A View from the Top—The Business of Practicing Law and Everything You Always Wanted to Know About Executive Committees But Were Afraid to Ask

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I. Introduction

A 2016 Vault/MCCA survey reported that 7.5% of attorneys of color serve on law firm executive or management committees. The report cited that “[R]epresentation of minority attorneys in law firm management is also at its highest level since 2007 and parallels the advances in the partnership ranks. The percentage of attorneys of color serving on law firm executive or management committees has grown from 5.42% in 2007 to 7.50% in 2015.” See, http://www.mcca.com/index.cfm?fuseaction=Page.ViewPage&pageId=2686.

While certainly an improvement, the numbers of attorneys of color is still low compared to the overall population of attorneys and the broader population. For example, a recent Washington Post article stated that Asian-Americans are underrepresented in the highest posts of the legal profession. The article cited Goodwin Liu who published research indicating that Asians are the nation’s fastest-growing racial group accounting for 5% of the population. Moreover, they make up an even larger percentage of law school students, with a significant number graduating from top institutions. However, Liu said their ranks in leadership positions are disconcerting with only 3 of the 94 U.S. attorneys and 4 of the country’s nearly 2,500 elected state prosecutors were Asian-American, with only 26 active Asian-American judges among more than 850 federal judicial positions, and with Asian American having the highest attrition rates and lowest ratio of partners to associates even though they are the largest minority group at major law firms among all racial groups. He stated that more than 80% reported experiencing implicit bias in the workplace. Many respondents said Asian-American attorneys were considered hard-working and responsible, but far fewer said the legal profession associated them with empathy, creativity or assertiveness. See, http://bigstory.ap.org/article/9ecb9ea0d0654826b7c6c08d8bcefc61/few-asian-americans-hold-top-legal-jobs-new-study-says.

Therefore, we believe that one way to continue to improve diversity numbers in law firms is to reduce the mystery of law firm management committees and to encourage actions and activities to promote diverse attorneys into the management ranks.

This panel will explore management of law firms and how to improve diversity at that level using our own law firms as case studies of certain practices.

II. Management of Law Firms

Law firms were generally managed by a managing partner or principal of the firm. However, law firms have become very complex and sophisticated businesses requiring the managing partner to be a full-time position. Some managing partners sacrifice their practices to manage the firm. Simultaneous with this trend has been an increase in the role and responsibilities of the executive committee, which now may comprise, together with the managing partner, part of the management team. Another important development is the formation of major practice group leadership or practice management committee chairs. Furthermore, administrative personnel such as a chief operating or administrative officer, chief financial officer and other administrative positions are utilized. There is no standard or accepted form of law firm management, and each firm varies on how it governs itself.
A. Barclay Damon

The Management Committee (an Executive Committee) which has the responsibility to develop the Firm Mission and guiding principles, as well as the oversight and controls to assure unbending commitment to those initiatives is an elected body. At BD each of the four largest offices elects its own Managing Director each of whom is a member of the Management Committee to 3 year terms with a 2 term limit. In addition, the entire Firm partnership elects the Managing Partner who chairs the Management Committee. The Managing Partner cannot be a Managing Director. As a transparent and democratic Firm, BD tends to have very successful attorneys with leadership and managerial qualities elected to these positions. Fortunately, one of the four offices, Albany, had elected a woman attorney who brings to the committee a strong perspective on the very real issues of bringing women to the Firm, retaining those women and having those women advance into leadership positions. In fact, the Firm partnership voted to waive the 2 term limit to allow this attorney to serve a 3rd term. But, preferably, the leadership of the Firm would reflect greater diversity and inclusiveness over time by developing strong leaders who represent a broader spectrum of the population.

