
AFRICAN AMERICAN LAWYERS SECTION NEWSLETTER

State Bar of Texas

2006-2007



Final Words (End of Year Report) From Your 2006-2007 Chairman:

First, my sincerest apologies as I know that this newsletter is late, but I hope you will find it to be well worth the wait. The 2006-2007 Section year has been a great year of building for our Section. I am glad to report that we are fiscally healthy, communications among our members and across the many Sections of the Bar are increasing, and our membership numbers are up. These attributes will be keys in our success as a fully functional affiliate with the National Bar Association, especially during the 83rd Annual Convention and Exhibits to be held in Houston, Texas in 2008. I did attend the 82nd Annual Convention in Atlanta, Georgia this year. We have a tough act to follow.

A special thanks to each and every member of our Section, for without you, as Bar Leaders, we would not be able to be effective at representing the interest of African Americans while strengthening the State Bar of Texas as a whole. Please tell your friends that we are doing great work in AALS, with even better things to come. We need their dollars. We need their membership. We need their involvement. Our new executive body is charged and full of energy! I see in them what we need to take our Section, as well as the State Bar of Texas, to new heights. As a Section, we must continue to foster dialogue on all topics which are presented by the legal community, and by our State Bar. As your new Vice-Chair of the Council of Chairs, I intend to ensure that we continue to get “a seat at the table.” Continue to be involved... continue to communicate... continue to share your views with others in the Section, so that as Bar Leaders, we can continue to represent you, your views, and your ideas.

Finally, I would like to extend very special thanks to all of the authors who were kind enough to share their wisdom with us through their contributions to this newsletter and also to **Damon Parrish II**, my 2007 summer legal intern at Halliburton. Without him, this newsletter probably would not have been published. Damon is now a 3rd year law student at Texas Southern University, Thurgood Marshall School of Law. Damon, your professionalism, your work ethic and your technical acumen is greatly appreciated. It will be instrumental in your eventual success as a lawyer. Keep it up and keep in touch!

It has truly been a pleasure serving as your Chairman. Enough of this insightful repartee! Now, sit back in your EZ-Chair and enjoy some select articles that I hope will broaden your horizons.

Sincerely,

-B-

Bert Jennings

Chairman, 2006-2007; Immediate Past Chairman, 2007-2008

Jump-Starting Your Law Firm's Diversity Program

By
Mauricio Velásquez

At a recent firm retreat it is evident to everyone that there is a real conspicuous absence of visible diversity among your partners. There seems to be consensus of a shared concern among the partners, but no one comes forward to take the bull by the horns. This could be called a moment of truth or an "internal driver" or motivator. Your company could also be dealing with the marketplace realities where some of your clients are beginning to point out that they don't see representative talent from all walks of life in your firm's attorney ranks, and it is beginning to concern them and their stakeholders. This is what I could call an "external driver."

For years, you, your colleagues, and your firm leadership has noticed this developing reality, but the firm hasn't seemed able to "move the diversity needle." What are you lacking? A formal diversity strategy and plan, the backbone of any diversity program, is typically the first place a diversity consultant looks upon consulting with law firms regarding their emerging internal and external diversity issues.

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The H-1B Visa Cap Impedes A Company's Ability To Meet Competition In The Global Marketplace

By
Clarence Smith, Jr.



Clarence Smith, Jr. is a Partner and head of Connell Foley LLP's Immigration Law Practice. He was formerly Assistant Chief Counsel to the United States Department of Homeland security. He can be reached at (973) 535-0500.

It is not uncommon for businesses to find that they cannot fill an employment position in a specialized field, despite a diligent search, with a citizen of the United States. In such cases, the H-1B visa may be used to afford access to qualified non-resident or non-citizen candidates for such positions where the prospective employee is a resident and citizen of a foreign country who possesses "highly specialized knowledge" in a specialized field with at least a bachelor's degree or higher. Unfortunately, while the H-1B visa may respond to a company's specialized employment needs, such relief may prove to be illusory due to the limited number of H-1B visas that can be issued on an annual basis. As illustrated below, arbitrarily placing a cap or quota on the H-1B visas does nothing to protect American workers, and in fact serves only to impair the American employers' ability to remain competitive in the global economy.

The H-1B visa is a non-immigrant employment visa for United States employers seeking to hire skilled temporary workers for the performance of specialty occupations. The duration of an H1B visa is three years and can be extended on a one-time basis for an additional three years².

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The success of a diversity program is measured through several factors, such as the nurturing of an inclusive workplace culture, growth in the hiring, retention, and promotion of women and minorities, and the increase in business with clients that explicitly value and reward diversity.

But sometimes growth can stagnate, momentum can stall, and programs that were once received with great enthusiasm disappear. What's the solution? It's going to require more than putting the key in the ignition. It's going to take a jump-start, which requires four essential components: supportive and committed leadership, an understanding of what a diversity issue is, a challenge of the status quo, and a firm-wide assessment.

Supportive and Committed Firm Leadership

It is not enough to have leadership that is merely supportive. If firm leadership is not committed to addressing internal and external diversity issues in the short, medium, and long term, the program will not succeed. Unsupportive firm leadership "signs the check" so to speak. They are there in body but not in mind and spirit. Committed firm leadership is accessible, out in front, and wants to hold people accountable. Those committed want to see results and are asking the difficult questions and demanding answers. Committed firm leaders are completely in touch with the increasingly diverse new marketplace landscape. Firm leadership must understand that acknowledging and addressing diversity issues will take an unyielding effort and an unwavering commitment to long-term change. Leadership must admit the firm needs to change certain policies, procedures, and business practices—both those that are formal and, more importantly, those that are informal (written and unwritten rules of the firm).

The typical first reaction of many organizations is denial. They are in denial that they have issues and that there are any intentional or formal causes for the diversity issues they face as an organization. Law firms have to move beyond the root causes if they feel they cannot do anything about the contributing factors. Don't get fixed on the root causes; focus instead on actions and solutions to address these issues. Denying the issues exist will not make them go away. Quite the opposite; the diversity issues typically fester when not addressed and can grow out-of-control and unfettered, which will garner increasing client scrutiny. For any law firm, diversity issues are an opportunity when addressed and a mounting problem when ignored.

Understanding and addressing diversity issues is not a short-term process. Committed support requires consensus among the partners and, in

particular, among firm leadership as to what, how, why, and when internal and external diversity issues will be addressed. This process demands time and hard work. Without it, the jump-start will falter.

Understanding the Differences Between EEO/Affirmative Action and Diversity

Major differences between EEO/AA and diversity are:

- EEO/AA is government-initiated while diversity is voluntary and company-driven.
- EEO/AA is legally-driven while diversity is productivity-driven.
- EEO/AA is quantitative and diversity is qualitative.
- EEO/AA is problem-focused, whereas diversity focuses on opportunities.
- EEO/AA assumes assimilation among its participants, but diversity assumes integration.
- EEO/AA has a strictly internal focus, while diversity focuses on internal and external issues.
- EEO/AA is reactive, but diversity is proactive

Understanding What is a Diversity Issue is Crucial

If you don't know what a diversity issue is, how will you know when you have come across one? What is the criterion that a situation must meet to be defined as a diversity issue? A firm has a diversity issue (opportunity or problem) when:

- A policy or business practice (formal, informal, internal, or external) has a **different impact** on a particular group (for example, do billable hour requirements disproportionately penalize certain associates?);
- The firm practice **happens more frequently** to a particular group (for example, who gets to go to pitches—who makes them, who is present to observe and who is not, or who gets real feedback on their briefs and who does not); or
- The potential barrier is **more difficult for**

one group to overcome (upward mobility for a particular group within a firm, including who is represented in leadership positions and who is not-"glass or color ceilings").

