

TEXAS YOUNG LAWYERS ASSOCIATION

RETENTION

GUIDE



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FUNDAMENTAL
— ADVISORY —



BE AN UNCOMMON LEADER.®

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SECTION 1: WHAT PEOPLE MAY SAY AND THINK ABOUT DIVERSITY

- “We know we need more diversity. Let’s create a committee to solve this.”
- “Talking about race and gender will cause more problems. When people have honest conversations about diversity, it opens the door to negative outcomes, such as anger, disrespect, aggressive confrontation, and unproductive debate.”
- “We would hire more diverse people if there were more diverse applicants.” Or: “We try to hire diverse but can’t find anyone; there is no pipeline.”
- “Growing our diversity won’t add value to our bottom line. There are no metrics to show that an investment in diversity, equity and inclusion produces a measurable value add. In other words, diversity, equity and inclusion don’t add value.”
- “A person’s ability to be consciously inclusive is either a ‘have’ or ‘have not’ scenario.”
- “All we have to do is hire more people from different groups, and that’s it.”
- “Diversity programs are racist. Diversity is only about non-majority people. The concept of diversity excludes white men.”
- “Diversity, equity and inclusion are a Human Resources responsibility.”

SECTION 2: “THE REALITY”

Women and people of color are not being promoted and retained in the same proportion at parity.

Women and people of color continue to be well represented in law school and in the summer associate class, but at each year after that women and people of color leave the lawyer ranks at law firms at a higher rate than white men, and women of color remain the most underrepresented of all, with Asian women making up just 1.46% of law firm partners, Latinx women making up just 0.8% of law firm partners, and black or African-American women making up just 0.75% of law firm partners.¹ Simply put, the legal profession’s diversity does not match the U.S. population. That means our law firms don’t match our clients.

Did you know? There is an “inclusion tax” – Women and people of color spend extra time, money, and effort trying to conform to male and white-European standards (ex.: time at a salon, learning a new skill such as shooting a rifle or playing golf).

This really happened! A trial attorney explained that she has to constantly monitor what she wears, from type of suit to color of suit, so that she meets certain stereotypes for what a lawyer looks like. She is often called the court reporter, paralegal, or secretary and is routinely dismissed by opposing counsel, the judge, and her own client all at the same time. This creates a secondary burden to her work. She must prove herself before she can even start working. This takes a stressful toll on women in this profession. Additionally, certain networking activities keep women out of this very important aspect of a legal career. Events that are not welcoming for women, like certain bars, sporting events, and male-dominated activities, can hurt the careers of women in the law. Women have to conform to their male peers and will still never be seen as “one of the guys.”

Women of color, black and indigenous women face a double burden of feeling included. The first burden is gender-based discrimination and the second is

¹ “2019 NALP Report on Diversity in US Law Firms.” *National Association for Law Placement, Inc.* 2019. Accessed May 11, 2020. https://www.nalp.org/uploads/2019_DiversityReport.pdf.

racial discrimination.² In addition to competing in a male-dominated field, they also endure racial discrimination including criticisms against their hair, customs, accents, and other attributes.

Further, as HR professionals and diversity practitioners warn, employers should be alert of playing the “blame game” as it relates to “unconscious biases.” There are different types of unconscious bias that occur in the workplace, including confirmation bias.

Confirmation bias is the tendency to search for, interpret, favor, and recall information in a way that confirms or strengthens one’s prior personal beliefs or hypotheses. It is a type of cognitive bias. Confirmation bias suggests that we don’t perceive circumstances objectively. We pick out those bits of data that make us feel good because they confirm our prejudices.³

This plays out in unequal penalties when white males receive unconscious favor and positive assumptions over women or people of color. Getting off on the right, or wrong, foot because of implicit bias then leads down a road of confirmation bias that has significant impact.

Did you know? Individuals with black-sounding names are 14% less likely to get a call back for a job interview than those with white-sounding names.⁴ When recruiters, hiring managers, and those close to the hiring process see a name to be “different,” deeply held implicit biases may kick in. There are many times when candidates are passed over because of their name only. Many attorneys are forced to use a white-sounding name and often forgo an important part of their identity—their true name—for a name they believe will carry favor, or at least will not hurt them.

