

GCs Driving Diversity and Inclusion In-house and at Law Firms

CMCP/Kaiser 2018 CLE Marathon

The logo for the California Minority Counsel Program (CMCP) features four curved, overlapping lines in yellow, orange, red, and blue, arching from left to right. Below these lines, the word "CALIFORNIA" is written in a large, black, sans-serif font, and "MINORITY COUNSEL PROGRAM" is written in a smaller, black, sans-serif font underneath it.

CALIFORNIA
MINORITY COUNSEL PROGRAM

January 10, 2018

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David Kelly, Golden State Warriors



Wanji Walcott, PayPal



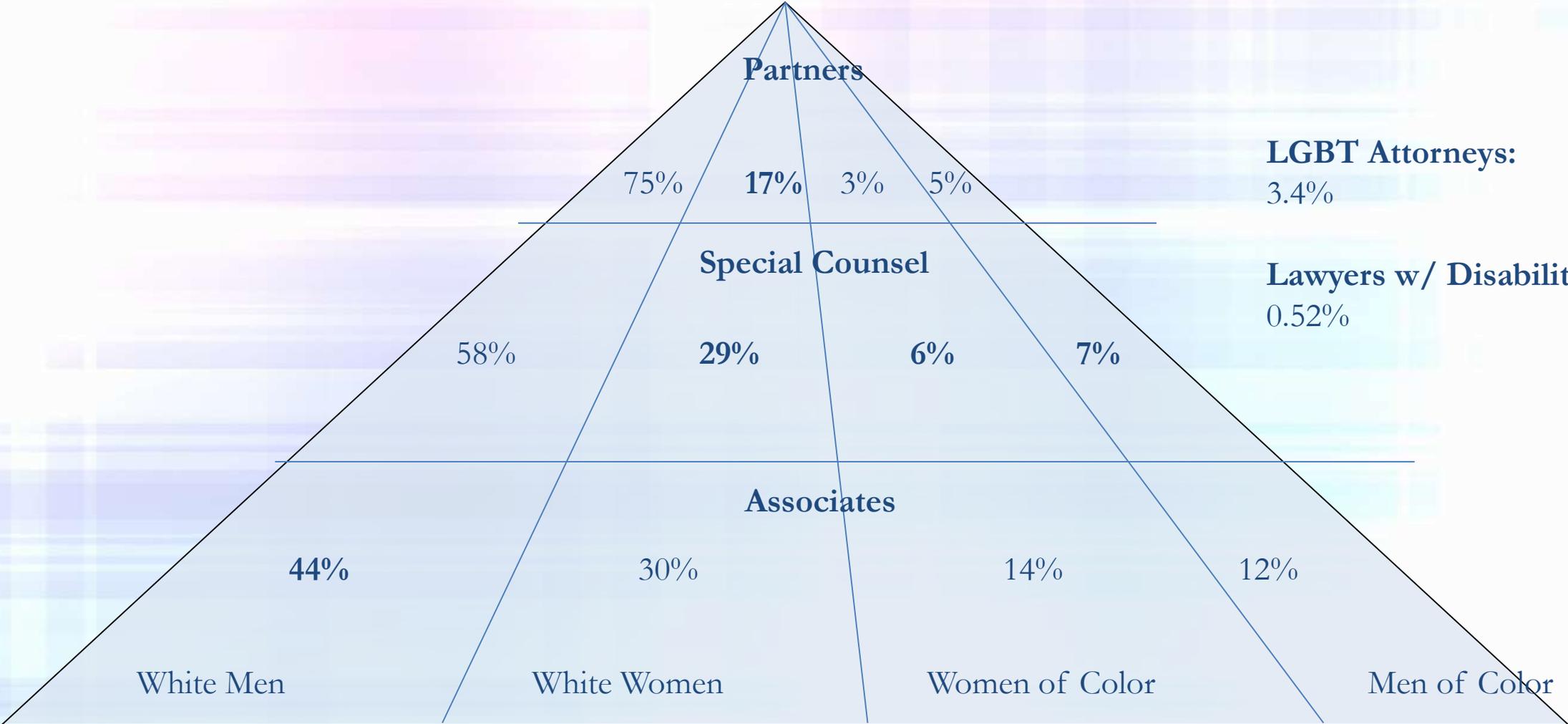
Kim Rivera, HP Inc.



Mark Zemelman, Kaiser Foundation

January 10, 2018

Current Reality – Law Firm Demographics



Diversity (Or Not) Among Business Attorneys

Numbers of minority attorneys show decline or limited growth over last several years:

- **Minority women** continue to be the most dramatically underrepresented group at the partnership level at 2.9% of partners in 2017 (women as a whole = 22.7% of partners in 2017)
- The percentage of **minority women associates** has increased minimally, from 11% (2009) to 12.86% (2017)
- The percentage of **Black associates** at law firms decreased for 5 straight years (2010 – 2015), and at 4.28% in 2017, below 2009 level of 4.66%
- **Blacks and Hispanics** each only represent 2% of partners and of counsel
- 47% of law firms in the country have zero (0%) **minority women partners**

Diversity Among Corporate Counsel

	Female	African American	Hispanic	Asian American	Other	Minority
2001	31.5%					12.5
2004	37.0	2.0	3.0	3.0	2.0	10.0
2006	39.0	3.0	3.0	3.0	2.0	11.0
2011	41.0	4.0	3.0	5.0	3.0	15.0
2015	49.5	4.0	5.0	7.0	3.0	19.0

Figures reprinted from Association of Corporate Counsel censuses.

