

Competency-Based Interviews: The Next Generation of Legal Interviewing

BY LORI L. LORENZO



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At the recent NALP (the Association for Legal Professionals) Diversity Summit, the buzz was all about a trend toward competency interviews (also called behavioral interviews) in law-firm settings. Although broadly defined, even among experts, a competency is knowledge, skills, abilities, or characteristics associated with high employee performance in a particular job.¹ Specifically, competencies look at the way an individual accomplishes the job's objectives and not merely whether or not the objectives were met.² This article looks first at how competencies are derived and their usefulness in identifying top candidates through competency interviewing, examines their particular usefulness to legal employers and provides suggestions for legal employers to maximize the benefits associated with the use of competencies, looks at the benefits of competencies for legal candidates, and provides

suggestions for identifying and refining personal competencies and formulating good competency interview answers.

The idea of assessing employees based on how they achieve their job goals as opposed to simply whether they achieved these goals began gaining popularity in the 1990s. In fact, in the mid-90s, about 75–80 percent of corporate employers used some type of competency framework in their human resources processes.³ Developing competencies for a given position requires that an employer identify top performers, or “star players,” within the particular position.⁴ Star players are defined by their consistent, above-average performance and longevity in the workplace as compared to their colleagues in the same position. Once star players are identified, the methods, techniques, and attributes they employ that allow them to perform in their position better than their contemporaries must be catalogued. The results are then analyzed to identify commonalities. The commonalities are the position's

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Decisive Moves Still Necessary to Promote Minority Partners

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Statistics and trends show an increasing number of women and minorities in law firms, particularly larger law firms. However, while the gains have been substantial, they have not been made evenly across the board. And when it comes to the number of women and minority partners at law firms, the gains appear to be smaller. More particularly, firm characteristics such as size, number of offices and their locations, prestige, and earnings rankings appear to have more of an affect on the

proportion of minority legal professionals than the proportion of women legal professionals. This article will tell why the gains made by minority legal professionals have been somewhat uneven and what factors led to this trend.

The National Association for Law Placement's statistics on the percentage of minority lawyers in 2009 show that there are significant differences between different cities and law-firm sizes. *Women and Minorities in Law Firms by Race and Ethnicity*, NALP (January 2010), www.nalp.org/race_ethn_jan_2010. Overall, minorities accounted for 6.05 percent of partners among the 1,500 employers in the NALP Directory of Legal Employers. *Id.* However, this does not mean that minorities make up 6 percent of partners at each of the employers surveyed. Indeed, about 30 percent of the offices and firms reported that they had no minority partners. *Id.*

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Promote Minority Lawyers

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Geographically, minority representation was highest in the largest cities. Law firms in Los Angeles and San Francisco had minorities account for 12.13 percent and 10.25 percent of the firm's makeup respectively. Likewise, firms in Atlanta, New York, Seattle, and Washington, D.C., are close to exceeding national averages. Among smaller cities, Miami (23.46 percent minority partners, mostly Hispanic) and San Jose (15.89 percent minority partners) exceeded national averages. *Id.*

However, in many other smaller cities, law firms were well below the national average with respect to minority partners. Cities in this category include Birmingham, Charlotte, Grand Rapids, Kansas City, Nashville, Salt Lake City, and Wilmington. *Law Firm Diversity Demographics Show Little Change, Despite Economic Downturn*, NALP (October 21, 2009), www.nalp.org/oct09lawfirmdiversity. One would expect to find parallels in the minority representation of the population in these cities to explain the differences in minority partnerships geographically. While this is largely true, particularly with respect to larger cities, it is not always the case. For example, in Charlotte, North Carolina, almost half the population is comprised of minorities, and in Richmond, Virginia, approximately 60 percent of the city's population is made up of minorities. *Id.*

Minorities account for greater percentages of associates in the surveyed law firms, making up 19.67 percent of all associates. *Women and Minorities in Law Firms by Race and Ethnicity*, NALP (January 2010). Minority associate representation is highest in Hartford, Las Vegas, Los Angeles, Miami, Orlando, San Francisco, San Jose, and Seattle, where one-third or more of the attorneys are minorities. *Law Firm Diversity Demographics Show Little Change*, NALP (October 21, 2009). As before, this average figure is not representative of all law firms. Sixteen percent of law firms have no minority associates, and 41 percent exceed the average figure of 19.67 percent. *Women and Minorities in*

Law Firms by Race and Ethnicity, NALP (January 2010).

