



Laboring Results

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Will Businesses Begin To Demand That Legal Counsel Use Diverse Mediators?

In California, ethnic minorities constitute the majority of California's population, work force and consumer markets. Leading companies have policies of valuing diversity and promoting inclusiveness amongst its employees and suppliers, including outside counsel. These companies, want to maintain their credibility and attract customers in the diverse communities that they service.

As a result of demands from leading companies who are its clients, law firms now have diversity policies and programs to recruit and retain diverse partners and associates. Will these companies demand that law firms address diversity in the pool of mediators it uses to resolve matters for it? Companies, who have a diversity plan, will conclude that it makes good business sense to select and use diverse mediators: it will promote successful mediation of their disputes and will support their written commitment to diversity and inclusion which will support its credibility. This demand for diversity and inclusiveness will trickle down to law firms to demonstrate its commitment to diversity in selecting and using qualified mediators.

Leading Companies Embracing Diversity

Leading Companies throughout the United States are consistently emphasizing the marketing and development of innovative products and services, customer satisfaction and commitment, and bottom-line performances. To stay on the forefront of innovation and creativity, these companies must carefully select and develop talent. To meet this challenge many have created an environment where differences in background and perspective are respected, valued and leveraged, which in turn has led to continued growth and success. These companies have embraced and increased diversity in their business and have demanded that their suppliers and vendors are diverse and inclusive.

Shell Oil Company's plan of "Valuing and Leveraging Diversity to Become a Model of Inclusiveness" not only creates diversity within their employee networks but also within their Supplier Diversity Program, which supports Shell's commitment to diversity and inclusion within the company and in the community. Shell's plan was developed and implemented to create an inclusive environment that elicits the very best from employees regardless of race, physical appearance, thought style, religion nationality, education and other visible underlying difference.

For Shell, as well as other leading companies, having an inclusive company that promotes diversity is good business sense. These companies, want to maintain their credibility and attract customers in the communities that they service. In order to communicate that, the company has to reflect and represent what the community is. Companies admit that in increasing its competitive advantage by attracting, retaining and developing talented people with diverse backgrounds and perspectives, allows it to respond to customers' needs, which, in turn allows the company to build a more diverse customer base. Using diverse perspectives helps to remove barriers to productivity and provide an environment in which employees can contribute fully toward achieving business goals. The employees of diversified companies feel respected, valued and connected, so they develop stronger relationships with clients and each other.

Shell's Model of Inclusiveness goes beyond its employees. Shell's commitment to Diversity goes beyond its work force. Shell requires that diversity be considered when recruiting external consultants and suppliers. The Supplier Diversity Program is designed to create value and maximize effectiveness through aggressively identifying, engaging and developing mutually beneficial relationship with women and minority owned business enterprises. In 2004, DiversityInc named the following Top 10 Companies for Supplier Diversity: SBC Communications, Ford Motor Co., IBM, Con Edison, Washington Mutual, Altria, Fannie Mae, International Truck and Engine, Verizon Communications and Dennys. All of these companies have formal supplier-diversity programs and nine of them require second tier supplier diversity (subcontractors). They spend an average of 12 percent of their total procurement budgets with diverse suppliers.

Leading Companies Making Diversity Demands On Their Outside Counsel

To meet companies' demands of supplier diversity, specifically that its outside legal counsel be committed to Diversity, many law firms have responded by creating Diversity Plans. Companies not only look to

the law firm's Diversity Plan, but examine its pool of associates and scrutinize its pool of senior attorneys and its partners, to see whether diverse attorneys are given meaningful opportunities to develop and succeed. Companies further demand that the law firm measure its success. Some companies require that law firms on its bills, include the race and gender of each attorney who works on their matters. Companies even go so far to sever its relationship with legal counsel if they refuse to address diversity and gender issues. Generally, law firm Diversity Plans establish internal programs focused on educating the law firm regarding diversity and by achieving an appropriate representation of its most talented diverse attorneys at all levels of the firm. This is instituted with diversity committees, diversity workshops, mentoring programs for diverse attorneys, minority law student scholarships and recruitment and retention programs for diverse partners and associates. Further, some law firms also participate in and form strategic alliances with organizations dedicated to the advancement of diversity in the legal profession.

Should Companies And Law Firms Be Committed To Diversity In Selecting And Using Qualified Mediators?

Will the requirements placed by Companies on their outside law firms filter down to the mediation profession? Should companies and law firms be committed to Diversity in selecting and using qualified mediators? If companies stand by their Diversity goals and want to maintain their credibility, not only will they demand that their outside counsel be diverse, but embrace diversity when selecting qualified mediators to resolve their disputes. Companies, who have a plan to develop and promote diverse talent have also discovered that it makes good business sense because it boosts their credibility, reflects the community in which they operate and attracts customers.

In the mediation profession, having diverse mediators is more than just good business sense but promotes the success of mediation. A mediator has to understand that people's diverse backgrounds influence the way they evaluate facts and understand situations. It is important that the mediator understands and is able to identify with cultural or gender perceptions that are present during a mediation. A mediator has to be able to communicate with the participants.

For example, several years ago, Toyota, was threatened with boycotts from the Reverend Jesse Jackson's Rainbow/PUSH coalition following the 2001 release of a culturally insensitive advertisement that featured a gold-toothed black person. Obviously, the Toyota advertising team lacked a diverse workforce and created an insensitive and demeaning advertisement, who could not recognize that there was an

issue with the image of a gold-toothed smiling African American. As a result, this advertisement, put up a barrier with African-Americans and created a lack of distrust and credibility for Toyota amongst the African-American community. With a mediator, the pivotal tool in having a successful mediation is not to create barriers but to eliminate barriers and have trust and credibility with the participants. A mediator that communicates with and understands the participants' diverse background immediately creates the necessary trust and credibility that will lead to a successful mediation. Further, communication flows because the diverse mediator can communicate and suggest creative resolution of actions in a message that will not offend the diverse participant.

Diverse participants receive communication the same, but the only difference is in the interpretation of the communication. If you say love of family to an African-American, it has a different resonance and meaning as to how Hispanics see love of family. In California, ethnic minorities constitute the majority of California's population, work force and consumer markets. The need to understand and communicate with diversified participants is a must, in order to have a successful mediation.

Mediator associations see the importance of embracing inclusiveness and diversity. The Diversity Committee of the Dispute Resolution Section of the American Bar Association goal is to increase the recognition and participation of underutilized or under represented ADR professionals of color, women, Gay, Lesbian, Bisexual or Transgender (GLBT) persons, persons with impairments or disabilities. It also supports the efforts of organizations, corporations who hire use or promote diversity in their organization and amongst its use of mediators. The Southern California Mediation Association has similar goals. Each of these organizations is active in promoting inclusiveness by providing mentoring, networking opportunities and programs for diverse mediators. However, having a pool of diverse mediators does not promote inclusiveness if the participant's attorneys or companies do not engage the diverse mediator.

Will There Be A Trickle Down Effect?

Will companies' and law firms' commitment to diversity and inclusiveness trickle down and include the mediators who supply mediation services for them? Will their diversity plans advance and promote diversity and inclusiveness in its use of mediators? It makes good business sense: it will promote successful mediations and will support their written commitment to diversity and inclusion and in the community that reflects its client base.

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