Best Practices for Diversity Initiatives Among Corporate Counsel

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Over a decade ago, Richard Palmore published *2004 Call to Action*, which argues in favor of in-house lawyers considering the racial, ethnic or gender backgrounds of prospective law firm candidates when selecting outside counsel.¹ Several S&P 500 companies are now putting these words into action by offering creative and concrete incentives to staff their legal matters with attorneys who reflect the goals of increasing racial and gender diversity.

Although diversity has generally improved within corporate legal departments, the percentage of diverse partners at a majority of law firms is far below any measure of parity. According to recent statistics published by the National Association of Law Placement (NALP), only 17.1% of equity partners at the 200 largest law firms in the U.S. were women, and an even fewer 5.6% were members of a racial or ethnic minority.² This flies in the face of increased client sophistication and demand that legal teams be comprised of attorneys that better reflect current demographics.³ According to Patrick Quinn, managing partner at Cadwalader Wickersham & Taft LLP, clients “look at teams of lawyers across the industry that are all white men and wonder what’s going on.” Quinn notes that, “Companies have been demanding more diversity from their outside counsel, but there are lots of great reasons for law firms to focus on diversity. We think firms that emphasize diversity will be able to recruit better talent and deliver more creative results for clients. There’s much more work to be done, but the legal industry is investing significant time and

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resources and, with determination and a little creativity, some firms are beginning to show real results.”

In a global business environment, companies are finding value in attorneys that are members of racial and ethnic minorities, who are women, LGBT, or military veterans, since this background provides them with innate skills to understand multiple cultures. As workforces and in-house legal departments are diversifying, general counsel are paying closer attention to diversity in making hiring decisions for outside counsel. Moreover, in-house legal teams now have the technological resources to track and measure the diversity of their outside counsel, along with tracking other performance metrics, such as results, efficiency and cost effectiveness.

Some of the leading in-house legal departments in the area of diversity and inclusion, such as Microsoft Corp., not only track outside counsel diversity, but hold outside counsel accountable by rewarding and penalizing both law firms and individual lawyers based on their diversity/inclusion “report card.” Microsoft, for example, provides an annual two-percent diversity bonus for the law firms it retains which satisfy certain diversity benchmarks. Law firms earn this bonus by selecting from one of five specific and objective targets designed to measure that firm’s diversity and inclusion progress annually. One annual target is whether a firm has achieved percentage increases in its overall U.S. diverse attorneys compared to the previous year, while another tracks percentage increases of diverse attorneys working on Microsoft matters. Senior Microsoft corporate counsel’s year-end bonuses are also tied to the diversity success of its outside counsel.

The legal departments of DuPont, General Mills, Verizon and Walmart also recently announced minority attorney inclusion programs specifically designed to engage diverse lawyers on significant matters and promote diversity in the major law firms that they retain. These programs require hiring diverse lawyers to be lead counsel on significant matters and require each firm to assign a diverse team to those matters. They also require the outside law firms they hire to certify that the diverse lead lawyers assigned to their matters receive financial credit as the originator of the matters.

Shell Legal has instituted external initiatives to increase the diversity of its outside counsel that not only help Shell meet the Legal Department’s own goals of hiring minority and/or women-owned law firms but also enable Shell to meet its U.S. corporate supplier diversity targets for using minority and women-owned businesses. The legal department periodically hosts Minority and Women-owned Business Enterprise Round Robin events

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where Shell in-house counsel invite and interview minority and women-owned outside law firms.³

Northeast Utilities (NU) distributes an outside counsel diversity policy statement that clearly communicates the company's expectations concerning diversity from its outside counsel. This includes requiring its outside counsel to provide periodic reports that state: (1) the number of diverse attorneys, paralegals, and staff working on NU matters and the hours they billed; (2) a description of steps taken to enhance diversity within the firm; (3) a description of efforts made within the profession and community to further diversity; and (4) measurable successes in achieving supplier diversity and diversity among temporary employees.⁴

Mark Roellig, Executive Vice President and General Counsel of Massachusetts Mutual Life Insurance Company and Marc Walters, Senior Attorney of Microsoft Corp.'s OEM Licensing division recently provided a roadmap for implementing general counsel-driven diversity initiatives with an approach that focuses on three areas. First, they recommend that the general counsel’s office create an internal company environment encouraging diversity among legal professionals. Second, they encourage in-house legal teams to build their brand and reputation as being committed to promoting diversity in the legal profession. Third, they urge legal departments to create both an internal and external pipeline of talented and qualified diverse legal professionals.⁵

Roellig and Walters recommend accomplishing the first goal by obtaining a commitment from the company's leadership to be actively and visibly involved in diversity initiatives. This may involve creating a task force or diversity committee and drafting a diversity policy statement that identifies the company’s strategies or initiatives to foster diversity. Diversity also needs to become an element of the performance review process with an impact on compensation and promotional opportunities – with specific rewards for effectiveness in recruiting and retaining diverse employees.

