



Increasing Diversity and Inclusion Through Engaged Corporate Counsel

Employment and Labor



INCREASING DIVERSITY AND INCLUSION THROUGH ENGAGED CORPORATE COUNSEL

CHEAT SHEET

- ***Small gains.*** The percentage of minority law firm partners grew by just 0.7 percent from 2017 to 2018.
- ***Three commitments.*** Senior leaders should align themselves to three basic tenets for contributing to diversity and inclusion: visibility, resource allocation, and accountability.
- ***Sponsorship.*** Diverse attorneys can greatly benefit by having a mentor or sponsor to provide support and motivation as they navigate their careers.
- ***No stereotypes.*** Removing bias from hiring and promotion decisions is key to recruiting and retaining diverse talent

The legal community has embraced diversity and inclusion in principle, but most of us have yet to see

consistent success in practice. Despite considerable efforts to create a more diverse and inclusive profession, statistics on minority advancement and participation within in-house legal departments, law firms, and the legal community as a whole have not changed appreciably over the past five years.

In its 2018 report on diversity in US firms, the National Association for Law Placement, Inc. (NALP) found that while the number of minority partners has increased in the long term, year-over-year gains have been small. In 2018, the percentage of minority law firm partners grew by only 0.7 percent from 2017 to 9.13 percent of all partners. Unfortunately, this meager increase is the largest annual increase for minority law firm partners in the 26 years NALP has compiled these statistics. Similarly, the percentage of female law firm partners grew just 0.66 percent from 2017 to 2018 to 23.36 percent of firm partners, and minority women remain the most underrepresented demographic within the partnership ranks at 3.19 percent in 2018.

As reported by ACC in its 2019 General Counsel Landscape report, the typical general counsel in the United States is a white male who earns approximately 39 percent more, on average, than his female counterparts do.

Despite these increases in law firm representation, not all minority groups have seen even these slight gains. While the representation of Asian and Hispanic associates has increased, the percentage of African-American associates remains lower than it was in 2009. Further, according to the 2018 Vault/MCCA Law Firm Diversity Survey, departure rates for minority women continue to climb, and departures for African-American lawyers outpace all minority groups. Disabled attorneys remain largely underrepresented within the law firm partner and associate ranks based upon the scant data available. And although the number of LGBTQ attorneys has increased year-over-year, their gains are largely limited to just four cities: New York City, Washington, DC, Los Angeles, and San Francisco.

In-house legal departments do not fare any better. As reported by ACC in its 2019 General Counsel Landscape report, the typical general counsel in the United States is a white male who earns approximately 39 percent more, on average, than his female counterparts do. While the number of female general counsel at Fortune 500 companies has increased to approximately 30 percent in 2018, this is only a marginal increase from 2017. Meanwhile, Hispanics comprise only 1.8 percent of Fortune 500 general counsel — nine out of 500 general counsel. Only 3.8 percent of the Fortune 1,000 general counsel are African-American — just 38 out of 1,000.

Given the limited progress for several minority groups, legal departments should continue to experiment with, and implement, different approaches to retain, develop, and promote diverse attorneys. This article will present proactive approaches to promoting diversity and inclusion that in-house legal departments and the legal community can adopt and adapt to individual circumstances. Specifically, this article will examine the importance of messaging from leadership, meaningful mentorship/sponsorship relationships, limiting implicit bias in hiring and promotions, building strategic relationships with bar associations, and working with law firms to increase diversity.

Messaging from the top

Diversity means recognizing and appreciating an individual's differences including race, ethnicity, gender, gender identity, sexual orientation, age, social class, physical ability or attributes, religious or ethical values system, national origin, and political beliefs. Inclusion is creating an accepting

environment that celebrates those differences.