Geographic differences and explanations aside, the significant difference between the overall percentage of minority partners and associates begs the question, why is this the case within law firms? Even in those metropolitan areas where law firms boast the highest percentage of partners (Los Angeles, Miami, and San Francisco), there is a significantly greater ratio of minority associates. For example, Los Angeles firms have on average 12.13 percent minority partners but 29.59 percent minority associates. Miami has 23.46 percent minority partners and 38.95 percent minority associates. San Francisco has 10.26 percent minority partners and 28.43 percent minority associates. The difference becomes even greater in those cities that have minority partners that are close to or exceed national averages. Atlanta has 7.2 percent minority partners with 17.87 percent minority associates. New York has 6.38 percent partners and 23.95 percent associates. Seattle and Washington, D.C., have 8.34 percent and 3.79 percent minority partners, respectively, and 20.48 percent and 20.83 percent minority associates, respectively. *Id.* Thus, by proportion, even in those areas where there are more minority partners than average, there are on average more than two times the percentage of minority associates.

Explaining the Gap Between Minority Partners and Associates

These figures lead to questions about whether there are any barriers or bottlenecks to minority associates becoming partners within law firms. Are there trends or findings that can explain this discrepancy in the numbers?

John M. Conley, professor of law at the University of North Carolina at Chapel Hill and professor of anthropology at Duke University, addresses these issues. Conley, John M., *Tales of Diversity: What Lawyers Say About Racial Equity in Private Firms*. LAW AND SOCIAL INQUIRY, 2006; UNC Legal Studies Research Paper No. 06-5. In his paper, Dr. Conley identifies a “chicken or the egg” problem when it comes to minority lawyers being promoted to partners. *Id.* In short, to retain a significant number

of minority attorneys, the law firm needs to already have minority attorneys in positions of power, which is unlikely unless there is a significant number of minority lawyers to begin with.

As evidenced by the greater number of minority associates in larger cities, the legal profession as a whole has become more diverse in recent years. But Dr. Conley has found that the trend has not manifested itself in individual practice organizations, especially at the partnership level. *Id.* While increasing the number of minority attorneys is a good start, it is the informal mentoring of an associate that creates real opportunities. The distribution of attention and training on associates comes from law-firm partners. Where minority associates lack this informal mentoring—which includes meaningful training, supervision, and interesting work—there is the real risk of the associate's career going nowhere.

Dr. Conley found that the problem is even more complicated than simply needing more minority partners. *Id.* The few minority partners that exist, he found, often felt more pressure than their non-minority counterparts to do public service work, which may divert their attention and time from cultivating influence within the firm. *Id.* On a more pessimistic note, some studies have concluded that the types of racial minorities most likely to succeed may not be those who are most likely to perform door-opening activities for other minorities. *Id.*

Yet, Dr. Conley found that even where law firms are scrupulously non-discriminatory in their hiring practices, there are distinct barriers to minority associates becoming partners. *Id.* Small law firms, for instance, tend to have partners who naturally promote people most like themselves. Small law firms liken themselves to marriages—i.e., the members of a small law firm see one another every day, collaborate on significant decisions, and may have difficulty ignoring major disagreements. And, like a marriage, a prospective partner seeks someone with similar values and expectations. Thus, even if the partners of a small law firm go out of their way to be nondiscriminatory and invite diverse candidates and actually hire them, chances are that the partners will end up affiliating themselves with someone with

a similar background. As a result, small law firms are unlikely to have substantial racial diversity in the foreseeable future.

Instead, the trend among small firms is to create a boutique firm culture with clear racial or ethnic identities that serve diverse constituencies. For example, there are African American and Latino small firms that cater to the members of their own communities.

With large law firms, Dr. Conley found that minority associates and applicants are confronted with what large firms refer to as their “standards.” *Id.* Large firms argue that their work is so challenging that there is an overriding need to ensure that any lawyers hired can do the work. To ensure this, large law firms tend to interview only those students at the top law schools who rank a certain percentage in the others. In the case of African Americans, for example, this leaves a very small pool of students eligible under this kind of criteria.

The Shrug Response

Dr. Conley calls the large law-firm response to diversity initiatives the “shrug” response. *Id.* The narrative basically states that large firms work very hard at doing something about discrimination and increasing diversity, but, with a shrug, what can they do without lowering their standards?

In 2002, the Minority Corporate Counsel Association (MCCA) completed a research project to identify barriers to diversity in law firms. *The Myth of Meritocracy: A Report on the Bridges and Barriers to Success at Large Law Firm*, Minority Corporate Counsel Association (2003) <http://mcca.com/index.cfm?fuseaction=page.viewpage&pageis=614>. The project identifies the “myth of the meritocracy” as one of the major obstacles most frequently encountered. The myth of meritocracy is the traditional view that an attorney’s law school, law-school grades, and participation in law review will provide measure as to how well one will succeed as a practicing attorney. However, it also found that a significant number of the partners at the most profitable law firms lack the same standards that are a barrier to many minority candidates. *Id.* Additionally, none of the respondents interviewed by this

study felt that the credentials called for by these standards were prerequisites for success in law firms. *Id.*

The MCCA project also reiterated a point made by Dr. Conley: Good mentoring is essential to making partner in a large law firm. *Id.* The study made it clear that senior associates who were in serious contention for partnerships have relationships with senior partners who champion their candidacy and were willing to give them the benefit of doubt when mistakes are made. The mentoring relationship does not need to be provided by a partner of the same race or gender. *Id.* However, as Dr. Conley points out, with a lack of minority partners in the first place and the tendency for people to be attracted to others sharing their interests and values, we again enter the “chicken or the egg” quandary. Conley, *Tales of Diversity*.