The second goal of building the brand for diversity must involve sponsorship and participation in diverse bar organizations. Microsoft, for example, encourages and pays for its legal team members to hold key leadership positions on committees and boards, such as the American Bar Association, the Minority Corporate Counsel Association (MCCA) and racial, ethnic and other minority bar associations.

To accomplish the third goal of establishing internal and external diversity pipelines and resources, in-house legal departments should perform annual internal satisfaction surveys directed to
legal professionals to promote and measure diversity, and implement programs that model those being implemented by Microsoft, Northeast Utilities, Walmart and Shell, described above.

Once the goal of diversity is embedded in the fabric of the in-house legal department, it could become a self-fulfilling prophecy. Diverse legal teams will prove their high performance and results over more homogenous teams, and internal legal department diverse demographics may be mirrored in the outside counsel selected. In turn, outside diverse counsel selected garnering business opportunities may be promoted to partnership levels and will in turn hire and internally promote diverse younger associates.

According to David Theising, Chair of the Diversity Committee of the ABA Forum on Construction Law, the Forum is also taking “aggressive steps to improve diversity in its membership, its leadership, and in all of its programs, publications, and other initiatives.” In the past year, the Forum Governing Committee has improved diversity in the leadership by appointing diverse individuals to be chairs of nine out of fourteen of the Forum's Divisions. The Forum also implements several outreach efforts to improve Diversity in the Forum's membership. These include its Diversity Scholarship Program, offering scholarships for the cost of registration to diverse individuals at the Forum's national meetings, regional meetings, and the Forum Trial Academy, as well as the Diversity Fellowship Program, the Forum’s signature membership outreach initiative offering three-year Fellowships to diverse construction lawyers.

The Diversity Committee has also created three separate subcommittees devoted exclusively to identifying, mentoring, and actively promoting diverse members of the Forum for speaking and writing opportunities in the Forum. Finally, the Diversity Committee in the past year has created a subcommittee designated to maintain liaisons with other diverse bar organizations, such as the ABA Commission on Women in the Profession, the ABA Commission on Racial & Ethnic Diversity in the Profession, the ABA Commission on Hispanic Legal Rights and Responsibilities, the ABA Commission on Sexual Orientation and Gender Identity, the ABA Commission on Disability Rights, and the National LGBT Bar Association.

“In-house counsel is still going to make hiring the most qualified attorney, with whom they believe they will be comfortable working, their first priority,” says Jayne Czik, General Counsel for Citnalta Construction Corp., a New York-based general contractor. “That’s where the benefit of belonging to diverse bar organizations comes in to play. As general counsel, I’m able to
gain access to diverse attorneys when they speak on or author Forum papers on issues of concern to Citnalta. Even more important, I get an opportunity to develop relationships with a diverse group of attorneys who I anticipate I will be comfortable working with,” adds Czik.

As in-house attorneys have noted time and again, general counsel hiring decisions are driven by the seminal three “Rs”: relationships, results and reputation. Therefore, it is critical that diverse attorneys participate in organizations, such as the Forum and national diverse bar associations, which welcome and encourage them to showcase their expertise and skills. Promoting diversity and inclusion will not happen without focus, time and effort. Implementing accountability systems, such as those discussed in this article, will assist the profession in making greater strides towards legal representation that reflects racial, ethnic and gender inclusion.

Endnotes


3. According to the U.S. Census Bureau, 44.2% percent of the millennial population (American youth born between 1982 and 2000) are a part of a minority race or ethnic group. See Millennials Outnumber Baby Boomers and Are Far More Diverse, Census Bureau Reports, June 25, 2015, available at https://www.census.gov/newsroom/press-releases/2015/cb15-113.html. The Census Bureau also estimates that over half of all children born in the United States will be non-white by the year 2020 and more than half of the entire U.S. population will be non-white by the year 2044. Id.


5. Id.


8. Id.

9. Id. at 20-21.