

NAMWOLF

BUYING LEGAL
COUNCIL

Diversity and Inclusion in the Legal Profession

A Moral and Business Imperative

JOEL STERN | CEO NAMWOLF

Keeping D&I Top of Mind

NOW, MORE THAN EVER.



Agenda

- Time to Stop Admiring the Problem and Start Solving!
- Unconscious Bias
- Diversity & Inclusion “Best Practices” Within In-house Legal Departments
- NAMWOLF
- Questions



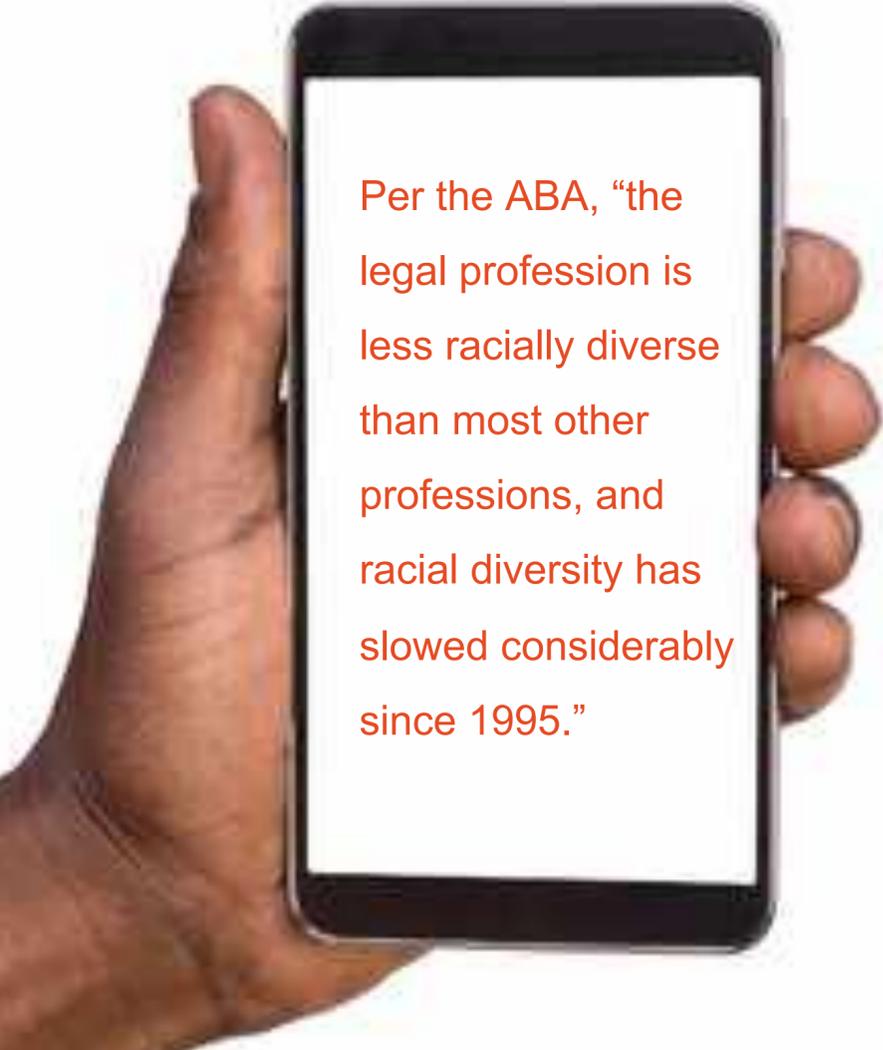
The Legal Profession is Falling Behind in Diversity **WOMEN**

The National Association of Women Lawyers' latest report indicated...

- While women have been 50% of law school graduating classes for the past 10 years, the representation of women declines significantly as she rises in seniority at law firms making up 47% of associates, 30% of non-equity partners (unchanged from 2018) and 20% of equity partners
- Men continue to dominate the top earner spots, with 93% of firms reporting their top earner is a man and of the 10 most highly compensated lawyers in the firm, one or none of those top 10 is a woman
- Women equity partner earns 88% of what the mean male equity partner makes (even though female equity partners generate 93% of the revenue that male equity partner generates)

The Legal Profession is Falling Behind in Diversity

MINORITIES



Per the ABA, “the legal profession is less racially diverse than most other professions, and racial diversity has slowed considerably since 1995.”

