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**“Retaining Diverse Talent – Practical Approaches
When \$ Just Won’t Cut It”**

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Retaining Diverse Talent – Practical Approaches When \$ Just Won't Cut It

I. Introduction

Today more than ever, law firms and in-house legal departments are facing the challenge of retaining talent and ensuring that the talent they retain is diverse. Although this has been at the forefront of law firm management for decades, the Covid-19 pandemic and the “Great Resignation” it spawned have made this topic even more critical.

This material has been prepared in connection with a panel to be held on February 22nd, 2022 at the International Association of Defense Counsel’s (IADC’s) Mid-Year Meeting in Scottsdale, Arizona. It has been authored by a group of lawyers with varying perspectives and insights on this issue: an in-house lawyer that manages a team of litigation counsel at a large, multinational company based in the United States; a chief diversity and inclusion officer for a large corporate law firm; an attorney that has grown within the ranks of a large corporate law firm; a partner in charge of human capital at a Central American law firm that can provide some international perspective.

Rather than provide “correct” or “incorrect” answers to the various problems that law firms and in-house law departments are facing in this field, this paper and the panel seek to raise awareness about the importance of a diversity and inclusion perspective in the race for talent and to provide readers and participants with ideas and practical approaches that can be adapted to one’s context.

II. Diversity: What, Why?

For the purposes of this exercise, what do we mean when we say “diversity”? When we refer to diversity throughout this paper, we are using the term broadly to encompass a focus on providing equal opportunities for career development to persons of color, persons of different ethnic backgrounds, persons with disabilities, persons in the LGBTQI+ communities, socio-economic diversity, gender diversity, generational diversity, etc. “Diversity” extends to more than racial or ethnic diversity and “encompasses all persons of every background, gender, race, sexual orientation, age, and/or disability”.¹

According to the American Bar Association (ABA), from the perspective of law firm and legal department management, “diversity” refers to “*the set of policies, practices and programs that change the rhetoric of inclusion into empirically measurable change.*”² Furthermore, a variety of reasons on why diversity is important are put forward beyond fundamental notions of fairness and human rights: to ensure that laws are being made and administered for the benefit of all persons;

¹ “Diversity in Law: Who Cares?”, see <https://www.americanbar.org/groups/litigation/committees/diversity-inclusion/articles/2016/spring2016-0416-diversity-in-law-who-cares/> (visited December 20th, 2021).

² Id.

to generate more trust in the legal system; to improve the quality of legal services and judicial decisions; to foster more diverse political leadership, since much of it comes from the legal profession; and to retain talent and clients.³ On the latter point, in the words of former ABA President Paulette Brown, “[a] *demonstrated commitment to diversity and inclusion can be a key aspect of a law firm’s competitive advantage when it comes to recruiting and retaining talent and pitching certain clients. Clients receive the highest quality service when their legal teams are drawn from professionals mirroring the diversity of the marketplace.*”⁴ The same can be said for in-house legal departments.⁵

Studies that show that diverse teams perform better. According to one study published by Accritas based on over 20,000 client interviews, diverse teams earn 25% higher share of wallet, are more than one and a half times more likely to achieve a “perfect ten” performance score, receive over three times higher Net Promoter Scores (Bain & Company client satisfaction index) and receive 25% more of their corporate clients’ legal spending.⁶ A similar report by McKinsey & Company found that diversity has a positive impact on many key aspects of organizational performance, among them strengthening client orientation, increasing employee satisfaction, improving decision making, enhancing the company’s image and winning the war for talent.⁷

Still, the Accritas report found that only 25% of legal teams are very diverse. There is a lot of work to do at many law firms and in-house legal departments on this front.

III. The Problem: The Covid-19 Pandemic, the “Great Resignation” and the Need to Do More To Retain Diverse Talent

Retaining diverse talent was an issue even before the Covid-19 pandemic. However, the current situation that law firms and in-house legal departments face is complicated further by the effects of the pandemic on the market for talent in the legal profession. By now, we have all heard of, been affected by, or even participated in, what has been defined as the “Great Resignation”. According to research by Microsoft, more than 40% of workers around the world are considering quitting their job or changing their profession.⁸ This has led to law firms and in-house law

³ Id.

