Increasing Law Firm Diversity

by Practical Law

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This Practice Note discusses the role in-house law departments can play in improving diversity and inclusion (D&I) at their outside law firms. Topics covered include the different types of law firm diversity, the current state of law firm diversity, benefits and challenges of promoting increased diversity at firms used by law departments, and practical suggestions to help law departments increase the diversity of their law firms.

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The legal profession is generally perceived as lagging behind other professions and industries in the area of diversity and inclusion (D&I). Although there are many notable exceptions, women and minorities are often under-represented at law firms and in-house law departments, particularly in leadership positions. They also often receive lower compensation than non-diverse attorneys and are excluded from, or overlooked for, other important law firm and law department roles, opportunities, and benefits.

Many in-house law departments have increased their diversity by participating in their organizations' D&I programs. Many law firms also have recently improved their D&I efforts, and numerous minority-owned law firms have been established. To accelerate these law firm diversification efforts, many law departments are becoming increasingly active and vocal in encouraging D&I at the majority-owned law firms they retain for legal services. Law departments are also increasing their use of minority-owned law firms.

This Note discusses:

• Different types of law firm diversity.
• The current state of law firm diversity.
• The benefits and challenges of promoting increased diversity at a law department's outside law firms.
• Practical suggestions to help law departments increase the diversity of their outside law firms.

Law Firm Diversity Defined

The two main types of law firm diversity are:

• Majority-owned firms that employ attorneys with diverse characteristics and backgrounds.
• Minority-owned firms and diverse solo practitioners.

Majority-Owned Law Firms

Majority-owned law firms are defined as firms that are largely owned, led, and managed by white males. Diversity at majority-owned firms is reflected in the employment, status, and roles of attorneys with diverse backgrounds, such as their:

• Gender.
• Race or ethnicity.
• Sexual orientation or identification.
• Disabilities.

Some law firms include additional characteristics and backgrounds in their definitions of diversity, such as:

• Religion.
• Age.
• National origin.
• Military service.

Minority-Owned Law Firms and Diverse Solo Practitioners
Minority-owned law firms, including solo practitioner firms, are defined as firms owned by:

• Women.
• Racial and ethnic minorities.
• LGBTQ persons.

Current State of Law Firm Diversity

A study of over 1,000 offices of major law firms in the US released in 2019 found that in 2018, women comprised 35.41 percent of the attorneys at those firms. That same survey found that 16.1 percent of attorneys at those firms were racially or ethnically diverse, 8.08 percent were racially or ethnically diverse women, 2.86 percent were LGBTQ attorneys, and 0.53 percent were attorneys with disabilities. The survey also found that in 2018, 23.36 percent of firm partners were women, 9.13 percent were racially or ethnically diverse, and 3.19 percent were racially or ethnically diverse women. The study did not disclose the percentages of LGBTQ partners or partners with disabilities. The study also did not distinguish between majority-owned firms and minority-owned firms nor did it disclose the number of minority-owned firms in the US.

Benefits of Increasing Law Firm Diversity

Increased law firm diversity can provide many benefits to an in-house law department, its organization, and the legal profession, including:

• Raising quality (see Raising Quality of Law Department Services).
• Reducing costs (see Reducing Outside Counsel Costs).
• Enhancing law department's reputation (see Enhancing Law Department's Reputation).
• Improving departmental operations (see Improving Law Department's Operations).
• Contributing to organizational initiatives (see Contributing to Organizational D&I Initiatives).
• Supporting external D&I efforts (see Supporting External Diversity Efforts).

Raising Quality of Law Department Services

The most important contribution a law department makes to its organization is the delivery of professional and cost-effective legal services. A law department's diversification efforts can improve the quality of its services and the results they generate because:
• Diverse firms and attorneys bring different perspectives, experiences, and opinions to identifying, addressing, and resolving legal issues.

• Teams with diverse members often are compelled to be more innovative, creative, and collaborative than teams with members that share similar backgrounds.