For example, according to the 2019 National Association for Law Placement report, the percentage of African-American associates is 4.76%. In 2009, the percentage was 4.66%

For all minorities, percentage of associates increased 1.2% to 25.44% (much of which is attributable to increases among Asian American lawyers)

Per the same report, women of color continue to be the most dramatically underrepresented group at the partner level – 3.45% (compared to 1.8% in 2009)

Percentage of minority partners grew less than half of a percentage point in 2019 to 9.55% (7.66% when looking only at minority equity partners)

African American partners discouragingly low at 1.97% (1.83 in 2018)

Attorneys of color make up only 10.2% of Fortune 500 General Counsels with only 4% being women of color.

Additional Findings from NALP Report

Minority women continue to be the most dramatically underrepresented group at the partnership level

*1 in 5 equity partners women

*People of color make up 7.65% of equity partners

Significant differences by law firm size and geography and many jurisdictions where the disparities in representation are stark (Miami versus Boston versus Phoenix)

Asian Women make up 1.46% of Partners

Latinx Women make up 0.80% of Partners

African American Women make up 0.75% of Partners

Representation of women and people of color in the summer associate ranks compares much more favorably to the population of recent law school graduates and hit all time highs in 2019.

Overall percentage of LGBT lawyers increased slightly to 2.99% compared with 2.86% in 2018. However, LGBT representation among summer associates jumped over 1.1 percentage points, from 5.73% in 2018 to 6.86% in 2019.

The Implications of Lagging in Diversity

Projections indicate that the U.S. will be a majority minority nation in 2044.

Former Attorney General Eric Holder noted the "overall lack of diversity within the legal profession adversely impacts our ability as lawyers to serve those most in need of assistance."

Accordingly, it is the legal profession's responsibility to be concerned about

"The potential effects [for the legal profession] of being significantly more racially homogenous than the increasingly heterogeneous society in which we live."

Business Case vs. Moral Case

“Advocates of the ‘business case for diversity’ likely did not mean to weaken diversity by undermining its normative justifications, but opponents of diversity initiatives have seized the opportunity to reframe and focus attention on the (admittedly often questionable) instrumental grounds for diversity. Indeed, David Wilkins, who has written extensively about the ‘business case for diversity,’ has astutely cautioned against both an uncritical adoption of it and against abandoning other justifications for diversity: ‘given the limitations with self-interested justifications for client participation in programs to increase law firm diversity, advocates for those programs would be well advised not to give up on...’normative diversity arguments.”¹

1A Primer on Diversity, Discrimination, and Equality in the Legal Profession or Who is Responsible for Pursuing Diversity and Why by Eli Wald

Benefits of Diversity



Racial & Gender Diverse Companies/Law Firms Outperform Less Diverse Companies

- Companies in the top quartile for racial and ethnic diversity are **35 percent** more likely to have financial returns above their respective national industry medians
- Companies in the top quartile for gender diversity are **15 percent** more likely to have financial returns above their respective national industry medians
- Companies in the bottom quartile both for gender and ethnicity and race are statistically **less likely to achieve above average financial returns** than the average companies in the data set
- For every **10 percent** increase in racial and ethnic diversity on senior-executive teams, earnings before interest and taxes **rises by 0.8%** in the U.S.
- Diverse teams drive **6 percent greater revenue, 15 percent more customer wins** and create **significantly higher** market share
- Companies with integrated diversity and inclusion strategies have **2.3 times** higher cash flow per employee, **1.8 times** more likely to be “change ready” and **1.7 times** more likely to be innovation leaders in their market
- Diverse law firms generate **more than \$100,000** of additional profit per partner than less diverse firms of the same size, location and hours

California Rules of Professional Conduct

Rule 2-400: Prohibited Discriminatory Conduct in a Law Practice

- In the management or operation of a law practice, a member shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race, national origin, sex, sexual orientation, religion, age or disability in:
 - (1) hiring, promoting, discharging, or otherwise determining the conditions of employment of any person; or
 - (2) accepting or terminating representation of any client.



New York Rules of Professional Conduct

Rule 8.4(g): Misconduct

- A lawyer or law firm shall not unlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment on the basis of age, race, creed, color, national origin, sex, disability, marital status or sexual orientation.



NY State New Diversity Requirement effective January 1, 2018

Rules 22 NYCRR 1500.2 (g)

- Experienced attorneys must complete at least one (1) credit hour in Diversity and Inclusion.
- Diversity, Inclusion and Elimination of Bias courses, programs and activities must relate to the practice of law and may include, among other things, implicit and explicit bias, equal access to justice, serving a diverse population, diversity and inclusion initiatives in the legal profession, and sensitivity to cultural and other differences when interacting with members of the public, judges, jurors, litigants, attorneys and court personnel.