Senior leaders must be vocal and consistent champions of diversity and inclusion efforts throughout their organization. They should own their workplace culture and empower personnel to contribute to diversity and inclusion efforts with three commitments:

- **Visibility:** Diverse attorneys are looking for active engagement from senior leaders on diversity and inclusion issues, and can and will see through mere platitudes. As a result, senior leaders should openly address diversity and inclusion issues, both within smaller departments and the organization as a whole. They should attend, actively participate in, and lead diversity and inclusion initiatives to demonstrate their personal commitment to these ideals. Further, senior leaders should prioritize diversity and inclusion ideals when selecting personnel for key leadership roles, such as project leaders or business unit teams.
- **Resource allocation:** Senior leadership should demonstrate their commitment through concrete investments in diversity and inclusion initiatives. Many law departments focus on reducing and controlling legal spending as their primary objective. Law departments should take steps to ensure that their resource allocation decisions align with their own diversity and inclusion priorities. Law departments should allocate resources where they can make meaningful contributions toward diversity and inclusion goals and objectives. For example, senior leadership could advocate for additional human resources and talent management personnel who are specifically charged with driving the company's diversity and inclusion goals. They should also thoughtfully allocate resources devoted to diverse attorney recruitment and training.
- **Accountability:** Senior leadership should hold themselves and others accountable for advancing legal department and company-wide diversity and inclusion goals and embrace a culture of innovation in this area. There are no cookie-cutter solutions to the underrepresentation of women and minority attorneys. Senior leaders should commit to solicit and evaluate new ideas, implement those ideas, and honestly measure their success or failure. Senior leadership should insist on regular reports and updates regarding diversity and inclusion metrics and goals. Senior leadership should also encourage open communications with personnel regarding diversity and inclusion efforts through surveys and internal review processes. Senior leadership should reward personnel who contribute to organizational diversity and inclusion goals. To that end, senior leaders may consider including progress toward realizing diversity metrics as part of the review process for managers, and create compensation incentives that tie legal department and companywide diversity and inclusion goals to personal performance.

Moving the needle from the top

Senior leaders can spur diversity and inclusion efforts within their organization through these specific actions:

- Adopt and communicate the organization's purpose and vision regarding diversity and inclusion as an important core value.
- Publish an annual diversity strategic plan or report.
- Create an evaluation system that promotes the retention and advancement of minority attorneys by aligning organizational values and culture with compensation and promotion.
- Review policies and benefits plans to determine whether they could appear exclusionary for any diverse worker. For LGBTQ+ lawyers, consider removing insurance contract provisions

that limit coverage for their partners or other dependents. For female lawyers, examine maternity leave policies to ensure they encourage retention and promotion.

- Experiment with new recruitment channels. Recruiting through regular channels will not bring new or increasingly diverse talent. A high percentage of an organization's recruiting efforts should focus on networking within diverse individuals and communities.

Meaningful mentorship and sponsorship opportunities

Mentors and sponsors are important to advance the careers of diverse attorneys. Generally, a mentor is a more experienced attorney willing to spend time and offer expertise to guide a protégé's development. Mentors should provide candid advice regarding a mentee's performance as well as provide more general support and motivation. Sponsors, by contrast, are senior and respected leaders within a company willing to invest their own reputational capital to advocate for a protégé behind closed doors and open previously inaccessible opportunities. The combination of mentorship and sponsorship enables a rising attorney to accelerate their development, while also working toward strategic career goals such as promotion. Establishing both a mentor and sponsor relationship is often the difference between retaining and promoting diverse talent and a narrowing pipeline delivering diverse talent.

Despite its importance, establishing effective mentorship and sponsorship relationships is a challenge for diverse attorneys. Too often, the responsibility for cultivating diverse talent is left to other senior diverse attorneys. This ignores that many potential mentors and sponsors within law departments are not minorities. Given the statistics discussed above, most potential sponsors are older, white males. Another obstacle is that senior leadership may find forming mentorship and sponsorship relationships difficult and intimidating given the necessary personal commitment and cultural differences among mentors, sponsors, and diverse attorneys. Finally, even when diverse attorneys are able to form mentorship or sponsorship relationships, these relationships often lack focused development or career goals that hold the mentors, sponsors, or protégés accountable.

