Will Coke's New Guidelines Move the Needle for Law Firms?

Skeptics said 20 years of Fortune 500 legal department exhortations haven't budged the low percentage of Black partners in Big Law.

By **Meredith Hobbs** (https://www.law.com/dailyreportonline/author/profile/Meredith-Hobbs/) | February 01, 2021 at 05:52 PM

John Lewis Jr., partner with Shook, Hardy & Bacon (from left); Bradley Gayton, general counsel with Coca-Cola; and Melba Hughes, partner with Major, Lindsey & Africa. (Courtesy photos and ALM)

While law firms and industry observers applauded Coca-Cola Co.'s new guidelines aimed at expanding outside counsel diversity, some were skeptical that the initiative from Coke's new general counsel, Bradley Gayton, would succeed any better at advancing lawyers of color to equity partner than the many others already issued by Fortune 500 companies.

Trending Stories

1 **The 2021 Diversity Scorecar Ranking the Legal Industry (/americanlawyer/2021/05/ 2021-diversity-scorecard-ranking-the-legal-industry/)**
THE AMERICAN LAWYER (HTTPS://WWW.LAW.COM/AMERICA

2 **Do Big Law Staff Have to Return to the Office? It Depends (/americanlawyer/2021/05/ big-law-staff-have-to-return to-the-office-it-depends/)**
THE AMERICAN LAWYER (HTTPS://WWW.LAW.COM/AMERICA

3 **As Law Firms Prepare to Bri Everyone Back, a Tinderbox Looms (/americanlawyer/2021/05/ law-firms-prepare-to-bring-everyone-back-a-tinderbox-looms/)**
THE AMERICAN LAWYER (HTTPS://WWW.LAW.COM/AMERICA

4 **Cuomo Appoints 7 Justices Appellate Division, New 2nd Department Presiding Justi (/newyorklawjournal/2021/ appoints-8-justices-to-**

Gayton, who became Coke's top lawyer **(https://www.law.com/corpcounsel/2020/07/24/ford-general-counsel-bradley-gayton-looks-back-on-diversity-struggles-triumphs/)** Sept. 1 after nearly 30 years at Ford Motor Co., rolled out a comprehensive new directive **(https://www.linkedin.com/pulse/open-letter-commitment-diversity-belonging-outside-counsel-gayton/)** for its law firms last week, saying that at least 30% of time billed for new matters should be from attorneys who are diverse by gender, race, LGBTQ or disability status. Notably, Gayton specified that half of this time, or 15%, should be billed by Black attorneys.

John Lewis, who spent 14 years in-house at Coke before becoming a Black partner at Shook Hardy & Bacon, welcomed Gayton's effort but is taking a wait-and-see approach after 20 years of watching other Fortune 500 companies' diversity initiatives fail to effect measurable change.

"It's a good plan, but will it work?," asked Lewis, who was Coke's chief litigation counsel and then global chief diversity officer before entering private practice in 2016.

"It's a well-intentioned and serious effort to move the needle—and I would like it to succeed—but I've seen a lot of initiatives that haven't translated into any meaningful long-term change," Lewis said.

Big corporate legal departments say they want diverse teams handling their matters, but "the audio does not match the video," he said. "Every big law firm has conspicuously underachieved on D&I metrics—and each one represents somebody in corporate America."

"There are still minuscule numbers of Black and Brown lawyers at the highest levels of law firms," he said—and the percentages have hardly budged in two decades. Only 2% of large law firm partners are Black, according to NALP. What's more, the number of female Black lawyers has actually declined, Lewis said, citing a recent ABA study.

But one of Atlanta's top legal recruiters, Melba Hughes, said Coke's new guidelines will make an impact. "Coke has a big legal spend. It's one of the largest institutional clients in Atlanta for many significant firms," said Hughes, the in-house diversity practice leader for Major Lindsey & Africa.

Coke is one of more than 15 Fortune 500 companies headquartered in Atlanta, but other big ones, like UPS, Home Depot and even Delta Air Lines, are newer to the scene.

