year over year.⁵ Similarly, as shown in the table below, the percentages of Asian and Hispanic associates show slight increases from 2009 through 2016.⁶ However, the percentage of Black/African American associates has either remained stagnant or even decreased in certain years. For example, the 2016 percentage for Black/African American associates was 4.11%.⁷ This figure represents an increase from 2015 (3.95%), but an overall backwards step from the 2009 percentage (4.66%).⁸ Moreover, there has been a decline in the overall percentages of Black/African American partners, associates, and counsel within law firms when compared to their Asian and Hispanic counterparts.⁹

Table 2. Partner and Associate Demographics at Law Firms – 2009-2016

	Partners						Associates					
	Asian		Black/African-American		Hispanic		Asian		Black/African-American		Hispanic	
	Total %	% Women	Total %	% Women	Total %	% Women	Total %	% Women	Total %	% Women	Total %	% Women
2009	2.20%	0.76%	1.71%	0.57%	1.65%	0.41%	9.28%	5.12%	4.66%	2.93%	3.89%	2.00%
2010	2.30	0.81	1.70	0.56	1.70	0.44	9.39	5.15	4.36	2.75	3.81	1.94
2011	2.36	0.82	1.71	0.58	1.92	0.48	9.65	5.31	4.29	2.61	3.83	1.92
2012	2.48	0.89	1.73	0.60	1.91	0.48	10.01	5.40	4.19	2.55	3.90	1.95
2013	2.67	0.91	1.78	0.60	1.99	0.54	10.48	5.64	4.10	2.43	3.82	1.89
2014	2.74	0.99	1.72	0.63	2.16	0.60	10.80	5.81	4.01	2.31	3.95	1.89
2015	2.89	1.07	1.77	0.64	2.19	0.63	10.93	6.00	3.95	2.25	4.28	2.03
2016	3.13	1.17	1.81	0.64	2.31	0.68	11.25	6.35	4.11	2.32	4.42	2.15

Source: *The NALP Directory of Legal Employers*.

Not surprisingly, attrition data further shows that attorneys of color are affected at a much higher percentage. According to a 2017 Report on Law Firm Diversity by Vault and the Minority Corporate Counsel Association, 21.80% of all lawyers who left the law firms surveyed in 2016 were members of a racial or ethnic minority group.¹⁰ Therefore, because the data continues to reflect a certain level of stagnating growth in the numbers of diverse attorneys within law firms,

³ NALP, 2016 REPORT ON DIVERSITY IN U.S. LAW FIRMS 5-6 (2017), *available at* <https://www.nalp.org/uploads/2017NALPReportonDiversityinUSLawFirms.pdf>.

⁴ *See id.* at 8, tbl.2.

⁵ *See id.*

⁶ *See id.*

⁷ *See id.*

⁸ *See id.* These general trends among the different racial groups and pertaining to the partner/associate ranks have also been confirmed via a separate 2017 Law Firm Diversity Survey Report issued by Vault and the Minority Corporate Counsel Association. *See VAULT & MINORITY CORPORATE COUNSEL ASSOCIATION, 2017 VAULT/MCCA LAW FIRM DIVERSITY SURVEY 11-18 (2018), available at* <https://www.mcca.com/wp-content/uploads/2017/12/2017-Vault-MCCA-Law-Firm-Diversity-Survey-Report.pdf> (hereinafter VAULT & MCCA).

⁹ NALP, *supra* note 3, at 8, tbl. 2.

¹⁰ VAULT & MCCA, *supra* note 8, at 8.

attorneys of color already working in these firms need to start finding alternative ways to combat attrition and build safe spaces for each other and their peers.

The Siloing of Diverse Attorneys Within Law Firms

In addition to the diversity and inclusion committees, councils, and initiatives mentioned previously, many law firms have affinity groups.¹¹ If used properly, affinity groups have the ability to positively impact various sub-groups of employees who share commonalities based on ethnicity, culture, gender, sexual orientation, or other aspects of their collective individualities.¹² Moreover, affinity groups provide necessary outlets for attorneys to provide their members with, among other things, opportunities for professional and leadership development, kinship and social bonding, a forum to further develop strategies and policies to address issues affecting the group at issue.¹³