A diversity issue exists when the firm policy or business practice affects attorneys of different backgrounds unequally. In other words, certain firm practices produce outcomes that affect the majority differently from the up-and-coming minorities in the attorney ranks. If the practice is inclusive, everyone benefits. If the practice is exclusive of difference, certain underrepresented attorneys might suffer adversely. Is there a trend or pattern that impacts certain groups of attorneys and staff disproportionately? For example, look at the top 10 rainmakers in your firm. Who are these leaders mentoring? Is the next generation of "mega-billers" different from the current "in group or dominant group" in the firm? Does your firm have diverse bench strength? Do your clients see your firm as an inclusive firm promulgating diversity of thought, background, and legal problem-solving innovation, or "more of the same?"

Having a diversity issue is not necessarily a bad thing. Doing nothing about it is where firms go wrong. Denial does not make these issues go away, and will not keep clients from scrutinizing business practices. When you have identified your diversity issues, you come to a fork in the road. You can thus address them or deny they exist and not take action.

Question why the firm has the diversity issue, and what actions would correct and improve the situation. This process requires challenging the status quo.

Challenging the Status Quo

Acknowledging the firm might have diversity issues is the first step to challenging the status quo. Adhering to the status quo-doing the same things the firm has always done, yet expecting better results-is organizational suicide.

Challenge the status quo by studying or assessing where the diversity issues lie within the firm and how to address them. Be prepared to question firm policies and procedures, especially those that have a disproportionate impact on minorities and women. Keep nothing sacred because this practice prepares firm leadership for the diversity needs assessment.

Conducting a Firm-wide Assessment

A diversity needs assessment or audit will establish a baseline and define the firm's current status on all diversity-related firm matters. The

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Meet Bethew B. Jennings III, Immediate Past Chair for the African American Lawyers Section. Mr. Jennings currently resides in Houston and is an Intellectual Property Attorney for Halliburton Energy Services. Mr. Jennings received his Jurisprudence Doctorate from Georgia State University College of Law, a Master in Computer Science from Clark-Atlanta University, a Master of Intellectual Property from Franklin Pierce Law Center, and a Bachelor in Computer Science from Morehouse College. Along with his service to the African American Lawyers Section, Mr. Jennings also participates in 100 Hundred Black Men, Houston Lawyers Association, and is an adjunct professor of Intellectual Property Law at Thurgood Marshall School of Law. Mr. Jennings is also a proud board member of Empowering Through Education, Inc., a non-profit organization designed to inform students and their families about choices and opportunities available when choosing a higher education. Mr. Jennings resides in Pearland with his spouse Phashetha and his children: Kendallyn Siri and Bethew Bertrand IV.

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Meet Mr. Frederick J. Barrow former Chairman for the African American Lawyers Section. Mr. Barrow currently resides in Dallas and practices Labor and Employment Law for Littler Mendelson. Mr. Barrow received his Jurisprudence Doctorate from Southern University Law Center in Baton Rouge, class of 2002 and a Bachelor of Science in Marketing from Louisiana State University, class of 1991. Along with his service to the African American Lawyers Section, Mr. Barrow also participates with J.L. Turner Legal Association, the African-American Bar Association of Dallas, National Bar Association, Dallas Bar Association's Board of Directors, and the American Bar Association. Mr. Barrow gained national prominence in the field of diversity as a member of Dallas Diversity Task Force, which issued the first ever diversity report card of the twenty largest Dallas-based law firms in 2006. As a result of the report, several major corporations have requested permission to use the Dallas Formula as one tool in evaluating the law firms that service them. Mr. Barrow resides in Dallas with his spouse Tammy Barrow and their son, Joshua Alexander.

assessment gathers data in many ways: a firm-wide survey, individual interviews with partners and associates, and focus groups consisting of both homogeneous and heterogeneous participant groups. Here, it is important to ask the same questions of different audiences and compare the results, which is called validating the data.

What are we hearing in the interviews and focus groups and does this data jive with the interview results? Are there patterns? It's key to reach out to people in the dominant or in-group and compare their answers to the same questions posed to individuals in the out-groups. In other words, what are the new associates saying versus partners in response to a particular question? Compare what the men said versus the women, or what the majority said in comparison to what the new emerging minorities are saying. Do all of the partners identify similar emerging diversity issues, or is there disagreement? If so, why? There are issues you know you have, issues you suspect you have, and issues you have no clue you have as a firm. Until you conduct some kind of audit or assessment of the firm, you don't have your bearings.

Additionally, always listen to the feedback. Are the focus groups agreeing with comments in the one-to-one interviews? Comparing the interviews, focus group, and survey data will reveal what is consistent across the firm and what might be unique to a particular office or region. The bigger the firm, the higher the probability that there are local, regional, and national diversity issues that beg a diversity strategy and plan that has local, regional, and national action items.

Once all of the feedback is gathered, look for themes, trends, and recurring diversity issues. These data points will form the backbone of the design and development of the firm's diversity strategy and plan, and give the firm a baseline from which to measure future success.

Critical Success Factors

What does it take to ensure the long-term success of a diversity program? The critical success factors include developing and communicating a diversity strategy and plan, and executing it for long-term change.

Developing a Diversity Strategy and Plan

A diversity strategy outlines all of the areas within and outside of the firm that impact the firm's

diversity. These areas typically include:

- Firm image in local, regional, and national markets;
- Sourcing and recruiting of attorneys (first years and laterals);
- Screening and selection of attorneys;
- Development of all attorneys (not just minorities or women);
- Upward mobility of all attorneys;
- Developing and nurturing an inclusive workplace culture;
- Minority or diversity supplier procurement program; and
- Marketing of diversity efforts internally and externally.

The accompanying plan is the detail behind the strategy, which includes all of the initiatives, activities, policies, procedures, and actions that the firm is purposely and formally executing to undergo the transformation to a more diverse and inclusive law firm.

Never seen a firm-wide diversity strategy and plan? Diversity consultants are often hired to present sample strategies and plans-a menu of potential action items, so to speak. The leading firms are out in front attempting to differentiate themselves from traditional firms with their diversity endeavors. Be ready for the day a client shares the plan of another firm as the high-water mark. Remember, studying what other firms are doing only tells you how they are addressing their unique diversity issues. Your issues may differ; however, you might like the way some of your competitors addressed similar issues.

Communicating Firm Strategy and Plan

Once there is a diversity strategy and plan in place, it should be communicated both internally and externally. Develop a brochure to use both for new hires as well as for existing and prospective clients. Refer readers to the firm's web site. Produce a video-a "fireside chat" with your managing partner-that can run on the web site and be distributed to new hires. While the plan itself will be more detailed, these products show that the firm has a strong diversity strategy in place.