"The voice of a general counsel like Bradley Gayton in this very important matter, particularly so early in his tenure, is going to make a difference," she said.

On the other side of the United States, Perkins Coie's chief diversity and inclusion officer, Genhi Givings Bailey, thinks Coke's specific, metrics-based guidelines to advance diversity are part of a "sea change occurring among large corporations."

While Coke is not a Perkins Coie client, Bailey said, Microsoft and Intel, which are, have also overhauled their diversity initiatives. "I have seen more momentum and engagement around racial equality and equity in the past year," she said, than in 15

supreme-court-appellate-division-in-1st-and-2nd-departments/)

NEW YORK LAW JOURNAL (HTTPS://WWW.LAW.COM/NEWYOR

5 **Skadden Will Require Unvaccinated Personnel to Produce a Negative COVID-Test Before Stepping Foot i the Office (/americanlawyer/2021/05/ will-require-unvaccinated-personnel-to-produce-a-negative-covid-19-test-befo stepping-foot-in-the-office/)**

THE AMERICAN LAWYER (HTTPS://WWW.LAW.COM/AMERIC

years working on the issue at large firms, which she attributed to the racial justice movement sparked by the killings of George Floyd and other Black people.

"Organizational change is hard. I think we're on the precipice of something radically different," Bailey said.

Power and Economics

To solve the legal industry's seemingly intractable diversity problem, firms must advance diverse lawyers, particularly Black lawyers, to ownership—that is, equity partner, said Lewis, at Shook Hardy. That means making diverse lawyers the relationship partners for top client work and awarding them origination credit.

One important feature "that we don't usually see in these diversity manifestos," Lewis added, is Coke's specification that Black lawyers bill 15% of the time on new matters and make up 15% of new relationship partner candidates.

Merely adding more diverse or Black lawyers to Coke's matters doesn't address the problem, Lewis said, referencing criticism from Constangy, Brooks, Smith & Prophete's outspoken Black name partner, Don Prophete, who told Corporate Counsel **(https://www.law.com/corpcounsel/2021/01/28/coca-cola-general-counsel-says-diversity-efforts-arent-working-unveils-new-guidelines/)** in a Jan. 28 email that Coke's new plan was "skirting around the problem."

"Real racial diversity will not happen until there is real racial empowerment. Empowerment is created by making people of color owners of business relationships," Prophete said last week.

But the Coke directive does address the ownership of matters, said Caren Ulrich Stacy, the CEO of Diversity Lab, which worked with Coke to craft the plan. "There is a power and economic gap in law firms for diverse partners. To close the gap, they need to be the lead on these cases—and get credit," Stacy said.

What makes the new guidelines "remarkable and rare," she said, is requiring that firms factor in diverse partners as relationship partner candidates who receive origination credit on new Coke matters.

In the directive, Gayton said Coke's goal is that relationship partners at its "highest-spend and preferred panel firms" are 30% diverse, and he's asked firms to identify at least two diverse lawyers (of whom half are Black) as successors to current relationship partners.

Firms also must report to Coke how they apportion origination or matter credit—and how it factors into performance evaluations and compensation.

As for Coke itself, Gayton, in his letter, said 51% of Coke's U.S. lawyers are ethnically diverse, of whom 23% are Black, 18% Asian and 10% Hispanic. What's more, 53% are women.

Stacy added that it's rare for corporations to be transparent about the diversity of their own legal departments and to break it out by race and gender. The only other corporations she knows of doing that are HP, US Bank, McDonald's and SurveyMonkey.

Firm Reaction

Coke is an important institutional client for Eversheds Sutherland, which has deep Atlanta roots. U.S. managing partner Mark Wasserman said Eversheds Sutherland's aim in its own internal efforts **(https://www.law.com/dailyreportonline/2021/01/25/eversheds-sutherland-shakes-up-leadership-of-major-us-offices/)** is to "attach our diverse lawyers to high-level work for key clients."

