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COMMENTARY

A Push for More Progress: Increased Diversity in the Legal



Profession



While diversity within the legal profession has improved over the last few years, progress has been slow, and law firm leadership must be further educated on the importance of diversity and inclusion so they will take greater steps toward enhancing diversity among leadership and increasing transparency of their firm's diversity, equity and inclusion practices.



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Special Sections

By Katharine W. Fogarty and Alexandra Lynch | October 07, 2023 at 01:37 PM

Over the last few years, more and more law firms have recognized the importance and value of having a diverse workforce, i.e., employees with different perspectives, opinions and experiences. As a result, law firms across the country have implemented diversity, equity and inclusion initiatives, including the pursuit of Mansfield Rule certification, in an effort to modify and improve upon their processes for making hiring and promotion decisions.

However, while there has been an overall push for increased diversity efforts among law firms, diversity in the legal profession falls far behind in comparison with other professions. In fact, according to data from the American Bar Association (ABA), only 19% of attorneys in the United States are considered minorities (“U.S. Supreme Court’s affirmative action ruling a ‘headwind’ for lawyer diversity, experts say,” Reuters, July 29, 2023). In comparison, minorities make up a much larger percentage in other professions, e.g., 36% of physicians and 30% of dentists. These numbers alone make it clear that much more needs to be done to create a diverse and innovative legal industry.

The need for a greater push by legal professionals to increase hiring and advancement opportunities for diverse candidates is only further illustrated by the findings from the ABA’s Model Diversity Survey Report for 2022 (the report). The report summarizes findings from studying diversity, equity and inclusion efforts throughout the legal profession and examining representation among the different attorney levels of a law firm, e.g., equity partner, non-equity partner, associates, of counsel. The report’s 2022 findings are fairly consistent with those findings from both 2020 and 2021, which showed that Caucasian men continue to dominate in representation within law firms—they make up the top 10% of the highest paid attorneys at the firm and are disproportionately overrepresented in firm leadership

positions (2022 ABA Model Diversity Survey, 2021 ABA Model Diversity Survey, 2020 ABA Model Diversity Survey, American Bar Association). In fact, Caucasian men were disproportionately overrepresented at the equity partner level but underrepresented at the associate level (2022 ABA Model Diversity Survey Reports). Further, Caucasian men were most likely to serve on governance committees at their law firms, whereas minority women attorneys were least likely to serve in these roles.

The report also found that all non-Caucasian attorney groups had 2% or less representation among the top 10% or next 20% of top earners in a firm. Additionally, African American women had the highest turnover rate throughout most of the attorney levels, especially at the partnership level. Further, the turnover rate for LGBTQIA+ individuals was higher than the baseline for both nonequity partner and of counsel roles and the turnover rate for disabled attorneys was higher than the baseline at the associate level. The report also found that African American males were more likely to be promoted to equity and nonequity roles, whereas African American women were least likely to be promoted into these roles. In comparison, associates who are disabled or are veterans were least likely to be promoted to equity partner relative to non-equity and of counsel roles.

These findings highlight the ongoing lack of diversity in the legal profession, and one way in which law firms are demonstrating their commitment to enhancing diversity is through obtaining certification under the Mansfield Rule. The Mansfield Rule, modeled after the NFL's Rooney Rule, was launched by the Diversity Lab in 2017 to assess whether law firms consider diverse candidates for hiring and promotions. The purpose of the Mansfield Rule is to diversify the entire power structure of law firms by broadening the pool of candidates considered for job openings, promotions, and leadership roles. The Mansfield Rule measures whether law firms have affirmatively considered at least thirty percent (30%) of talent from four groups: women attorneys, underrepresented racial and ethnic attorneys, LGBTQIA+ attorneys, and attorneys with disabilities—for leadership and governance roles, equity partner promotions, formal client pitch opportunities and senior lateral positions. Law firms are also asked to consider 30% of underrepresented talent for C-suite roles and 50% underrepresented talent for top internal roles and outside counsel. The Mansfield Rule—now on its sixth iteration—continues to evolve and expand as previous versions did not specifically include equity partnership and did not count the four groups separately.

Obtaining Mansfield certification clearly demonstrates a law firm's commitment to diversity as those firms that piloted the Mansfield Rule from 2017 through 2019 have diversified their management committees by more than 30 times the rate of non-Mansfield firms ("Mansfield Rule 6.0 Pushes for Increased Diversity in the Legal Profession" Civility, Aug. 26, 2022). More and more law firms are recognizing the importance and significance of obtaining Mansfield Rule certification. In fact, while only 60 law firms participated in Mansfield 2.0, as of 2023, there are 340-plus U.S. and Canadian law firms, 20-plus U.K. law firms, and 75-plus legal departments participating in the certification process to implement the Mansfield Rule.

While the creation of a diverse workplace is the first step for law firms, they cannot simply stop there. Law firms need to take the necessary steps to foster a respectful work environment in which diverse employees feel valued and included. An

emphasis on inclusion will signal to employees that their different viewpoints and experiences are encouraged. Further, promoting inclusion among their employees will lead to more effective communication, fewer misunderstandings, more effective motivational methods, increased recruitment and employee retention, better formed expectations, and increased productivity and teamwork.

Law firms can promote a respectful and inclusive work environment by creating diversity & inclusion committees and hosting training sessions geared towards educating employees about the importance of diversity and challenging implicit biases.

Overall, while diversity within the legal profession has improved over the last few years, progress has been slow, and law firm leadership must be further educated on the importance of diversity and inclusion so they will take greater steps toward enhancing diversity among leadership and increasing transparency of their firm's diversity, equity and inclusion practices.

Katharine W. Fogarty *is a partner in the Philadelphia office of Kaufman Dolowich. A civil litigator, Katharine concentrates her practice in employment law and commercial litigation, including discrimination, harassment, retaliation, and wage-and-hour violations. She represents employers, including schools and school boards, in federal and state courts and in administrative proceedings in federal, state, and local human rights agencies.*

Alexandra Lynch *is an associate in the Philadelphia office of the firm. She focuses her practice on employment law and professional liability, and defends clients in matters involving sexual harassment, discrimination, wrongful discharge, and retaliation in state and federal courts, as well as before the U.S. Equal Opportunity Commission and state and local administrative agencies.*

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