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STRATEGIC SOURCING

A Guide for Creating an Effective and Sustainable Legal Supplier Diversity Program

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The legal industry is among the least diverse in the United States. In an article published by American Lawyer in July 2017, "Client Calls for Diversity at Fever Pitch," the authors reported, "...The representation of women in the equity partner ranks has been stuck at around 18 percent for the past decade and the percentage of minority equity partners has actually **dropped 2 percent** since 2011 at a national level. Many legal departments have made their own progress internally, and they want their law firms wholeheartedly "all in" on their journey to greater diversity and inclusion as a profession. And, as legal departments narrow their rosters of outside counsel to shortlists of preferred providers, they have even greater leverage to set more rigorous diversity and inclusion expectations."

To improve diversity and inclusion in majority owned law firms, many General Counsel are pressing their outside firms to make their teams more diverse at all levels of seniority. Some companies mandate that women and ethnic minorities account for a substantial portion of law firm teams working on their matters. If they do not comply, they run the risk of a financial penalty or being eliminated altogether from approved panel lists. Others reward firms that use diverse counsel with financial bonuses and/or recognition awards. The Diversity Lab (www.diversitylab.com) has developed the "Mansfield Rule" requiring at least 30% of law firms' candidate pools for leadership or governance roles—as well as equity partner promotions and senior lateral positions—be comprised of women or minorities. Those that comply can style themselves as "Mansfield Certified."

While the above mentioned initiatives are a positive development in majority-owned law firms, there has been less attention paid to "true" supplier diversity in the legal profession—i. e. the role MBE, WBE, and LGBT certified attorneys, law firms, and legal service providers should play to help corporate legal departments achieve their diversity goals.

Most US corporations make substantial investments in their supplier diversity outreach with well-funded administrative teams and robust support of leading certification organizations such as the National Minority Supplier Development Council (NMSDC), the Women's Business Enterprise Council (WBENC), and the National LGBT Chamber of Commerce (NGLCC). These organizations host annual trade shows where certified suppliers can attend educational sessions and meet supplier diversity representatives from many Fortune 1000 corporations. The Billion Dollar Roundtable (BDR) is an organization of corporations whose suppler diversity spend has reached or exceeds $1 billion annually and that make meaningful and measurable contributions to the growth of MWBEs. It has recently voted unanimously to include LGBT, disability, and veteran owned companies among those that can be tracked for their Tier I supplier diversity spend. This is a move toward broader inclusion of diverse communities that more fully aligns with the best practices of America's largest corporations, and thus the firms who represent them.

While the commitment to supplier diversity is strong in most corporations' operational functions, professional services—and legal services in particular—traditionally have fallen outside the purview of the supplier diversity and procurement teams. However, this is changing as the rise of procurement professionals continues. (See 2018 Buying Legal Council Legal Procurement Survey www.buyinglegal.com.) Even though highly touted supplier diversity programs do not explicitly exempt the legal department, there is often strong resistance to the "risk" of retaining unfamiliar and unproven attorneys and law firms to handle matters. The reasons for this are many, but chief among them are:

- There is often no mandatory requirement for including diverse counsel and/or diverse law firms when considering outside firms to handle legal matters;
- Diverse firms are generally not top-of-mind when corporate counsel assign matters;
- In-house departments may find it difficult to identify and vet diverse firms;
- There may be a perception that some of the smaller diverse firms lack the skills and resources to provide "quality" services as their proven track records may not be widely known;
- In-house counsel are more comfortable assigning matters to attorneys and firms they already know and that are familiar with their business and corporate culture;
- The approved panel counsel process can often perpetuate the use of firms with long-established relations with the corporate legal team.

Despite this, many corporate legal departments are now approaching diversity more strategically by aligning with wider corporate social responsibility initiatives. They recognize the quantifiable business benefits of diversity and inclusion—as well as the moral imperative. In 2016, the American Bar Association adopted its Resolution 113 urging all users of legal services "...to expand and create opportunities at all levels of responsibility for diverse attorneys." To date, over 100 corporations are ABA 113 signatories.

Materially improving diversity and inclusion in the legal profession will require a sustained effort and long-term planning. What follows is a list of Best Practices to help achieve these goals.

> "...[we urge you] to expand and create opportunities at all levels of responsibility for diverse attorneys."
>
> — American Bar Association

1 Develop and/or Strengthen Relationships with the Corporate Supplier Diversity and Procurement Teams

The professionals on the supplier diversity and procurement teams are valuable sources of information and guidance to help the legal department organize and strengthen their diversity initiatives. If the organization has not already done so and established a legal procurement team, the supplier diversity team should consider assigning staff to specifically collaborate with the General Counsel and legal team to foster closer relationships and to ensure their initiatives contribute to the overall success of the corporation's supplier diversity efforts.