2 Powell, Kristin. “Advancing Women of Color: Burden or Opportunity?” Edited by Mira Brancu. *Psychology Today*. October 31, 2018. Accessed May 11, 2020. <https://www.psychologytoday.com/us/blog/new-look-womens-leadership/201810/advancing-women-color-burden-or-opportunity>.

3 Heshmat, Shahram. “What is Confirmation Bias?” *Psychology Today*. April 23, 2015. Accessed May 11, 2020. <https://www.psychologytoday.com/us/blog/science-choice/201504/what-is-confirmation-bias>.

4 Vedantam, Shankar. “Despite Improving Job Market, Blacks Still Face Tough Prospects.” *NPR*. October 1, 2015. Accessed May 11, 2020. <https://www.npr.org/2015/10/01/444912628/despite-improving-job-market-blacks-still-face-tougher-prospects>.; see also Petersen, Blaze. “The state of US workplace diversity in 14 statistics.” *ArchPoint Consulting*. December 1, 2016. Accessed May 11, 2020. <https://archpointgroup.com/the-state-of-us-workplace-diversity-in-14-statistics/>.

This really happened! An immigrant from India changed his name from Vinod to Vince in an effort to appease his clients at the behest of his firm. This is an example of how many people cannot bring their whole selves to work.

The “broken rung” represents the systematic barrier to women being promoted from an entry-level position to a manager position.

Did you know? Diversity metrics are seemingly better at the lower rung but that changes at the top of the pyramid. According to a 2018 article published by the Regent University School of Business & Leadership, race and gender continue to be barriers to roles within middle and upper management. In 2010, women made up approximately 47% of the U.S. labor force (U.S. Dept. of Labor, 2010) and while the number of Fortune 500 companies that have at least one woman holding a corporate directorship grew from 0.16% in 1978 to 89.2% in 2003, only 7.9% of those holding the top title in these companies were women.⁵

Women face external and internal biases, both implicit and explicit, that stop upward progress in their careers.

This really happened! One attorney explained that she was seen as too young to be taken seriously as a lawyer in her first few years as an associate at a big firm. Then she was saddled with the assumption that she was not as dedicated to work when she started her family. She was taken out of key roles and off important cases due to the firm’s concern that children meant less time for work and less dedication. That threw her off from the partner track. Once her kids were grown, she was seen as too old to begin her path toward management. This catch-22 scenario is pervasive for women. The other difficult angle to this is many of the assumptions, stereotypes, and negative attitudes often become internalized messages to women (and people of color) that they are not meant to be in management, and they do not belong. Because of this internalized bias, they do not seek these roles or harder cases.

⁵ Davis, Marcelle W. “Absence of Diversity at the Leadership Level.” *Journal of Practical Consulting* Vol. 6, no. 1 (Summer): 148-154. Accessed May 11, 2020. https://www.regent.edu/acad/global/publications/jpc/vol6iss1/JPC_6-1_Davis_pgs148-154.pdf.

Did you know? For every 100 men promoted or hired to manager, only 72 women were promoted or hired. Men hold 68% of manager positions compared to women holding only 32%.⁶ This first promotion is often referred to as the “broken rung.” This initial hurdle causes a ripple effect up the corporate ladder, as there are fewer women available to promote to higher positions.

Lack of inclusion and understanding with bias creates the management pipeline problem. There are a lot of women in the field of law—over 50% of all summer associates are women, yet those women are not advancing to become associates, those associates are not advancing to partnership, and those partners are not advancing toward equity ownership.⁷ Why? The metrics used to promote and advance are rooted in a biased framework.

Did you know? 47% of HR leaders say that the biggest challenge to promoting women to manager positions is that women don’t receive as much sponsorship. 19% say women are less likely to be promoted to first-level manager positions.⁸

Sponsorship is when an advocate and leader in a workplace seeks out a junior employee and actively promotes that employee for various career opportunities, training, and experiences.

It’s easy and goes unnoticed when men sponsor each other. Senior male partners grabbing new associates to join them for golf, drinks after work, etc.