⁴ Id.

⁵ “**The Disruptive GC: Reali’s New Legal Chief Drives Innovation, Diversity**”, see <https://www.law.com/corpocounsel/2021/12/17/the-disruptive-gc-realis-new-legal-chief-drives-innovation-diversity/>, visited December 20th, 2021

⁶ “**Diverse Legal Teams Perform Better – Fact**”, see <https://abovethelaw.com/2016/06/diverse-legal-teams-perform-better-fact/>, visited December 20th, 2021.

⁷ “**Five Takeaways From McKinsey’s ‘Diversity Matters Report’ For the legal Profession**”, see <https://abovethelaw.com/2015/08/5-takeaways-from-mckinseys-diversity-matters-report-for-the-legal-profession/>, visited December 20th, 2021. See also Roy S. Ginsburg, J.D., “**Diversity Makes Cents: The Business Case for Diversity**”, <https://www.americanbar.org/content/dam/aba/publications/landslide/volume-10/2018-mar-apr/diversity-makes-cents.pdf>, visited December 20th, 2021.

⁸ “**The ‘Great Resignation’ and Its Impact on the Legal Industry**”, see <https://www.reuters.com/legal/legalindustry/great-resignation-its-impact-legal-industry-2021-09-10/>, visited December 20th, 2021.

departments having to deal with the significant costs of attrition.⁹ By way of example, data from September 2021 indicates that the top 25 U.S. law firms (based on gross revenues) had a 12-month increase of 4.4% in total associates, but with 4,458 hires and 3,935 *departures*.¹⁰

In terms of why people at firms are leaving, the same research mentioned above highlights several issues as seen from the standpoint of employees (i.e., associates and staff attorneys), among them: policies on return to the office, flexibility, and remote work; a focus on work-life balance and “working to live” vs. “living to work”; and a related concern regarding burnout.¹¹ Recent global research conducted by the International Bar Association confirmed what many of us know and have seen day to day in terms of worrying mental wellbeing trends: that mental wellbeing of legal professionals is a cause for global concern; that it has a disproportionate impact on women, young people, those who identify as an ethnic minority, and those with disabilities; and that stigma is a major problem, with over 40% of survey respondents stating that they would never discuss these issues with their employer for fear of damaging their career.¹²

In this context, what are law firm and in-house legal department leaders doing? Often, there is a perception that many address diversity issues merely as a formality in order to “check the box”, rather than sitting down to think hard about what people need.¹³ In the United States, 2021 ABA data shows that from 2011 to 2021 the percentage of women lawyers increased from 33% to 37%.¹⁴ The same data shows that Hispanics now account for nearly 5% of attorneys, up from 3.9% in 2011, while Asian lawyers grew from 1.7% to 2.5% in the last 10 years.¹⁵ The percentage of Black attorneys decreased slightly from 4.8% in 2011 to 4.7%, significantly lower than the 13% of Americans who are Black. In general, while minorities comprise 40% of the U.S. population, only 26.5% of law firm associates are minorities (although this is up from 19.5% in 2011).¹⁶ The gaps found at the partnership level are significantly wider,¹⁷ with minority women especially scarce in

⁹ “**Law Firms Struggle to Stave Off Mass Attrition**”, see <https://www.law.com/americanlawyer/2021/10/12/law-firms-struggle-to-stave-off-mass-attrition/>, visited December 20th, 2021.

¹⁰ “**Associate Hiring and Attrition at ‘Top 25’ Law Firms**”, see <https://about.firmprospects.com/law-firm-hiring-attrition/>, visited December 20th, 2021.

¹¹ “**The ‘Great Resignation’ and Its Impact on the Legal Industry**”, see <https://www.reuters.com/legal/legalindustry/great-resignation-its-impact-legal-industry-2021-09-10/>, visited December 20th, 2021.