• Diversification encourages team members to consider factors and issues that they might otherwise overlook, undervalue, or dismiss.

Reducing Outside Counsel Costs
In-house law departments that use qualified minority-owned firms can achieve high quality results while simultaneously reducing their legal spend because:

• Minority-owned law firms are typically smaller and have lower operating expenses than their majority-owned competitors, so they often charge lower rates for their attorneys' services.

• In addition to their lower rates, smaller firm attorneys are often more experienced and efficient than the associates at larger firms providing the firm's day-to-day legal services.

• Many minority-owned law firms are relatively new compared to longer-established majority-owned firms and they are often more aggressive in obtaining and retaining clients. This can result in lower hourly rates and more creative uses of alternative fee arrangements. For more information on alternative fee arrangements, see Practice Note, Alternative Fee Arrangements.

Enhancing Law Department's Reputation
An in-house law department's law firm diversity program that delivers improved results to the organization demonstrates that the department is forward-thinking and committed to improving its services and advancing the legal profession. Employing a diverse roster of qualified outside counsel experienced with different cultures, languages, and backgrounds can enhance the department's reputation, credibility, and effectiveness with:

• Diverse business colleagues that interact with outside counsel.

• Other organizational colleagues.

• External legal professionals.

• Judges and juries.

Improving Law Department's Operations
The effective use of diverse law firms and attorneys can contribute to a law department's internal operations by:

• Encouraging diverse law department personnel to remain engaged in their roles and employed by the organization because the department promotes, practices, and rewards diversity.

• Increasing job satisfaction across the department by providing its members with opportunities to support important principles of justice, ethics, and equality.

• Causing diverse candidates to consider joining the law department because of its strong commitment to diversity.
Contributing to Organizational D&I Initiatives

Law departments for organizations that have established D&I initiatives can support those initiatives by pursuing increased law firm diversity. The law department's support allows the organization to:

- Demonstrate the broad scope of its D&I initiatives.
- Highlight the importance of participating in D&I initiatives to its other departments and functions.
- Include the law department's successes in the organization's public D&I disclosures.

Supporting External Diversity Efforts

A law department's increased use of diverse attorneys and minority-owned law firms provides additional benefits to the legal profession and society-at-large, including:

- Encouraging the recruiting, hiring, development, retention, and promotion to leadership roles of qualified diverse attorneys at majority-owned firms.
- Demonstrating the quality and reliability of diverse attorneys and minority-owned firms to other potential clients.
- Supporting the economic viability of minority-owned law firms, which encourages the expansion of that business model in the legal profession.
- Prompting diverse candidates to pursue careers in the legal profession.
- Increasing minorities' access to the justice system.
- Making the legal profession more representative of the population it serves.

Challenges and Risks of Increasing Law Firm Diversity

There are also challenges and risks of increasing law firm diversity, including:

- Identifying diverse firms and attorneys (see Identifying Qualifying Firms and Attorneys).
- Exposing internal lack of diversity (see Highlighting Law Department's Lack of Diversity).
- Creating operational inefficiencies by introducing new firms (see Inefficiencies from Onboarding New Firms).
- Reducing quality by unduly emphasizing diversity (see Promoting Diversity at the Expense of Quality).

Identifying Qualifying Firms and Attorneys

A law department implementing a law firm diversity program must identify qualifying firms. A recent study found that that more than 85 percent of law firms surveyed have diversity committees that include senior partners, and more than 30 percent employ a dedicated diversity professional. However, the fact that a law firm dedicates resources to its diversity program does not guarantee that its D&I efforts are successful. A law department needs to perform due diligence to determine the effectiveness of firms' diversity programs. The law department similarly must identify minority-owned law firms and confirm their qualifications before retaining them (see Steps to Achieve Increased Law Firm Diversity).
Highlighting Law Department's Lack of Diversity
An in-house law department that is not already diverse must ensure that its operations reflect D&I principles before implementing a law firm diversity program. If a law department does not prioritize D&I in its operations, majority-owned firms cannot be expected to follow a department's law firm diversity guidelines. For more information on law department diversity, see Practice Note, Increasing Law Department Diversity and Article, Expert Q&A on Law Department Diversity.