BD’s model understands that the Managing Partner and Management Committee establishes policies and strategies, but that a robust management structure is needed to carry out the Firm culture and that Diversity and Inclusion must be an essential responsibility of the hands on Management Team. The Practice Group leaders (“PGL”) and the Practice Area (“PA”) chairs are appointed by the Managing Partner with full advice and input from the full Management Committee. This PGL/PA structure sets the stage for carrying out the Firm diversity initiative and also is a feeding ground for diverse individuals to develop both office specific and Firm-wide reputations which prepares them for becoming Management Committee members. In addition, the Firm has been fortunate to have a diverse individual appointed to the Diversity Partner position. There are also committees and committee chairs for many non-substantive matters such as hiring and pro bono initiatives.

Joining the Management team in 2011 of what is now the largest law firm in the northeast not headquartered in a major city; Jim Grossman remembers well the early January Management Committee retreat. Having practiced for 37 years at the time and been a member of other Firms, he was astonished to see years of strategic plans, regularly updated with data and outcomes regarding how a 175-year-old Firm morphed from a small city Firm in Syracuse, New York to a profitable platform firm spanning the State. But, most remarkable was that the management team was not like other Firms he had seen, trying to sustain its successes and assure comfortable and safe havens for key partners to continue their earnings. Instead, the Firm Management focused on how to expand and grow and become a truly dynamic and leading Firm over the next ten years and beyond. The key strategic initiative which was discussed in a two hour session was Diversity and Inclusion.

From an ethical, professional and business perspective, the Management team identified that Law Firms to be at the head of the class needed to have a broad spectrum of diverse individuals throughout the Firm and this included developing Firm leaders, including Management team members, that brought and fostered both principles of diversity and inclusion to the Firm and constant attention to measurable success in achieving a Firm that had a reputation in the legal and business community of exemplifying a culture of diversity and inclusion.

To have the Firm culture work effectively, the Management Committee has weekly meetings in addition to two mini-retreats each year. The Management Partner meets regularly with the PGLs and has a standing agenda item to discuss diversity and inclusion. In addition there are 2 in person meetings between each PGL and the full Management Committee each year with diversity and inclusion as an area fully discussed to assure efforts to enhance the Firm’s culture are being carried out. Finally, the Diversity Partner, who chairs a
Diversity Partner Committee, regularly attend Management Committee meetings to report on all of the Firm’s diversity and inclusion efforts.

Partner compensation is recommended for a full partnership vote by a separate Compensation Committee. The committee consists of four elected partners, one from each major office (not a Managing Director) together with the Managing Partner of the Firm. Most significantly, all aspects of a Partners performance, including “civics” are considered by the Compensation Committee annually to determine partners tier placement as well as annual bonuses. Civics includes active participation in committee or leadership roles throughout the inclusive management structure of the Firm. Since the Firm’s culture encourages vertical input to the Management Committee from committees, PAs, PGL’s and other leadership positions it is essential for diverse partners to actively participate in these “administrative” capacities. The same is true for Associates seeking to move through the ranks to a partnership level. Active participation allows diverse attorneys to add their thought processes and ideas to the Firm and that buy-in is dearly valued and rewarded by the Firm’s culture.

B. Ballard Spahr

Ballard has a Chair who is elected to a three-year term and who is the head of the executive management team. The Chair appoints the executive management team consisting of the financial partner, general counsel, chief administrative officer, strategic partner and the partner in charge of non-partner lawyers. The Chair also appoints the department chairs and office managing partners. Department chairs usually serve five years. The Chair and the executive team are overseen by an elected board. The elected board consists of nine members with staggered terms so that three members are up for election each year. No board member may succeed themselves for more than two consecutive terms. The Chair and each board member cannot have a term that has them serving past age 65. The Chair, executive team, elected board, department chairs, office managing partners and certain non-lawyer key staff (i.e. marketing, diversity and pro bono directors) comprise our Expanded Board. The Expanded Board effectively manages Ballard’s 14 offices and over 500 lawyers.

