

Best Practices in Achieving and Maintaining Diversity



Pennsylvania Association for Justice
(formerly Pennsylvania Trial Lawyers Association)
in participation with the
Philadelphia Trial Lawyers Association

Written in collaboration with
Anthony K. Moore
Principal and CEO
Paradigm Group Consultants

INTRODUCTION

In June 2007, the *Legal Intelligencer* published an article that sent a wake-up call to plaintiffs' firms in Pennsylvania. The newspaper of record for Philadelphia attorneys discussed a survey it conducted of some plaintiff law firms in the state, inquiring about their hiring practices with respect to women and minority groups. The survey of 24 firms—not a complete representation of plaintiffs' firms—showed that diversity is practically non-existent within this selection of firms. Throughout the state, the survey identified only five African-American attorneys, three Asian and no Hispanic. Women fared better: of the firms surveyed, 23% of lawyers at the surveyed firms were women.

We know that there are more attorneys of color working in plaintiffs' firms and as sole practitioners. Just the same, however, we know that it is true that there are few people of color working at plaintiffs' firms around the state. The heart of the *Legal Intelligencer* article was accurate, even if the survey was not complete.

A lack of diversity is a problem that is not unique to plaintiff law firms. The lack of diversity in the profession became a national issue with respect to large, corporate firms more than a decade ago. Despite efforts by those firms to improve their diversity, the problem persists. Even in the large corporate practices, which hire pools of 10-15 attorneys each year at significant salaries, diversity remains an issue as evidenced by the low retention rates.¹

Following the *Legal Intelligencer* survey, both boards of the Pennsylvania Association for Justice ("PaAJ") and Philadelphia Trial Lawyers Association ("PTLA") unanimously passed strongly-worded resolutions encouraging their members to take measures emphasizing diversity in their hiring considerations. (The resolutions can be found in the exhibits section of this document.) PTLA established a new diversity committee which has been very aggressive in forming new alliances with minority legal organizations and has created a web-based job bank (which is shared with PaAJ). Both associations continue to participate in panel discussions at local law schools, mentor local minority law students, and engage in other similar activities. PaAJ has reinvigorated its committee with new members, and has also created an advisory committee of non-trial lawyers to bring creative ideas to the project and add a measure of accountability to PaAJ's work. Members of that advisory committee reviewed this document and provided extensive

input. PaAJ is beginning to establish contacts with law schools beyond the Philadelphia area.

To ensure another level of accountability, PaAJ and PTLA have conducted a survey for internal purposes of its members statewide as a benchmark for determining what progress is made on a longitudinal basis.

DIVERSITY: WHY IT'S IMPORTANT TO PLAINTIFFS' FIRMS

Increasing diversity within our firms is clearly the “right thing to do.” In addition to the obvious moral imperative, there are several practical reasons why plaintiffs’ firms should make diversity an element of their hiring strategy.

- Jury pools, especially in the large cities, have significant numbers of women and people of color.
- This is not just a “Philadelphia problem.” The lack of diversity holds true for smaller cities as well. For example, in the past 15 years Scranton, Reading, Bethlehem and Hazleton have developed emerging Hispanic communities. Law firms in such areas should recognize this growing client population, and consider hiring attorneys who reflect the entire community and, for example, who are able to communicate in Spanish.
- Diverse attorneys can help diversify access to cases and clients.
- Diverse attorneys can also offer different perspectives to trial strategy and approaches to juries.
- As advocates for equality and justice, our hiring practices should be consistent with our mission and message.

This document was developed in collaboration with diversity consultant Anthony Moore.¹ Hopefully, it will provide plaintiffs’ firms with ideas and practices that can be implemented to promote within their firms.

¹ Anthony Moore is Principal and CEO of Paradigm Group Consultants, LLC., a firm which helps companies of all sizes and types achieve diversity. Among his clients are Yazaki North American, AAA Michigan and the Philadelphia School District. Web address: www.paradigmgroupconsultants.com, e-mail: paradigm@paradigm.com

This guide does not purport to be exhaustive of all best practices to attain diversity in plaintiffs' law firms. Rather, it strives to serve as a resource for law firms to design tailor-made diversity plans that best fit their unique organizational structure. If member firms have discovered other best practices, you are invited to share them with us so we can continue to add to this living document at diversity@pajustice.org.

BEST PRACTICES IN DIVERSITY HIRING AND RETENTION FOR PLAINTIFFS' FIRMS

One. Demonstrate Commitment at the Top. All firms should spell out their hiring policies clearly. Each firm should state in strong language that it not only follows equal employment laws but that the firm has a strong commitment to diversity in its hiring practices. The policy should be signed by all partners of the firm.

