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**Kenyon & Kenyon**  
continuously improving  
Diversity Rankings since 2008

## Diversity Scorecard

**THE DROP** in law firm diversity may be small, but it's important. Overall, big firms shed 6 percent of their attorneys between 2008 and 2009—and, amid the bloodletting, lost 9 percent of their minority lawyers. (Here and elsewhere in this story, we've calculated such percentages only for the 191 firms that provided numbers in both years, in order to have a consistent basis for comparison.) Diversity advocates call the drop a warning sign that shouldn't be ignored. "I think [that] when you're looking at any numbers of a population you're trying to increase, and you see a decrease, that's significant," says Venu Gupta, executive director of the Chicago Committee on Minorities in Large Law Firms. "I guess I hoped we wouldn't be going backward," echoes Fred Alvarez, chair of the American Bar Association Commission on Racial and Ethnic Diversity in the Profession and a Wilson Sonsini Goodrich & Rosati partner.

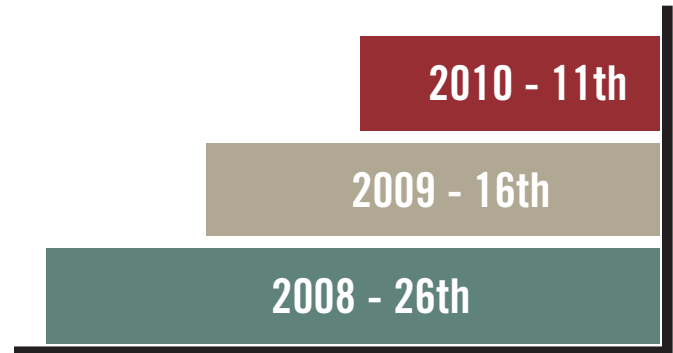
The decrease in minority head count confirms a concern voiced by many in the legal industry: that the massive law firm layoffs of 2008 and 2009 would hit minority lawyers especially hard. "There were fears when the recession began that these folks would be disproportionately impacted, and it appears to be the case," says Thomas Sager, general counsel of E.I. du Pont de Nemours and Company and a longtime diversity champion. Sager and other observers fear that this year's falloff could be the start of a new downward trend, given a climate of slower law firm hiring, fewer African American law school students, and so-called stealth layoffs.

This year's results have shaken up our Scorecard rankings, which are based on the firms' percentage of all minority lawyers as well as their percentage of minority partners. Alvarez's firm, Wilson Sonsini, held its number one spot, but some of last year's top-ranked firms didn't fare so well. Those firms include Townsend and Townsend and Crew (which dropped from second to fourteenth) and Milbank, Tweed, Hadley & McCloy (from tenth to seventeenth). Townsend says that it continues to keep a close eye on its diversity numbers; Milbank says that its percentage of minority attorneys has held steady at 23 percent, once its new entering class is taken into account. (The full rankings are available online at [americanlawyer.com/diversity](http://americanlawyer.com/diversity).)

Several firms bucked the overall trend, rising in the rankings thanks

### Moving Up in the Ranks

The diversity ranking for Kenyon & Kenyon rose from 26th place in 2008 to 11th in 2010.



to improved minority lawyer numbers. Among them: Chadbourne & Parke (going from sixty-second to twenty-ninth) and White & Case (from ninth to fourth). These firms trimmed lawyers, but managed *not* to lose a disproportionate share of minority lawyers.

We compiled the Diversity Scorecard by sending our survey to 249 firms from The Am Law 200 and The NLJ 250, asking for their lawyer numbers as of September 30, 2009. All told, 202 firms responded, down from last year's 210. (Three firms that responded last year have since gone out of business or merged with other firms.) Overall head count at the 191 firms who responded both this year and last dipped by 6 percent, or by 5,834 lawyers. There were 4,543 fewer white lawyers, 10 percent fewer nonpartners of all races, and 1 percent more partners of all races.

The data shows that, while minority lawyers as a whole lost ground, not all groups were affected equally. In proportional terms, African Americans lost the most: the percentage of all black lawyers fell by 13 percent (462 lawyers), with the number of black nonpartners sliding by a startling 16 percent. Translation: Almost one in six African American nonpartners left the surveyed firms in the space of a year without being replaced.

In raw numbers, Asian Americans dropped the most, by 9 percent (556 lawyers). The number of Asian American nonpartners dropped by 11 percent, while the number of partners rose by 6 percent. As for His-

BY **Emily Barker**

## 2010 diversity scorecard

**Kenyon & Kenyon**  
New York

Diversity Rank	Diversity Score*	Minority Percentage All U.S. Attorneys	Minority Percentage All U.S. Partners	Total Attorneys U.S./Non-U.S.	African American Partners/Nonpartners	Asian American Partners/Nonpartners	Hispanic American Partners/Nonpartners	Other Minority/Multiracial Partners/Nonpartners
11	33.9	21.2%	12.7%	170/0	0/3	5/24	3/1	0/0

\*Minority percentage of all U.S. attorneys + minority percentage of all U.S. partners.

## The Best

These firms had the biggest gains in their proportions of Asian American lawyers.

