Lawyers' Responsibility for the Quality of Justice; Diversity in the Legal Profession: What Difference Difference Makes

Hypothetical Discussion Problem for Tuesday, February 27

Able, Smith & Jones (“Firm”) is City law firm with 25 lawyers (7 partners, and 7 partners) Each of the seven partners are white and male. They first met and became friends while they were students at the University of Oklahoma College of Law (classes of 1980-1983). Their law school friendships developed around their mutual love of sports --both spectator (“Go OU!”) and participatory. In those younger days, they regularly played football and basketball together, and enjoyed occasional golf outings. They routinely would visit local drinking establishments together. For the last twenty years later, they have had monthly golf outings where they enjoyed friendly competition (with wagers), humorous banter, and informal discussions and strategizing about the Firm. They would complete the two foursomes by inviting select associates and clients or client representatives. Their informal criteria for extending an invitation to play: excellent golfer, fun to be with, and strong partnership potential (high quality and quantity of profitable work, rain-making track record). While never the actual subject of conversation between the partners, no woman or racial or ethnic minority has been invited to play.

Over the years, Firm has hired several women law clerks and attorneys. None have been made partner, mostly because they haven't stayed around long enough to be considered. The one attorney who has an “of counsel” status is Carrie Carr. She was first hired in 1990 and appeared to be well on the way to partnership, but then started a family and was unwilling to work the long and unpredictable hours required of senior litigators. Because she was a star litigator and moderately successful at client development, Firm agreed with Carr's request that she be taken off the partnership track and retained as “of counsel” with compensation based on reduced hours, and a percentage bonus based on work she brought to the firm. At partnership meetings, some have expressed frustration about the waste of time and money spent in training associates, who then leave after several years -- either for “greener pastures” or for a less demanding work schedule. Although several of the women seemed to have great potential, they left the Firm when they began having children.

Within the last five years, Firm has hired a handful of racial or ethnic minorities, either as law clerks or associates. Partners had mixed reactions to these individuals, based on perceived quality of work and future potential. Thomas Gray, an African-American associate, left Firm after three years because he was dissatisfied with the quality of his work assignments and compensation package. Markesha Marcus interned for Firm during her last year of law school. Firm declined to extend her an offer of permanent employment because her supervising attorney was not impressed with her courtroom demeanor in presenting a discovery motion. Firm partners are unaware whether any of its lawyers or staff are gay, lesbian or transgendered.

Lead named partner, “Honest Abe” Able is very involved with the bar association, and in the line-up to be elected President of the Oklahoma Bar Association. Representatives of the OBA Diversity Committee have approached prominent senior partners at many of the most respected
firms, to discuss the importance of having a diverse legal profession, and provide practical suggestions for how law firm management can accomplish that goal.

Discussion Questions & Role Assignments:

1. Firm Partners: Matt Allen, Amanda Alley, James Banks, Marva Banks, Lauren Barghols, Chad Dayton and Leighton Greenwood.

   Please sit together in class on Tuesday. Decide between yourselves who should play role of Honest Abe. You have agreed to meet with the Oklahoma Bar Association Diversity Committee during this class hour.

   Be prepared to ask probing questions, objections and legitimate concerns about WHY the Firm should be concerned about diversity. Identify the issues presented by Firm's history and culture that may create practical difficulties in accepting diversity as a goal, and what it would take for Firm to get on board, both as a matter of principle (moral, political, economic), and practically HOW to accomplish. Evaluate and be prepared to discuss the very different issues presented as to race, ethnicity, gender, sexual orientation and disabilities. As members of the partnership, identify specific steps that you would be willing to recommend as law firm policies and procedures.

2. Members of the OBA Diversity Committee: Marcus Bivines, Lacy Boyles, Heather Hutchins, Krist Caldwell and Aimie Cryer and Professor Cheryl Wattley.

   Please sit together, in the front row of the classroom and be prepared to make your pitch to Honest Abe and the Firm Partners.

   Specifically, you should address WHY diversity is an issue that private law firms should be concerned about. Anticipate and prepare persuasive arguments to the objections that could be made by Firm Partners who are not convinced. Evaluate and be prepared to discuss the very different issues involved in promoting diversity on the basis of race, ethnicity, gender and sexual orientation. Address HOW such a goal could be addressed in practical terms. Identify law firm cultural issues and proposed policies that could be adopted that could be helpful in achieving the goal of meaningful diversity.
3. All others are either Senior or Junior Associates, or Of-Counsel. Senior Associates and Of-Counsel should sit in one group, and the Junior Associates in a second group.
   a. Senior Associates: Alicia Currin-Moore, Christine Eads, Blake Farris, Brooke Gatlin, and Brett Gray.
   b. Of-Counsel Carrie Carr: Sarah Soderstrom-Bridge (sit with Senior Associates)
   c. Junior Associates: Keneisha Green, Jennifer Hardwicke, Chris Keim, Michael Martin, Matt Patterson, Rooney Patterson, Elizabeth Prykryl, Jessika Tate, Rebekah Taylor, Ellen Thomas, Sarah Weldon

The associates have a wide range of concerns relating to the firm. Some are unhappy with what appears to be arbitrary or inconsistent work assignments, feedback on their job performance, face time with clients, and other matters. Others are quite happy and feel validated by their work, collegial interactions and compensation. On several prior occasions the two subgroups of associates have met after hours for drinks to discuss their various concerns. Knowing that the OBA Diversity Committee is meeting with the Firm Partners. Discuss your concerns and complaints and try to formulate a proposal for the Firm Partners to address the concerns you have identified.