Corporate counsel should make the ultimate decision about which lawyers and law firms are best suited for specific matters and projects, since they bear responsibility for a successful outcome. However, the supplier diversity team can share their expertise and assist the in-house legal team in several ways, including:

- Providing best practices and benchmarking support;
- Setting policies and criteria;
- Establishing achievable goals;
- Mentoring;
- Identifying and vetting qualified diverse law firms and legal service providers;
- Implementing systems to track vendor demographics and legal spend;
- Budget support for activities and sponsorships;
- Integrating data into the overall corporation's supplier diversity reports.

2 The Chief Legal Officer Is Key to Implementing Legal Supplier Diversity

Many Chief Legal Officers are challenging their internal teams to develop programs that will encourage diversity from their outside lawyers. This begins with requiring their majority owned firms to comply with stated goals for the inclusion of diverse attorneys in terms of ethnicity, gender, and sexual orientation at all levels of seniority. And corporate legal departments are, with increasing frequency, identifying and vetting highly qualified MBE, WBE, and LGBT certified lawyers, law firms, and legal service providers to add to their roster of approved counsel and vendors. General Counsel who are leaders in this area understand there are differences between "Big Law" firm diversity and supplier diversity. They understand it is not a binary decision and both are necessary to expand diversity in the legal profession.

The Chief Legal Officer must establish diversity and inclusion as core values and embed them into the culture of their department. While each corporate legal department establishes its own protocols, typical action items often include:

- Inspiring the legal team to move beyond their comfort zone;
- Partnering with the supplier diversity and procurement teams;
- Educating the corporate legal team about the importance of diversity and inclusion;
- Establishing supplier diversity performance goals;
- Incorporating successful diversity efforts as a component of in-house counsels' performance reviews;
- Designating an attorney, or group of attorneys, to monitor the overall efforts of the legal department;
- Holding majority-owned firms accountable for fulfilling diversity requirements;
- Requiring outside law firms to submit information about their own supplier diversity programs;
- Committing a percentage of annual legal fees to MBE, WBE, and LGBT certified law firms and legal service providers;
- Allocating resources to support minority bar associations and other organizations that are engaged in increasing diversity and inclusion in the legal profession;
- Developing metrics to track and measure progress and effectiveness.

3 Educate the Legal Team About the Importance of Diversity and the Elimination of Bias

Diversity in the legal profession is not only a moral imperative, but studies have proven the business advantage of using diverse teams as well. While most in-house legal teams are making strides to attract qualified professionals to fill their internal positions, their outside law firms often lag in their efforts. For instance, a recent study published by the National Association of Women Lawyers reports that women represent only 22.7% of all law firm partners. The National Association for Law Placement reported in 2017 that the number of African American law firm partners is 1.83%.

The study of unconscious bias is based upon 40 years of social science research. Unconscious bias is often more detrimental than explicit bias because it operates below the radar. To make demonstrable progress in the legal profession, it is imperative to raise awareness about unconscious bias. A growing number of jurisdictions, including California, Illinois, and New York require "elimination of bias in the legal profession" CLE credits for members of their state bars. In jurisdictions that do not have mandatory CLE requirements for the elimination of bias and improving diversity, in-house counsel should petition their state bar associations to establish this important requirement. There are many options legal departments can make available for their members through organizations such as the Practicing Law Institute. A key component of the National Association of Minority and Women Owned Law Firms' mission is to raise awareness about diversity and inclusion and advising companies about improving their legal supplier diversity efforts. NAMWOLF CEO Joel Stern conducts dozens of complimentary CLE sessions each year on-site for corporate legal teams. A special effort is made in areas underrepresented by MBE/WBE/LGBT firms.