Inefficiencies from Onboarding New Firms
An in-house law department and its organization benefit from maintaining long-term relationships with outside counsel and their law firms. Outside counsel representing an organization over many years often develop deep knowledge of an organization's:

- Personnel.
- Business model.
- Operations.
- Risk tolerance and profile.
- Culture.
- Industry.
- History.

Replacing long-term outside counsel with newly hired diverse firms can create inefficiencies because those new firms must spend time and resources:

- Becoming familiar with the organization and its operations.
- Developing personal connections with in-house counsel and their business colleagues.
- Learning the law department's billing, matter-management, and knowledge-management policies, practices, and systems.

Promoting Diversity at the Expense of Quality
Law departments are responsible for assigning their work to appropriately qualified law firms and attorneys, regardless of whether those assignments are made to majority-owned firms, minority-owned firms, diverse attorneys, or non-diverse attorneys. Therefore, a law department must design and implement a program to identify and retain diverse firms and attorneys that is consistent with its obligation to match its outside counsels' experience, skills, qualifications, and resources with the complexity and importance of the matters it assigns to them.

Steps to Achieve Increased Law Firm Diversity
Law departments can use different tools to improve law firm diversity, including:
• Adopting law department operating principles (see Adopting Law Department Operating Principles).

• Establishing and implementing policies, practices, and procedures for identifying, retaining, and onboarding diverse outside counsel (see Establishing Outside Counsel Policies).

• Working with third parties, such as bar associations, interest groups, and law departments at industry peers (see Working with Third Parties).

Adopting Law Department Operating Principles
The general counsel's commitment to D&I is the first step to increasing the diversity of a law department's outside counsel. The general counsel must demonstrate that diversity is one of the law department's core values and adopt operating principles that reflect the importance of diversity to the law department's mission of providing quality legal services to the organization. If the general counsel does not encourage diversity and take steps to achieve it in the department's internal and external operations, any D&I initiatives the department pursues are unlikely to succeed.

Operating principles and practices the general counsel can adopt to support law firm diversity include:

• Emphasizing the importance of diversity in the department's mission statement. For more information about law department mission statements, see Practice Note, Law Department Business Plans: Mission Statement.

• Educating the law department about the importance of D&I principles to the department's operations (see Standard Documents, Increasing Law Firm Diversity: Presentation Materials and Increasing Law Department Diversity: Presentation Materials).

• Establishing diversity as a key driver in the department's selection of outside counsel.

• Including supplier diversity goals in in-house counsels' annual performance targets.

• Appointing respected senior in-house counsel or the department's law department operations professional to lead the department's diversity initiatives. For more information on the role department personnel can play in promoting diversity, see Practice Notes, Role of the Deputy General Counsel: Supervising Administrative Operations and Establishing a Law Department Operations (LDO) Management Function.

• Designating department members to participate in the organization's D&I programs and partner with outside D&I interest groups.

• Budgeting funds to support minority bar associations and other organizations dedicated to increasing diversity in the legal profession.

• Publicizing the department's D&I-focused operating principles and demonstrating the department's successful performance against those principles:
  • within the law department;
  • around the organization; and
  • among the department's outside law firms.

• Developing metrics to track and measure the department's progress against its diversity goals, regularly collecting and auditing the resulting data, and updating the department's D&I goals, initiatives, and strategies as necessary.
Establishing Outside Counsel Policies
General counsel should also develop, implement, and follow outside counsel policies, practices, and procedures to identify and engage qualified law firms that support the department's D&I goals. In-house law departments collectively send business worth hundreds of millions of dollars to outside law firms every year. General counsel can have a material effect on the improved diversification of the legal profession by sending business to or otherwise recognizing law firms that support, practice, and demonstrate success against D&I principles and withdrawing or declining to send business to law firms that do not prioritize diversity.

