Diversity and Inclusion in IP Law: 2019 and Beyond

By Brian C. Kwok | January 23, 2019

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The first weeks of 2019 have already shown unprecedented changes in our clients' businesses. The world economy is more dynamic, more fluid, and more interconnected. International forces, inter-dependent economies, and national policies seem to be impacting us more than ever before.

This change is also impacting the legal services industry. The law firms that will respond successfully to this volatility will focus on delivering what clients need and being more efficient in the way services are provided.[1] Who will be delivering these services will become increasingly important.

Our definition of a successful attorney must continue to evolve to match the realities of today's law firm industry. Strong technical skills and legal acumen in isolation will no longer suffice. Clients need commercially minded, creative thinkers, with a global outlook and sound project management skills.[2]

Our clients' customers and workforces reflect the richly diverse world in which we live, and so must our law firms. This necessity makes common business sense, and it is also a critical component to winning new work. Clients are both explicitly and implicitly demanding that their law firms comprise the most innovative, creative, and high-functioning attorneys that diverse and inclusive teams can deliver. For example, some clients reward firms financially for using diverse teams effectively. Other clients withhold a certain percentage of fees for law firms not using diverse teams in the way they expect. And some companies set forth guidelines specifying the percentage of women and attorneys of color they expect on their legal teams.

These incentive structures make a lot of sense. Adopting the viewpoint that the high-performing legal teams that clients are demanding comprise the same cookie-cutter version of the same attorney, with the same credentials, and the same biography would be futile. Just like a game of chess, we provide our clients the best customer service when we play to our strengths. Great chess players know that all of the pieces and pawns have important contributions to a winning strategy. So too are the unique perspectives and skills of a diverse legal team.

We have made formidable strides towards diversity and inclusion goals in the legal profession. Yet there remains so much opportunity. This year - and for years to come - our firm remains committed to achieving equality in the legal industry. For all law firms, advancements in several important areas will help enrich our teams and provide for a more diverse and inclusive profession.

Fostering a Thriving Culture of Diversity and Inclusion

Embracing a diverse law firm community is not something that can simply be checked off a list. It must be woven into the culture that defines the firm. From the highest levels of firm management to the associate ranks, diversity and inclusion must be valued as an opportunity to create a real competitive advantage in the legal industry. Garnering support for change requires strong leadership and accountability; diversity and inclusion must be viewed as an investment in the long-

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term best interests of the law firm and integral to the way we do business every day.

Retention and Promotion of Diverse Attorneys

Entry-level associate classes are increasingly diverse, but the statistics are not as encouraging in the leadership ranks of law firms. For example, while Asian Americans have been the largest minority group in major law firms for the past two decades, they have the highest attrition rates and the lowest ratio of partners to associates among all groups.[3] Similarly low representation in the law firm leadership ranks is observed for Hispanic and African American attorneys. Whereas Asians, Blacks, and Hispanics comprised 7.05 percent, 3.09 percent, and 3.60 percent of all attorneys, respectively, in the Vault/MCCA 2015 survey, they comprised only 3.08 percent, 1.76 percent, and 2.36 percent of equity partners.[4]

One of the most often cited barriers to career advancement by diverse attorneys is the inadequate access to mentors and contacts.[5] Guidance, training, and substantive opportunities provide the skills and experiences that connect attorneys to firms and allow them to thrive. Mentors and contacts empowered to make change may be willing to "take a chance" on an attorney who would otherwise go unnoticed. Ultimately, as diversity and inclusion is weaved into the culture of the firm, staffing cases with diverse attorneys *at all levels* will be viewed no more of a "chance" than any other traditional staffing arrangement and will in fact be sought after.

Building the Next Generation Lawyers with Our Clients

The hallmark of a truly strong client relationship is an in-house counsel that views its outside counsel as a natural extension of its corporate team. Understanding our clients' ongoing activities, business operations, and assets are fundamental to delivering value, but so are the ways in which we staff our teams. A considerable number of Fortune 500 companies are refocusing their efforts in 2019 on equality, not only because it is the right thing to do, but because it has been shown to be good for the bottom line.[6,7] It makes sense that our clients would expect the same from their law firms.

At Haynes Boone, we've taken the opportunity to work hand-in-hand with some of our clients to share in our united focus to promote diversity and inclusion in the legal industry. For example, since its inception we've partnered with the Google Legal Summer Institute (LSI) to provide a unique in-house and law firm experience to traditionally underrepresented law school students. This partnership has proven to be very successful. Through this program, we've identified future attorneys that exceeded our expectations and were invited back to spend another summer with us.

Our managing partner also meets with our clients regularly to listen to their concerns and to gather insight into how we can be better service providers. A common theme among these meetings is succession planning. Corporations are overwhelmingly focused on the next generation of attorneys and our efforts to develop a diverse and talented pipeline that will represent them well into the future. They are genuinely interested in the culture we're building to ensure that diversity and inclusion is part of our everyday existence, and how we are attracting and retaining the top legal teams they have come to expect.

In 2019, we celebrate all that we have accomplished, and take on the difficult task of making even more change in the area of diversity and inclusion. It is easy to say that diversity and inclusion are important. It is another thing to *authentically practice it* and to integrate the value of diversity into

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the way we conduct ourselves both personally and professionally. The firms that understand and act upon the critical importance of diversity and inclusion will sustain success into the future.

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[1] Citibank Private Bank and Hildebrandt Consulting, "2019 Client Advisory" (2018).

[2] *Id.*

[3] Eric Chung, Samuel Dong, Xiaonan April Hu, Christine Kwon & Goodwin Liu, "A Portrait of Asian Americans in the Law," Yale Law School & National Asian Pacific American Bar Association (2017).

[4] *Id.*

[5] *Id.*

[6]Shelley Zalis, "6 Equality Trends to Watch in 2019," *Forbes* (2019) at 6-equality-trends-to-watch-in-2019.

[7] Vivian Hunt, Dennis Layton, Sara Prince, "Diversity Matters," McKinsey & Company (2015).

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