Did you know? Only 42% of black women say they have an equal opportunity for advancement. Only 24% of black women say they have the sponsorship needed to advance their careers.⁹

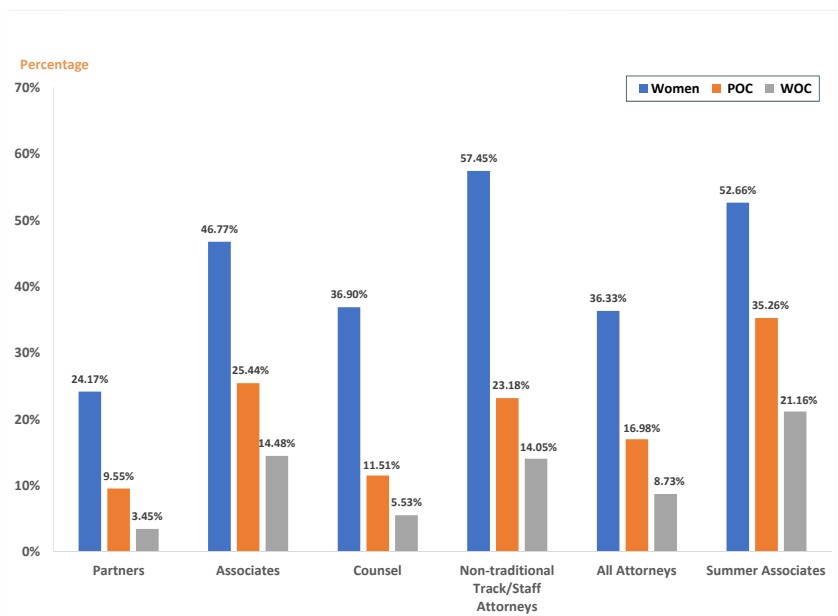
6 Thomas, Rachel, Marianne Cooper, Ellen Konar, Ali Bohrer, Ava Mohsenin, Lareina Yee, Alexis Krivkovich, Irina Starikova, Jess Huang, and Delia Zanoschi. *Women in the Workplace*. McKinsey & Company and LeanIn.Org, 2019. Accessed May 11, 2020.
https://wiw-report.s3.amazonaws.com/Women_in_the_Workplace_2019.pdf.

7 “2019 NALP Report on Diversity in US Law Firms,” 25.

8 Thomas, et al., *Women in the Workplace*, 12.

9 Thomas, et al., *Women in the Workplace*, 12.

Percentage of Women and People of Color at Law Firms — 2019



Source: https://www.nalp.org/uploads/2019_DiversityReport.pdf, Chart 7, p. 25

Distribution of Equity and Non-equity Partners for Men, Women, and People of Color

	2011	2012	2013	2014	2015	2016	2017	2018	2019
Equity partners	12,396	13,864	13,760	13,508	13,078	13,323	12,630	12,067	11,633
% men	84.4%	84.7%	83.5%	82.9%	82.6%	81.9%	81.3%	80.4%	79.7%
% women	15.6%	15.3%	16.5%	17.1%	17.4%	18.1%	18.7%	19.6%	20.3%
% people of color	4.7%	4.8%	5.4%	5.6%	5.6%	5.8%	6.1%	6.6%	7.6%
Non-equity partners	7,842	8,992	9,101	8,968	9,369	9,278	8,720	8,959	8,675
% men	72.3%	72.7%	72.4%	71.8%	71.2%	70.6%	69.3%	69.5%	68.9%
% women	27.7%	27.3%	27.6%	28.2%	28.8%	29.4%	30.7%	30.5%	31.1%
% people of color	8.3%	8.4%	9.1%	8.9%	9.4%	9.9%	10.4%	10.7%	10.7%

Note: Partners who are people of color are also counted in the men and women categories, hence percentages do not add to 100.

Source: https://www.nalp.org/uploads/2019_DiversityReport.pdf, Table 4, p. 17

SECTION 3: WHAT YOU CAN DO: TIPS TO RETAIN WOMEN AND PEOPLE OF COLOR?

No one wants to work where they are not respected, where they don't have a seat and voice at the table and where they do not see themselves reflected in leadership. A culture of inclusiveness must be a focus for the legal industry and law firms.

Flexibility is key to retaining women. Get away from the concept of “facetime” at the office. Get away from seeing motherhood as a roadblock to success.

First, recognize the bias: Implicit bias is real. It is neither good nor bad but a feature of our brains. However, deeply held negative assumptions and attitudes about groups of people like women and black, indigenous, people of color tend to affect their careers in damaging ways. We must be courageous enough to look at ourselves and recognize that bias is likely built into many of the business processes within our firm. From firing to promotions to assignment of cases, there are ample areas to focus on where bias is getting in the way of rational decision making.