For sample guidelines in-house counsel can use to set out the law department’s policies and expectations on diversity, see Standard Document, Outside Counsel Guidelines.

Identifying Diverse Law Firms
The law department should collect from its majority-owned firms data for the attorneys in each category of diversity in the law department’s diversity program, including:

- Percentages of:
  - firm attorneys;
  - partners;
  - equity partners;
  - non-equity partners;
  - counsel and non-partner track attorneys;
  - associates;
  - incoming classes of associates and their rates of progression through the firm’s partnership process relative to non-diverse associates;
  - partners leading practice groups; and
  - partners serving on firm management, compensation, and other leadership committees.

- Hourly rates, including how those rates compare to similarly situated and qualified non-diverse attorneys.
- Compensation statistics, including gender and minority pay-gap information.
- Number of hours spent on the organization’s legal matters, including hours spent on substantive tasks, to confirm that diverse attorneys are performing meaningful work for the organization.

The law department should collect additional data from its majority-owned firms to supplement the information on the firms’ diverse attorneys, including information regarding the firms’:

- Publicly available D&I statements.
- Commitments to and performance against external diversity benchmarks, such as:
  - the Diversity Lab’s Mansfield Rule; and

- American Bar Association (ABA) Resolution 113: Promoting Diversity in the Legal Profession.

For more information on these external standards, see Outside Counsel Retention and Billing Policies and Working with Third Parties.

- Internal D&I policies and performance against those policies, including the firms’ commitments to:
  - hire, retain, and promote diverse attorneys;
  - eliminate any gender or diversity pay gaps; and
  - encourage diversity within its service suppliers.

- Support for the firms’ affinity groups, also known as employee resource groups, which are employee groups organized based on social identity, shared characteristics, or life experiences (see Practice Note, Affinity Groups in the Workplace and Standard Document, Affinity Groups in the Workplace Policy).

- Training and education programs for other firm attorneys to:
  - encourage their support for the firms’ diversity initiatives; and
  - identify and avoid unconscious bias (see Practice Note, Increasing Law Department Diversity: Avoiding Unconscious Bias).

- Personnel assigned to manage the firms’ diversity initiatives.

- Strategic growth plans and the contributions to those plans the firms’ D&I goals are expected to make.

- Committees responsible for implementing the firms’ D&I policies, including the committees’:
  - members;
  - mission statements;
  - levels of authority;
  - action plans; and
  - results against specific diversity targets.

- Recruiting at non-traditional law schools.

- Participation in diversity initiatives, including:
  - apprenticeships, internships, and fellowships;
  - partnering with clients’ diversity activities; and
  - supporting bar association programs.

The law department should also collect information from minority-owned law firms, including confirming that the law firms are certified as minority-owned by third-party organizations, including:

- The National Association of Minority and Women-Owned Law Firms (NAMWOLF).
The law department can collect diversity data about each law firm by:

- Interviewing the firm's:
  - attorneys; and
  - staff members responsible for implementing the firm's diversity programs.

- Considering the firm's:
  - publicly available information; and
  - internal D&I policies.

- Reviewing the firm's responses to:
  - the ABA Model Diversity Survey, which collects data from law firms on their D&I practices; or
  - surveys designed and conducted by the law department.

- Reviewing publicly reported diversity data collected by organizations such as:
  - the National Association for Law Placement (NALP);
  - the Minority Corporate Counsel Association (MCCA); and
  - the Association of Corporate Counsel (ACC).

- Conferring with the law firm's other clients.

- Researching the law firm's certifications by third parties (see Working with Third Parties).

The law department should periodically refresh the diversity data it collects about its firms to ensure that data remains accurate and up-to-date.