On the flip side, affinity groups may have the potential to cause individuals to silo their identities. For example, a mixed-race female attorney, who happens to be Black and Asian, may have to join three separate affinity groups in order to check all of the boxes that comprise her identity (*i.e.*, a Black/African American affinity group, the Asian/Asian American affinity group, and the women's affinity group). Even if she does join all three affinity groups, it may be the case that her issues as a mixed-race female will not be fully addressed by any one particular group. Separately, even though most, if not all, affinity groups express an open and inclusive membership policy, it may be perceived as difficult for a particular attorney to join an affinity group where the individual believes that s/he is lacking in the one-shared commonality that forms the basis for the affinity group. By way of example, an attorney who identifies as Black/African American may hold some reservations about joining the Hispanic affinity group. Recruitment into those affinity groups may also be targeted to only those individuals who are believed to have the particular traits that would fit within the specific groups.

Finally, while these affinity groups may be jointly tied together through a diversity and inclusion committee or council, it is more often likely that the ability to share personal experiences, issues, and solutions will only be limited to those who sit on those joint committees or councils. This separation may ultimately deprive the majority of members of these affinity groups from the opportunity to learn and benefit from one another and to ultimately create a more diverse and informed minority population.¹⁴

Where Do We Go From Here?

With the issues having been identified, it must also be recognized that efforts can be made across racial lines so that attorneys of color further integrate and collaborate in order to achieve common ends within their law firms.

¹¹ Toller, *supra* note 1, at 73.

¹² Sandra S. Yamate, *Affinity Groups in Large Law Firms: What to Consider*, AM. BAR ASS'N (Winter 2009), https://apps.americanbar.org/litigationnews/practice_areas/minority-affinity-groups-in-large-law-firms.html.

¹³ *See id.*; Toller, *supra* note 1, at 73.

¹⁴ Please note that the purpose of this section is not to advocate against the use of affinity groups, but only to point out the limitations of such groups.

The Historical Perspective

History teaches us that there are countless instances where all racial minorities have collectively benefitted when different ethnic and racial groups have worked together. During the Civil Rights Movement, several Asian Americans joined hands with African American leaders to build a more inclusive nation.¹⁵ Most know about the triumphs of Malcolm X and Martin Luther King, Jr, but working alongside them were individuals like Yuri Kochiyama and Grace Lee Boggs—both of them were Asian Americans who believed in obtaining social justice for all.¹⁶ Separately, Hugh McBeth, a Los Angeles-based Black attorney and a member of California's Race Relations Commission, was an outspoken advocate against the incarceration of persons of Japanese ancestry in the United States during the Second World War.¹⁷ McBeth's opposition to the forced detention of Japanese Americans occurred at a time when very few questioned the U.S. Government's decision to do so.¹⁸ Lastly, seven years before the landmark U.S. Supreme Court decision in *Brown v. Board of Education*,¹⁹ Hispanic families engaged in similar litigation efforts in *Mendez v. Westminster School District of Orange County*²⁰ in order to preclude Orange County, California from having separate schools for Caucasian and Hispanic students. It could be argued that the *Mendez* decision served as an important test case for the legal team in *Brown*²¹ and the beginning of the end for the "separate but equal" doctrine, previously set forth in *Plessy v. Ferguson*.²² These examples illustrate that communities of color have the capacity to achieve measureable gains through collective advocacy. The ability to look past racial lines provided these groups with opportunities to have a greater impact on the issues they were working on.

Breaking Down Artificial Walls

Diversity is defined as, "the condition of having or being composed of differing elements: variety; especially the inclusion of different types of people."²³ Historical context aside, attorneys of minority races or ethnicities can benefit from exposure to other attorneys and groups within

¹⁵ See, e.g., Quintard Taylor, *"Justice Is Slow but Sure": The Civil Rights Movement in the West: 1950-1970*, 5 NEV. L.J. 84, 91 (2004); Gabriel J. Chin, *Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1, 23-8 (1998).

¹⁶ Hansi Lo Wang, *Yuri Kochiyama, Activist And Former World War II Internee, Dies at 93*, NAT'L PUB. RADIO (June 2, 2014, 12:51 AM), <https://www.npr.org/sections/codeswitch/2014/06/02/318072652/japanese-american-activist-and-malcolm-x-ally-dies-at-93>; Thomas J. Sugrue, *Postscript: Grace Lee Boggs*, NEW YORKER (Oct. 8, 2015), <https://www.newyorker.com/news/news-desk/postscript-grace-lee-boggs>.