¹² “**New IBA Report Sets Out Principles for Dealing With Mental Wellbeing Crisis in the Legal Profession**”, see <https://www.ibanet.org/New-IBA-report-sets-out-principles-for-dealing-with-mental-wellbeing-crisis-in-the-legal-profession>, visited December 20th, 2021. The report is based on the IBA’s survey on the topic, which collected data from nearly 3,500 survey respondents and more than 180 legal organizations, including bar associations, law societies, in-house legal departments, and law firms. The full report can be accessed here: <https://www.ibanet.org/document?id=IBA-report-Mental-Wellbeing-in-the-Legal-Profession-A-Global-Study>

¹³ “**‘Exclusionary and Classist’: Why the Legal Profession is Getting Whiter**”, see <https://www.reuters.com/legal/legalindustry/exclusionary-classist-why-legal-profession-is-getting-whiter-2021-08-10/>, visited December 20th, 2021.

¹⁴ “**New Lawyer Demographics Show Modest Growth in Minority Attorney**”, see <https://www.reuters.com/legal/legalindustry/new-lawyer-demographics-show-modest-growth-minority-attorneys-2021-07-29/>, visited December 20th, 2021.

¹⁵ Id.

¹⁶ Id.

¹⁷ “**Partner Promotion Photo Shows Little Diversity**”, see <https://www.abajournal.com/news/article/partner-promotion-photo-shows-little-diversity-law-firm-blames-idiosyncratic-demographic-pool>, visited December 20th, 2021.

law firm partnership ranks.¹⁸ According to some sources, minority attorneys are 1.3 to 1.5 times as likely to voluntarily leave their law firms compared to white male attorneys, with minority partners almost three times as likely to leave their positions compared to white men.¹⁹ This speaks not only to recruiting, but also retaining diverse talent.

Perhaps as provocation, the title of this paper and panel indicates that sometimes “money just won’t cut it”. Actually, in the “Great Resignation” induced talent wars, sometimes money has cut it. Some U.S. firms have been reported to have paid this year bonuses of US\$115,000 on top of base salary bumps and seasonal bonuses to retain talent.²⁰ Whether this is good for the legal system, the legal profession, clients, law firms, and lawyers is, of course, up for debate and will depend on whose perspective you adopt. A mid-level associate reaping the benefits of this talent war may very well think that it is the market working in his/her favor. Regardless, is this sustainable? Is it addressing the underlying issues that made lawyers want to seek jobs elsewhere to begin with? Is it doing anything at all to help retain more diverse teams?

IV. Practical approaches

Realizing that this topic is very broad and complex²¹, it is perhaps useful to list certain practical approaches and perspectives for those dealing with talent retention and diversity issues at law firms and in-house legal departments. The following approaches are to be understood as part of an integral plan:

- **Diversity must be at the core your business strategy, or it will be seen as window dressing:** *“The problem here is that the biases against this progress run deep. It’s easy to hire a vice president of diversity to run feel-good initiatives. It’s easy to include more BIPOC imagery in marketing campaigns. However, it’s incredibly challenging for leaders to embrace transparency, recognize faults within themselves and the larger organization, and deliberately lead the charge in correcting the imbalances of opportunity and fair treatment that have existed in the U.S. since its establishment.”*²²

¹⁸ “Diversity In U.S. Law Firms: ‘It’s Always Going To Be Incremental’”, see <https://www.attorneyatwork.com/its-always-going-to-be-incremental-law-firm-diversity/>, visited December 20th, 2021, citing the National Association for Legal Placement’s “2020 Report on Diversity in U.S. Law Firms”, found here: https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf

¹⁹ “Fight or Flight: Explaining Minority Associate Attrition”, see <http://jlpp.org/blogzine/fight-or-flight-explaining-minority-associate-attrition/>, visited December 21st, 2021. See also “Prestige Draws Young Attorneys, But Keeping Them Takes Work”, <https://www.law360.com/pulse/articles/1444060/prestige-draws-young-attys-but-keeping-them-takes-work>, visited December 21st, 2021.