**Outside Counsel Retention and Billing Policies**

Most in-house law departments establish policies for retaining outside counsel and provide their outside counsel with billing guidelines. Including D&I standards in these policies and guidelines provides a law department with mechanisms to:

- Demonstrate the importance of diversity to its in-house counsel and outside law firms.
- Ensure that diverse attorneys and law firms are provided opportunities to provide legal services to the organization.
- Improve the results achieved by the law department by using diverse outside counsel (see Raising Quality of Law Department Services).
The policies, practices, and procedures that in-house law departments can employ to improve diversity among its outside counsel include:

- **Inclusion in preferred provider networks (PPNs).** Many departments have networks of qualified firms they send most of their work to in exchange for being charged lower rates, receiving flexible payment terms, and having dedicated teams of firm attorneys working on their matters. Law departments can benefit from receiving legal services informed by diverse perspectives, experiences, and opinions by including diverse law firms and attorneys in their PPN process. For more information about PPNs, see Building the Business Case for a Law Firm Preferred Provider Network Checklist and Process Map for Creating a Law Firm Preferred Provider Program.

- **Participating in department requests for proposals (RFPs).** Law departments are increasingly using RFPs to identify, evaluate, and retain outside counsel. A law department's RFP process can support and advance its D&I initiatives by:
  - requiring law firms to include diverse attorneys on the teams participating in the RFP response and providing the legal services awarded to the firm, including in supervisory roles;
  - inquiring about the diversity initiatives, statistics, and successes of majority-owned firms participating in the RFP process; and
  - inviting minority-owned firms to participate in the process.

  For more information about law department RFPs, see Practice Note, Drafting an Effective RFP for Legal Services and Standard Document, Request for Proposal (RFP) for Legal Services.

- **Outside counsel guidelines.** Some in-house law departments include specific diversity requirements and provisions in their outside counsel guidelines, including:
  - requiring the assignment of at least one diverse firm relationship partner to the organization's account;
  - mandating that a minimum percentage of billable hours on substantive tasks be performed each month by diverse attorneys;
  - requiring each firm to complete the ABA Model Diversity Survey;
  - committing a minimum percentage of the department's annual outside counsel spending to certified minority-owned firms (see Working with Interest Groups);
  - sharing the onboarding costs incurred by newly retained diverse law firms and attorneys;
  - financially rewarding firms if they meet agreed-to diversity goals around staffing and leadership and penalizing those firms that do not meet those goals; and
  - receiving regular reports on each firm's D&I programs and results.

  For more information about including diversity principles in outside counsel guidelines, see Standard Document, Outside Counsel Guidelines: Drafting Note: Diversity.

- **Informal department practices.** Law departments that do not adopt formal policies or practices emphasizing D&I in identifying, evaluating, and retaining outside counsel can still support diversity by:
  - encouraging in-house counsel to consider diverse firms and attorneys to represent the organization; and
  - including diverse members of the department in the process of hiring outside counsel.
Other recognition events. The law department can encourage law firm diversity by recognizing and celebrating those firms that partner with the law department on its D&I initiatives, provide the organization with diverse legal support, and support diversity initiatives within their own firms and legal communities. For example, the law department can:

- establish an annual award for the firm that makes the most meaningful contribution to diversity during the year;
- acknowledge that firm at a celebratory event; and
- publicize the winner among the department's other firms to incentivize them to compete for the award by increasing their D&I efforts.

Working with Third Parties
In addition to emphasizing the importance of diversity in their internal operations and through their outside counsel retention and billing practices, in-house law departments can join third parties to help diversify the legal profession. These third parties include:

- Bar associations (see Working with Bar Associations).
- Industry interest groups (see Working with Interest Groups).
- Law departments at industry peers (see Working with Industry Peers).

Working with Bar Associations
Numerous national, state, and local bar associations have established diversity committees and developed initiatives to promote diversity among their members and in the legal profession. Examples include:

- The ABA's:
  - Diversity and Inclusion Center; and
  - Commission on Racial and Ethnic Diversity in the Profession.
- The California State Bar Association's Council on Access and Fairness.
- The New York State Bar Association's Committee on Diversity and Inclusion.
- The New York City Bar Association's Office for Diversity and Inclusion.