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Meet Mr. James Goodwille Pierre formerly a Chairman for the African American Lawyers Section. Mr. Pierre currently resides in Houston and is the manager of the Small Business Development & Contract Compliance Division of the Houston Airport System. Mr. Pierre received his Jurisprudence Doctorate from South Texas College of Law, class of 2000; Mr. Pierre received his Masters in Education from the University of Central Florida; and he received his Bachelors Degree in Chemistry from Georgia State University, class of 1989. Along with his service to the African American Lawyers Section, Mr. Pierre has served as Chairman of Houston's Government Procurement Connections Planning Committee. Mr. Pierre has also participated with the State Bar of Texas, National Bar Association, Houston Lawyers Association, Legislative Division of the Earl Carl Institute at the Thurgood Marshal School of Law and a subscribing life member of the National Association for the Advancement of Colored People. Mr. Pierre is a Deacon at The Community of Faith Baptist Church and currently sits on the Board of Directors of The Dominion Community Development Corporation; and The Robert F. Tinsley Scholarship Fund. Mr. Pierre resides in Houston with his spouse Jacquelyn Tinsley and his children: Joi Candace and Jada Elaine.

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Meet Mr. Demetrius K. Bivins former Chairman for the African American Lawyers Section. Mr. Bivins currently resides in Houston and is Legal Counsel for The Department of Homeland Security and is a Colonel in the United States Army Reserves. Mr. Bivins received his Jurisprudence Doctorate from the University of Texas School of Law, class of 1982; and he received a Bachelor of Science from WestPoint Military Academy, class of 1976. Along with his service to the African American Lawyers Section, Mr. Bivins has also participated in: State Bar of Texas: Section Representative, Military Law Section, College of the State Bar, State Bar Grievance Committee, San Antonio Black Lawyers Association. Mr. Bivins is a member or former member: San Antonio Federal Credit Union Supervisory Committee, Leadership San Antonio XXII, Board of Directors West Point Society of South Texas Board, Federal Bar Association, American Bar Association, National Bar Association, Pro Bono Legal Advisory Board, Board of Directors Battered Women's Shelter of Bexar County, Board of Directors Big Brothers/Sisters of Bexar County, Board of Directors Child Guidance Center. Mr. Bivins resides in Houston with his spouse Cynthia and his children: Demetrius II and Emily.

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It is imperative that firms promote their diversity initiatives. The competition is already there. Associations provide a forum for firms that have had diversity successes, thus clients and prospective employees who are committed to diversity look to such organizations first.

Eight Major Myths About Diversity

By Mauricio Velásquez

Leaders committed to diversity are sometimes confronted with myths that challenge programs' worthiness and effectiveness. To ensure long-term, firm-wide change, these myths must be debunked with passion and purpose.

Myth 1: Diversity is a problem. No, it is an opportunity. You can't understand and take advantage of something "you don't know you don't know." Your diversity strategy and plan is an opportunity to differentiate your firm from the competition-don't blow it.

Myth 2: Diversity is our human resource department's responsibility. No, it is your responsibility. Too many people say, "That's not my problem; our personnel people have to handle the diversity issues." Wrong. Everyone (partners, associates, administration, staff) plays a significant role.

Myth 3: Diversity is just about race and gender. No, it is much broader than that. It used to be called cultural diversity, but the conversation has become more inclusive.

Myth 4: Diversity is about minorities and women in the workplace. No, diversity is about your internal (employees) and external (prospects and clients) customers. Understanding the diversity in your employee and customer ranks and anticipating needs can make or break your firm (most likely break if you subscribe to this myth). Diversity marketing-targeting new, increasingly diverse "emerging markets" is a hot new field.

Myth 5: Diversity is about exclusivity. No, it is about inclusivity. In other words, diversity is about all of us. If you feel diversity is about attacking the white male, you are mistaken. Diversity is not about getting "them" into your corporate culture (assimilation). Diversity is about creating a culture where everyone can thrive and contribute to your firm, and understand and serve your increasingly diverse clients.

Myth 6: Diversity is about lowering standards. Be very careful with this notion. Many people take great offense to this perception. Firms that are committed to diversity are not lowering standards, but are widening the pool-and sometimes raising standards or rewriting them.

Myth 7: Diversity is just another fad. Look at your workforce and client marketplace today and compare it with five and ten years ago. Then try to look five and ten years into the future. Do the same analysis for your customer base. Look at the demographic projections for the future. You'll see that diversity is not a fad, but a preview.

Myth 8: Diversity is another version of Equal Employment Opportunity/Affirmative Action. No, it is very different from EEO/AA. Diversity concerns all employees and customers. Minorities and women are the context for EEO/AA.

Executing for Long-Term Change

A firm's diversity strategy and plan should include clear goals and benchmarks. Without them, the firm has no way of measuring its progress. Progress should also be measured through the business case—a detailed look at the impact that diversity programs have on the bottom line. These benefits include lowering turnover (and decreasing training costs), attracting new business, achieving higher billable hours, and even lowering health costs, because happier employees are less stressed. Publicize these accomplishments. Make sure the firm keeps its eye on the prize.

A diversity strategy and plan is about creating a better firm for all attorneys and staff, not just minorities and women. The diversity journey is a long one, with a destination that may at times seem elusive. But the rewards are well worth it: a productive, passionate staff; a strong, growing bottom line; and recognition and admiration by clients and competitors. Jump-starting a diversity program ensures that a law firm's goals do not stall out in neutral.

Mauricio Velásquez is the president and CEO of The Diversity Training Group, Inc., located in Herndon, Va. For more information, go to www.diversitydtg.com.

From the July/August 2005 issue of Diversity & The Bar®

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Meet Mr. Tee Aye Sneed former Chairman for the African American Lawyers Section. Mr. Sneed currently resides in Dallas and practices General Civil Law with emphasis on real estate, estate planning, probate and small business matters for The Law Offices T. A. Sneed. Mr. Sneed received his Jurisprudence Doctorate from the University of Wisconsin. Along with his service to the African American Lawyers Section, Mr. Sneed also participates in J L Turner, NBA and ABA.

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The H-1B visa is not meant to be a vehicle for hiring lower wage substitutes for qualified United States citizens or legal permanent residents. To that end, the application process includes restrictive attestation requirements designed to protect existing American employees and the prospective foreign H-1B visa petitioners. Significantly, before hiring a prospective H-1B visa applicant, the prospective employer must attest, as part of its Labor Condition Application for the employee, that: (1) it will pay the required wage rate and benefits to the H-1B employee; (2) the employment of the H-1B employee will not adversely affect the working conditions of other similarly situated workers; 3) it has taken "good faith steps" to recruit U.S. citizens or legal permanent residents to fill the current "specialty occupation" vacancy for which the H-1B employee is sought; and (4) it has not displaced an American employee "employed by the employer" during a period commencing ninety (90) days before the filing of the H-1B visa petition and ending ninety (90) days thereafter³.