Illinois Supreme Court Rule 794(d) CLE Requirement on Diversity Training

Rule 794(d): Diversity Training

- Illinois lawyers required to complete one hour of diversity and inclusion CLE as part of the Professional Responsibility CLE requirement due to studies showing that the legal field falls short in the area of diversity.
- Illinois fourth state to require diversity-related CLE



Diversity of The Legal Profession as a Moral Imperative and Professional Obligation

Lawyers have an ethical responsibility to eliminate bias in the legal profession as codified in the following rules of conduct:

California Rules of Professional Conduct

Rule 2-400: Prohibited Discriminatory Conduct in a Law Practice

New York Rules of Professional Conduct

Rule 8.4(g): Misconduct



Unconscious Bias in the Legal Profession

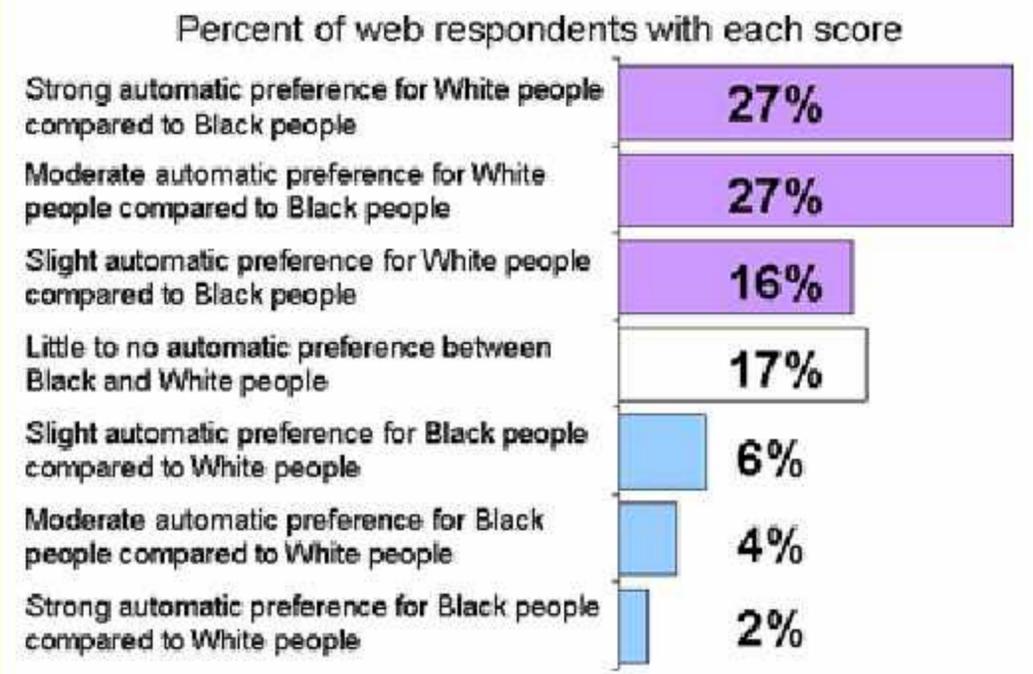


Unconscious Bias in the Legal Profession

The study of unconscious bias is based on 40 years of social science research.

Our brain reaches conclusions without immediately telling us that it's reaching conclusions.

Harvard Implicit Association Test



<http://implicit.harvard.edu>

TAKE THE HARVARD IMPLICIT ASSOCIATION TEST (IAT)

www.implicit.harvard.edu/implicit/demo



Different Types of Unconscious Bias



- Confirmation
- Perception
- Affinity
- Halo Effect
- In-Group
- Fundamental Attribution Error
- Incumbency Bias

Unconscious Bias in the Legal Profession

Impact on In-house Legal Groups

Internal Impact

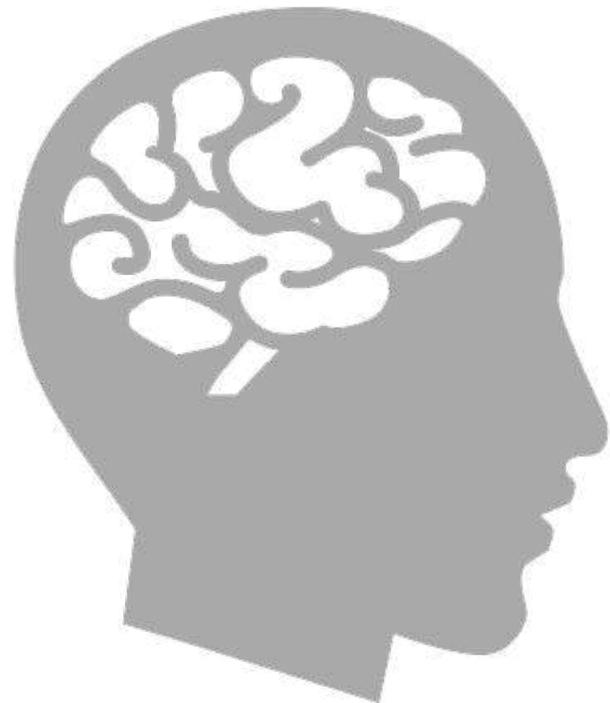
- Hiring
- Promoting
- Firing
- Mentoring
- Overall engagement of legal group

