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To Retain Minority Attys, Aim For 'Psychological Safety'

By Kevin Penton

Law360 (December 21, 2021, 1:42 PM EST) -- Law firms in recent years may have made incremental progress in diversifying their attorney workforces, but once they've recruited minority candidates they have a new challenge in retaining them.

The focus on why minority lawyers leave law firms earlier in their careers and at higher rates than their white counterparts often centers on professional development and advancement — attorneys of color make up 26.9% of associates but only 10.8% of partners and 9.7% of equity partners, according to Law360's most recent Diversity Snapshot.

Narges Kakalia of Mintz Levin Cohn Ferris Glovsky & Popeo PC said she suspects there is another important factor: whether minority lawyers believe their employers are actively striving to create workspaces that are inclusive and thoughtful toward communities that have often not felt as if they belonged in a law firm.

"You're not going to be able to retain people long term if they don't feel comfortable in the law firm," said Kakalia, Mintz's director of diversity, equity and inclusion. "I suspect that is why we have the kinds of attrition rates that we do."

Kakalia last month moderated a panel discussion at an Association of Corporate Counsel conference on psychological safety, which she characterizes as the sense by employees that they can walk into a room and share their thoughts, suggestions, criticism, ideas or mistakes without fear that they will be humiliated, punished or ostracized.

Kakalia said she suspects that minority attorneys' not feeling sufficiently psychologically safe is one reason nearly 1 in 4 lawyers who left their firms in 2020 were attorneys of color, even though they represent just 1 in 6 lawyers at the firms that reported data to Law360 as part of August's Diversity Snapshot.

"If diverse team members cannot bring themselves to speak what's on their minds or show up fully, then they will censor themselves," said Michael D. Thomas, a principal at Jackson Lewis PC who defends employers in labor and employment matters and regularly conducts training on workplace diversity and inclusion. "What that ultimately means is that they will not experience inclusion nor will the group benefit from their perspective."

Instead, minority employees will spend their time and energy thinking about how they're perceived by

others because of their race, gender or sexual orientation, about what they should and shouldn't say, and about the true intentions of their peers and supervisors, Thomas said.

Thomas suggested that firms looking to counter the trend begin at the top, with firm leaders not only trumpeting their successes but also honestly sharing with employees their own challenges and failures, and how they've worked to overcome them.

"When leaders display that level of vulnerability, it gives me permission to trust," Thomas said. "That allows me to show up more authentically, instead of thinking like I have to blend in and cover."

The legal industry is laden with a culture of overconfidence, where lawyers are supposed to know it all and to get results fast, and where admitting a mistake or not knowing an answer is often perceived as a liability, said Heidi Brown, a professor at Brooklyn Law School and the author of "Untangling Fear in Lawyering: A Four-Step Journey Toward Powerful Advocacy."

"To say that we're worried about making a mistake or to admit that we did make a mistake, there's not a lot of room for that ... in legal education and in the early years of your practice of law," Brown said. "We basically fake it until we make it, which is not a healthy way of performing at our peak."

Brown suggested that law schools and the legal industry follow the lead of medical schools such as Harvard University's teaching hospitals and the University of Chicago Medical Center, which have developed training programs that encourage younger practitioners to voice their concerns and fears without fear of repercussions.

"When we have a sense of safety, we're able to take smart risks," Brown said.

Thomas said law firms would also be well served by demonstrating genuine curiosity toward each of their minority attorneys' unique talents, skills and abilities, and to think about what and who the lawyer might best be surrounded by rather than randomly throwing them onto a project or a team or creating a one-size-fits-all onboarding process.

"Different employees will develop and grow in different ways," Brown said. "What one person may need to succeed may be different from what everyone else needs."

Law firm leaders who don't pay sufficient attention to psychological safety risk not only failing to retain attorneys of diverse backgrounds but also not hearing points of view that may challenge their firm's accepted but misguided practices, said Larry Richard, a psychologist and former practicing attorney who founded LawyerBrain LLC, a law firm management consulting firm.

"Otherwise, everyone is on their best behavior," Richard said. "You can see plenty of meetings where people just go in, obligatorily sit and roll their eyeballs, and nothing happens."

Richard and Brown encourage minority attorneys to actively seek and develop allies and mentors among both lawyers who share their backgrounds and those who do not, as a way to build consensus and create safe environments where they can speak candidly.

"Part of the challenge for diverse lawyers, which makes psychological safety incredibly important, is that our margin of error, either real or perceived, is a lot smaller than other attorneys'," Brown said. "So our work environments are often less forgiving if we make mistakes. So having an environment that is

supportive, that is psychologically safe, becomes incredibly important. Because we're all going to make mistakes. It's just a question of whether the environment is supportive enough to allow and encourage individuals to grow and learn from those mistakes."

--Additional reporting by Jacqueline Bell. Editing by Brian Baresch.

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