

PUBLICATION

Is the Call to Action Working?

April 21, 2011

In the wake of this great recession, we have discovered that many things are not recession proof, including the *Call to Action*. In 1999, the Chief Legal Officers of roughly 500 major corporations signed a document titled *Diversity In The Workplace – A State of Principle*. The Statement embodied the commitment of these corporations to increasing and sustaining diversity in the legal profession. *The Diversity “Call to Action,”* authored by Rick Palmore, the CLO of Sara Lee and member of the Board of Directors of the Association of Corporate Counsel (ACC), was endorsed by the ACC's board in October 2004. The aim was to improve opportunities for diverse attorneys within the signatory corporations themselves and the law firms with which they do business.

Loss of Modest Gains

When times were “good,” relatively speaking, both corporations and law firms were well aware that the number of minority attorneys making it to the partner ranks was poor and in need of drastic improvement. What the *Call to Action* achieved was opening a broader conversation about diversity. Companies discussed diversity in their internal hiring; large firms began creating diversity committees; and firms made efforts to actively recruit diverse talent, implement diversity initiatives and advertise their efforts in minority recruitment and retention. However, much of the progress made during the past decade is in jeopardy of being wiped out.

In the spring of 2010, the Minority Corporate Counsel Association (MCCA) and Vault.com collected survey data from more than 260 law firms nationwide on their diversity initiatives, programs and demographics. The results of this survey demonstrate that minority lawyers have been disproportionately affected by the current recession. For the first time in the survey's seven-year history, the results showed practically no increase in the percentage of minority equity partners, which remained stagnant at 6.06% from the 6.05% reported in 2008. The data also showed that minority recruitment was down at all levels. Of all attorneys hired in 2009, less than 20% were minorities (19.09%), a sizable drop from 2008 (21.77%) and 2007 (21.46%). The percentage of minority students in the 2009 2L summer class dropped to 25.19%, the lowest percentage of minority students in the last three years of the survey (compared to 25.66% in 2008 and 25.91% in 2007).

All the while, the percentage of minority associates who have left their firms, in particular at junior and midlevel, has continued to increase since 2007. This is especially the case with respect to minority women. In 2009, 16.64% of the associates who parted ways with private practice during their third year were minority women compared to 13.98% in 2008 and 14.36% in 2007. In total, minority men and women represented 20.79% of attorneys who left their firms in 2009, despite the fact that minority lawyers represent only 13.44% of the overall attorney population.

Reversing Current Trends

The MCCA and Vault statistics demonstrate that diversity has taken a measurable step backwards. Economists and pundits can only speculate as to when the economy will “come back.” Regardless, steps must be taken to stem the tide and adjust to the new normal in which the legal community finds itself today. So far, firms have responded with cost-cutting measures, such as layoffs, reduced staff and scaled-back summer internships for 2L's. In some cases, firms have eliminated diversity initiatives and budgets altogether. Long-

range efforts to boost minority hiring and retention now have fallen further down the list of priorities as law firms attend to rehabilitating their bottom lines. The fact that diversity has taken such a step backward shows that there was actually little buy-in regarding the business case for diversity, and diversity is considered a mere expense rather than an investment. This means that a critical component to the *Call to Action* has failed. That component (i.e., the “teeth” to the commitment) has been that those firms failing to increase diversity would lose business with participating corporations. If diversity was profitable and increased business, times like these would lead to greater emphasis on diversity, not less. Firms that did not take their commitment seriously would be working against their best fiscal interest by jeopardizing retention of valuable clients as a result of cutting or eliminating diverse recruitment and retention programs.

Therefore, the teeth must be put back into the *Call to Action*. To do that, companies have to be willing to bite. Firms that have tossed diversity aside should be penalized, while firms that have stayed the course, rather than abandoning diversity initiatives and mentoring in the name of cost-cutting and belt-tightening, should be rewarded. The increased work flowing to these firms would set an example that successfully growing diversity leads to tangible financial success. It would also help to provide valuable experience and opportunity needed to develop the next generation of diverse partners. Through all of this, there is a great opportunity for the business community and committed law firms to continue to lead the way as they must. The moral arguments in favor of diversity have always been present, but they have not been strong enough to turn this problem around. This recession demonstrates that, until diversity is profitable for law firms, no real or sustained progress can be made.