¹⁷ *Intersections of Black and Japanese American History: From Bronzeville to Black Lives Matter*, DENSHO (Feb. 17, 2016), <https://densho.org/japaneseamericanandblackhistory>.

¹⁸ Greg Robinson, *Hugh Macbeth*, DENSHO ENCYCLOPEDIA, <http://encyclopedia.densho.org/Hugh%20Macbeth>.

¹⁹ *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954), *superseded by* 349 U.S. 294 (1955).

²⁰ *Mendez v. Westminster Sch. Dist. of Orange Cty.*, 64 F. Supp. 544 (S.D. Cal. 1946), *aff'd sub nom.* *Westminster Sch. Dist. of Orange Cty. v. Mendez*, 161 F.2d 774 (9th Cir. 1947).

²¹ See Francisco Macias, *Before Brown v. Board of Education There was Mendez v. Westminster*, LIBRARY OF CONG. (May 16, 2014), <https://blogs.loc.gov/law/2014/05/before-brown-v-board-of-education-there-was-mendez-v-westminster>.

²² *Plessy v. Ferguson*, 163 U.S. 537 (1896).

²³ *Definition of Diversity*. MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/diversity> (last visited June 25, 2018).

their law firms with which they may not personally identify. Based on our experiences, here are three simple ways in which attorneys of color can increase their collaborative efforts with others:

Join more or different affinity groups and bar associations of color: To begin, we understand that all attorneys, regardless of how they identify, are extremely busy and that their time is valuable and limited. However, experience has shown us that by personally investing our time and energy into causes that are not our own and by caring about the plight of others, we increase our ability to be compassionate, share both similar and differentiating experiences, and expel notions that affinity groups are simply remote islands in a vast ocean. Accordingly, we believe it is imperative for attorneys of color to become “joiners” in a larger sense. Specifically, we encourage attorneys of color within firms to expand their horizons and seek out ways to engage different racial affinity groups and bar associations.

Engage in more frequent professional and personal interactions with other attorneys of color: Whether it is working on cases, giving presentations, setting up formal or informal mentoring opportunities, or simply extending invitations to lunch or happy hours, associates and partners of color profit from building rapport with each other on professional and personal levels. Even though we are from different racial backgrounds, we, the authors of this article, are living proof that these types of interactions are attainable. We have enriched each other’s lives and our practices and instantly impacted our separate and collective successes within our firm. Indeed, there have been many occasions where we have called each other for advice or used each other as sounding boards. So, do not wait for firm-sponsored diversity events to have these interactions. Start now!

Encourage your law firm to (occasionally) break down the affinity group structure: We start out with the premise that affinity groups play important roles within the law firm structure. However, again, we note that in many instances there may be few opportunities for different affinity groups and diversity councils to meet and work with other groups of color within their firms. With that said, we understand that diversity councils and committees, as well as affinity groups, may be constrained by their assigned budgets. If possible, however, attorneys within these groups should make attempts to encourage their firms to provide additional opportunities for diverse attorneys, including attorneys of color, to meet and to pool resources so that a larger number than just the members of the diversity councils or committees are able to meet, interact, and work together in combined sessions. If this means foregoing one or two diversity council/committee or affinity group meetings in favor of an all-affinity group meeting, then the potential gains of having a shared space may be worthwhile.

Conclusion

In closing, the purpose of this article is to highlight our strong belief that sustainable diversity within law firms can be achieved so long as *everyone* is invested in ensuring that we all reap the benefits of a diverse law firm environment and demonstrate that commitment through proactive means. With that said, we also wish to clarify that we are not attempting to shift the burden of “diversity” within law firms entirely upon the shoulders of the handfuls of diverse attorneys within these spaces and doing this work already. Instead, this article simply posits that diversity within firms is attainable where there is a shared sense of trust, understanding, and shared responsibility for each other. That trust and understanding can only be developed over time and

by working together collectively with those that may be different. It is not enough for partners alone to engage in this work. It must occur at all levels. Accordingly, attorneys of color are asked to develop their potential to create new bridges through collaborative means and reinforce currently-existing relationships with other attorneys of color. By doing so, hopefully, we will close the divide and achieve the kind of diversity the legal profession deserves and needs.