Big Firm Impact

- Who we interview
- Who we retain
- Who we like
- Who we find flaws in
- Who we support

Supplier Impact

- Are you giving MBE/WBE firms the opportunity to compete for and win the business?
- Are MBE/WBE firms unfairly disadvantaged due to our unconscious biases?



The Unconscious Bias Checklist



Understand

Seek first to understand that you have biases and then take steps to solve them



Assess & Share

Take and then share results of the Harvard Implicit Association Test



Be Aware

Stay on top of your biases



Consult Experts

Use expert consultants to minimize adverse impact on legal group (Michelle Silverthorn – Inclusion Nation)

Diversity & Inclusion In-house Best Practices

Top Down & Bottom Up Support

Accountability Defined

Embedded In Core Values

Managed as a Strategic Imperative

Carrot & Stick Approach

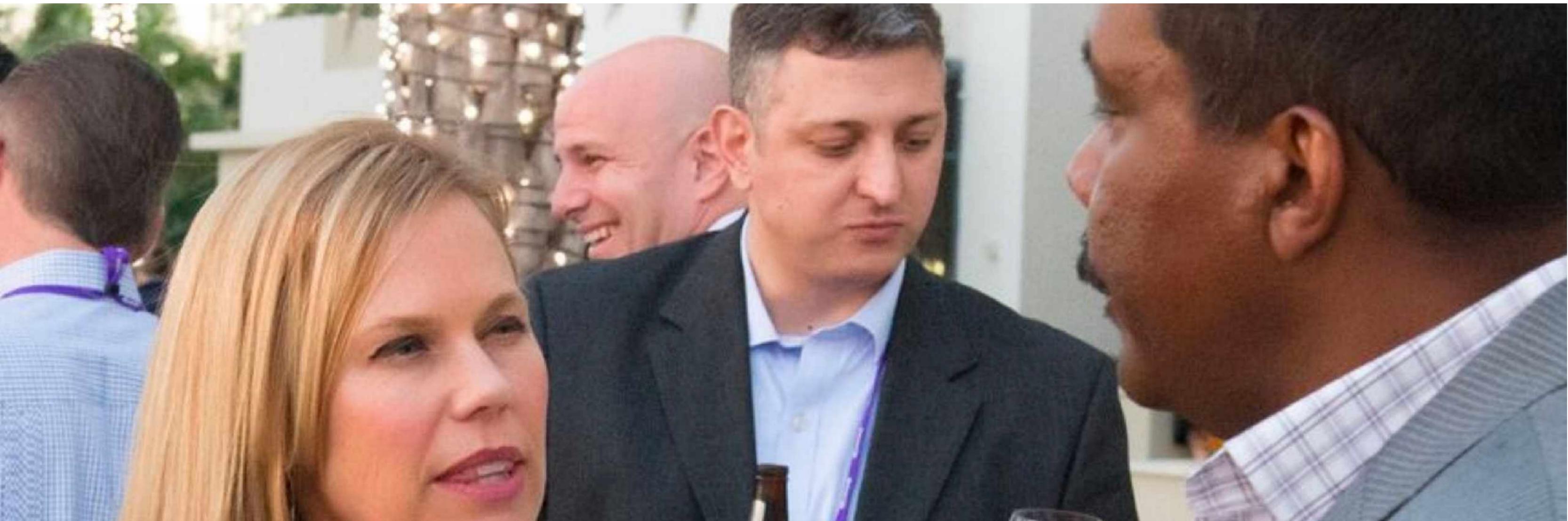
Goals Created & Measured

Successes & Failures Communicated

Legal Leads & Not Follows



NAMWOLF



#WhyNAMWOLFnow



What is NAMWOLF?

Founded in 2001, NAMWOLF is a non-profit, national legal trade association comprised of minority and women owned law firms and other interested parties.

