How In-house and Outside Counsel Can Advance D&I Through Origination Credit

Compliance and Ethics

Cultural Competence

As company leaders, in-house attorneys should strongly support a culture of inclusion. An effective diversity and inclusion program promotes participation of minority attorneys in the legal profession. Most law departments use outside counsel for certain issues that require specialization or when

demand for legal service exceeds in-house capacity.

Diversity and inclusion cannot stop at the door of the legal department. As in-house lawyers, we typically control budgets, select firms, and review and approve legal bills. Here are a few concrete steps in-house lawyers can take to help effect change in law firms.

What is origination credit and why does it matter?

Origination — the ability to bring new business to the firm — is the single major way law firm attorneys advance. Origination credit influences compensation as well as a lawyer's place in the firm hierarchy. Because the legal profession did not welcome minority lawyers until after the Civil Rights Movement, they often lack the social capital that facilitates client development and the tools to navigate internal law firm politics.

Minority lawyers continue to be underrepresented in the upper echelons of the profession in both in-house legal departments and law firms. Diversity and inclusion in the legal profession are aspects of social justice.

Mid-level and senior members of in-house legal departments often have latitude to select outside legal teams. It is time for in-house lawyers who are committed to advancing D&I goals to "claim their power" by taking concrete and determined action.

How can in-house counsel identify minority law firm talent and help them advance?

The initial step is to meet diverse attorneys and understand expertise by reaching out at bar events and professional conferences as well as seeking and providing referrals. It is important for lawyers on both sides of the in-house fence to develop a level of personal trust and confidence in each others' professional capabilities.

It goes without saying that the number one criterion for selecting outside counsel and for advancement should be trustworthiness and competence. The goal is to make sure diverse attorneys are not overlooked in this process.

Because we control the purse strings, in-house lawyers are in a position to tell law firms directly that they expect to see the firm's commitment to D&I in action and not just in glossy brochures. This means making it clear to the law firm hierarchy that the firm has been selected directly thanks to the efforts of a particular attorney, and that the client expects to see evidence that credit is given where it is due.

For law firm lawyers, the road to origination credit is often paved with internal firm politics. The traditional law firm partnership model is designed to favor established lawyers over newcomers, regardless of who performs the work.

It is not infrequent for an established lawyer to continue receiving credit for a client they originated, long after they stopped personally doing any work for that client. In-house lawyers have the power to disrupt this model but need to be mindful of internal firm sensitivities because an antagonistic and uncoordinated approach could hurt a young lawyer's career prospects.

The principle that lawyers should never discuss such internal matters outside the firm is deeply ingrained in traditional law firm culture. It is therefore incumbent on in-house counsel to initiate the discussion at an early stage, and the best source of guidance is the law firm attorney him/herself.

The two lawyers should discuss the approach candidly but allow the law firm lawyer to set the pace and guide how and where in-house counsel apply pressure on the law firm hierarchy — for example by demanding that the lawyer be not only involved in the work in an appropriately senior role, but also in project staffing, annual reviews, and law firm fee negotiations — and then following up.

What is the best way for in-house counsel to effectively promote origination credit within their own legal departments?

Acquiring and retaining the best legal talent is simply a best practice. The goal is to ensure that great talent does not get overlooked or fail to be recognized when it comes to origination credit. Many surveys document that mid-level minority attorneys often leave law firms in frustration over precisely those issues.

Attrition of this sort is bad for law firms and bad for clients — these experienced lawyers take with them years of institutional knowledge about a client that must be reconstructed at great expense of time and money spent to train new lawyers.

Legal departments can put in place a number of incentives to ensure diverse outside counsel are not overlooked — from including demonstrated D&I success in the selection guidelines for law firms, to awarding points for D&I in competitive bidding to law firms that demonstrate commitment to D&I, and up to potentially clawing back business from firms that do not meet the company's D&I expectations and the firm's commitments.

A word of caution: It is important to recognize that not every in-house lawyer is in a position to exert the kind of pressure described. Junior members of legal departments often cannot select counsel directly, but they can work within established structures to highlight opportunities to retain diverse outside legal talent. Large companies may have preferred provider lists for legal services, and junior lawyers can work to influence the selection of counsel within existing parameters.

Isn't promotion of D&I a two-way street?

Absolutely! We should always expect and ensure there is reciprocity. Law firm counsel can help in-house lawyers advance their careers by delivering top-notch legal services, but also by being mindful of the internal workings of the legal departments they serve and checking in to see where they can offer support for their client's advancement.

A good relationship that leads to a successful and timely conclusion of projects will benefit the career prospects of in-house counsel as well as those of the attorneys in whom they have placed their trust. And given the increasing revolving door between law firms and law departments, the interests of all lawyers who are committed to diversity and inclusion can be truly aligned, regardless of where they happen to be working.

For more webcasts on achieving racial equity in the workplace, as well as new D&I resources and content, visit the ACC I.D.E.A.L. Foundation page.

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