The leaders of the law firm must not only “talk the talk” but must “walk the walk” in demonstrating their commitment to diversity hiring and retention. They should be involved in the interviewing, recruitment and mentoring processes. Top leadership of the firm should be deeply involved in all evaluation processes and mentoring programs. Depending on the size of the firm and its approach, in general, to decision making, it might consider the establishment of a diversity committee, and the leadership of the firm should be represented on it.

Two. Commitment to Retention. Recruitment of attorneys is an expensive investment of time and money. Each plaintiff firm must maximize its investment by committing to retain the minority attorneys it hires. When an attorney is hired, he/she should have a 20-20 vision of the culture of the firm, its pace and intensity which are common characteristics of plaintiffs' firms.

That said, retention means:

- Mentoring and coaching new attorneys, and senior members of the firm should be part of this program. If Tom Dixon of Dixon, Halley and Parker (not a real law firm) is the mentor for the new African-American attorney—that sends a strong message.
- Firms should have genuine evaluation processes for their attorneys. At a Diversity Committee meeting of the PaAJ, consultant Anthony Moore told the story of a large company he worked with on diversity issues. The company aggressively sought out people of color to join their work

- force. One superstar decided to go elsewhere because he never received feedback from his supervisors that they were delighted with his performance—until he told them he was resigning. By then, the damage was done and the employee left for a competitor.²
- Take the time to develop attorney expectations prior to hiring the new attorney. Lack of communication of goals and objectives may be the major issue when women and people of color leave firms.
 - Transparency and objectivity in the assignment of assignments and cases and exposure to clients.³
 - Equal opportunity in training and access to continuing education.
 - Inclusion of minority attorneys in the management of the firm and on its key committees.
 - Addressing personal issues—home life, children, family crises, and the like—in a sympathetic way. To the extent allowed by law, full disclosure of such issues should be addressed during the hiring process. If a firm defines diversity to include gay and lesbian lawyers, the firm should consider providing domestic partner benefits. Law firms, however, must be mindful of federal employment discrimination laws.
 - Communicating that advancement in the firm is an attainable goal and outlining benchmarks necessary to achieve the goal.
 - Recognizing and rewarding success.
 - Providing all new attorneys, not just diverse ones, with a copy of the firm's diversity statement and policy with their new employee packet.
 - Foster a culture that allows minority lawyers to voice their concerns.
 - Encourage minority lawyers to participate in minority bar associations and organizations. This will provide them with a healthy support system and, importantly, will enable them to seek out their own business and referrals.
 - In turn, encouraging a firm's minority attorneys to get involved with ethnic bar groups will increase the firm's hiring network. (See below.)

At the end of the day, retention is a fundamentally critical issue which affects not just plaintiffs' firms, but all firms. PaAJ and PTLA will seek to work with the entire legal community on initiatives that encourage better retention rates.

Three. Break Out of Closed Network Hiring. Traditionally, plaintiffs' firms hire new lawyers with experience by tapping into a small network developed by word of mouth, personal connections and observation in court or other legal proceedings. This closed network is not conducive to recruiting minority attorneys who are not already at the table.

To achieve success in diversity hiring, a firm must broaden the way it looks at new lawyers and cast a wider net. Partners should also insist that each search include women and candidates of color. Minority lawyers at the firm should be part of the recruitment process in an active way.

Four. Emphasize Advantages of Plaintiff Practices. It is important to recognize, however, that some of these challenges can be communicated as advantages to potential hires.⁴ The following are examples:

- Because plaintiffs' firms are small, a talented attorney may have a greater opportunity to obtain more meaningful experience and to assume greater responsibility.
- Lawyers at firms which require a benchmark of billable hours each year find that process to place inordinate pressure on them. This is not part of the culture at plaintiffs' firms.
- Attorneys in large corporate firms are not likely to see a courtroom in a genuine way for years—experience in the courtroom is the way of life at plaintiffs' firms and they can hope to attain this goal at a much earlier stage.

Five. Recruit From Government Offices. Assuming that plaintiffs' firms largely hire attorneys with at least a few years of experience in litigation, it is recommended that the firms consider candidates from governmental law offices like prosecutors, municipal law departments and public defenders. These offices often include larger numbers of minority attorneys, and this is one dependable way of widening the net. In these positions, young lawyers obtain courtroom experience much earlier and will be more seasoned after 3-5 years.⁵ Plaintiffs' firms should also carefully consider judicial law clerks who may not have tried cases, but who are very familiar with the way a courtroom works.