We believe the most effective way for corporations to increase diversity in the legal profession is to increase their retention of minority and women owned law firms.



Mission

NAMWOLF'S mission is to provide corporations the premier place to go to locate and hire minority and women owned law firms of the very highest caliber. These firms offer a wide array of legal services in several practice areas including litigation, labor and employment, intellectual property, complex transactions, insurance and corporate law just to name a few.

Why Hire Minority & Women Owned Firms?

Corporations have found success in retaining high quality and high value minority and women owned law firms.

NAMWOLF successes are the result of the following:

- ✓ Many of the lawyers in NAMWOLF firms are former partners in large law firms obtaining the experience necessary to represent America's largest corporations.
- ✓ NAMWOLF's geographical footprint includes 42 states.
- ✓ NAMWOLF'S nearly 200 law firms encompass over 2,800 attorneys.
- ✓ NAMWOLF firms have expertise in most practice areas.
- ✓ NAMWOLF aligns perfectly with Corporate Supplier Diversity initiatives.

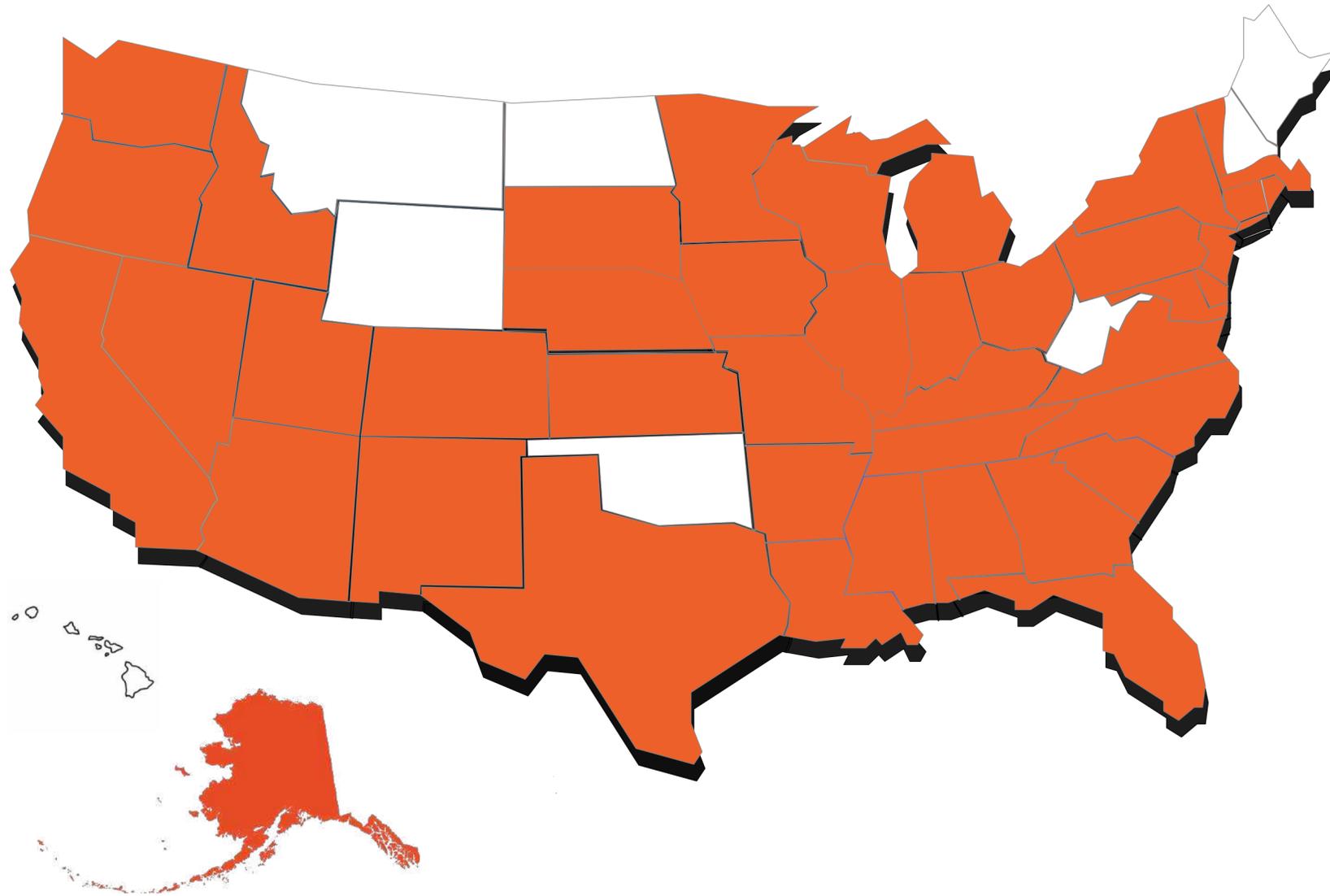
NAMWOLF Firms & The Vetting Process

NAMWOLF firms go through a rather long and onerous process to be admitted into NAMWOLF.