Assuming compliance with the attestation requirements and the Labor Condition application, the employer may proceed with the submission of a Petition For a Nonimmigrant Worker (Form I129), to the U.S. Citizenship and Immigration Service ("USCIS") for the issuance of a H-1B visa required for it to hire qualified foreign workers capable of fulfilling "specialty occupation[s]".⁴ A "specialty occupation" has been defined by Congress as any "occupation that requires (A) theoretical and practical application of a body of highly specialized knowledge, and (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States."⁵ While the vast majority of H-1B visas are issued to workers in the information technology and computer industries,⁶ other professionals such as engineers, accountants, lawyers, librarians, psychologists, financial analysts, and journalists might also qualify for H-1B visas.⁷ The H-1B visa's application to a wide spectrum of fields and professions led one group of commentators to call it "the utility in-fielder" of the business immigration world "with [the] power, speed, and the flexibility to handle many positions."⁸

Notwithstanding its acknowledged utility, the H-1B visa application process is the subject of considerable debate. Despite the wide application of the visa, the H-1B visa petitioner is not guaranteed the issuance of a visa. Quotas on the number of

visas that can be issued prompts competition between H-1B visa petitioners to be the first in line for the limited number of available H-1B visas in any given fiscal year, often resulting in undue delays in the application process for qualified candidates.

Since the enactment of the American Competitiveness and Workforce Improvement Act of 1998 ("ACWIA"),⁹ arbitrary quotas or "caps" have been in place for the number of H-1B visas issued per year. After the enactment of ACWIA, the then-existing H-1B visa was ill-suited to meet the demands of industry in hiring skilled temporary workers for specialty occupations.¹⁰ In the years following the passage of the ACWIA, it was not uncommon for the annual cap to be exceeded in a given year during the first months of that year.¹¹ Because of these deficiencies, the high-tech industry lobbied Congress to increase the annual cap on skilled workers under the H-1B visa.¹² These efforts, however, were met with staunch opposition from pro-labor and anti-immigrant lobbies from both sides of the political spectrum.¹³ Ultimately, a compromise was reached by mending ACWIA. The new amendment, which became known as the American Competitiveness in the Twenty-First Century Act of 2000 ("AC 21"),¹⁴ arbitrarily raised the cap from 65,000 to 115,000 for fiscal years 1999 and 2000 and then, arbitrarily reduced it to 107,500 in fiscal year 2001.¹⁵ In time, however, the cap was again outpaced by the brisk American economy, particularly in industries that had acute demands for H-1B skilled workers.¹⁶ As a result, the limit on H-1B visas was again increased to 195,000 for fiscal years 2001 through 2003.¹⁷

While this increase was a temporary "improvement," it was not a solution to the problems faced by American employers, who remain unable to fill a wide array of "specialty occupations" with skilled workers. This dilemma spurred many employers to begin to move toward outsourcing their employment needs to the countries of origin for their H-1B visa applicants.¹⁸ A natural criticism of the cap is that the numbers set by Congress "fail to accurately predict the needs of industry. Given the artificial limits set by Congress for H-1B visas, industry has been, and continues to be, uncertain about whether it will have a sufficient number of skilled workers on a year-to-year basis. A logical consequence of this uncertainty and confusion is the movement of high-tech firms overseas, closer to their ready source of skilled human capital."¹⁹ While cognizant of these dangers, but still missing the "big picture," Congress enacted the H-1B Reform Act of 2004,²⁰ which exempted up to 20,000 petitioners from the H-1B visa who had attained advanced graduate degrees from United States universities.

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Meet Lisa M. Tatum a former Chairman for the African American Lawyers Section. Ms. Tatum currently resides in San Antonio and practices Education, General Civil Practice, Labor & Employment and Litigation for West & Associates, L.L.P. Ms. Tatum received her Jurisprudence Doctorate from Santa Clara University School of Law, class of 1994; and she received her Bachelor of Arts degree in Government from Smith College, class of 1991. Along with her service to the African American Lawyers Section, Ms. Tatum currently participates in: the San Antonio Black Lawyers Association and the Bexar County Women's Bar Association. She has also participated in the San Antonio Bar Association, Federal Bar Association, American Bar Association, The Fellows of the American Bar Foundation and the National Bar Association.

These measures fall short of the mark. Congress' actions in this regard have been ineffective at best, with ever-fluctuating H-1B cap numbers that do not adequately address the needs of a competitive marketplace. For the fiscal year 2007, the H-1B statutory cap has been reduced to the minimum number of 65,000.²¹ The significance of the limits on the number of H1-B visas that can be issued is well-illustrated by the fact that on April 1, 2006 USCIS began accepting advance filings of H-1B applications for employment in fiscal year 2007 (i.e., for employment that will begin on or before October 1, 2006)²². Only two months later, on June 1, 2006, the mandated cap of 65,000 visa petitions was reached.²³ As the manner and rate at which the fiscal year 2007 H-1B visas were exhausted indicates, existing structure for the issuance of visas is wholly inadequate and unresponsive to the needs of American industry to remain competitive in ever expanding world-wide markets.

The arbitrary nature of Congressional attempts to increase and decrease the cap has not addressed the needs of American employers in their push to remain competitive in the twenty-first century. The only way that American employers can remain competitive in the global economy is through a flexible, laissez-faire approach where the marketplace dictates the demand for skilled temporary workers instead of a cap regulated arbitrarily by Congress.

Endnotes and Citations

1. See 8 U.S.C. § 1101(a)(15)(H)(i)(b) (1994). See also, Steel on Immigration, §3:13, 3-73-74.
2. See 8 U.S.C. § 1184(g)(4).
3. See 8 U.S.C. § 1182(n)(1).
4. See 8 U.S.C. §1184(i).
5. See *id.*
6. See Simone M. Schiller, Does the United States Need Additional High-Tech Work Visas or Not? A Critical Look at the So-Called H-1B Visa Debate, 23 Loy. L.A. Int'l & Comp. L. Rev. 645, 653 (Oct. 2001)(hereinafter Schiller)("The majority of H-1B visas are issued for occupations in systems analysis, computer programming, and electrical or electronic engineering occupations, from India, China, Canada, the United Kingdom, and the Philippines."); see also, Jung S. Hahm, American Competitiveness and Workforce Improvement Act of 1998: Balancing Economic and Labor Interests under the New H-1B Visa Program, 85 Cornell L. Rev. 1673, 1675 (Sept. 000)(hereinafter "Hahm")(noting a trend with regard to the demand in the high-tech sector for H-1B visas).
7. See Austin T. Fragomen, Jr., et al., Immigration Law and Business Database, 1 Immig. Law & Business §2:45 (Oct. 2006).

8. See John F. Horyto and Michael E. Stroster, *Get Into The Game*, 84-AUG Mich. B.J. 26, 27 (Aug. 2005)

9. See American Competitiveness and Workforce Improvement Act of 1998 (“ACWIA”), (Pub.L. 105-277, 112 Stat. 2681-653 (Oct. 21, 1998).

10. See Schiller at 646-47.

11. See *id.* at 646.

12. See *id.*

13. See Hahm at 1684 (citation omitted).

14. See American Competitiveness in the Twenty-First Century Act of 2000 (“AC 21”), Pub. L. No. 106-313, 114 Stat. 1251 (Oct. 17, 2000).

15. See Austin Fragomen, Jr. et al., *H-1B Handbook* at §1:10 (hereinafter “Handbook”).

16. See *id.*

17. See *id.*

18. See Michael Meehan, *Outsourcing Information Technology to India: Explaining Patters of Foreign Direct Investment and Contracting in the Software Industry*, 2 B.Y.U. Int’l L. & Mgmt. Rev. 285 (Spring 2006).