Six. Take Advantage of Legal Retention Trends. We know that many large corporate law firms have lost their investment in diversity hiring and lose minority candidates after several years. Again, this attrition creates a pool of more experienced attorneys available for hiring. Plaintiffs' firms should establish informal and formal connections with these attorneys.

Seven. Rooney Rule—One Out of Three. The National Football League implemented the "Rooney rule," which says that in hiring for coaching and front office positions, a team's management will make best efforts that at least one of the three final candidates for an opening must be from a minority group. We know that the NFL rule for diversity hiring in the front

office has met with Super Bowl ring success, and it can be a very useful tool for your firm's diversity plan.

Eight. Diversity Manager. Because plaintiffs' firms are small, it is probably true that they often do not have human resources or diversity managers. Sometimes the office manager or the senior partner doubles as the HR person. In such cases, each firm should appoint a senior lawyer to be the point person for setting forth its practices in diversity hiring and retention practices and enforcing them.

Nine. Broad Definition of Diversity. Each firm must define diversity for itself. We know that diversity involves equality in hiring. Beyond that, does it include groups other than women and people of color? Are gays and lesbians included? Are people with disabilities included? Is age a factor? Does a firm's policy specifically address the demographic realities of their community—for example, the mid-sized cities which have emerging Hispanic and Hispanic communities? Does the diversity policy fairly treat women re-entering the workforce after raising a child? The definition of diversity developed by the Philadelphia Trial Lawyers Association diversity committee and adopted by the Pennsylvania Association for Justice Board of Governors⁶ includes, but is not limited to, race, gender, national origin, religion, socio-economic status, sexual orientation and physical disabilities.

Ten. Start Summer Clerkship Programs. These programs are a good way of looking at potential hires down the line, if not right out of law school. Plaintiffs' firms cannot compete with the ambitious summer clerkship programs of large firms, either in terms of money or time. However, you might consider a first-year summer clerk program when law students have a harder time getting internships. You might also consider hiring law students for specific projects during the school year. PaAJ is preparing a model internship program tailored to plaintiffs' firms.

Conclusion.

The leaders of PaAJ and PTLA could not have said it more clearly in their response to the *Legal Intelligencer*:

“We have been struck by an irony in facing this test. As trial attorneys, we work hand in hand with people who are seeking civil justice, and they are most often the most vulnerable people in Pennsylvania, many of them from minority communities. Just as we are dedicated to the causes of our clients,

we feel strongly that we must spend considerable energy in diversifying our own firms.”

Hopefully this “best practices” document will help you achieve that vision.

Exhibit A

Keys to Success

To summarize, here are some key factors in achieving a successful diversity program:

- Encourage frequent, candid communication to correct misperceptions about diversity and diversity programs.
- Create an atmosphere of sensitivity and inclusion.
- Cultivate an attitude of respect and dignity in the workplace.
- Continue to evaluate the performance and results achieved; require accountability.
- Obtain commitment by senior management, as evidenced in both words and actions.
- Provide effective mentoring and sponsorship.
- Reward and recognize diversity successes and achievements.
- Make the financial commitment inside and outside the legal organization.

--National Association of Legal Administrators

Exhibit “B”

Sample Diversity Commitment Document

For (law firm name) to reach its true potential, we must continue to build an organization that values individual differences. Our focus is on creating an inclusive workplace where we value and retain employees and deliver our best service to customers and communities. Diversity at (law firm name) is a business imperative. Aligning with our client base, engaging our communities, and attracting and retaining talented individuals are critical to our success. Diversity includes but is not limited to race, gender, national origin, religion, socio-economic status, sexual orientation and physical disabilities

We are committed to being an inclusive law firm where all people are treated fairly, recognized for their individuality, promoted based on performance and encouraged to reach their full potential. We believe in recognizing, understanding, and respecting differences among all people. Every individual at (law firm name) has an ongoing responsibility to advance diversity.

(Law firm name) Diversity Committee is chaired by Senior Partner (name here) and includes a cross section of individuals from across the firm. The purpose of the committee is to convert the ideal of what we think our firm stands for into strategies that ensure that the ideal becomes reality.

