

PUBLICATION

More Than a Pretty (Diverse) Face in the Courtroom

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2020 was a transformative year for the United States, forcing everyone to pause and take an in-depth look into the racial, economic, and gender disparities that exist and are ingrained within the very fabric of our nation. The legal profession is not exempt from this phenomenon and, while the practice of law may ostensibly be progressing, the numbers show otherwise. For instance, a 2007 American Bar Association study found that only four percent of active attorneys identified as African American, four percent Latinx, and three percent Asian American. Ten years later, these numbers had barely changed, with African American and Latinx groups rising only to five percent, and the proportion of Asian American attorneys remaining steady at three percent. The number of racial minorities decreases drastically when moving up the ranks – 20 percent of equity partners are female and only eight percent of equity partners belong to a racial minority.

With the changing demographics of the United States as a whole, the imbalance in law firms must be addressed, and not only in its outward appearance. For at least the past decade, legal professionals have spoken of the need to bring more diversity into their ranks. Yet the profession – and law firms in particular – have struggled to significantly move the needle, especially at senior levels. All too often, firms attempt to remedy this disparity by putting a diverse face in the courtroom to appease diverse judges or jurors. Requiring this small pool of individuals to be the “diverse faces” on the trial team, while offering them no substantial work or experience, is a disservice to the attorneys, the clients, and the profession. These exclusionary tactics affect the psyche of younger attorneys who enter the profession expecting to have exposure to cases not only in the courtroom but throughout every phase of the litigation.

Diverse attorneys deserve more and, in fact, require it for continued growth and ultimate career progression. A diverse team should be involved in all activities and decision making from the time a case is brought to the firm. This includes a seat at the table during budgeting, factual investigation and discovery, analysis of claims, motion drafting, and trial preparation. While the natural tendency may be to include those who look like or have the same interests as you, this has detrimental effects to the progression of the practice of law. Specifically, these excluded attorneys fail to gain the foundational skills to eventually succeed in the practice of law.

Including diverse individuals in substantive work from case inception is not merely good optics. Diversity within corporations and teams has been proven to be a good economic decision for both law firms and clients. Based on a Harvard Business Review meta-analysis of team performance studies, diverse teams consistently (1) focus on a wider variety of facts; (2) process those facts more carefully; and (3) innovate more often. A McKinsey & Company multinational study of 1,000 companies identified similar results, finding gender diverse teams to be 21 percent more profitable, with ethnically/culturally diverse teams seeing a 33 percent increase in economic performance.

This burden to uplift diverse individuals as they navigate their legal careers does not rest solely on the firms. As the push for diversity in corporations continues, clients have the power to ensure that their legal teams, internally and externally, are diverse and inclusive. This guarantees a well-rounded approach to cases while ensuring diverse attorneys are well prepared for their future legal careers.