Given these challenges, law departments should seek to create organized mentorship and sponsorship initiatives that encourage participation by senior leaders while providing innovative and focused professional development to participants. Mentorship and sponsorship initiatives should:

- Encourage social interactions between senior leadership and diverse attorneys at all levels.
- Identify senior leaders who have demonstrable coaching and mentoring strengths or a willingness and capacity to develop those skills.
- Pair diverse attorneys with non-diverse senior leadership for either mentor or sponsorship roles.
- Where formalized, hold mentors, sponsors, and protégés accountable through discernible and reportable metrics. Ensure that mentors, sponsors, and protégés answer to each other as well as the broader legal department.
- Encourage mentors, sponsors, and protégés to develop measurable short-term and long-term career goals and encourage effective follow-up.

Offering support and coaching simultaneously from sponsors and mentors has proved successful in elevating associates to partner and providing them with the tools to assume senior roles within the firm.

A model for an innovative and effective mentorship program is Seyfarth Shaw LLP's Triad Mentoring program. The Triad program is a mentorship program where high-potential associates work with both a mentor (a senior partner with demonstrated coaching skills) and a sponsor (a partner in a leadership role) for one year. Recognizing that the path to partnership requires a combination of relationships and demonstrable personal development, the Triad program provides participants access to firm leaders as well as one-on-one coaching. Notably, 100 percent of Seyfarth's Executive Committee and Department Chairs, as well as a variety of equity partner leaders, participate as sponsors in the program. Offering support and coaching simultaneously from sponsors and mentors has proved successful in elevating associates to partner and providing them with the tools to assume senior roles within the firm. Law departments should consider implementing similar Triad Mentoring programs to cultivate mentorship and sponsorship opportunities for diverse attorneys.

Mentorship and sponsorship opportunities are not necessarily limited to personnel within the law department. This is especially true when a law department is simply too small to offer the personnel or resources to support a formal mentorship or sponsorship initiative. In such a case, in-house counsel may create mentorship or sponsorship opportunities with outside counsel or other corporations through joint initiatives. For instance, a law department may partner with outside counsel to create a fellowship or secondment program where diverse attorneys are given the opportunity to work with senior leaders and develop potential mentorship and sponsorship relationships. In-house counsel may also develop mentoring or sponsoring relationships with diverse members of client teams through hosted meet and greets, lunches, and other social events.

Law departments should consider participating in pipeline initiatives with other corporations or diversity organizations. These programs often provide necessary infrastructure and tools that are helpful to develop mentorship and sponsorship program within companies.

Removing bias from hiring and promotion decisions

Hiring and promoting diverse talent to leadership positions throughout the legal department and the broader organization is critical to recruiting and retaining diverse attorneys. Indeed, the vast majority of current general counsel are promoted from in-house positions either at their current company or from an equivalent role at another company. Nevertheless, implicit or unconscious bias can hinder recruitment or promotion of diverse attorneys.

Implicit or unconscious bias refers to the unconscious attitudes or stereotypes that affect our understanding, actions, and decisions. These unconscious attitudes or stereotypes often impact how one envisions a typical lawyer, and whether one assumes that lawyer will be a white male. This implicit bias may create faulty perceptions regarding diverse attorneys and negatively affect their opportunities for hiring and promotion. For instance, in a 2014 study conducted by Arin N. Reeves, empirical evidence determined that supervising attorneys perceived African-American lawyers' writing skills as weaker than their white counterparts even though the work product was identical. Additionally, during hiring and promotion discussions, female attorneys with children often hit the "maternal wall," which includes negative preconceived notions regarding a mother's competence and commitment to a desired role.

These biases can influence hiring and promotions of diverse attorneys. For instance, in 2018, approximately 57 percent of newly hired general counsel at Fortune 500 companies were male. Although women make up nearly a third of in-house counsel overall, about 79 percent of individuals promoted to general counsel were male.