Some practical recommendations include:

1. Look at the structures and processes in place for hiring.
2. Identify whether the recruitment process at your firm is rooted in bias both about people's characteristics and also regarding regional/geographical bias and what you really want to see in your new hires. Does everyone look like you? Why is that?
3. See the opportunity in diverse backgrounds and experiences.
4. Writing samples need to be evaluated in a more intentional way. We know that samples from black attorneys are judged more harshly. This concerning trend must be addressed.
5. Set up a system of practice area-specific benchmarks and firm-wide competencies. Be clear, explicit, and consistent with this roadmap.
6. Don't simply ask the women or black, indigenous, people of color to serve and run the diversity committee. This is emotional, unpaid labor. Bring in an outside consultant to ensure there is buy-in and that best practices are put in place.

Second, establish the “local” local rules: All firms have a culture. All firms have “unwritten rules.” Instead of leaving them unwritten, make the firm norms known. Many minorities, women, and people of color make unknowing mistakes, especially if they are first generation attorneys (or college graduates).

Did you know? Sponsorship and mentorship are two different things. Mentorship implies passivity. The mentor waits on the mentee to approach and ask questions and then shares wisdom. A sponsor seeks out a qualified person and helps them find and create opportunities to succeed. Sponsor a woman. Sponsor a person of color. Be a sponsor. Sponsors advocate behind the scenes for the protégé. Sponsors share feedback.

This really happened! A black lawyer explained that over his 20-year career as a criminal defense attorney, he routinely has been mistaken as the defendant by court staff, the district attorneys, and the public. This negatively affects his self-worth and his sense of inclusion and belonging. We must broaden our awareness and seek to show the world the diversity in the legal field. Perceptions shape reality.

Ask the women attorneys you know how many times they have been mistaken for the court reporter or the paralegal. Moral of the story? Examine your own preconceived notions of what a lawyer looks like. These assumptions are frequently wrong.

Practice Tip: Instead of writing a maternity leave policy, have a parental leave policy available after birth or adoption. Encourage male associates and partners to use more than just three days of their parental leave. Having equitable leave policies for both men and women decreases attrition, increases employee morale, and reduces overhead by reducing costs associated with training new employees.¹⁰

In addition, the Texas Supreme Court is considering a parental leave policy that grants automatic continuances to a lead attorney who becomes a new parent through birth or adoption.

¹⁰ Eaton, Emily and Carole Jackson. 2018. “Want to improve gender equality at work? Help men take parental leave?” October 20, 2018. Accessed May 11, 2020. <https://www.mercer.com/our-thinking/want-to-improve-gender-equality-at-work-help-men-take-parental-leave.html>

Third, amplify and include: It's easy for a person of color to know when diversity is “for show.” Don't make the woman or people of color part of a “display” of the firm's attempt for diversity. Leaning too heavily on women or people of color for community outreach, such as on-campus interviews or presenting CLEs, can actually have the opposite effect and create a sense of “otherness.”

Bring people of color and/or women into seats of power—and give them the power and freedom to make decisions.

Amplify – If you are a senior, white, male partner, amplify the good ideas of women and people of color—and give them the credit. For instance, try saying, “What does x have to say on this? She's the expert.” Simple statements like that carry more weight than you realize.

When writing the parental leave policy—or making any other decisions that will affect firm culture—include everyone in that process, especially women and people of color. Allowing individuals to exhibit some control over the atmosphere and culture at their workplace will make them much more likely to feel like they are a part of the organization and commit for the long haul. A more senior sponsor can open the door for protégés to be included in these decisions.¹¹

11 Eaton, Emily and Carole Jackson. 2018. “Want to improve gender equality at work? Help men take parental leave?” October 20, 2018. Accessed May 11, 2020. <https://www.mercer.com/our-thinking/want-to-improve-gender-equality-at-work-help-men-take-parental-leave.html>

SECTION 4: IMPLEMENTATION STRATEGIES – EDUCATE, RECRUIT, INVEST

Did you know? Employees are less likely to consider a long-term career with a firm if they don't see people like themselves in managerial positions.¹² It's crucial that those involved in the hiring process understand the need for and benefit of diversity within their organization.