The Criteria for Admission Include:

- Three Fortune 500 Client References done via interview
- Excellence in quality of law practiced, as evidenced by references, presence on outside counsel approved lists and panels and other awards and memberships
- Certified by NMSDC, WBENC or NGLCC as a minority, women or LGBT- owned, operated, managed and controlled
- Martindale Hubbell AV Peer Review Rating
- Three or more full-time attorneys
- Sufficient Practice Liability Insurance

NAMWOLF Law Firm Members



NAMWOLF law firm membership consists of nearly 200 members in 42 states.

How to Find a NAMWOLF Law Firm

- **Corporate Counsel Guide** – Law firm members are listed by state and practice area.
- **NAMWOLF's website** - The NAMWOLF website allows individuals to perform a comprehensive search for NAMWOLF Member Firms with specific expertise, geographic locations, practice areas, and sub practice areas.
- **Ask other in-house counsel for recommendations.**
- **Anonymous solicitation process** – With this approach, individuals provide NAMWOLF with specific details of what they are looking for (i.e., practice areas, jurisdiction, expertise levels, etc.) and the NAMWOLF support team will send out a solicitation to our Member Firms.

Practice Area Committees

NAMWOLF formed several practice area specific committees to better serve corporations and their legal departments. Through these committees, NAMWOLF strives to highlight the abundance of knowledge and expertise that NAMWOLF's law firm members can offer to corporate counsel.