There are also several bar associations that focus on advancing the career opportunities for attorneys in discrete categories of diversity, including:

- The Disability Rights Bar Association (DRBA).
- The Hispanic National Bar Association (HNBA).
- The National Asian Pacific American Bar Association (NAPABA).
- The National Association of Women Lawyers (NAWL).
- The National Bar Association (NBA)
• The National LGBT Bar Association (NLGBTBA).

In-house law departments can support the diversity efforts of these and other bar associations by:

• Providing financial support.
• Paying membership dues for department attorneys.
• Encouraging department attorneys to volunteer their time and expertise to association projects, including serving as speakers and panelists at bar association events.
• Attending their programs and initiatives.

**Working with Interest Groups**

In-house law departments can also support the legal profession's diversification by partnering with third-party interest groups, including:

• ACC.
• The Diversity Lab.
• The Leadership Council on Legal Diversity (LCLD).
• MCCA.
• NAMWOLF.

Many of these organizations have created tools to assist in-house counsel evaluate, confirm, and support law firm and other legal industry diversity initiatives. For example:

• The Diversity Lab has developed the Mansfield Rule under which participating law firms qualify as Mansfield Certified if they meet targets around:
  • the consideration given to diverse candidates for firm leadership positions;
  • the adoption of transparent processes for firm promotions; and
  • the implementation of other criteria encouraging the fair consideration of diverse candidates for firm roles and activities.

• The LCLD has several programs designed to increase diversity in the legal profession, including:
  • the Fellows Program, which works to develop leadership competencies of law firm attorneys from diverse backgrounds;
  • the Fellows Alumni Program, which provides past Fellows Program participants opportunities to mentor new Fellows, participate in community service projects, and engage in diversity outreach efforts to universities and law schools; and
  • corporate and law firm membership programs that allow members to participate in LCLD events, build support networks, and share best D&I practices.
NAMWOLF has created a certification program for law firms to demonstrate to potential clients that they are minority-owned firms capable of providing high-quality legal services. NAMWOLF’s qualification criteria include the firm’s:

- certification by NGLCC, NMSDC, or WBENC that the firm is minority-owned, operated, managed, and controlled;
- favorable references from corporate clients, including clients in the Fortune 500;
- Martindale-Hubbell AV Peer Review Rating;
- presence on outside counsel approved lists and panels; and
- other awards and memberships.

**Working with Industry Peers**

In-house law departments can also work with law departments at industry peers to encourage law firm diversity. For example, in January 2019, general counsel and chief legal officers from over 170 companies published an open letter to their law firms expressing their commitment to increasing diversity in the legal profession and:

- Congratulating those firms that embrace increased diversity in their recruiting, hiring, retention, and promotion practices.
- Expressing their disappointment in those firms that do not work to retain, promote, and fairly compensate diverse attorneys.
- Stating their intention to direct their legal spend to firms:
  - showing their commitment to diversity through their practices, policies, and procedures;
  - achieving demonstrable results in the diversity of their attorneys at all firm levels; and
  - providing high quality legal services.

In May 2019, those general counsel and chief legal operating officers joined the Diversity Lab in issuing a document entitled *Strategies and Tactics for In-House Legal Departments to Improve Outside Counsel Diversity*. This document contains specific steps law departments can take to improve diversity at their law firms, including:

- Hiring and retaining law firms that prioritize and achieve diversity.
- Working with firms to encourage diverse students to pursue careers in the legal industry.
- Supporting:
  - the careers of diverse attorneys; and
  - the success of minority-owned firms.

In-house law departments can also join industry peers in:

- Sponsoring and attending diversity networking events, job fairs, and conferences.
- Allowing their in-house counsel to serve as mentors in organized and informal programs for diverse law students and attorneys.
• Participating in national and local internship programs focused on diverse candidates.