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**DIVERSITY** | IN ACTION

## What Gives?

The lessons of **failing the bar** and a **good performance review**.

**BY KATHERINE FRINK-HAMLETT**

**F**ailing the bar has become my worst nightmare. I am an African-American male who graduated cum laude from an Ivy league law school. To make matters worse, one of the senior associates of color at my law firm blasted me for failing the bar. He made me feel as if I had failed the entire African-American community and even seemed to suggest that my career was eternally doomed at the firm. Partners have been far more supportive and tell me that I can recover. Will I be relegated to the worse case assignments? Should I consider new opportunities? Who should I believe?

Believe in yourself. You will pass the bar, and the fact that you failed should not be construed as a career death sentence. There are people of color who have failed the bar on their first try and have moved on to become successful attorneys. There are people of color (and otherwise) who have passed the bar on their first try with less than stellar careers.

Whether we like it or not, African-Americans often become involuntary representatives for the entire community, particularly in arenas where we are consistently under-represented. It is a tremendous responsibility that many of our counterparts will never understand or appreciate. We are constantly told that we have to work twice as hard to be considered half as good.

While all of this is true to some extent, keep in mind that you are not infallible. You will make mistakes because you are human. It is your response to the situation that what will determine how your career develops from this point forward.

This is not to suggest that there won't be partners or associates who will judge you based on the fact that you failed the bar — they will. But that's out of your control and shouldn't be the focus of your endeavors.

Furthermore, now is not the time to consider new opportunities. To be blunt, no one is interested in hiring a first-year associate who just failed the bar.

Your objective is to recommit yourself



to passing the bar. To that end, you have to create a schedule that will enable you to focus most of your energies on studying and preparing for it.

At the same time, you will need to deal with the assignments that the firm expects you to complete. While you should be avail-

able for certain projects, do not take on assignments that will impair your ability to pass the bar. Be candid and explicit. Tell the partner that while you are eager to devote time to the projects, it is in the firm's best interests that you be admitted to the bar and you intend to do everything in your power to make that happen.

After you have passed the bar, dedicate yourself to becoming a superstar and producing the best work product possible.

**D**iversity hiring appears to have become more important to my law firm, a major one in New York.

As a Puerto Rican male who is a third-year litigation associate, I welcome this and consider it a step in the right direction. However, I recently received a good review; in fact, it was borderline excellent. I was told

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*that I am performing above class level, that I am diligent and dependable and produce a good work product. Given the firm's increased interest in diverse candidates, is it possible that the positive feedback was driven by a desire to increase diversity and has less to do with my overall performance?*

Possible, but highly unlikely. Partners and senior associates will not provide a positive review to a third-year associate simply because he is of a diverse background. This is true even when the firm has made diversity hiring a stated goal.

Law firms have an established set of criteria for assessing the performance of their associates and have no interest in providing a positive review to anyone, diverse or otherwise, unless there is a legitimate basis for the feedback. While the review process will vary from firm to firm and is highly individualized, in my conversations with white, male partners and senior associates at major New York law firms, the responses were fairly consistent: diversity is not relevant during the review of a third-year associate and nobody is going to pull punches in the name of diversity.

First, there are other, more effective mechanisms to reach diversity goals — such as increased diversity hiring, mentoring and retention programs — that are far more likely to attract and retain diverse candidates than are trumped up reviews for marginal associates.

Additionally, and without devaluing the importance of the review process, most third-year associates will not be at the firm as seventh- or eighth-year associates.

As a result, the reviews are weighted accordingly. Also, keep in mind that because you are a litigation associate, a significant portion of your work product is the culmination of a joint effort, thereby making it more difficult for partners and senior associates to distinguish between what is truly the fruit of your endeavors and what is the work product of one or more other associates on the team. Again, this will impact the meaningfulness of the review and undercuts the notion that a positive review will be determined by your race, gender or ethnicity.

In essence, the review for a third-year is not nearly as meaningful as the review for a more senior associate for whom the expectations are far greater and have much more significance in terms of career development and long-term benefits to the firm and its clients. Indeed, at the senior levels, diversity becomes critically more important, particularly regarding partnership decisions. One partner revealed that a white female senior associate was made partner ahead of some male counterparts in the interests of diversity. Recognizing that several of the firm's corporate clients had female in-house counsel, the firm felt that it would be beneficial to have a female partner interact with its client base.

So while you should be commended for your performance, you now need to determine what steps to take in order to make the successful transition from a junior to a mid-level associate. One litigation partner suggested that good reviews tend to trip up junior associates more than marginal reviews because

associates have a tendency to focus on one or two positive statements in the review rather than using the opportunity to develop a career strategy with short-term and long-term goals.

Do not fall into this trap! Take it upon yourself to manage your career and figure out how you develop additional assets. The key to professional success is inextricably tied to the skills you develop. If you haven't done so already, you need to follow up with partners and senior associates to discuss how to improve. Perhaps, for example, you have solid research and writing skills but need to become more experienced with taking depositions.

Remember that while diversity is of increased interest to many law firms and corporate law departments, these organizations are primarily interested in top-flight legal professionals with solid legal skills and exceptional interpersonal skills. It makes good business sense. Think back to the real-life example of the female senior associate who was made partner over her male counterparts. Now, more so than ever, clients retain lawyers, not law firms. The reputation of a firm is built upon the performance of its attorneys, so make sure that you are among those who add value. •

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