NAMWOLF | **TRANSACTIONAL**
PRACTICE AREA COMMITTEE

NAMWOLF | **INTERNATIONAL LAW**
PRACTICE AREA COMMITTEE

NAMWOLF | **LABOR & EMPLOYMENT**
PRACTICE AREA COMMITTEE

NAMWOLF | **PRODUCTS LIABILITY**
PRACTICE AREA COMMITTEE

NAMWOLF | **INTELLECTUAL PROPERTY**
PRACTICE AREA COMMITTEE

NAMWOLF | **INSURANCE**
PRACTICE AREA COMMITTEE

NAMWOLF | **TRIALS**
PRACTICE AREA COMMITTEE

NAMWOLF | **THE WHITE COLLAR DEFENSE
& INTERNAL INVESTIGATIONS**
PRACTICE AREA COMMITTEE

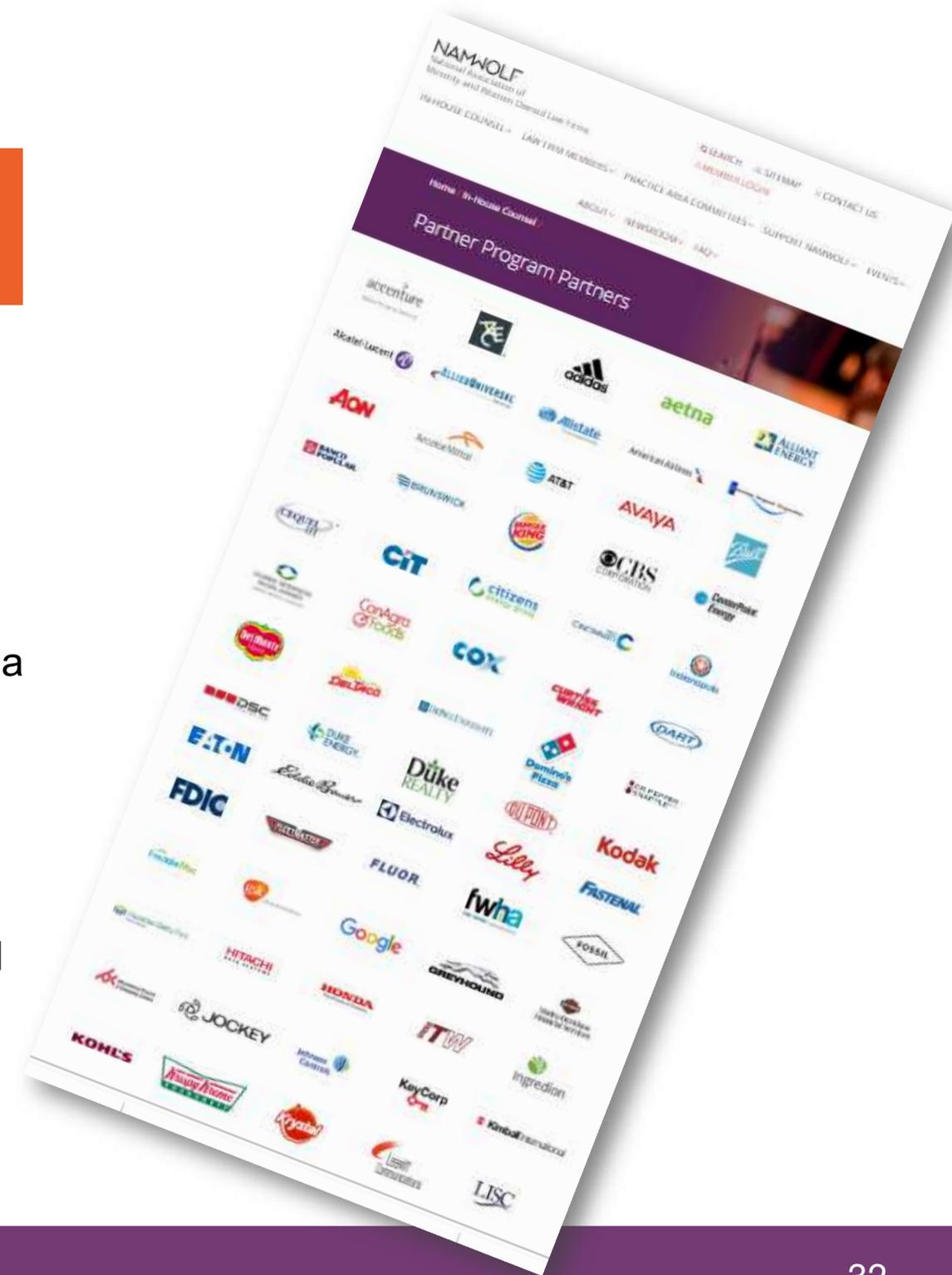
NAMWOLF | **RETAIL, RESTAURANT,
& HOSPITALITY**
PRACTICE AREA COMMITTEE

NAMWOLF | **FINANCIAL SERVICES
LITIGATION**
PRACTICE AREA COMMITTEE

NAMWOLF Corporate Involvement

NAMWOLF Partner Program (NPP)

- The National Association of Minority and Women Owned Law Firms Inc. developed the NAMWOLF® Partner Program to encourage corporations to increase their utilization of certified minority and women owned law firms.
- The NAMWOLF® Partner Program requires corporations and other entities to agree to set a goal of expending a minimum of 5% of their outside counsel budget with certified minority and women owned law firms.
- To become a member of the NAMWOLF® Partner Program, simply fill out the application and return it to NAMWOLF®. This program is free of charge. The application can be found at www.namwolf.org



NAMWOLF Platinum Partners



NAMWOLF Corporate Involvement

Inclusion Initiative

A collaborative effort of 33 forward-looking companies committed to an immediate and measurable increase in the retention of minority and women owned law firms by Corporate America.

In the initial year of the Inclusion Initiative, members together spent \$42 million with MWBE law firms. Since then, the total amount of money participating law departments have spent on MWBE firms has grown significantly and has exceeded \$200 million every year since 2012, including \$226 million in 2016

In seven years these companies spent more than \$1 Billion and “put their money where their mouths are.”

Companies found that when General Counsel make the use of diverse law firms a business imperative – with tracking, reporting and support – corporate law departments successfully engage diverse law firms in a wide range of legal matters.

Inclusion Initiative 2019 Companies



NAMWOLF Corporate Involvement

Advisory Council

The NAMWOLF Advisory Council is comprised of In-House Counsel from corporations and government entities who demonstrate personal commitment to increasing diversity in the legal profession. The council serves as a consultative and advisory body to provide input to the CEO, the Board of Directors and the membership at large on matters related to the mission, objectives and goals of the association. The council provides the means for discussing and evaluating NAMWOLF affairs, activities and programs.

