**DUKE LAW GUIDELINES AND BEST PRACTICES ADDRESSING CHRONIC FAILURE TO DIVERSIFY LEADERSHIP POSITIONS IN THE PRACTICE OF LAW**

**(FIRST DRAFT PENDING REVISION)**

**MAY 10, 2018**

**Guideline 3:** Corporate legal departments should promote diversity in attorney leadership when hiring outside counsel.

 Many legal departments today are not just asking firms to field diverse teams of attorneys –– they are requiring those firms to put attorneys in leadership positions and demanding data to back it up.

 For example, in April 2017, Facebook announced that it would begin requiring outside counsel to field teams with at least 33% women and ethnic minorities and show they are actively creating “clear and measurable leadership opportunities for women and minorities” in the company’s legal matters.[[1]](#footnote-1) In a similar vein, HP pushed for advancement of women and diverse attorneys in leadership roles when it announced, in February 2017, that it would withhold up to 10% of invoiced amounts from law firms that do not field at least one “diverse relationship partner” or at least one woman and one “racially/ethnically diverse” attorney each performing at least 10 percent of the billable hours on HP matters.[[2]](#footnote-2)

 Corporate legal departments have increasingly placed demands on in-house legal teams to track their spending with greater precision, indicating an approach that uses spending data to hold firms accountable for diversity initiatives.[[3]](#footnote-3) These efforts may be an effective means of demanding diversity accountability with clear benchmarking, regular feedback, and business incentives that further the development and advancement of women and diverse attorneys on corporate legal teams. Instead of relying solely on law firms for their reporting of diversity statistics, in-house legal departments can use spending data to track which attorneys are doing which kind of work. For example, a general counsel can track if a young woman of color is staffed for large amounts of time on document review, or if she is taking on a leadership role and logging significant hours on more high-level work designed to advance her career and leadership prospects.

Clients can also help by insisting on diverse legal teams, retaining female trial lawyers, and demanding evidence from law firms as to the roles women are playing on their cases. And finally, female attorneys can take the initiative to seek out better assignments.

“We advise women never to turn down the opportunity to be part of a trial team,” write Scharf and Liebenberg. “There are so many upsides to saying ‘yes’ and enough downsides to saying ‘no’ that, to our minds, the only right answer is ‘yes.’”[[4]](#footnote-4)

1. Ellen Rosen, *Facebook Pushes Outside Law Firms to Become More Diverse*, N.Y. Times Dealbook (Apr. 2, 2017), https://www.nytimes.com/2017/04/02/business/dealbook/facebook-pushes-outside-law-firms-to-become-more-diverse.html?ref=dealbook@\_r=0. [↑](#footnote-ref-1)
2. Rick Mitchell, *Wake up Call: HP to Dock Fees on Firms Lagging on* Diversity, Bloomberg Law: Big Law Bus. (Feb. 17, 2017), https://bol.bna.com/wake-up-call-hp-to-dock-fees-on-firms-lagging-on-diversity. [↑](#footnote-ref-2)
3. For a list of corporate legal department efforts to use statistics and financial incentives to promote diversity in outside law firm assignments, see *Legal Department (AKA Clients) Efforts Designed to Drive Outside Counsel Diversity*, DiversityLab, www.diversitylab.com/knowledge-sharing/clients-push-for-diversity (last updated July 8, 2017). [↑](#footnote-ref-3)
4. Scharf & Liebenberg, *supra* note 1, at 17. [↑](#footnote-ref-4)