19. See Hahm at 1692.

20. See Consolidated Appropriations Act, 2005 (Includes L-1 Visa and H-1B Visa Reform Act, and the H-1B Visa Reform Act of 2004), Pub. L. No. 108-447, 118 Stat. 2809 (Dec. 8, 2004).

21 . See 8 U.S.C. § 1184(g)(1)(A)(2006)(“The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)...may not exceed 65,000.”). Of that number, 6,800 H-1B visas are earmarked for citizens of Chile and Singapore under the Chile and Singapore Free Trade Acts. See United States-Chile Free Trade Agreement Implementation Act, Pub. L. No. 108-77 (Sept. 3, 2003); and United States-Singapore Free Trade Agreement Implementation Act, Pub. L. No. 108-78 (Sept. 3, 2003). Any unused Chilean or Singaporean H-1B visas will revert to the general pool of H-1B applicants and will be available on the first day of the next fiscal year.

22. See Handbook § 1:19.

23. See USCIS Press Release, *USCIS Reaches H-1B Cap*, www.uscis.gov/graphics/publicaffairs/newsrels/FY07H1B_Cap_060106PR.pdf (visited Oct. 31, 2006).

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Meet Nydia D. Thomas former Chairman for the African American Lawyers Section. Ms. Thomas currently resides in Austin and practices Juvenile Law, Administrative Law, Contracts Law, Legislative Analysis and Ethics for the Texas Juvenile Probation Commission . Ms. Thomas received her Jurisprudence Doctorate from Howard University School of Law. Along with her service to the African American Lawyers Section, Ms. Thomas also participates in: the Texas Association of Black City Council Members, the Liberty County Children Protective Services Board, Houston-Galveston Area Council (HGAC) Economic Development Board, HGAC Regional Review Committee and the Texas Municipal League Legislative Policy Committee. Ms. Thomas is currently a member of the Business Development Board for Prosperity Bank (Cleveland), the Texas Violent Gang Task Force Advisory Board, the State Agency Council, the State Bar of Texas Juvenile Law Section Council, Past Chair of the African-American Lawyers Section, and the College of the State Bar of Texas.

Best Diversity Practices for Law Firms

Published in: *Practical Lawyer Magazine*

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WILL THE NEXT Bill Gates be an immigrant woman of color? Far-fetched? Consider that Wal-Mart, a consumer of approximately \$200 million annually in legal services, recently terminated a law firm “strictly because of their inability to grasp our diversity expectations.” In the May 2001 issue of *Diversity & the Bar*, Scott Mitchell wrote, “law firm diversity is an oxymoron.”

Moving from the hypothetical to the absolutes, diversity consultant, Jacob Herring probably said it the best. “Law firms who don’t pay attention to their diversity will be the truly disadvantaged ones.”

Bottom line: a workplace that encourages and supports inclusion also promotes innovative perspectives that ultimately result in better client service. Better client service creates both satisfied clients and more clients. Diversity is not simply a topic for lawyers to debate and litigate. The business case for an inclusive, diverse workplace is evident.

GENERIC BEST PRACTICES • The way approach to an inclusive workplace depends, to some extent, on the nature of the workplace. However, four components are required to ensure an inclusive work environment.

1. Commitment at the Top

The first and most important way to increase and support diversity in the workplace is to obtain a sincere commitment from the top levels of firm management. Indeed, surveys conducted by the Minority Corporate Counsel Association (“MCCA”) show that law firm leadership involvement is a critical factor that distinguishes successful diversity efforts from those that fail. Law firm leaders must not only be vocal, they must also act. For staff members and associate to recognize a true commitment, firm

management must commit both the firm’s time and financial resources necessary to meet diversity goals.

Most law firms would agree that having a diverse and inclusive workplace is a laudable goal. However, many are still uncomfortable openly discussing racial, ethnic and gender issues. Specialized training can play a crucial part in diversity success and awareness. Diversity consultants help generate candid dialogue that allows firms to recognize and manage inherent biases. Firms can initially rely on outside consultants to assess their needs and provide diversity training.

2. Recruiting Strategies

Firms will naturally measure the success of their diversity initiatives by the number of diverse candidates hired. Given increased competition for such candidates, firms need to implement innovative recruiting strategies and set inspirational goals. Innovative recruiting by itself is not enough. Clients want to see a demonstrable record of successful retention and promotion of diverse attorneys.

3. The Importance of Mentoring

Mentoring can play an important role in contributing to the success of diversity in a law firm setting. To give formal mentoring programs the greatest chance for success, law firm management must visibly and vocally support them and lead by example. They should also make sure that mentors appreciate that their participation will greatly advance a core firm goal.

4. Tracking Progress

Although we cannot measure a robust, diverse environment solely by reference to a mathematical equation, numbers do matter—just ask any minority attorney. Tracking certain essential statistics helps firms identify which efforts work.

A LAW FIRM DIVERSITY MANAGER • Less than half of large U.S. law firms have a designated diversity manager, and only half of these managers are dedicated full-time to the position, according to a survey on the role and responsibilities of the primary diversity staff member in AmLaw 200 firms, conducted in 2005 by Altman Weil, Inc. and the MCCA. Theresa Cropper, national director of diversity at DLA Piper, says that, “The position requires full-time commitment and attention if a firm wants to take their diversity efforts to the next level.” Russell Harris, the diversity initiatives manager at Mayer, Brown, Rowe & Maw LLP, adds, “Appointing someone to lead the diversity program is indicative of the firm’s level of commitment.”

The MCCA survey also stated that the 10 top responsibilities of a Diversity Manager are to:

- Develop and promote diversity goals and

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Meet Regina Bynote Jones a former Board Member for the African American Lawyers Section. Ms. Jones currently resides in Houston and practices Corporate Law for Schlumberger Oilfield Services. Ms. Jones received her Jurisprudence Doctorate from South Texas College of Law, class of 1998; and she received her Bachelor of Arts degree in General Business from Sam Houston State University, class of 1992. Along with her service to the African American Lawyers Section, Ms. Jones also participates in: Houston Bar Association, American Bar Association, American Corporate Counsel, State Bar of Texas - African American Lawyers Section, Girl Scouts of America, March of Dimes and the Child Advocates.

- strategies;
- Ensure implementation of both a short-term and long-term strategic diversity plan;
- Work with the recruiting committee;
- Promote awareness of issues that impact diversity in firm management, operations, and governance;
- Ensure that the firm supports law school minority organizations and local and national minority bar associations;
- Develop programs to ensure that the firm has an environment that fosters inclusiveness and support for all lawyers to encourage retention;
- Implement and monitor objectives and strategies;
- Present diversity updates at management committee meetings or as requested by firm management;
- Work with the firm's professional development committee; and
- Continually evaluate the effectiveness of the firm's structure, policies, and practices.

Diversity management in law firms is becoming a niche industry. More and more, continuing legal education programs, bar associations, affinity groups, and other initiatives are serving as resources for ongoing information gathering and education.

THE CALL TO ACTION • A major corporate world initiative that reflects this thinking is *A Call to Action—Diversity in the Legal Profession*, authored by Rick Palmore, the chief legal officer of Sara Lee. The Association for Corporate Counsel endorsed it in October 2005 and followed a similar pledge in 1999 by 500 major corporations called *Diversity in the Workplace—A Statement of Principle*.

