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Undaunted, DEI Pros Meet 2023 Challenges, Expand Programs & Unveil New Ones—Part 2

In the August issue, Of Counsel examined the ramifications of a Supreme Court ruling in the summer of 2023 that shook the legal profession, particularly law firms’ diversity, equity, and inclusion programs. Last year at about this time, firms were reeling from the High Bench’s monumental—and controversial—decision striking down affirmative action in higher-educational admissions. For one thing, it opened the door for anti-affirmative action activists to sue law firms for some of their diversity programs, and created a chilling effect on DEI efforts. In the second installation of this two-part article, we look at this important topic further.

April 2023—which, among many other topics, explored DEI—Roy Sexton was receiving pushback from some LMA members. As president of the association, who’s also the director of marketing and a DEI supporter at Detroit’s Clark Hill, Sexton was reading and hearing complaints about the location of the event. Florida, after all, had and continues to have a very conservative political landscape, one that doesn’t exactly embrace diversity.

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In the weeks leading up to the Legal Marketing Association’s annual conference in

“Some members were giving me a hard time and saying, ‘How dare you hold a conference in Florida!’” Sexton recalls. “I kept explaining to them that these contracts were signed years in advance, It’s not like we can just pull up stakes,”

Instead of stake-pulling, Sexton stuck with an idea he’d had long before the state government took certain moves that made Florida’s political climate even less inclusive. Tasked, as are all LMA presidents, to welcome the conference-goers and open the proceedings with

introductory comments, Sexton took a different, one might say bold approach.

“I like to sing and so I thought I’d do a little singing to kick things off; I chose a song with a message of inclusion, of all people having a place,” he says. “I also asked for and got a drag queen to accompany me on stage, although she wouldn’t sing along.”

So bright and early on that late April morning with the conference hall packed with 1300-1400 attendees, Sexton took the stage dressed in silver pants, a rainbow-sequined morning coat, a sequined shirt, and ruby slippers. He paused to let the moment sink in and launched into “Born This Way” by Lady Gaga. Electrified, the audience stood and cheered. After singing the first stanza, Sexton paused again and introduced his costar: “Please welcome, Athena Dion!”

“She was wearing rainbow chiffon with a cape and was magnificent and the crowd went wild,” he recalls, describing the dynamic performer who has quite a following in South Florida and beyond.

Later, scores of people—from the LGBT community to people of color, from members of the Gen Z generation to old-guard LMA leaders and members—approached Sexton and thanked him for his conference kick-off. They appreciated the message of inclusion he sent. “More than one person told me, ‘You made me feel safe,’” he recalls. One long-time LMA-er told him, “I’ve never been prouder of LMA than in that moment.”

The opening launch set the right, upbeat tone and sense of belonging for the entire conference: Mission accomplished.

Pushing Back with More Energy

Of course, in June of last year, only two months after Sexton’s bold opening act to the conference, the Court handed down its

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DEI Progress

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ruling overturning affirmative action policies in higher ed. The ensuing and well-reported litigation against law firms, the threats of more suits, and other fallout generated from the decision shook law firms, their attorneys, and professional staffs.

It seems, however, that private practitioners have been pushing back against those actions. While some firms initially pumped the brakes on their diversity initiatives and/or cut their DEI budgets, most buttoned down their compliance protections and moved on—some with more energy than before the ruling.

“Some firms cut funding or [job] positions, and that’s very unfortunate, but I don’t think that’s the trend,” says Ashley Holloway Black, the diversity, equity, inclusion & belonging manager at Houston’s Porter Hedges. “I think that most firms still know that DEI is very valuable, and it’s needed. And, clients are still requesting that they have diverse teams for their matters. In our own little corner of the world, we haven’t changed much in what we’ve done [on the DEI front]; in fact, we have added to it.”

The hit to diversity actually seems to be strengthening relationships among lawyers and staff at several partnerships. “For us, it was all about pulling together and reviewing our policies and language and figuring out how we can still keep our [DEI policies and programs] without breaking the law or falling out of compliance,” says Lee Ashby Watts, the director of diversity, equity & inclusion at Nashville-based Bass Berry & Sims. “It just made us get more creative. It caused us to open our arms even wider.”

Despite the shake-up last summer and into the fall, many diversity programs are moving along without a hitch and some trends have continued to emerge. That includes expanding billable-hour credits.

“We are now providing our attorneys with an opportunity to receive non-billable credit for their DEI efforts both internally and externally,” says Terra Davis, chief diversity & talent development officer at the California-based, national firm Knobbe Martens. “This is a powerful way to both keep the good work going and combat the diversity tax.”

Law firms are also forming more workforce support structures that perform many functions and organized activities. “We have several affinity groups, and each was intentionally established,” David notes. “Rather than start one because every firm has it, we listen to those in our firm and respond to what they express that they need. These affinity groups have hosted several educational events but also social events that build camaraderie and a healthy and inclusive firm culture.”

Vets, Books, & Ethnic Cuisine

Clark Hill has resource groups around LGBTQ lawyers and staff, people of color, women, and others, including a recently formed veteran’s group because, collectively, the partnership understands that diversity in its purest sense is finding those places where everybody can connect, according to Sexton.

“A couple of veterans approached us,” he recalls, “and said, ‘Look, we have a voice; we have a lot of folks in the firm; and we’d like to have this connection point with each other.’ I think there’s real responsiveness in our culture here at Clark Hill. So, when they stepped forward, we said, ‘Yeah, why not? Let’s organize that.’ It’s one of those things that made a

good amount of sense when it was presented, and why would we not?”

Many partnerships take innovative approaches to bring people together and share diverse backgrounds and interests—all with the goal of boosting inclusivity, enhancing workplace culture, and consequently, increasing productivity. “We implemented a DEI book club, and we read three or four books a year,” Holloway Black says. “The firm purchases the books for anybody who wants to be involved, so you’ll have anybody from equity partners to our receptionist come to the book discussions. We usually have 25 or 30 people come and talk about how that book affected them.”

Additionally, every few months Porter Hedges has what’s called a Dine-Around-the-World Lunch where they order lunch from a different ethnic cuisine. “We recently did Nigerian food, and we’ve done Thai, Pakistani, Jamaican food, and others,” Holloway Black adds.

Listen and Learn

One way DEI professionals cultivate ideas for such programs while learning about their colleagues’ needs and wants is through proactive communication. At Bass Berry & Sims, Watts went office-to-office and door-to-door to talk with—and more importantly, listen to—the firm’s attorneys and staff.

“Last October I kicked off a listening tour,” Watts says. “I spent about a month visiting all of our offices and interviewing everyone from partners to legal assistants of all backgrounds, asking about their perspectives on DEI and specifically here at the firm.”

Once she elicited all of that information and pulled it together, she identified some common denominators—ideas and perspectives that stood out, which will inform the firm’s diversity efforts. “I have been tasked with creating a completely new DEI strategy for the firm,” Watts says. “So, that listening tour was really helpful. I want to make an impact and create new programs and new initiatives at the firm.”

Knobbe Marten’s David agrees that active—and *compassionate*—listening serves as a linchpin in advancing a culture that truly embraces diversity, equity, and inclusion. And, listening, along with fully understanding and synthesizing what people say, is even more important in the wake of last summer’s DEI backlash.

“One approach to meeting challenges [to DEI],” she says, “is to keep an empathic ear, to understand that even if it isn’t your lived experience, it’s still a real, lived experience of the person telling the story. I cannot stress the importance of education and also advocacy in this space.” ■

—Steven T. Taylor