One way of broadening diversity in the recruitment process is to interview students from schools beyond just the top-ranking institutions. Moreover, it's not enough to simply hire a diverse group of new lawyers. Conscientious investment in these young lawyers is necessary to establish solid relationships that will foster success for them and the firm.

To retain diverse talent, the firm must demonstrate that these lawyers are valued and prioritize their inclusion in firm activities, culture, and work. If lawyers feel that the firm is invested in them, they are more likely to stick around long enough to get promoted to positions with more visibility and decision-making power. This will further propel the cycle to promote diversity both within the firm and the industry as a whole.¹³

This really happened! After being approached to join a nationally known firm with a big name in estate planning as one of its lawyers, a female lawyer jumped at the opportunity to learn from him. The firm provided an environment in which CLEs and educational opportunities were plentiful. The firm lacked nothing in the way of IT, accounting, HR, etc. After making income partner, however, this woman left the law firm because “there were very few women in leadership at the firm, and none who offered any kind of mentoring.” She further explained: “I felt less and less connected with the culture of the firm over the years. After almost 20 years, I was burned out and could not imagine staying through retirement.”¹⁴

12 Petersen, Blaze. 2016. “The state of US workplace diversity in 14 statistics.” December 1, 2016. Accessed May 11, 2020. <https://archpointgroup.com/the-state-of-us-workplace-diversity-in-14-statistics/>

13 Harris, Ariel. 2019. “Tips for Creating Diverse & Inclusive Law Firms.” March 29, 2019. <https://www.americanbar.org/groups/litigation/committees/woman-advocate/practice/2019/tips-for-creating-diverse-and-inclusive-law-firms/>

14 Sawyer, Jennifer, Mary Vandenack, and Beth A. Wood. 2018. “Leaving Big Law to Forge a New Path.” *Probate & Property Magazine*. Vol. 32, no. 6, https://www.americanbar.org/groups/real_property_trust_estate/publications/probate-property-magazine/2018/november-december-2018/leaving-big-law-forge-new-path/

SECTION 5: THE BOTTOM LINE: DIVERSITY MAKES MONEY

At the end of the day, the practice of law is about people, and people need empathy.

Benefits for Employers

1. Companies with diverse management teams outperform industry averages by 35%.¹⁵
2. Inclusive teams make better business decisions than individuals 85% of the time, while homogenous teams make better decisions only 58% of the time. Compared to individual decision makers, all-male teams make better business decisions 58% of the time, while gender diverse teams do so 73% of the time.¹⁶
3. For every 10% increase in diversity on senior executive teams, company earnings rise 0.8%.¹⁷
4. Gender diverse companies are 15% more likely to outperform their respective national industry medians.¹⁸
5. Companies that reported above-average diversity on their management teams also reported innovation revenue that was 19 percentage points higher than that of companies with below-average leadership diversity—45% of total revenue versus just 26%.¹⁹

15 Hunt, Vivian. 2015. "Why Diversity Matters." McKinsey & Co. January 1, 2015.

<https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>

16 Larsen, Erik. 2017. "New Research: Diversity + Inclusion = Better Decision Making at Work" Sept.

21, 2017. <https://www.forbes.com/sites/eriklarson/2017/09/21/new-research-diversity-inclusion-better-decision-making-at-work/#6ff6c73d4cbf>

17 Hunt, Vivian. 2015. "Why Diversity Matters." McKinsey & Co. January 1, 2015.

<https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>

18 Hunt, Vivian. 2015. "Why Diversity Matters." McKinsey & Co. January 1, 2015.

<https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>

19 Lorenzo, Rocio. 2018. "How Diverse Leadership Teams Boost Innovation." Boston Consulting

Group, January 23, 2018 Last accessed May 11, 2020 <https://www.bcg.com/en-us/publications/2018/how-diverse-leadership-teams-boost-innovation.aspx>

The data suggests diversity correlates with better financial performance.

Likelihood of financial performance above national industry median, by diversity quartile, %

Ethnic diversity



Gender diversity



Gender and ethnic diversity combined



Source: McKinsey Diversity Database

Source: <https://www.mckinsey.com/business-functions/organization/our-insights/why-diversity-matters>

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