The *Call to Action* document says that more diverse law firms will translate into better business. It says "the legal and business interests of our clients require legal representation that reflects the diversity of our employees, customers and the communities where we do business."

BEST PRACTICES BY SPECIFIC FIRMS

- Many firms have taken the diversity question seriously, and have come up with some innovative approaches:
- Alston & Bird has over 60 multilingual attorneys who speak 16 languages, they extend domestic partner benefits to their gay and lesbian lawyers, and in 2002, they constructed a stand-alone, state-of-the-art, near-site childcare center in Atlanta, available to all Alston & Bird staff and attorneys;

- Kirkpatrick & Lockhart LLP was the first major law firm to appoint a Management Committee-level Chief Diversity Officer (“CDO”) to expanding recruiting activities, develop a firm-wide mentoring program that includes gender and race specific innovations to enhance retention of these two groups’ members, and promote the law firm among minority constituencies as well as promoting awareness of the firm’s diversity initiatives to the wider community;
- Perkins Coie established its Minority Hiring Task Force in 1988 to develop and run programs that improve recruitment and retention of minority attorneys, and created the Perkins Coie 1L Student Fellowship. The fellowship provides a \$7,500 academic scholarship and a paid position with the Phoenix, Portland, Seattle, or Washington D.C. office to a summer associate during the summer immediately following the student’s successful completion of his/her first year of law school. The firm also has an attorney part-time policy, subsidized child care for attorneys and staff, partially subsidized backup child care services, business development training specifically targeted for women attorneys, and a mentor program for entry-level women and minority attorneys;
- Vinson & Elkins encourage its lawyers to attend seminars, conferences, and bar meetings that highlight issues relevant to attorneys of color, including client development techniques, networking and general issues of diversity, launched a formal women’s initiative and a new lawyer mentoring program, developed with input from the Women’s Career Development Council, the Diversity Task Force and Women’s Initiative Advisory Board.

HOW TO MAKE IT WORK • No law firm can afford to keep losing female lawyers and/or attorneys of color. Studies show an associate’s departure costs a law firm about \$415,000 in recruiting, training, salaries, overhead, severance, outplacement, and other costs—not including hiring a replacement. The changing demographics within the United States have signaled to firms that diversity is an important goal that will affect the firm’s viability and ultimately the bottom line. In response, many firms have launched diversity recruitment efforts designed to bring more women and attorneys of color into the firm. The problem has been that within a few years of being hired attorneys that qualify as diverse leave the firm in search of more inclusive, diverse and culturally competent work environments. Below are some critical reasons why attempts at creating diversity have failed:

“Narrow” mentoring programs. There is no sound reason to believe that only women can mentor women, or that only Latinos can mentor fellow Latinos, or to exclude men from the program as either mentors and mentorees.

- *Lack of commitment at the top.* For diversity initiatives to succeed, there must be vigorous support for it at the senior level of the firm;
- *Failure to assess the firm’s environment.* Assessment is critical in helping to create and implement an effective diversity initiative plan;
- *Overemphasis on recruitment and hiring.* Relying on recruitment as a primary means of creating diversity will prove to be an ineffective strategy. Retention and development of a strong and diverse pool of attorneys depends upon the firm’s ability to create a work environment that values and leverages difference, mentors cross culturally and consistently measures and monitors the progress and development of all attorneys;
- *Insufficient strategic planning.* Failure to include diversity objectives in the organizations strategic plan;
- *Lack of understanding of diversity phases.* Many firms fail to view the creation of a diverse organization as a developmental process. Finally firms must understand that building a diverse and inclusive work environment is an ongoing effort;
- *Ignoring the importance of training and development.* Cultural competence and diversity training should focus on building awareness and alliances. A “blaming and shaming” approach will never produce a productive, diverse, and inclusive workforce;
- *Cultural incompetence.* Many firms communicate a desire to build an inclusive and diverse work environment yet they still place a high value on—*sameness*. The days of the faceless “organization man” are over, and good riddance.

CONCLUSION • At a recent conference, there was a panel of distinguished lawyers and diversity experts. One of the main questions posed to the panelists was, “Given your businesses and your interest in promoting diversity, do you agree with the business necessity/argument/justification for diversity?” Without hesitation, all responded that diversity is a necessity, as well as the right thing to do. Diversity means “inclusion,” and that is good for the bottom line and is simply good business practice. And it clearly benefits our nation, our people, our businesses, our organizations, and our communities.

Preserving the Attorney Client Privilege in Corporate America

By
Beth S. Rose

MEET THE BOARD: A CELEBRATION OF PAST AND PRESENT BOARD MEMBERS



Meet Ramona Ortiz Brown a former Board Member for the African American Lawyers Section. Ms. Brown currently resides in Houston and practices General Corporate, Administrative, and Antitrust Law for Exxon Mobil Corporation. Ms. Brown received her Jurisprudence Doctorate from Georgetown University, class of 1994; and, she received her Bachelor of Science degree in International Politics from Georgetown University School of Foreign Service, class of 1989. Along with her service to the African American Lawyers Section, Ms. Brown also participates in: the State Bar of Texas, the National Bar Association and the Houston Lawyers Association.

Introduction

As the law departments of corporate America grow, the responsibilities of in-house counsel have become more diverse than ever before. While in-house counsel are, of course, called upon to dispense legal advice, they are also sometimes asked to wear multiple hats – legal, business and financial – in some instances, at the same time. In this dynamic environment, questions of whether a communication is privileged can be daunting. Pervasive use of e-mail and other electronic forms of communication add yet another layer of complexity. This article discusses the contours of the attorney client privilege in the corporate environment, and provides in-house counsel with practical strategies to preserve vital attorney client communications.

Basic Principles

The attorney client privilege is the oldest of the privileges for confidential communications known to the common law. Over twenty years ago, our Supreme Court recognized that full and frank communications between lawyers and their clients promoted broader public interest in the observation of law and the administration of justice, and that sound legal advice and advocacy depends on lawyers being fully informed by their clients. The Court further recognized that the privilege necessarily applies regardless of whether the client is an individual or a corporation. It likewise extends to communications with in-house and outside counsel alike. But because application of the privilege can, some argue, interfere with the truth finding process, it is construed narrowly. This strict analysis is especially evident when a corporate entity seeks to invoke the privilege to protect communications to in-house counsel. One court has written that this approach is “necessary to prevent corporations from shielding their business transactions from discovery simply by funneling their communications through a licensed attorney.

Nature and Scope of the Attorney Client Privilege in the Corporate Setting

Even an advocate with the most expansive view of the attorney client privilege would be hard pressed to argue that all communications between in-house counsel and his/her client are privileged. Most courts recognized that the “privilege only exists for those confidential communications which necessarily occur in the course of requesting or giving legal advice.” Where a dispute arises, the

burden rests on the party asserting the privilege to clearly demonstrate that the communication in question was made in confidence for the purpose of securing or rendering legal advice. This test is far from straightforward in a corporate setting.

These days, in-house counsel are likely to perform multiple roles within their respective organizations. In addition to acting as counsel, they often serve as administrators, financial/business advisors, committee chair, and negotiators to name just a few. The conventional wisdom is that the privilege attaches to those communications in which in-house counsel is acting in his/her capacity as a lawyer or legal advisor. Similarly, the privilege exists only if the lawyer is giving legal advice; there is no protection if the attorney is dispensing technical advice or business advice.