²⁰ “Cravath To Pay \$115,000 Associate Bonuses Amid Talent War”, see <https://news.bloomberglaw.com/business-and-practice/cravath-to-pay-115-000-bonuses-for-associates-to-start-season>, visited December 20th, 2021.

²¹ There are many strategies and practices that can be adopted. See, e.g., “Tips For Creating Diverse and Inclusive Law Firms”, <https://www.americanbar.org/groups/litigation/committees/woman-advocate/practice/2019/tips-for-creating-diverse-and-inclusive-law-firms/>, visited December 21st, 2021.

²² Howard, Vern. “The Dangers of ‘Diversity Washing’ And What To Do Instead”, see <https://www.forbes.com/sites/forbestechcouncil/2020/11/30/the-dangers-of-diversity-washing-and-what-to-do-instead/?sh=37aecd17404b>, visited December 20th, 2021. See also “Diversity and Inclusion in Litigation: Less Talk, More Action”, <https://www.butlersnow.com/2018/03/diversity-and-inclusion-in-litigation-less-talk-more-action/>, visited December 21st, 2021. See also Minority Corporate Counsel Association, “The Next Steps in Understanding and Increasing Diversity and Inclusion in Large Law Firms”, <https://www.mcca.com/wp-content/uploads/2017/04/Book9->

- **Measure, plan and execute:** Business guru Peter Drucker is credited with saying “*what gets measured gets managed*”. In our experience, this also applies to diversity and talent retention. Firms must first determine what gaps exist in terms of their diversity goals. Then, they must set measurable goals (such as: “*we will increase our minority partner numbers from X% to Y% in Z number of years*”). Finally, they must develop specific measures and actions to achieve those goals. This is an ongoing, permanent process. This means that firms must spend time and resources recruiting, retaining a diverse pool of lawyers, looking to provide the best opportunities, and developing diverse client teams.
- **Train everyone:** Unconscious bias is one of the main barriers to achieving greater diversity in all settings. Therefore, before a firm can address these issues meaningfully, it must first raise awareness -especially at the top- as to the importance of diversity and the existence of unconscious biases, before it can plan and execute properly. That bias is often *unconscious* is something that even the fairest, most well-intentioned leaders must come to realize consciously, or risk perpetuating unfair and discriminatory practices. All of this requires specific training programs at all levels, such that better opportunities are afforded by those in charge of associate and lawyer recruiting, training, development, staffing of client teams, promotions, etc.²³
- **Establish formal sponsorship programs:** Although mentorship and coaching help, research has found that one of the main keys to developing a successful career at a law firm or in-house legal department is to have a sponsor.²⁴ As distinguished from a mentor, a sponsor will advocate actively for his/her sponsored individual, seeking to find career development opportunities, developing business development networks, get client introductions, etc. However, the program must be *formal* and open to all associates and lawyers; otherwise, informal sponsorship sprinkled with a dose of unconscious bias will cause opportunities to be generated in an inequitable manner.

[Red.pdf](#), visited December 21st, 2021: “Law firms should continue to stress the strategic importance of diversity and inclusion from the leadership level, including why it is a priority.”

²³ “**Here Is Why Organizations Need to Be Conscious of Unconscious Bias**”, see <https://www.forbes.com/sites/pragyaagarwaleurope/2018/08/26/here-is-why-organisations-need-to-be-conscious-of-unconscious-bias/?sh=1e792c2f726b>, visited December 20th, 2021. See also “**Confronting Implicit Bias: What Law Firms Can Learn From Starbucks**”, <https://abaforlawstudents.com/2018/05/29/confronting-implicit-bias-what-law-firms-can-learn-from-starbucks/>, visited December 21st, 2021. See also American Bar Association’s Commission on Women in the Profession and Minority Corporate Counsel Association, “**You Can’t Change What You Can’t See – Interruptin Racial & Gender Bias in the Legal Profession**”, <https://www.mcca.com/wp-content/uploads/2018/09/You-Cant-Change-What-You-Cant-See-Executive-Summary.pdf>, visited December 21st, 2021.