Implicit biases can undermine a law department's diversity and inclusion goals. As such, law departments should be particularly vigilant, looking for implicit biases and creating clear checks to remove bias from hiring and promotions decisions. Here are several ways law departments may guard against implicit bias:

- Consider conducting mandatory trainings on implicit bias for hiring managers and other personnel involved in the hiring and promotion process.
- Diversify recruitment methods and track referral sources to ensure that the recruitment process does not consistently provide non-diverse candidates from the same sources.
- Establish clear grading or ranking rubrics for interviewers to assess the performance and qualifications of job candidates.
- Develop objective criteria and/or substantive “testing” to evaluate true competencies for job postings.
- Avoid justifying the rejection of candidates based upon vague reasons not tied to the actual job requirements or competencies necessary to fulfill the job requirements (i.e., denying someone a job based on “cultural fit”). Ask participants in the hiring and promotion process to clearly articulate their thoughts regarding candidates.
- Create a transparent promotion process where candidates are given the opportunity to improve deficiencies for future consideration.
- Consider ranking job applicants across interview panels and selecting the candidate with the highest aggregate score.
- Consider “blind” interviews and job candidate materials that do not reflect demographic information (i.e., name, gender, law school, etc.).

Growing promotion and advancement opportunities for diverse lawyers

There is a paucity of diverse attorneys in key leadership positions within law departments. While there are several reasons why the pipeline of diverse talent is not reaching key leadership roles, one issue is a lack of diversity within candidate pools. If law departments are reaching out to the same candidate pools to fill key roles, they will undoubtedly get the same results. Thus, law departments should think critically about where they are sourcing candidates to develop a diverse talent pipeline.

Fortunately, several law departments and law firms are championing ways of diversifying candidate pools for key roles. One approach producing demonstrable positive results is the “Mansfield Rule.” The Mansfield Rule, named after the first woman lawyer in the United States, Arabella Mansfield, was inspired by the National Football League’s (NFL) Rooney Rule, which requires every NFL team to interview at least one minority candidate for each head coach vacancy. Since its implementation, the Rooney Rule has nearly doubled the number of minority head coaches and increased the likelihood that a minority candidate will fill a coaching vacancy by 20 percent.

Building on this approach, the Diversity Lab has collaborated with over 65 law firms to implement the Mansfield Rule, which challenges law firms to consider at least 30 percent women, attorneys of color, or LGBTQ+ attorneys for leadership and governance committee roles, equity partner promotions, and lateral partner and mid- to senior-level associate searches. To comply with the Mansfield Rule, participating law firms are required to establish metrics to assess their talent pipelines and measure their progress towards the 30 percent goal as well as identify areas for improvement. Critically, the Mansfield Rule and its demonstrable metrics help foster two commitments we have noted above: resource allocation and accountability.

The Mansfield Rule has already had a profound impact on minority representation within law firms. Forty percent of participating law firms saw an increase in diversity among leadership roles and all participating firms are now tracking their candidate pools for leadership, senior associate lateral hiring, partner lateral hiring, and equity partner promotions.

Law departments have supported the Mansfield Rule by encouraging more law firm participation. The Diversity Lab sponsors a program offering law firms that have successfully implemented the Mansfield Rule the opportunity to send their promoted diverse partners to a two-day Client Forum to forge relationships with, and learn from, influential in-house counsel. To date, 70 legal departments have committed to support the Mansfield Rule and attended these client forums.

Recently, the Diversity Lab has opened the Mansfield Rule pilot to law departments. Under the law department version of the Mansfield Rule, law departments will be asked to consider at least 50 percent women, attorneys of color, or LGBTQ+ attorneys for leadership roles, internal hiring and promotions for senior management roles, hiring for interns and temporary lawyer positions, high visibility opportunities for internal and external business leaders, and outside counsel representation. The increased threshold, as compared to the law firm pilot, reflects the higher level of diversity for law departments generally. The initial participants include BASF Corporation, Compass Minerals, Lending Club, MassMutual, PayPal, Symantec, thredUP, and U.S. Bank. Law departments should strongly consider implementing the Mansfield Rule given its promising initial results.

