

# How client surveys are moving the DEI needle at law firms

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Every winter, law firms receive from their clients a deluge of annual surveys and requests for data regarding the efforts made and success obtained by firms in regard to diversity, equity, and inclusion. These surveys are crucial tools for firms to determine not only the progress they have made over the last year but also to understand more how their clients define success in this area.

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This year's surveys make clear that the definition of success is evolving in a significant way. Clients are issuing clear directives on what firms must do and accomplish. They are shifting from an effort-based system to an outcome-based system. And they are injecting themselves into DEI discussions at law firms in a real and significant manner.

Just as client demands dictate the direction of a law firm's actions on a commercial deal or in a litigation matter, client demands are now shaping the future of DEI initiatives at law firms. To remain ahead of the curve of client demands in this area, firms must be prepared to receive the direction provided by clients and implement that direction in an impactful way.

## The definition of success is shifting

One major frustration experienced by law firms — and specifically, by diversity professionals with the responsibility to meet client demands on DEI — is that many clients had never set clear expectations with regard to DEI when it came to staffing, credit allocation, and assignment of responsibility. While the reason for this is apparent — our clients' views on inclusion and equity are developing in parallel with that of firms — the absence of explicit guidance from clients led to scattershot approaches and often failed efforts.

This year's crop of DEI surveys and requests for data demonstrates that this frustration may be relieved in a real way, as clients are setting direct and specific targets and goals (and the time frames to do so).

For example, many firms traditionally believed that assigning diverse and/or female attorneys to legal or pitch teams was sufficient to meet a client's diversity expectations. However, this year's surveys make clear that that is not the case. Clients request detailed data on the hours billed by those attorneys on each engagement and, more importantly, a narrative describing how those attorneys performed meaningful work and gained meaningful experience.

This year's surveys also demonstrate that many clients no longer believe that a firm can be successful in regard to diversity and inclusion by simply having a firm whose population is diverse overall. While this is still a necessary factor, clients are now also demanding that each individual legal team or engagement demonstrates that diversity.

## Accountability mechanisms are here to stay

In 2017, HP Inc. made headlines by issuing a clear and harsh directive — outside firms that failed to meet HP's standards on DEI would find a portion of their billed fees withheld. Many other organizations followed suit, with companies such as Novartis announcing they would withhold 15% or more of legal fees billed by a firm unless that firm ensured that diverse lawyers performed a significant percentage of the work. See

For a period of time, it appeared that only the largest organizations would adopt these types of accountability mechanisms with the most advanced diversity and inclusion goals. However, that does not appear to be the case, as many organizations are now taking distinct steps to reward firms who are champions of DEI and penalize those firms who fail to meet baseline standards.

As for penalties, this year's crop of diversity surveys suggests that many organizations are still remiss to adopt written standards as severe as those adopted by HP and Novartis. However, that does not mean that individual in-house counsel and legal departments are not penalizing firms for failing to meet DEI standards.

Many in-house lawyers, especially those passionate about DEI issues, ensure compliance with DEI values by allocating less work to that lawyer or firm or informing leadership of a firm's shortcomings in this area. In extreme circumstances — especially those involving firms or lawyers who actively refuse to meet standards — clients are issuing stern warnings that the overall relationship is in jeopardy unless a significant and immediate change is made.

On the other side of the coin, firms and lawyers who exceed DEI expectations often see increased allocations of work and expansion of current representations. Recent diversity directives also indicate that clients are compiling and issuing lists of the firms and attorneys who best exemplify commitments to DEI and ensure that the general counsel and CEO know who is — and is not — on each list.

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A final point on accountability mechanisms — firms can no longer believe that DEI priorities do not apply to them. These priorities apply to all firms, and in-house counsel are being directed to explain with clarity why each firm is being rewarded or penalized based on its performance. Attorneys must be prepared to engage in these critical discussions and make meaningful efforts to ensure that client engagements expand in the future.

### About the author



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### Clients are injecting themselves into the discussion

In-house counsel often express that, despite their power on the allocation of legal work to firms, they feel like they have little power to affect the careers of individual diverse and female lawyers within firms. However, this year's diversity surveys suggest that clients intend to inject themselves into the careers of high-performing attorneys at firms to ensure that those attorneys are given equal opportunities to advance and succeed.

In-house counsel are doing this in three significant ways. First, counsel are investing in the training and development of diverse outside counsel by bringing those attorneys into the client's business. This investment often involves a detailed explanation of the business giving rise to the engagement, critical discussions of the client's approach to risk and billing, and introductions to other members of the in-house team, including the general counsel.

Second, in-house counsel are communicating directly with relationship attorneys and with firm leadership regarding the career trajectory of diverse and female lawyers. These communications can remedy an issue (such as a gap in experience or expertise) or recognize significant contributions (often directly to firm leadership).

Finally, in-house lawyers are demanding change and opportunity for diverse and female lawyers. For example, in-house counsel can require that a diverse or female attorney receive origination credit on a matter and take on first chair responsibilities (despite how these issues were handled in the past). In-house counsel also regularly require that diverse and female members of the team get to argue an important motion or close an important deal.

While staying on top of client trends on DEI is necessary to maintain a healthy attorney-client relationship, it is important not to lose track of the primary reason for doing so — to create rewarding and lasting inclusion strategies that benefit your firm and all of its attorneys. As these trends demonstrate, it is no longer enough for a firm to say it is diverse and inclusive. That firm must take action and be stewards of positive change.