²⁴ International Bar Association, “**Women in Commercial Legal Practice**”, see <https://www.ibanet.org/MediaHandler?id=9a9d8fe6-347f-4a1d-b441-2900085b197c>, visited December 20th, 2021. This study found that “[m]entorship is important, but sponsorship is critical. Those who progress in law firms often are those who more senior lawyers, in particular senior partners, actively sponsor. This sponsorship, however, is largely informal and opaque. This further entrenches discriminatory practices. Formal and transparent sponsorship programmes can go some way to addressing workplace inequities.” See also “**Minority Women Are Disappearing From BigLaw – And Here’s Why**”, https://www.abajournal.com/magazine/article/minority_women_are_disappearing_from_biglaw_and_heres_why, visited December 21st, 2021.

- **Embrace flexibility:** If one thing is clear, because of the Covid-19 pandemic flexible and remote work are here to stay. If more flexibility at work (work schedules, work from home, etc.) helps retain talent in general, it may also contribute retaining more diverse talent.²⁵
- **Invest in team and leadership development:** Lawyers, especially younger lawyers, will appreciate training opportunities. Aside from the obvious benefits in terms of performance, this will make them feel appreciated and may thus contribute to retaining talent in a hot talent market.²⁶
- **Review the partnership track in this light:** Many younger lawyers do not see a clear path to partnership. It is also true that many perhaps do not aspire to partnership. However, firms should review their partnership track to determine if there are obvious obstacles to partnership that affect achieving their diversity and overall retention goals. What can be done to ensure that more women opt to stay with the firm? What can be done to allow for greater work-life balance?²⁷
- **Address lawyer wellbeing:** Yes, law firms and legal departments probably will never become low-stress environments. Yes, we are lawyers because we have a certain personality that allows (requires?) us to thrive in these high-pressure environments. Still, firms can do much more to address mental wellbeing issues, which will help attract and retain more talent. Among the suggestions put forth by the International Bar Association, firms can consider adopting a formal policy on the issue of wellbeing, addressing systemic problems, prioritizing mental wellbeing, and recognizing intersectionalities (i.e., recognizing that wellbeing problems may be worse for specific groups, including younger lawyers, female, ethnic minorities, and persons with disabilities).²⁸

²⁵ “**Big Law Talent War Creates Openings For ‘Flexible’ Jobs**”, see <https://news.bloomberglaw.com/business-and-practice/big-law-talent-war-creates-openings-for-flexible-jobs>, visited December 20th, 2021.

²⁶ “**The ‘Great Resignation’ and Its Impact on the Legal Industry**”, see <https://www.reuters.com/legal/legalindustry/great-resignation-its-impact-legal-industry-2021-09-10/>, visited December 20th, 2021. See also “**To Address Gender Bias at Your Company, Start With Teams**”, <https://hbr.org/2017/01/to-address-gender-bias-at-your-company-start-with-teams>, visited December 21st, 2021.

²⁷ “**Partner Promotions in Big Law Highlight Talent War Divides**”, see: <https://www.law.com/americanlawyer/2021/12/20/partner-promotions-in-big-law-highlight-talent-war-divides/>, visited December 20th, 2021. However, see also “**Survey Suggests The Path to Partnership is Getting Longer**”, <https://www.law.com/americanlawyer/2021/11/08/survey-suggests-the-path-to-law-firm-partnership-is-getting-longer/>, visited December 20th, 2021.

²⁸ “**New IBA Report Sets Out Principles for Dealing With Mental Wellbeing Crisis in the Legal Profession**”, see <https://www.ibanet.org/New-IBA-report-sets-out-principles-for-dealing-with-mental-wellbeing-crisis-in-the-legal-profession>, visited December 20th, 2021.