Building strategic relationships with bar associations

By representing the interests of lawyers, judges, law professors, and law students, bar associations are uniquely positioned to promote diversity and inclusion within the broader legal profession. To that end, bar associations across the nation are studying diversity and inclusion initiatives, facilitating strategic proposals, and fostering minority committees and sections. Nonetheless, law departments often fail to build strategic relationships with bar associations that can advance their own diversity and inclusion objectives. This is a lost opportunity. Law departments should think critically about their involvement with bar associations. Here are several ways law departments can strengthen their strategic relationships with bar associations to support diversity and inclusion:

- **Meaningful membership:** Law departments should encourage their attorneys to join and meaningfully participate in bar associations by attending annual sponsored dinners and galas, but also by participating in substantive programming and events throughout the year so that they are recognizable stakeholders within the bar association.
- **Diverse attorneys pipeline:** Bar associations offer law departments a pipeline of diverse attorneys. First, bar associations offer networking opportunities with potential diverse job candidates. By staying involved, law department attorneys will be able to market their organization to potential job candidates and cultivate meaningful referrals. Second, bar associations may offer formal leadership programs that could benefit law departments by providing external training opportunities for diverse attorneys.
- **Credentialing:** Bar associations offer credentialing opportunities through CLE and other substantive programming, which allow attorneys to market their subject matter expertise. Law departments should ensure that their diverse attorneys are taking advantage of these opportunities to increase their visibility both inside and outside the law department. CLE programming also provides an opportunity for in-house lawyers to market their law department to the broader legal community.
- **Legal community leadership:** Bar association leadership often includes potential sponsors that can assist diverse attorneys in their personal and career development goals. As a result,

law departments should encourage diverse attorneys to seek leadership positions within bar associations to take advantage of these potential personal relationships. This may include seeking committee leadership positions, moderating CLE panels, or participating in host committees or working groups.

- **Relationships with affinity bar associations:** There are several effective and long-standing bar associations devoted to the development and advancement of minority attorneys, such as the National Bar Association, the Hispanic Bar Association, and National LGBT Bar Association. Law departments should strategically increase their participation with these and other affinity bar associations. This may include posting open roles with these bar associations, working with their leaders to identify candidates for positions, sponsoring and hosting bar association events, and connecting in-house affinity groups with affinity bar associations to support and augment their work.
- **Rewarding participating outside counsel:** Bar associations offer opportunities to feature the expertise of, and develop meaningful relationships with, diverse attorneys, and law departments may use bar association participation as a means to source outside counsel. In-house counsel may want to create or participate in pitch activities with diverse attorneys involved with bar association activities focused on diversity and inclusion initiatives.
- **Communication:** Law departments should more regularly communicate with their local and national bar associations about shared diversity and inclusion goals. By proactively conferring about these issues, bar associations can work collaboratively with law departments on stated goals and potentially create new initiatives within law departments and the broader legal community.

“As women general counsel, we have a unique ability to influence the creation of more opportunities for diverse attorneys to be considered for outside counsel work, ensure they get credit for it, and help support their promotion to positions of power and influence.”

— Lily Hughes, SVP and Chief Legal Officer, Arrow Electronics, Inc.

Changing the makeup of outside counsel

In addition to fostering diversity within law departments, in-house counsel have significant leverage to improve diversity among law firms by requiring demonstrable commitments to diverse client teams. Several legal departments now view law firms as strategic partners to achieve broader diversity and inclusion goals. To that end, law departments are using carrots as well as sticks to encourage the retention, development, and promotion of diverse attorneys.

These may include:

- Benchmarks for the number of diverse attorneys billing on matters.
- Benchmarks for diverse relationship partners.
- Metrics for the use of minority and women-owned law firms as outside counsel.
- Commitments from firms that go beyond putting diverse attorneys on pitch and client team, to ensure that diverse attorneys are given meaningful opportunities to lead projects, cases, or client teams, and receive commensurate credit within the firm’s credit allocation and compensation system.
- Benchmarks for internal firm governance and leadership.
- Strategic partnerships for sponsorships and pipeline programs.
- An outside counsel conference hosted by the corporation or by participating law firms, where attendees discuss the corporation’s business and diversity and inclusion goals.