The problem with these rules is that they fail to give adequate consideration to the multi-faceted world in which in-house counsel perform their jobs. The reality is that legal and business advice are often intertwined. In those instances, courts find that the legal advice must predominate for the communication to be protected. What it means for legal advice to "predominate" the communication is sometimes anyone's guess – the analysis is typically fact bound. Some courts opine that if the legal advice is incidental to the business advice, it is not privileged. The variety of matters on which in-house counsel are called to comment make it as clear as mud to figure out when a court will agree that a communication is privileged. What happens when the client is seeking both business and legal advice from its counsel? Why shouldn't these communications be protected? What steps can corporate counsel take to protect them?

Although there are no easy answers, the case law provides the following guidance for the analysis of privilege in the corporate context:

- Information is not privileged simply because it comes from an attorney.
- The mere presence of in-house counsel at a meeting does not make all communications made during the meeting privileged.
- The privilege does not apply to the fact of a communication between a client and its counsel –only the substance of the communications is protected.
- A general description of work performed by an attorney may not be privileged.
- When an attorney is merely acting as conduit for information, the privilege does not apply.

- Copying a lawyer on a document does not transform an otherwise non-privileged communication into a privileged one.
- Legal advice can be protected – business advice cannot.
- Where confidentiality of a document is not maintained, privilege may be lost.

Consider the following unfortunate real life examples regarding meeting minutes. Plaintiff, a senior scientist and nine year employee, was terminated and sued his employer for age discrimination. During discovery, plaintiff sought documents created by the company's Personnel Action Review Committee ("PARC") – the entity that made the decision to end plaintiff's employment. Defendant acknowledged that the PARC made the termination decision, but sought to withhold minutes of the meeting on privilege grounds. The company's in-house counsel was a member of the PARC; indeed, the bylaws of the committee required his participation. The court rejected the company's argument that the communications made during the PARC meetings were privileged, because in-house counsel was acting as a legal advisor. Rather, the court found that although legal review was one purpose of the meeting, it was merely "incidental" to the primary purpose, namely to review and concur in termination decisions, and to approve proposed terminations.

A similar issue arose in a product liability case in which plaintiff sought all documents relating to defendant's Corporate Product Liability Management Team's analysis of a particular forklift that plaintiff apparently claimed injured him. The company's general counsel served as a member of the committee, and to support defendant's position that the requested documents were privileged, submitted an affidavit explaining that the very purpose of the team was to analyze and take measure to reduce product liability claims, and that his specific role was to provide legal advice to the group. The Court's conclusions were sobering: "From this affidavit, it is apparent that some, perhaps many, of the communications that occurred in CPLMT meetings were protected by the attorney-client privilege. The affidavit does not establish, however, that all communications in the CPLMT meetings are protected by the privilege, much less that the communications at issue here are so protected. Indeed, there is nothing in any of the communications submitted for the court's review that suggests that the communications were made primarily for the purpose of securing legal advice." *Id.* at 5. But wasn't the committee formed so that counsel could provide legal advice on product liability claims?

Best practices to preserve the attorney client privilege in a corporate environment

Practical steps to meet these challenges are set forth below.

1. Segregate legal functions from those that are arguably non-legal. The question for some courts is whether the task could have been performed readily by a non-lawyer. Related to this inquiry is whether the lawyer performed a legal task – applying the law to a set of facts (*i.e.*, analyzing compliance with a particular statute or regulation). Examples of task which some courts have found to be non-legal include preparation of a tax return, negotiating an agreement, accounting advice, engineering advice given by patent lawyer in a patent litigation, an attorney acting as a money manager, business agent or lobbyist.

2. Where appropriate, advise employees in writing that communications/cooperation with in-house counsel is required to assist counsel in providing legal advice to the company.

3. Advise employees in writing that the communications with in-house counsel are confidential and must be maintained as such.

4. Limit the number of employees who receive attorney client communications. Attorney client communications should only be shared with those who need the information to perform their job function..

5. Legend documents and emails as “Attorney Client Communications” as appropriate. Don’t overdue it. A legend may not be determinative of whether the communication is privileged – the substance of the communication is.

6. Maintain separate legal and business files where practical.

7. Use appropriate titles to identify counsel. Just because the VP of Business Development may have a law degree will not transform his communications into privilege ones if he is not acting as counsel.

8. Consider and address challenges posed by pervasive use of e-mail and other electronic forms of communication. To be sure, e-mail is one of the greatest communication tools ever. It is easy to use, and allows for the exchange

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Meet Mr. Steve Bolden II the Vice Chair for the African American Lawyers Section. Mr. Bolden II currently resides in Dallas and practices Corporate and Securities Mergers, Acquisitions and Private Equity for Akin Gump Strauss Hauer & Feld LLP. Mr. Bolden II received his Jurisprudence Doctorate from Thurgood Marshall School of Law, class of 2000; and he received his A.B. from Dartmouth College, class of 1997. Along with his service to the African American Lawyers Section, Mr. Bolden also participates in the Dallas Bar Association, State Bar of Texas, the J. L. Turner Legal Association, the African-American Bar Association of Dallas, The First Tee of Dallas, Thurgood Marshall School of Law DFW Alumni Chapter and the St. Luke “Community” United Methodist Church Usher Board.

of information among multiple parties. Yet, the nature and extent to which otherwise privileged communications are forwarded or are embedded in lengthy e-mail strings may be a part of a court's privilege analysis. Conduct e-mail training for in-house counsel to facilitate better understanding of how electronic exchanges can affect privilege determinations.

Conclusion

Judicial evaluation of the attorney client privilege in the corporate context is too narrow and rigid. Because of the varying roles in-house counsel play in the corporate setting and the increasing use of electronic communications, courts should develop more flexible criteria to evaluate when a communication is protected. Until then, in-house and outside counsel should be mindful of the existing rules and take practical steps to protect privileged communications.

Beth Rose is a Member of Sills Cummis Epstein & Gross P.C. and is Co-Chair of the Firm's Litigation and Product Liability Practice Groups.

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- ⁷ *Kramer*, 1992 Lexis 7418 at 4.

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Leaving a Legacy of More Than Wealth For The Next Generation

By
Craig H. Young

MEET THE BOARD: A CELEBRATION OF PAST AND PRESENT BOARD MEMBERS



Meet Ms. Pauline Edwards Higgins currently a Board Member for the African American Lawyers Section. Ms. Higgins currently resides in Houston and practices Corporate Finance and is Partner and Chief Diversity Officer for Thompson & Knight LLP. Ms. Higgins received her Jurisprudence Doctorate from Tulane School of Law; she received her LLM in Tax Law from University of Houston; and she received her Bachelor Science in Accounting. Along with her service to the African American Lawyers Section, Ms. Higgins also participates in American Bar Association, State Bar of Texas, Houston Law Association, Houston Bar Association and Diversity Committee of the State Bar of Texas.

When it comes to deciding how, when and with whom to share your wealth, careful planning is essential for a smooth and successful transfer of assets. Today, the technical process of passing on assets can be accomplished with relative ease. Passing on your personal values, however, is a more nuanced exercise that requires a deep understanding of what drives your family. Proactive planning and discussion among family members will help prepare you and your loved ones for a smooth intergenerational transfer of wealth and values.

