



Solving Law Firm Diversity Tracking with E-billing Technology

By Mary B. Clark, Esq.

Diversity tracking in the legal industry.

Today, the issue of diversity is a key consideration for corporate attorneys who engage outside law firms to represent their companies. Many companies have enterprise-wide diversity initiatives, but even when this is not the case, law departments have focused attention on including the perspectives of women, minorities and various ethnicities in providing legal services to their enterprises.

In 1999, the Association of Corporate Counsel (ACC) led the way toward greater inclusiveness by inviting Chief Legal Officers to execute a statement of commitment to diversity in the legal profession. Roughly 500 corporate law departments are signatories to Diversity in the Workplace – A Statement of Principle, which calls on law firms to promote diversity internally¹. In October 2004, ACC endorsed a Call to Action² to reaffirm this commitment with the goal that legal departments and law firms would come to reflect the diversity of the communities in which they exist. Both corporate legal departments and law firms have increased focus on diversity in their ranks. Nonetheless, many law firms have an opportunity for improvement and many corporate law departments now routinely monitor law firm diversity practices.

Diversity metrics support diversity best practices.

In the 2006 report, *Creating Pathways to Diversity® A Study of Law Department Best Practices*³, the Minority Corporate Counsel Association reported the results of a study of diversity practices among approximately 50 corporate law departments, large and small. In setting forth the 10 best diversity practices found within these corporate law departments, MCCA ranked as number 3 the implementation of a diversity plan that includes metrics to measure progress in internal staffing and outside legal spend. Although measuring internal diversity is generally not a big challenge for most law departments, they experience difficulty in measuring the effectiveness of diversity initiatives among their outside law firms. Those corporate counsel surveyed who made successful inroads into tracking law firm diversity often credited e-billing technology as essential to collecting and aggregating the critical metrics.

Metrics and e-billing technology.

Any e-billing technology that supports a diversity plan must capture and track the obvious – number of minority vs. non-minority timekeepers for each law firm and number of Minority and Women-owned Business Enterprises (MWBE). However, to fulfill the intent of an effective diversity plan – and ensure that law firms provide meaningful opportunities for minorities – an e-billing solution also must track other significant data such as diversity within practice groups and the kind of services performed by individual women and minority attorneys.

1 *Diversity in the Workplace – A Statement of Principle*, www.acc.com/public/accpolicy/diversitystmt

2 *A Call To Action – Diversity in the Legal Profession*, www.cloCallToAction.com

3 *Creating Pathways to Diversity® A Study of Corporate Best Practices*, Minority Corporate Counsel Association (MCCA), Washington, DC (2006).

E-billing technology is the solution of choice for tracking diversity data for several reasons:

- Most law firms use e-billing technology to communicate timekeeper, rate, budget and invoice information to their customers
- Both law firms and law departments have reason to regularly use the e-billing solution
- Lawyers as well as administrators are familiar with the technology, making it convenient for them to enter data
- Flexible reporting functionality makes it easy to extract reports without exporting data to or integrating with other systems
- The e-billing solution aggregates and presents comparative, qualitative and quantitative data

An e-billing solution supports a diversity plan by providing an array of data capture and analytics reporting options, enabling law departments to start with simple metrics and moving to more complex analysis.

Tracking baseline law firm diversity facts.

The optimal e-billing solution will also have the capacity to aggregate and track baseline law firm information by calendar year. Year-over-year reports will provide an evolving view of each law firm's success in increasing and sustaining diversity among its professional staff, as well as comparative firm vs. firm results. Examples of baseline firm data are listed below.

- Total attorneys in firm
- Total attorneys in firm management
- Total partners
- Total associates
- Total women attorneys/partners/associates
- Total women attorneys in firm management
- Total minority attorneys/partners/associates
- Total minority attorneys in firm management
- Total associates promoted to partner during previous calendar year
- Total women associates promoted to partner during previous calendar year
- Total minority associates promoted to partner during previous calendar year
- Total women partners elevated to firm management during the previous calendar year
- Total minority partners elevated to firm management during the previous year
- Total partners who left during the previous calendar year
- Total women partners who left during the previous calendar year
- Total minority partners who left during the previous calendar year

- Total associates who left during the previous calendar year
- Total women associates who left during the previous calendar year
- Total minority associates who left during the previous calendar year
- Firm is a MWBE

Tracking individual attorney characteristics.

Keeping in mind that the self-identification of minority characteristics is, by law, voluntary, individual timekeepers are able to self-report on personal characteristics such as gender, race and ethnicity within the e-billing solution. This is important for two reasons. First, the law firm may not itself collect characteristics of individuals. Secondly, minority characteristics may not be self-evident to someone who merely observes another individual. Therefore, if a person who reports diversity data on behalf of a law firm gathers information about individual characteristics through his own powers of observation, his conclusions about which characteristics apply to an attorney could be incorrect. Self-reporting is the most reliable methodology and e-billing simplifies capture of each individual's data.