4 Actively Seek Out Diverse Lawyers, Law Firms, and Legal Service Suppliers

In addition to the above-mentioned NMSDC, WBENC, and NGLCC, there are many minority bar associations dedicated to increasing diversity and inclusion in the legal profession. They provide opportunities for in-house counsel to meet and network with diverse attorneys from majority owned firms, MBE, WBE, and LGBT certified law firms, and solo practitioners. In turn, these attorneys and firms demonstrate their skills and substantive expertise by participating in live and electronic educational sessions. There are often opportunities for diverse legal service providers such as recruiters, e-discovery support, and court reporters to participate, as well. Many corporate legal teams assign attorneys to participate in one or more of these associations for educational, fact-finding, networking, and recruiting purposes. Participation in these groups offers in-house counsel a chance to share ideas with their peers about practical ways to create and sustain meaningful diversity initiatives. The websites for these minority bar associations provide information about their mission and programs:

- ACC Foundation: www.acc-foundation.com
- American Bar Association Minority Counsel Program: www.aba.org
- Defense Research Institute: www.dri.org
- Hispanic National Bar Association: www.hnba.com
- Leadership Council on Legal Diversity: www.lcldnet.org
- LGBT Bar Association / Lavender Law: www.lgbtbar.org
- Minority Corporate Counsel Association: www.mcca.com
- National Asian Pacific American Bar Association: www.napaba.site-ym.com
- National Bar Association: www.nationalbar.org
- National Native American Bar Association: www.nativeamericanbar.org
- National Association of Women Lawyers: www.nawl.org
- South Asian Bar Association of North America: www.sabanorthamerica.com

In addition, the following organizations offer excellent resources to identify highly qualified diverse firms:

National Association of Minority and Women Owned Law Firms: NAMWOLF provides leading US corporations access to highly skilled law firms owned, operated, and managed by minority, women, and LGBT certified attorneys. The 195+ Martindale-Hubble AV-rated law firms, practicing in 44 states, are carefully vetted and have a proven track record of successfully representing corporate clients in a wide range of substantive matters. Hundreds of the nation's most prominent corporations and public entities rely on NAMWOLF's outstanding reputation as a source for high quality and dependable legal representation. NAMWOLF offers robust programming to educate corporate attorneys about practical ways to implement effective and sustainable diversity initiatives in their legal departments. They host in-person meetings and webinars featuring NAMWOLF law firms and in-house counsel faculty. A feature of their Annual Meetings is the Law Firm Expo where in-house counsel can meet senior partners from member firms to learn about their capabilities and consider for future retention. NAMWOLF can also recommend diverse legal services suppliers such as court reporters, recruiters, eDiscovery support, and technological solutions. All NAMWOLF programs and services are offered at no charge to in-house legal teams. The NAMWOLF Corporate Counsel Guide and Best Practices Guide can be found at www.namwolf.org.

The National LGBT Chamber of Commerce (NGLCC): National Legal Industry Council (NLIC): The NLIC creates avenues of opportunities for contracting, consulting, and partnering by opening membership to all pro-LGBT law firms, NGLCC certified LGBT businesses, and certification-eligible legal services providers. They host legal industry roundtables and share CLE and networking opportunities with all members nationwide. The NGLCC offers a unique National Legal Partnership (NLP) to all law firms interested in developing supplier diversity programs and taking advantage of business development opportunities as an NGLCC national corporate partner. All National Legal Partner firms are offered NGLCC's proprietary "How to Build a Legal Supplier Diversity Program" guidebook and in-person support services to create such a program.

The Council leverages recent changes to the HRC Corporate Quality Index to require LGBT business inclusion and expand corporate partner participation and engagement opportunities within the NLIC by directly engaging in-house counsel and supplier diversity teams to utilize NGLCC certified legal professionals.

The NLIC promotes membership and partnership opportunities with NAMWOLF for inclusion of LGBT firms in hiring and contracting opportunities. They engage in educational and networking opportunities with legal service providers and firms that are members of other diverse certifying agencies such as WBENC and NMSDC. Further information about the NGLCC can be found at www.nglcc.org.

5 Make Information About Diverse Firms Easily Accessible to Your Legal Team

In recent years, many corporations have undertaken a "convergence" process by culling their lists of outside legal counsel and developing lists of "preferred legal providers." Also, to control legal spend, many companies use national contracts to award certain types of work to large multi-practice law firms. In both instances, the effect has been to make it difficult for smaller, regional minority and women owned law firms to break into these networks. This development has been explored in depth in the article "Uninvited: Preferred Counsel Lists and How They Limit Minority-and Women-Owned Law Firms' Access to Legal Work," published by the American Bar Association in 2014.

It is imperative that rosters of approved counsel include the many highly qualified diverse law firms that are equally capable of achieving favorable results for their corporate clients. The founding and managing partners of these firms often worked at large prestigious AmLaw 100 firms and have a Martindale-Hubble AV Preeminent Peer Review Rating. And because many diverse firms are smaller in size than majority owned firms, they have less overhead and can offer their services at more attractive rates without any loss in the quality of representation.