Firms should develop internal policies and practices to include minority attorneys in marketing efforts, including client contact.

Dr. Conley found that mid-sized law firms have a great deal of difficulty finding minority applicants who might meet their standards, because chances are that the applicant is being courted by a larger firm for more money and prestige. *Id.* For example, a larger firm may expand its selection pool to include the top quarter or half of a law-school class where a mid-size firm would normally hire from, leaving the mid-sized firms with few potential hires. The risks of hiring a minority candidate below the mid-size firm’s standards are perceived to be too great. Thus, like the large law firms, mid-sized firms are victims of circumstances beyond their control. And with the lack of minority hires, again there is the lack of minority mentoring that is essential to transitioning from associate to partner.

Clientele and business have often been cited as a driving factor to achieve greater diversity. The business world is well ahead of the legal world in this

regard, with the argument that clients and customers want and demand diversity. Even Fortune 500 corporate clients demand that their attorneys be diverse.

However, Dr. Conley’s findings are pessimistic about clients and business effecting significant gains in minority advancement in law firms. *Id.* With small law firms, he found that while clients want lawyers who are like themselves and are most comfortable when dealing with members of their own ethno-cultural communities, the clients may prefer a lawyer who is like them but does not care about the diversity makeup of the rest of the law firm. Thus, as long as there is at least one attorney that can make a client comfortable in terms of ethno-cultural familiarity, there is no concern about the racial, ethnic, or cultural background of the law firm’s partners. Particularly, in small law firms, this means there is little pressure felt to promote minority attorneys to partner so long as the firm can present a “friendly face” to its clients.

Large law firms have reported that they are aware of their corporate clients’ desire for greater diversity in the firms that represent them. But their demands have been largely unmet because large firms believe their corporate clients have nowhere else to go. If the corporations wanted to put pressure on the large firms to become more diverse, they would have to threaten to take their business to a smaller firm. However, large firms do not believe their corporate clients would actually be willing to do this, because corporate executives believe it would be too risky to not be able to say their legal affairs are being handled by a large, expensive firm.

Decisive Moves Are Necessary

Just as law school administrations have made affirmative and decisive moves to diversify their student bodies, so must law firms to leave behind the “chicken or egg” quandary of having too few minority partners or mentors to develop and promote minority partners and mentors.

Yet, even after making this affirmative decision, several strategies and recommended practices can help meet the goal of greater diversity in partnership. Law firms that are serious about increasing diversity must move past the

recruiting stage to offer associates the opportunity to work with challenging assignments and to receive critical feedback on work.

Successful diversity programs share several key attributes. One is the formation of committees to address diversity recruitment and retention. This is led by a senior member of the firm to communicate the idea that diversity goals are strongly supported by each member of the firm. Another is to establish a system that governs the success or failure of diversity recruitment or retention initiatives. These initiatives could tie results to bonus-incentive pay for partners.

Firms should develop internal policies and practices to include minority attorneys in marketing efforts, including client contact. The ability to attract clients and market the law firm is a large component of an associate's growth and potential to become partner. This requires both the opportunities to market as well as the skills to close a deal. Ensuring the inclusion

of minority attorneys in these efforts provides invaluable experience and education that usually cannot be learned elsewhere but among the firm's elite.

A formal mentoring program designed and monitored by the diversity committee will greatly assist firms in developing and maintaining diversity. The mentor need not be a minority but should be a senior attorney—preferably a senior partner. Successful law firms that have programs that promote mentoring relationships between senior partners and young associates have been very successful. The mentoring relationship provides the partner with a substantive basis to judge an associate's potential and at the same time offers an associate an opportunity to receive substantial work, critical feedback, and an education on what will be necessary to become partner.

Ending the "Chicken or Egg" Quandary

There have been some substantial gains in the legal profession by minority

attorneys. However, even with a foot in the door, there are immense challenges to advancing within the law firm that are rationalized as either innate in human relationships or due to external circumstances. As is apparent in the discrepancy between the percentage of minority associates to minority partners, even after getting a foot in the door, a minority associate must still be offered an opportunity to develop and be promoted to partner. Law firms must make greater efforts to narrow the gap between minority associates and partners or repeatedly fall victim to the "chicken or the egg" quandary. ■

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