In managing the assignment of work, individual characteristics are used to create reports about the staffing distribution of minorities and women across the all of the legal matters assigned by the corporate law department to outside law firms. Examples of typical metrics include the following:

- Total attorneys assigned to all legal matters during previous calendar year or year to date
- Total women attorneys assigned to all legal matters during previous calendar year or to date
- Total minority attorneys assigned to all legal matters during previous calendar year or to date
- Total attorneys assigned to each matter
- Total women attorneys assigned to each matter
- Total minority attorneys assigned to each matter

Corporate counsel routinely evaluate law firms by legal spend. An e-billing solution calculates the portion of a company's outside legal spend resulting from the work of diverse law firm attorneys. These critical diversity metrics also depend upon individual characteristics. E-billing technology aggregates metrics like those set out below for the following groups: all attorneys, women attorneys/partners/associates, and minority attorneys/partners/associates.

- Total outside legal fees
- Total hours billed
- Average hourly rate
- Average hourly rate per firm

Inclusion of diverse staff at all levels.

Corporate law departments have called upon law firms to go beyond providing demographic representations of minorities on their staffs. Rather, they expect law firms to provide diverse staff with meaningful opportunities to perform services across all practice areas and at all levels of responsibility. To aggregate information that helps the corporate law department evaluate the progress law firms make in creating these opportunities for success and growth year-over-year, an e-billing system should have functionality to deliver more complex metrics, such as:

- Total practice areas/categories of matters assigned to each firm
- Total attorneys per practice area/category of assigned work
- Total women attorneys/associates/partners per practice area/category of assigned work
- Total minority attorneys/associates/partners per practice area/category of assigned work
- Legal services by task (such as drafting motions, attending trials, negotiating merger terms, etc.) by firm
- Legal services by task provided by women attorneys/associates/partners in a firm
- Legal service by task provided by minority attorneys/associates/partners in a firm

By weighing the complexity of tasks that are performed by women and minority attorneys and the practice areas in which they work, corporate counsel can assess which law firms are providing meaningful opportunities to diverse staff, reflective of the law firm's serious commitment to advancing diversity. Corporate counsel do not want to reward firms who use their minority attorneys to mechanically "touch" each matter without taking on responsibility for difficult legal challenges. These revealing metrics can also be compared firm-to-firm and year-over-year.

Adjusting to Realities.

Along with the reporting of diversity within practice areas or about the kind of work that minority lawyers are assigned, an e-billing solution will enable corporate attorneys to drill into diversity metrics by location — of their own company, the law firm office or the matter. Because demographics vary across the country as well as internationally, a law firm with several offices worldwide may have widely divergent diversity profiles for each office. While some of a law firm's offices may excel in staff diversity, others may have no diversity at all. The location of the office may be the differentiating factor, and not the firm's commitment to inclusion.

Testing Internal Commitment.

An e-billing solution should facilitate the assignment of all matters in which the company is represented by outside counsel. Therefore, it becomes easy for the General Counsel to view data disclosing which members of her staff are focused on the law department's own diversity goals when assigning

matters to outside counsel. As the Pathways to Diversity report revealed, several law departments tie attorney compensation directly to their own effectiveness in supporting corporate diversity initiatives.

Successful Integration of E-Billing into a Diversity Plan.

Integrating an e-billing solution with the law department's diversity plan streamlines data capture and the creation of meaningful metrics. An e-billing solution will give the General Counsel visibility into law firm diversity information as a whole or by the sum of its parts. Three key factors are essential to the success of a diversity plan that tracks metrics using an e-billing solution:

- The General Counsel's top-down leadership in driving the capture of diversity information and communicating the importance of success in this endeavor to the law firms that represent the company.
- The e-billing solution's capacity to optimize the data collected in the diversity program by leveraging comparative and quantitative analysis.
- The fluidity and flexibility of the e-billing solution's reporting functionality to easily provide critical metrics in a variety of formats.

About the Author

Mary B. Clark is Vice President, Law and Deputy General Counsel for LexisNexis. With more than a decade of experience in the legal technology industry, Clark has been instrumental in developing and introducing consulting, technology and Internet solutions to the legal marketplace. She has shared her expertise in numerous presentations hosted by professional organizations such as the American Bar Association, the Association of Legal Administrators, and Corporate Legal Times. Prior to joining LexisNexis, Clark practiced law as corporate counsel and as a litigation attorney in private practice.

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