Some legal departments maintain their own internal databases where the legal team is encouraged to submit information about specific firms and individual attorneys with a candid assessment of their capabilities.

NAMWOLF maintains a publicly accessible database of its 195+ highly qualified diverse owned law firms, and corporations can easily identify firms in specific jurisdictions with expertise in a wide range of practice areas. NAMWOLF also administers a Solicitation Program where any organization can submit an anonymous RFI to obtain information about potential law firm candidates. The NAMWOLF team can consult with an in-house team about their options and recommend in-house counsel peers who can offer candid assessments about member firms and attorneys. In 2018, NAMWOLF received 65 solicitation requests from corporate counsel, a 20% increase over the previous year. By the end of 2018, a total of 60 NAMWOLF member firms were interviewed and more than 20 firms were engaged, attesting to the value of this process. From the inception of the formal solicitation program, there have been more than 188 requests, 227 interviews, and 70 firms selected. There is no charge for this service and no obligation to use any of the firms that submit information.

The NGLCC National Legal Industry Council maintains a roster of LGBT certified attorneys, law firms, and legal service providers. This list is available to the supplier diversity professionals and in-house counsel at NGLCC's more than 200 national corporate partners.

6 Provide Opportunities for Diverse Firms to Interact with Your Legal Team and "Big Law" Firms

Corporate legal departments frequently invite smaller diverse firms and solo practitioners to attend networking events where they can meet the department's in-house teams. Some also invite these firms to host webinars or in-person CLE sessions where they can showcase their substantive expertise.

Some corporate legal departments require that diverse attorneys from "Big Law" firms get origination credit for the new matters they are handling, thus helping their career growth. Others encourage their majority owned outside counsel to collaborate with smaller diverse firms by establishing co-counsel arrangements, or by retaining them for discrete matters. Detailed guidelines for successful collaborations can be found in "The Power of Partnering" available on www.namwolf.org.

The Freddie Mac Legal Department hosts bi-annual meetings with their top law firms to discuss diversity and tracking metrics. The firms' relationship partners, diversity professionals, and firm and/or office managing partners are required to attend these meetings which range between 90 to 120 minutes. As a result, the firms reported these meetings were impactful and bolstered the message to their other colleagues that Freddie Mac, and many other corporations, are deeply serious about improving the diversity of their outside counsel.

NAMWOLF's 195+ member firms have formed ten Practice Area Committees ("PACs"). The PACs are organized around substantive areas and are platforms where member firms interact with one another and demonstrate their expertise to corporate legal departments. The PACs conduct webinars and in-person CLE workshops, prepare articles and white papers, and host networking events. The current PACs include Financial Services Litigation; Insurance; Intellectual Property; International Law; Labor & Employment; Products Liability; Restaurant, Retail & Hospitality; Transactional; Trials; and White-Collar Defense and Internal Investigations. There is never any cost to attend PAC-hosted events or webinars. Detailed information about the NAMWOLF PACs can be found at www.namwolf.org.

7 Help Diverse Firms Succeed in Your Organization

Even though many corporations devote time and resources to identify, vet, and include diverse firms on their roster of approved outside counsel, there can be resistance from in-house attorneys to assign matters to them. To improve utilization of diverse firms, some corporations have established formal on-boarding programs to educate diverse firms about their business, corporate culture, expectations, and technical requirements. For example, Freddie Mac conducts a "Vendor Academy" to provide opportunities for diverse firms to strengthen their business aptitude on Freddie Mac's key lines of operations and participate in interactive group sessions relative to their expertise. Similarly, Walmart hosts their "Walmart Ready" program to acclimate diverse law firms to their approach to representation and litigation and set client service expectations. Many other corporations choose less formal "diversity summits" and other periodic programs to introduce their legal teams to outside resources.

8 Make an Affirmative Commitment to Using Diverse Law Firms

NAMWOLF initiates contact with major corporations and public entities on behalf of its members and encourages them to form business relationships with minority, women, and LGBT owned law firms.

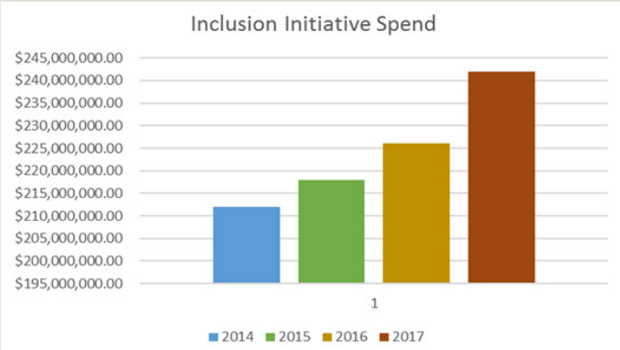
Major public and private entities join the ***NAMWOLF Partner Program*** by pledging to set a goal of at least 5% of legal spend with certified law firms. There are currently 134 major US corporations participating in the Partner Program. Details can be found at www.namwolf.org.