NAMWOLF Corporate Leadership Advisory Council



CHAIR

Justi Miller

Associate General Counsel



CO-CHAIR

Chris Luna

Legal Affairs



VICE-CHAIR

Vanessa Watson

Vice President, Senior Managing



JUNIOR VICE-CHAIR

Michael Danforth

Executive Director Attorney



The In-House Advisory Council is represented by dozens of corporations including:

- | | | | |
|-----------------------------|----------------------------------|--|----------------------------|
| 101 Studios | Duke Energy | Kapitus | Siemens Healthineers |
| Abbvie | Edward Jones | Markel | Similar Web |
| ACC | Entergy | Mastercard | Southern California Edison |
| Accenture | Equitable | McDonald's | State Farm |
| AFLAC | Excelon | Merck | SUPERVALU Inc. |
| Allstate | FDIC | MetLife | Takeda Pharmaceuticals |
| AMN Healthcare, Inc. | Federal Reserve Bank of New York | Microsoft Corporation | T-Mobile |
| Airbnb | FMC Corporation | Morgan Stanley | Toyota Financial Services |
| Aon | Freddie Mac | Nationwide Insurance | U.S. Bank |
| Bank of America | General Electric | NBCUniversal | United Airlines |
| BASF Corporation | GetixHealth | New York State Teachers' Retirement System | USAA |
| BD Medical Technology | GlaxoSmithKline | National Gay & Lesbian Chamber of Commerce | Verizon |
| Bechtel | Goldman Sachs | Northwestern Mutual | VICE Media |
| BP | Google | Panasonic | Walgreens |
| Boeing | Hartford Insurance | Paypal | Walmart |
| Booz Allen Hamilton | Honda North America | Pearson Education, Inc. | Wells Fargo |
| CDW Corporation | Huntington National Bank | PECO Energy | WeWork |
| Chevron | Infosys | PNG Gaming | Xerox |
| CHUBB | Ingredion | Prudential | York |
| Citi | International SSOS | Rockwell Automation | |
| Coca-Cola | J.P. Morgan Chase | Sempra | |
| Converse | KeyBank, NA | Shell Oil Company | |
| Core Services | Kroger | | |
| Discover Financial Services | | | |

Next NAMWOLF Event



NAMWOLF WEEK
Your VIRTUAL Annual Meeting EXPERIENCE

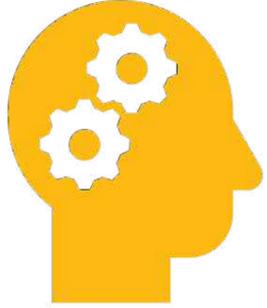
September 14-18, 2020



Become the change you
wish to see in the world
and it will happen.



Questions



Diversity & Inclusion - What Companies Are Doing

- **Hewlett Packard** – Imposes up to a 10% hold back of firm fees if certain firm diversity requirements are not met. Outside counsel must have at least one diverse firm relationship partner regularly engaged on billing and staffing issues, or at least one woman and one racially/ethnically diverse attorney, each performing or managing at least 10% of hours billed to HP.
- **Chase Bank** – Requires that at least 50% of its matters be handled by diverse attorneys.
- **Microsoft** – Provides annual two-percent diversity bonus for law firms which satisfy certain diversity benchmarks designed to measure firm's diversity and inclusion progress annually, including whether firm has achieved increase in diversity compared to previous year. Senior corporate counsel's year-end bonuses are also tied to diversity success of outside counsel.

Diversity & Inclusion Best Practices

- **Monitor who's doing billable work for the Company** – Look at the top three to five attorneys charging time on account. If there aren't diverse attorneys in that group, insist that change over a given period of time or face consequences.
- **Meet with engagement Partner at firm** – Discuss state of the legal profession, and need for greater diversity. What is firm's strategy to address this?
- **Identify up-and-coming diverse attorneys within firm** –
 - a) Develop opportunities for those diverse attorneys to gain your confidence and develop the kind of relationships that could later lead to greater responsibility inside the firm;
 - b) Involve these attorneys in Company's functions and events, where they might be able to make networking/client development connections;
 - c) Consider offering secondment opportunities.

Diversity & Inclusion Best Practices

- **Tracking software** - In-house now have available technological resources to track and measure the diversity of their outside counsel, along with tracking other performance metrics, such as results, efficiency and cost effectiveness.
- **E-billing software** – Is the solution of choice for tracking diversity data for several reasons:
 - a) Most law firms use e-billing to communicate information to their clients anyway;
 - b) Familiarity with this software;
 - c) Flexible reporting functionality makes it easy to aggregate and present comparative, qualitative and quantitative data.
- **E-billing technology** - Essential to collecting and aggregating critical metrics, including:
 - a) Total attorneys assigned to all legal matters during previous calendar year or year to date;
 - b) Total diverse attorneys assigned to all legal matters during previous calendar year or to date; and
 - c) Total diverse attorneys assigned to each matter.