

## Encouraging Diversity in Outside Counsel

*In-house counsel should communicate to outside counsel that diversity really does matter.*

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By [Laurie Robinson](#)  
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Rick Palmore, executive vice president, general counsel, and chief compliance and risk management officer of General Mills, wrote the "Call to Action" in 2004, which galvanized more than 200 CLOs of corporations to commit to promoting diversity in legal departments, as well as in the law firms that corporations engage.

For the in-house legal departments that have yet to commit to the Call to Action or those that only have a diversity policy, it is not too late to start the dialogue with outside counsel.

In-house lawyers can start with something as simple as a phone call.

Call your outside counsel. Begin the conversation. Reference your diversity policy, and communicate that it is a business imperative and important to the corporation, as well as to the law department. If you have never had this conversation with outside counsel, don't be concerned that you will offend them. The truth is many law firms have been working on diversity for a few years with the corporate legal departments that pushed and held them accountable through the Call to Action. These firms are warmed up, and some even may be waiting for your call.

After you discuss your policy, ask them about their numbers. How diverse is their firm? How many diverse associates, equity partners and nonequity partners do they have?

Delve deeper with the most important question of all: How many diverse lawyers are actually working on our legal matters? It is not good enough that in-house legal departments use law firms with a "good" diversity scorecard. If the actual legal matters the law firms handle for you don't have one diverse lawyer staffed on them, there is a big problem.

In-house attorneys must move diversity beyond being a feel-good proposition to being an imperative. This means driving it, especially as it relates to staffing legal matters.

Therefore, during the next one-on-one dialogue with outside counsel on staffing your legal matter, as the in-house counsel customer, you should and can easily request that the matter include diverse lawyers. Don't let stereotypes of inferiority give you pause or prevent you from giving a diverse lawyer a chance. Though some may argue that using diverse lawyers will result in negative consequences, the reality is that you have highly educated, competent and confident lawyers, who have all passed the bar. Evidently, they are able to perform; they just need an equal opportunity to do so.

Once the dialogue starts, continue it by measuring outside counsel's performance. This can be achieved by quarterly monitoring of the billable hours of the lawyers working on your matters. It will give you an indication of who is actually working on your matters and what level of work they perform (e.g., photocopying versus writing the motion papers).

Next, continue the communication by providing the firms with feedback on their performance. Let them know how they are doing, what they are doing well and where they need to improve. If helpful, provide comparisons with how some of your other firms are performing in the area of diversity.

Finally, reward firms that perform well with more business or—depending on how far you are in your diversity efforts—follow the lead of Brad Smith, senior vice president, general counsel and corporate secretary of Microsoft Corp., and give firms and senior executives in the law department a bonus if they improve diversity in measurable ways.

Remember diversity is not just good policy, it is also good business. The corporations and law firms that seriously invest in diversity maximize their business opportunities and effectuate meaningful change in furthering progress on an important issue in our profession.

Laurie N. Robinson is senior vice president and assistant general counsel at CBS Corp. and founder and CEO of Corporate Counsel Women of Color.

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