All partners within the age limit are eligible for election as the Chair or as a board member. Each election has the same procedure but occur at different times of the year. Each eligible partner can elect to remain or not on the first ballot. Each partner has one vote for the Chair position and three votes for the board positions. The votes are cumulative requiring a partner to vote for three different people for the three board positions. After the first ballot, the top ten vote getters are place on the final ballot, and the voting occurs once again. The top three vote getters are elected to the board, and likewise, the top voter becomes the Chair.

Similar to BD’s model, Ballard operates with a robust management structure creating policies and procedures but also setting vision and goals. Although the Chair is a very powerful in our structure, the Chair has historically operated by consensus in keeping with the firm’s Quaker heritage. The three year term of the Chair ensures that the Chair is accountable to the partnership.

Compensation is determined by a separate allocation committee which does have the Chair and the financial partner as members. The allocation committee members serve two year terms with half of the committee up for appointment each year. The Chair appoints the members of the allocation committee. The hallmark of the compensation system is that the allocation committee meets with every partner to discuss contributions to the firm and that the partner can talk about everyone except themselves.

At Ballard, even though the Chair occupies a strong position, the executive committee acts as a check or balance to the Chair providing oversight. The management of the firm is essentially the Chair providing vision and executing such vision with the executive committee representing the partnership’s varied interests and giving supervision.
III. Diversity and Inclusion

As noted previously, attorneys of color have made inroads to management committees but still comprise about 7.5% of management. To address this, firms are taking steps to increase the pipeline of available candidates for senior level and management positions. As clients ask about and in some cases, require diversity, law firms must respond. One study showed that a 1% increase in gender diversity correlates with a 3% gain in revenue, and a 1% increase in racial diversity correlates with a 9% gain in revenue. See, The ABA Presidential Diversity Initiative; http://www.americanbar.org/presidentialdiversityinitiative.

A. Barclay Damon

The Diverse Firm Strategy

So, what was and is included in the diversity and inclusion strategic plan that was generated at the 2011 Management Committee retreat and revisited and revised, where appropriate, bi-annually?

1. The Approach

Diversity and inclusion is a long-term organizational change process. It requires a strategy that generates commitment and creates a culture of inclusion in the firm. It is based on a philosophy that diversity and inclusion goes beyond race and color. It recognizes that human beings tend to be ethnocentric and that it is not useful to target anyone specifically for current inequities. It also realizes that it is difficult for people to share power. In addition, people often find comfort and trust in likeness. Finally, that diversity and inclusion is a strategic business issue.

2. Definitions

Diversity encompasses the unique characteristics of differences that each of us have. Inclusion values welcoming and embracing the strengths or our differences, encouraging involvement and providing equal access to opportunities and information. Inclusive environments are about Equity-Not Equality.

3. Executive Level Commitment

The firm must empower a Diversity Partner who regularly reports to and has frank dialogue with the Managing Partner. The Management Committee must also be fully committed to the diversity and inclusion initiative and consistently monitor and support the success of that initiative. The High Level Leadership Team including the Diversity Partner must meet regularly to discuss the manner in which the inclusionary goals are being fostered and to review measurable effectiveness.

4. Strategic Business Case For Diversity

Diversity and Inclusion training is essential. This includes both individual training for Firm leadership such as Management Committee members and PGL’s and group trainings for all attorneys. We have found that this training is best received at annual firm-wide retreats where attorneys are not distracted by daily work considerations. Participation is valued as good civics. Diversity and Inclusion training also includes staff trainings conducted during regular business hours with attorneys also present to enhance the total Firm commitment to the initiative.

5. Assessments and Diagnosis

The initiative should be assessed at all levels of the organization. The Firm regularly retains diversity and inclusion consultants to train and conduct surveys regarding the initiative. Further, the Firm will review policies, systems and laws regularly. Flex time and partner insurance are two areas which are regularly con-
considered. Further, the Firm seeks through transparency to examine attitudes, feelings, values and group and cultural norms of those in the organization. Finally, the firm compiles, assesses and reviews firm-wide recruitment, hiring and personnel data as measurable.