Exhibit "C"

Members of the PaAJ Diversity Committee

Rhonda Hill Wilson, co-chair

Shanin Specter, co-chair

Daryl Christopher

Steven Chung

Laura Feldman

Leslie Fields

Nancy Fullam

Rhonda Hill Wilson

Ruben Honik

Brian Ketterer

Mark Milsop

Darren Parr

Sudhir Patel

Rosemary Pinto

Veronica Richards

Cliff Rieders

Robert Ross

Eve Semins

Jamie Sheller

Bernard Smalley

Shanin Specter

Lee Swartz

Susan Williams

Members of the Philadelphia Trial Lawyers Association Diversity Committee

Laura Feldman, Co-Chair
Bernard Smalley, Co-Chair

Michael Barrett
Jim Beasley, Jr.
Larry Bendesky
Nadeem Bezar
Matt Casey
Stewart Cohen
Harold Datz
Stewart Eisenberg
Alan Feldman
Laura Feldman
Ruben Honik
Ron Kovler
Tim Lawn
Michelle Lee
Evan Liu
Dan Levin
Leonard Lundy
George Martin
Stephan Matanovic
Joe Messa
Michael Pansini
Bobbie Pichini
Sam Pond
Stephen Raynes
Rob Ross
Marty Rubenstein
Charles Schaffer
Rich Seidel
Jamie Sheller
Bernie Smalley
Royce Smith
Shanin Specter
Mark Tanner
Peter Villari
Steve Wigrizer
Rhonda Hill Wilson

Members of the Pennsylvania Association for Justice Advisory Committee

Nolan Atkinson, Esquire, Duane Morris
Angela Baker, Rutgers Law School-Camden
Vanessa Browne-Barbour, Duquesne University School of Law
Andrew Chirls, Wolf Block, former Chancellor, Philadelphia Bar Association
Richard Delgado, Professor, University of Pittsburgh School of Law
Joanne Epps, Temple University Beasley School of Law
Stephanie Girard, Dickinson Law School
Pheobe Haddon, Temple University School of Law
Cletus Lyman, Gay and Lesbian Lawyers of Philadelphia
Anthony Moore, Paradigm Group
Elaine Petrossian, Villanova Law School, Assistant Dean, Career Strategy
May Mon Post, Cohen, Fluhr & Gonzalez, chair, Young Lawyers Division,
Philadelphia Bar Association
Marie Queen, Pennsylvania Bar Foundation
Scott W. Reid, Cozen & O'Connor, President, Barristers Association
Leonora Ruffin, Widener School of Law
Sozi Tulante, Hangle, Aronchick, Segal, & Pudlin
Wendell Pritchett, Professor, University of Pennsylvania Law School (on
leave), presently adviser to Mayor Michael Nutter
Stacy Hawkins, formerly Ballard Spahr, now diversity consultant

Staff Support

Xenia Hewka Scott, Development and Membership Director, Pennsylvania
Association for Justice

Patricia Patterson, Executive Director, Philadelphia Trial Lawyers Association

Anthony Green, Executive Director, Pennsylvania Association for Justice

Endnotes

¹ See, e.g. "This suggests to me that law firms are doing a very good job on the front end, recruiting women and minorities into their summer programs. But what these numbers confirm is what many other studies have shown, and that is that women and minorities leave their law firm jobs at a higher rate than their male and non-minority colleagues. The real challenge in making more rapid change is improving the retention of female and minority lawyers." James Leipold, Executive Director, National Association of Legal Professionals, report on minority retention, October 1, 2007. [\(Read report\)](#) In an earlier study, the NALP Foundation found that "The annual attrition rate for entry-level associates was 13.8%, with firms of more than 500 attorneys experiencing a lower rate of departures (11.6%) and smaller firms of 251-500 attorneys a higher rate (17.2%). Minority men were reported as having departed at the rate of 17.5% annually, the highest for any group." [\(Review Executive Summary\)](#)

² PaAJ Board Meeting Diversity Committee, January 27, 2008

³ "I strongly believe that even more important than mentoring is a system whereby the firm provides quality assignments to the new attorney. Firms should not hire unless they are certain that they have the cases to keep an associate busy and productive."—Nolan Atkinson, Esquire, Duane Morris, member of the PaAJ Advisory Committee.

⁴ This observation was made by Elaine Petrossian of the Villanova Law School, Assistant Dean for Career Strategy and Advancement, and a member of the PaAJ advisory committee.

⁵ This is not to say that the plaintiff bar should aggressively poach lawyers in public service offices, but as these lawyers consider moving into the private sector, they might consider plaintiffs' work.

⁶ PaAJ Board of Governors meeting, October 27, 2007