- Succession planning programs for outside counsel where outside counsel provide a leadership succession plan that demonstrates their commitment to diversity and inclusion.
- Penalties for failing to reach benchmarks.

For example, as of 2017, Facebook requires outside counsel to field teams with at least 33 percent women and ethnic minorities and demonstrate that the firms are creating “clear and measurable leadership opportunities for women and minorities.”

Microsoft has developed a series of incentives for their outside counsel as well. Microsoft offers two percent bonuses on the prior year’s fees to its provider firms if they meet diversity goals. Additional bonuses are available for firms that achieve certain diversity benchmarks, such as partner and management committee diversity, diversity of relationship partners, and diversity of partners who billed for Microsoft matters. Over the seven years since implementing this program, Microsoft has increased the diversity of its outside counsel teams by more than 15 percent.

Hewlett Packard has reminded law firms that there are consequences for failing to field diverse teams. It has stated it would withhold up to 10 percent of bills from firms that do not meet or exceed its diverse staffing requirements. To avoid this potential fee cut, firms must have at least one diverse firm relationship partner or at least one woman and one racially/ethnically diverse lawyer, each performing or managing at least 10 percent of the billable hours worked on HP matters.

MetLife, recognizing the importance of mentorship and sponsorship, requires outside counsel to develop sponsorship opportunities for junior diverse attorneys. Outside counsel who fail to do so must work with the law department on an “accountability plan” to improve their internal development programs within six months.

Several general counsel have also issued a public call to action to law firms to move the needle on diversity and inclusion in response to partnership classes that are still largely male, straight, and white. In January 2019, more than 170 general counsel signed and released an open letter to law firms pledging to give more business to firms committed to retaining and promoting diverse lawyers. Arrow Electronic Inc.’s senior vice president and chief legal officer, Lily Hughes, a signatory to the open letter, describes her decision to sign the open letter as follows: “As women general counsel, we have a unique ability to influence the creation of more opportunities for diverse attorneys to be considered for outside counsel work, ensure they get credit for it, and help support their promotion to positions of power and influence.”

Law departments should carefully consider the many ways in which they can influence outside counsel to become meaningful partners in fostering diversity and inclusion.

Conclusion

By implementing thoughtful and deliberate initiatives, and honestly assessing the results, corporate counsel can continue to be leaders for diversity within law departments, law firms, and the broader legal community. However, more concerted action is needed as the growth of diverse attorneys in senior roles at law firms and law departments has stagnated. For many diverse attorneys, the ideal of a truly diverse and inclusive profession is vanishing. It is our hope that law departments will consider using the steps outlined above to foster a more diverse and inclusive legal profession.

Nathaniel Vitan



Senior Vice President, Chief Legal Officer, and Corporate Secretary

Public Storage

Prior to joining Public Storage, he was assistant general counsel for Altria Client Services, Inc. and previously a trial practice and appellate litigation attorney at Latham & Watkins LLP. He is a diversity leader within Public Storage and the legal profession generally. In 2014, he was named to the Lawyers of Color's 2014 Hot List.

Cameron A. Smith



Labor and Employment Partner

Seyfarth Shaw LLP's New York Office

His practice focuses on representing management in complex employment litigation and arbitration, and counseling clients on all aspects of the employment relationship. In 2015, Smith was named one of the "Best LGBT Lawyers Under 40" by the National LGBT Bar Association. He serves on the board of directors of the New York LGBT Bar Association.

Ephraim J. Pierre



Senior Labor and Employment Associate

Seyfarth Shaw LLP's New York Office

His practice focuses on representing management in complex employment litigation, arbitrations, and class actions as well as providing employers practical workplace solutions. In 2017, Pierre was awarded Seyfarth Shaw's "Inspirational Leadership Award" in recognition of his commitment to Legal Outreach, Inc, a pipeline program for NYC youth, and he was named a Pathfinder with the Leadership Council on Legal Diversity.