6. Inclusivity

Some actions taken are (i) the development and review of the Firm Mission Statement from the bottom up, (ii) the establishment of Diversity Leadership Teams at each of the Firm’s offices, (iii) the development of a Voices of Excellence publication with a commitment to diversity and inclusive themes, (iv) the establishment of monthly diversity and inclusion lunch and learns; and (v) the expansion of and commitment to a Women’s Forum.

7. System Changes

Revise recruitment policies to assure diverse candidates are included in all aspects of attorney and staff recruitment and, where appropriate, utilize direct search consultants to assist in this effort. Target lateral experienced diverse attorneys. Increase pipeline initiatives by attracting diverse law students. Provide training for Firm interview teams, including providing questions for interview teams in an effort to improve the effectiveness of the diversity and inclusion initiative. Provide and train firm mentors and sponsors for diverse attorneys at the Firm. Conduct exit interviews of all outbound employees with specific attention to any matters impacting the success of the diverse and inclusive culture of the Firm and the goal to retain diversity in the organization.

8. Identify Saboteurs and Change Agents

The Firm acknowledges that many individuals are resistant to and lacks a commitment to diversity and inclusion initiatives. There also is unintended bias. The Firm and its leadership will identify people who challenge personal assumptions and stereotype thoughts and suggest resolution strategies when diversity and inclusion related conflicts arise.

9. Data Management/Evaluation

There will be regular and ongoing reports disseminated and reviewed at leadership levels, including the Management Committee, regarding promotions, retention, work flow, productivity, performance and exit interviews to allow appropriate monitoring of the initiative.

B. Ballard Spahr

Ballard has a similar approach to BD with diversity and inclusion at the forefront of its goals and policies. Many firms speak of creating a culture of diversity and inclusion; however, the latest Vault/MCCA survey shows that there is much to do. Ballard actually counters some of the trends of the survey with Asian-American partners holding leadership positions, women partners becoming part of both the executive team and executive board, and more African-Americans becoming partners. A few key elements to this success have been the Chair and executive board making diversity and inclusion a value of the firm.

1. Chief Diversity Officer

In addition to educating the firm on the value of diversity and inclusion especially the economic importance of such, Ballard has a Chief Diversity Officer. The Chief Diversity Officer is an attorney who has an administrative position and does not practice. The CDO has a direct line of communication with the Chair and is a member of our Expanded Board. The CDO regularly reports at the Expanded Board meetings with
statistics, latest thought trends, client and business development activities and any other relevant information. The CDO also participates in promotions, evaluations and exit interview process.

2. Diversity Council

The firm has a Diversity Council consisting of the Chair, CDO and a representative of each office. Other key or senior partners are also part of the Diversity Council including department chairs. The Diversity Council recently created a three-year strategic plan to increase diverse individuals and groups in the firm, create an environment for success for such diverse lawyers and create an external profile that will attract clients and unique business opportunities.

3. Organization of Diverse Groups

The firm encourages and has formed various diverse attorney groups for frank discussion, sharing of best practices, business development, training and administrative concerns. The non-partner lawyers (i.e. associates) have their own diversity group development and training as key concerns. Retention and promotion of younger lawyers is vital to the development of firm leaders. Recognition of this fact leads to forming forums for diverse lawyers to speak out, coordinate and share ideas and practices.

IV. Conclusion

Management or executive committees (or whatever they may be named) are the ways in which law firms govern themselves. It is vital that law firms increase diversity in those ranks. As one ABA study indicates, diversity and inclusion is good for the bottom line and increases revenues. Law firms can do a myriad of things to improve the pipeline of diverse partners then become viable for leadership positions.

BD’s Diversity Partner, Sheila Gaddis, made the following statement capturing the takeaway for firms to improve diversity in leadership ranks. “Diversity, Inclusion & Equity requires much more than training. It is a long term organizational change process. Developing and supporting a diverse and inclusive environment is a marathon, not a sprint, that requires constant attention and unwavering support from firm management. BD continues to have a committed Diversity Partner Committee and receptive firm management.”