Join the Inclusion Initiative

The Inclusion Initiative, a collaborative program among law departments at major corporations across the country, announced in August 2018 that member companies spent over $240 million in 2017 with minority and women owned (MWBE) law firms.

In 2010, the initial year of the Inclusion Initiative, its members collectively spent $42 million with MWBE law firms. Since then, the program has grown significantly. Participating companies have spent more than $1.4 billion with MWBE law firms since the inception of the program. In addition, in every year since 2012, participating law departments have spent over $200 million with MWBE law firms per year.

"Minority and women owned law firms have a substantial role in creating a pipeline for diverse lawyers," said Ann Kappler, Senior Vice President and Deputy General Counsel of Prudential Financial, Inc., a founding company of the Inclusion Initiative. "Programs like the Inclusion Initiative have a multiplier effect—as the program has grown it has made a meaningful, positive impact on our target firms and the legal profession more broadly. "



At the heart of the Inclusion Initiative is the belief that MWBE law firms (i) play a vital role in providing opportunity to diverse attorneys and (ii) provide excellent, cost-effective legal services that meet the needs of corporate America. Inclusion Initiative members believe that MWBE law firms provide a reliable pathway into the legal profession for law students and young lawyers of diverse backgrounds and house some of the nation's most talented and seasoned attorneys capable of handling significant matters.

Since its founding, participation in the Inclusion Initiative has nearly tripled to 33 members. The current roster of participating companies includes 3M, Accenture, Allstate, American Airlines, AT&T, Bank of America, CenterPoint Energy, The Coca-Cola Company, Comcast, Exelon, Federal Deposit Insurance Corporation, General Mills, GlaxoSmithKline, Google, JPMorgan Chase, McDonald's Corporation, Macy's, Merck, Microsoft, Morgan Stanley, Nationwide, NBCUniversal, Prudential Financial, Sempra Energy, Shell Oil Company, State Farm, Target, Toyota Financial Services, UPS, Verizon, Walmart, Wells Fargo, and Xerox.

9 Track Metrics

The key to a successful Legal Supplier Diversity program is capturing and tracking the type of work performed by diverse and non-diverse outside counsel and the fees generated. The metrics should include:

- Minority timekeepers by self-reported gender, race, ethnicity, and LGBT identification;
- The level of diversity within practice groups and locations;
- The level of diversity at all levels of responsibilities, i.e., partners, counsel, associates, and non-partner track attorneys;
- The number of diverse attorneys in leadership positions such as office heads, practice group heads, and firm management and compensation committees;
- The level of diversity by substantive tasks such as drafting motions, attending trials, and negotiating contracts so that firms are not "running up" their diversity hours by assigning more menial tasks to their diverse lawyers;
- The level of diversity within practice groups and in each geographical location;
- Calculation of the hours billed, hourly rates, and total outside legal fees of the above.

By capturing this data, the General Counsel and Diversity Team will have insight into the entire program, as well as the sum of its parts. They will also have data to determine which practice groups are succeeding and which groups may need more mentoring and resources. What's more, they can share this data with the supplier diversity teams to complete the full picture of the corporation's supplier diversity efforts.

10 Share Your Commitment to Diversity and Success Stories

Sharing success stories internally can inspire practice groups to make more of an effort to use diverse firms and create "friendly competition" among the legal teams. It will also reinforce the General Counsel's commitment to a sustainable program. Likewise, updating all outside law firms that handle matters for your corporation will motivate them to bolster their efforts and follow your lead. The legal teams should also consider sharing diversity success stories externally to inspire implementation of similar programs across the legal industry.

Conclusion

Improving and enhancing legal supplier diversity is a long-term commitment. It requires top-down buy-in and the dedication of real resources, but the benefits gained by designing and maintaining a plan for increasing spend with diverse suppliers are numerous and significant. The strategies laid out in this Guide are a great way to start a conversation among colleagues about increasing the resources allocated to minority, women, and LGBT owned law firms. In a challenging and ever-changing business world, a diversity of voices not only makes moral sense but offers a diversity of unique solutions.

Thank You Contributors!

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