BIGGEST GAINS

### ASIAN AMERICAN

Cleary Gottlieb	4.17%
<b>Kenyon &amp; Kenyon</b>	<b>3.99%</b>
Boies, Schiller	2.46%

panic lawyers, their numbers dropped by 9 percent overall (282 lawyers). Hispanic nonpartners fell by 13 percent; partners rose by 3 percent.

The declines in minority attorneys were not evenly spread across firms. About a third saw no decrease, while 31 firms saw decreases of 20 percent or more. The biggest decliners in percentage, including Fried, Frank, Harris, Shriver & Jacobson; Gibbons; Kilpatrick Stockton; and Milbank, lost more than a third of their minority attorneys. (Gibbons and Kilpatrick say they remain strongly committed to their diversity programs; Fried, Frank did not respond to a request for comment.) While general head count also went down at almost all 31 of those firms, in every case it was outpaced by the percentage drop in minority lawyers.

It would seem logical that the losses in the minority lawyer population are linked to the widespread job cuts at large law firms in 2008 and 2009. But we can't draw that conclusion definitively without collecting a demographic breakdown of all of the attorneys fired for economic reasons—a project beyond the scope of this survey. However, our data shows a strong correlation between firms that drastically cut overall head count and firms that saw significant losses of minority lawyers.

Still, it's unlikely that the drop in minority attorneys is linked only to broader industry layoffs. Large law firms are presumably savvy enough about labor and employment law to avoid publicly announced cutbacks that hit a protected class of employees disproportionately. But, say several diversity experts, minority attorneys remain extremely vulnerable to stealth layoffs through performance evaluations. Our 2009 Minority Experience Study found that minority associates, especially African American associates, were more likely to say that their workload was "too light" and to report lower hours than white associates ["Can They Still See the Forest?," *The American Lawyer Student Edition*, Fall 2009]. Consultant Arin Reeves of The Athens Group says minority associates suffer when work dries up: "Your ability to meet hours is reflective of whether or not you've been invested in."

Deferred start dates for first-year associates at many firms may help explain what became of some of the missing minority attorneys. Because our survey asked for data as of September 30, 2009, deferred first-years were not included in the firms' head count. (Milbank, for instance, deferred its starting class, which included 33 minority associates, from fall 2009 to January 2010.) That's important because entering classes tend to be more diverse than the firms they join. Once those associates start work—and some already have—their presence should increase their firms' diversity statistics.

This optimistic scenario points to an inconvenient truth about large law firm diversity. "For a long time, the way that law firms beefed up their diversity numbers was really to have a lot of diverse associates in the first- and second-year classes," says Gupta from the Chicago Committee on Minorities. If a firm didn't hold on to its minority associates—and many didn't—it

was relatively easy, Gupta says, to hire more in the next recruiting season.

But that was in a so-called normal economy. These days, firms can't quickly replace the minority attorneys they lose through voluntary or involuntary attrition. Reduced recruiting is another factor that is likely contributing to the decline in minority attorneys. In written comments in the Diversity Scorecard survey, about half of the responding firms acknowledged that the recession had hurt their diversity-building efforts. Many firms cited limits on new hiring as a blow to diversity efforts. This comment from 141st-ranked Dykema Gossett was fairly typical: "With the downturn in the economy, it has been difficult to increase our diversity by new hires at the level at which we had been doing in prior years." (The firm reported that 9.9 percent of its lawyers were minorities, down from 10.1 percent last year.)

Some firms said that as a result of budget cuts, they had scaled back sponsorship of outside diversity groups or tried to find ways to produce internal diversity programs more cheaply. "We didn't cut any projects," wrote Gibson, Dunn & Crutcher (number 78 in the Diversity Scorecard) in a response that echoed similar comments from other firms, "but we did in some cases limit their scope."

What will be the long-term impact of this year's drop in minority lawyers? "My fear is that even though it is a half-percentage point [decline], it's a half-percentage point that will not correct itself, and it will increase over the next two years," says consultant Reeves. In addition to slower recruiting, Reeves says, "we also saw a lot of minorities quietly being 'evaluated out' in the last quarter."

Several long-term trends will make it hard for firms to regain lost ground. Summer and first-year classes are likely to stay small, as clients balk at paying high rates for junior associates and firms rethink staffing levels. Plus, the pool of minority law school graduates isn't growing. Alvarez, Reeves, and Gupta all cited a study by Columbia Law School's Lawyering in the Digital Age Clinic that found fewer African Americans and Mexican Americans starting law school in 2008 than in 1993. ABA data shows the number of minority J.D.s stuck at about 22 percent of all new lawyers in recent years.

A permanent drop in the minority associate ranks would eventually mean fewer minority partners—and perhaps fewer future minority lawyers, says Alvarez. "If [minority students] see the profession going negative instead of improving, that could have additional impact on the decision to go to law school," he says. "I think [the decline] needs to turn around *soon*, or we could see a negative spiral."

Still, Alvarez says, clients aren't letting up the pressure on law firms to diversify. "The clients have not stopped talking about it," he says. Just listen to Roderick Palmore, general counsel of General Mills, Inc., whose 2004 Call to Action set off a major diversity push by U.S. general counsel. "The challenge is that we cannot look at these statistics and these results and sit still," he says. "We're in a dogfight." Adds DuPont's Sager: "I think [firms] ought to be concerned how [a decline in diversity] is perceived at law schools, in the legal community, and most of all, by their clients."

That's a broad hint if there ever was one.

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