Talking to your children about money: An essential first step

Raising children who are born into wealth has obvious benefits, as well as challenges. Smith Barney proprietary research indicated that many affluent parents are concerned about whether their children will be able to handle their inherited assets responsibly and gracefully. Thus, it is important to initiate discussions about wealth with your children at an early age. Teaching even young children about money — saving, earning, budgeting, investing and charity — is one of the most important responsibilities you have as a parent. After all, these lessons may not be taught in school, and are often critical to communicating your family's values to your children. No one can shape, influence and strengthen the financial and philanthropic habits young people develop better than their parents.

Often, children who inherit wealth grow up with a sense of entitlement. Therefore, it is crucial to establish an ongoing dialog with your children on the issue of financial responsibility. Smith Barney proprietary research also showed that many parents of teens and tweens find it just as difficult to talk about the dangers of drugs or sex as money. The reality, however, is that most children are curious about the concept of money and what it entails, and will accept education and guidance from their parents. As teenagers, kids often begin to perceive personal financial responsibility as a symbol of adulthood and independence.

Make it a priority to have regular open forums with your family. While at the dinner table or on a vacation, focus your family conversations on the importance of hard work and philanthropic affairs. The returns on the time and energy invested can be invaluable to your child and you.

Instilling your values in the next generation

Intergenerational transfer of wealth is more than just a tax-efficient way to transfer your assets. By leaving money to your children, other family members, and charitable organizations, you can help perpetuate your family's values and culture. Discuss your legacy, family history, and important family stories. What have been the most important values in your family? What is the most important value you can pass on to your children? Reach consensus on those values that can help guide your children's financial behavior. The culture of shared family history and identity can create a sense of responsibility, productivity, and appreciation of the opportunities that come with wealth.

Instilling your values begins with establishing continuous communication with your children. At an early age, why not begin by explaining to your child what it means to live within one's means? Discuss how there are limits to spending, no matter what you, as a family, may have. Explain to your children the difference between wants and needs. This can help promote wise spending habits as they become young adults. By encouraging thoughtful spending, you can teach children the value of budgeting—to avoid spending everything they may have today—so they can accumulate funds for more meaningful things they may want in the future.

The ability to set and fulfill personal goals is central to appreciating the benefits that come with wealth. Teaching your children to identify and pursue their own goals—both financial and social—will help motivate and give them a sense of responsibility for their future. Avoiding this topic may lead your children to assume they never need to worry about money and may leave them unprepared to make important financial decisions. Educating your children will help empower them.

Smith Barney proprietary research also indicated that many parents are concerned that a significant inheritance could undermine their children's work ethic. Reinforcing a strong work ethic can help ensure that family wealth does not undermine your children's capacity to be productive and maintain a strong sense of self-worth.

Passing on your legacy: Philanthropy and your children

Charitable giving is a powerful force within the United States. On average, Americans give close to \$249 billion to charities annually. Of the \$41 trillion in wealth expected to be transferred over the next 50 years, \$6 trillion, or 15%, will go to charities.

For many affluent families, philanthropy

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Meet Ms. Dawn R. Tezino currently a Board Member for the African American Lawyers Section. Ms. Tezino currently resides in Beaumont and concentrates her practice in general civil litigation, with a concentration in labor and employment law, product and premise liability for MEHAFFYWEBER, P.C. Ms. Tezino received her Jurisprudence Doctorate from Loyola University School of Law, class of 2001; her Bachelor of Science in Psychology from University of Houston, class of 1998. Along with her service to the African American Lawyers Section, Ms. Tezino also participates with the Jefferson County Bar Association, Jefferson County Young Lawyer's Association, State Bar of Texas, State Bar of Louisiana, Texas Association of Defense Counsel, Defense Research Institute, National Bar Association, Hispanic Bar Association, Baton Rouge Bar Association, New Orleans Bar Association, an Advisor on the 2007-2008 NBA Commercial Law Section Executive Committee.

becomes a tradition – a way to contribute to their communities, make a difference in other people's lives, and pass on their values to succeeding generations. Following a few relatively simple steps will help ensure that philanthropic values are instilled in your children at an early age:

First, work together with your children to draft his or her personal mission statement. Have your children reflect on the needs of their community and how they, as community members, can contribute to help meet those needs. Help them identify the special skills or talents they possess that can be used to make a difference.

Second, be a role model for your children. When parents donate, volunteer or participate in charitable organizations, kids can often see first-hand the impact philanthropy can make in the world. In fact, bring your children along when you do charitable work. It could be a life-changing experience for them.

Third, allocate some family funds to teach your children the decision process behind charitable donations. Use their allowance to teach financial responsibility and giving. An allowance can teach every child—even the very young—the concepts of charity, saving, planning, and responsibility. Consider creating three separate "accounts" with each allowance payment—1/3 for daily spending needs, 1/3 for long-term needs (including a car, college expenses, a vacation with a friend, a graduation trip) and the last 1/3 for charitable contributions. When children donate their own money—no matter how much it is — they feel greater ownership over their decisions.

Intergenerational transfer of wealth extends far beyond legal, tax and financial implications. Planning begins with creating an environment in which your entire family can talk openly about issues surrounding wealth, values, and philanthropy. Once you, as a family, define your goals and values, your Smith Barney Financial Advisor can help create a strategy to help ensure your assets will be used to support them. By doing so, your values, family legacy and philanthropic goals can best be passed to succeeding generations.

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Stages of Wealth Management

By
Craig H. Young

In today's fast-paced world, investors have more to think about than simply their stock portfolios. When creating wealth, they must also consider issues like tax planning, risk management, borrowing needs, estate planning, and charitable giving.

Life is about stages. So is wealth management. As investors move through stages of life, they face a succession of financial challenges. Some begin early and never go away. Others, like estate planning, come later in life.

Wealth management can be viewed as a cycle with four main stages:

1. Wealth Accumulation

During this phase, individuals are primarily focused on acquiring the assets they will need to meet their long-term financial goals.

2. Wealth Preservation

As investors move into their peak earnings years, their financial focus may gradually shift from asset growth to risk management – protecting their portfolios from unexpected adversity to market volatility.

3. Wealth Utilization

At some point, most individuals will need to draw upon their accumulated resources to fund specific needs, such as college tuition costs or retirement expenses.

4. Wealth Transfer

Many affluent individuals hope to leave a sizable legacy behind for their children, grandchildren or their community.

Keep in mind, wealth management stages often overlap, and the transition between stages can be gradual. Therefore, individuals and their financial advisors must address a continuing change in new and old financial challenges. For example, increased life expectancies, soaring medical costs and rising expectations for higher living standards translate into retired investors having to balance both current income and capital growth.

Finding strategies to address these problems may require difficult tradeoffs. Investors should weigh

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their risk tolerance against their investment return objectives. They may also have to decide between generating a high level of current income or a rate of capital growth sufficient to support a somewhat lower standard of living later in life.

These decisions are difficult and should be made within the context of a comprehensive wealth management strategy. Working directly with a financial advisor could be a good strategy for reaching long-term investment goals. Together, you can review the appropriate investment options available and formulate a personalized investment plan and other practical strategies for managing your finances now and throughout retirement.

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