Diversity of Lawyers Versus Other Professions

Aggregate number of minorities in management and professional jobs as of 2015:

- Accountants & auditors: **28.2%**
- Financial managers: **24.5%**
- Software developers: **44.2%**
- Physicians and surgeons: **31.2%**
- Overall professional labor force: **27.3%**
- **Lawyers: 14.5%**

Why Increasing Diversity Matters

Diversity adds value to businesses:

- Among companies with more than \$10 billion in annual revenues, 56% strongly agreed that *diversity helps drive innovation*
- Studies show diverse teams are better problem solvers and more likely to produce innovative and unconventional ideas
- Diversity allows better leveraging of talent, reflects the marketplace, and builds corporate reputation

Corporate Initiatives to Diversify Outside Counsel Spend – Are They Working?

Corporate clients express a commitment to greater diversity and, intentionally or not, imply to outside counsel that continued or additional business will flow as law firms manifest support for and commitment to greater diversity.

However, corporate clients, at best, use diversity as one of many criteria in selecting outside counsel and rarely implement strategies to reward in-house counsel for choosing diverse outside counsel or bestow more business upon those firms that are succeeding in their diversity endeavors.

Other Findings on Initiatives to Diversify Outside Counsel Spend

- Few corporate law departments use any kind of incentive – promotions, raises or bonuses – to encourage in-house counsel to retain diverse outside counsel.
- Only 12.5% of in-house counsel actually changed their relationships with law firms based on poor performance against their company's diversity metrics or objectives.
- 83.3% of such in-house counsel reduced the use of the firms as outside counsel, while none pulled any matters from a firm, and only 16.6% terminated the relationship with the firm.
- 80% of law firms have never been told that they had received business, in whole or in part, because of the diversity of the lawyers in the firm or the firm's diversity efforts.

Corporate Initiatives to Diversify Outside Counsel Spend

Engage Excellence Minority Lawyer Inclusion Incentive Program (2014) initiated by DuPont, General Mills, Verizon and Walmart: This program requires that law firms commit to staffing matters with diverse lead counsel and a diverse team before receiving the work, and that the law firms certify that the diverse lead lawyer hired receives financial credit as originator of the matter.

Microsoft Law Firm Diversity Program (2008/2015): Participating firms have the opportunity to earn an annual bonus of up to two percent of the legal fees billed to the company based on their performance in increasing diversity in three aspects of a firm's leadership.

Walmart Ready (2015): Walmart Legal meets with diverse attorneys to introduce them to Walmart's culture and requirements for outside counsel to prepare them for Walmart work in the future.



Corporate Initiatives to Diversify Outside Counsel Spend

Facebook (2017): Requires outside counsel teams to consist of at least 33% women and minorities and firms to demonstrate clear and measurable leadership opportunities, ex: client relationship managers

HP Inc. Will withhold up to 10% of law firm bills if they fail (after one year) to meet diverse staffing requirements.

Secondment/Fellowships (GE, JPMorganChase, et al): companies hire diverse lawyers directly from law school for 1 – 2 years, then direct them to outside counsel for employment.

Law Firm Attorney Development: Firms include clients as mentors for diverse attorneys at firms.

ABA Resolution 113: Growing list of GCs pledge to ask current and prospective outside counsel to complete Model Survey and use results in determining firms to retain.

Some Solutions and Best Practices

- Connect diverse outside counsel to in-house colleagues
- Have in-house counsel set diversity metrics for law firms
- Attach economic incentives and consequences for in-house and firm lawyers' diversity efforts
- Educate minority outside counsel on company culture and business to prepare them to pitch successfully (Example: "Walmart Ready")
- Encourage minority-majority law firm collaboration
- Implement a public standardized rating system for law firms' diversity effort
- Implement a "Rooney Rule" requiring interviews of minority candidates for employment positions and for outside counsel retention for matters over a certain amount

Some Solutions and Best Practices

- Explore alternative billing practices that place values on diversity, efficiency and economy versus billable hours as performance measures which disproportionately impact women
- Invite law firms to meet in-house teams, and encourage them to bring diverse attorneys
- Invite diverse attorneys to present CLEs to in-house teams
- Discuss succession planning re relationship managers and encourage diverse attorneys as successors
- Review preferred provider programs and consider modification or expansion to increase pool of diverse lawyers used

Some Solutions and Best Practices

- Encourage law firms to pay for minority attorney participation in minority bar associations
- Implement objective review processes
- Educate partners on business development opportunities available by having meaningful involvement of minority associates on pitches
- Have effective (3rd party led?) exit reviews of diverse attorneys who leave firm to determine what may have contributed to decision to leave
- Include hours spent on promoting/supporting diversity and/or outside counsel diversity in in-house counsel performance standards
- Introduce non-diverse professionals in diversity efforts in ways that educate and enable them to advocate for diversity
- Provide specific actions employees can take to support diversity (direct to bar associations, groups, etc)