"I think Bradley [Gayton]**,** from the corporate side, is trying to encourage that result by putting a framework around moving these efforts forward and forcing the conversations with Coke's law firms," Wasserman said, adding that he will be talking with Coke this week on implementation.

"It helps all of us in these efforts if more clients are doing this," he said.

Eversheds Sutherland is one of four law firms participating in Diversity Lab's Move the Needle Fund **(https://us.eversheds-sutherland.com/NewsCommentary/Press-Releases/224952/Eversheds-Sutherland-announces-participation-in-Move-the-Needle-Fund-to-accelerate-diversity-and-inclusion-in-legal-profession)** with Coke and 29 other corporate legal departments to advance experienced diverse lawyers into leadership, Wasserman added.

King & Spalding, also based in Atlanta, has done work for Coke since a landmark 1921 settlement with bottlers over syrup price contracts, according to a firm history. "We look forward to the opportunity to continue to work with Coca-Cola on efforts to increase diversity and inclusion across our profession," said the firm's diversity committee chair, Harold Franklin, in an emailed statement.

Coke's requirement that legacy firms identify diverse relationship partner candidates is particularly important, said Hughes, the recruiter at Major Lindsey. If only a handful of a firm's partners get origination credit for new Coke matters, such as a big class action or M&A deal, she explained, "it's hard for anyone else to move into that arena until partners die."

Coke is "changing the equation" by asking its outside firms how they distribute matter credit, she said. "Advancement is almost as mission-critical as attracting diverse lawyers," for firms, she said, so "sharing that credit with diverse lawyers makes a substantial difference."

Institutional Inertia

A common criticism is that corporate legal departments' diversity requirements lack teeth, but Coke's new guidelines raise the specter of cutting fees and work for noncompliant firms.

Gayton said Coke will review firms' billings for new matters quarterly, and those that fail to hit the staffing targets for two quarters will have their fees docked 30%. What's more, the company will select a panel of preferred firms in 18 months and factor in how well firms staff matters with Black and other diverse attorneys. Firms that don't comply could lose work.

That is noteworthy, Stacy said, because "there are hundreds of legal departments that ask for diversity in their outside counsel but few that build in meaningful accountability measures."

Even so, the status quo is difficult to disrupt. Despite the plethora of diversity rules that Fortune 500 companies have set over the years for outside counsel, one reason the needle hasn't moved much is that it's hard to fire a legacy firm.

After Gayton posted his letter to firms on LinkedIn, one in-house lawyer suggested Gayton simply move all Coke's outside legal work to firms that already meet his criteria.

"It is unfortunately not practical to move all work," Gayton replied, "but more importantly, I believe we can have a larger systemic impact by working to create demand [for diverse lawyers] across the ecosystem, including at the firms we currently work with."

Lewis, at Shook Hardy, said, "It remains to be seen if there is the institutional and personal will to disrupt the status quo."

"We won't know for 18 months," he added, referring to Coke's panel of preferred firms.

Meredith Hobbs

(https://www.law.com/dailyreportonline/author/profile/meredith-hobbs/)

Meredith Hobbs writes about the Atlanta legal community and the business of law. Contact her at mhobbs@alm.com or 404.419.2837. On Twitter: @MeredithHobbs.

More from this author → (https://www.law.com/dailyreportonline/author/profile/meredith-hobbs/)

Dig Deeper

Legal Services (/topics/legal-services/) Diversity (/topics/diversity/)

General Counsel and In House Counsel (/topics/general-counsel-and-in-house-counsel/)

Law Firm Client Relationships (/topics/law-firm-client-relationships/)

Law Firms - Large (/topics/law-firms-large/)

KATHERYN TUCKER (/AUTHOR/PROFILE/KATHERYN-TUCKER/) |
MAY 25, 2021

“Marissa’s light burned so brightly, illuminating the path forward," Southern Center for Human Rights Executive Director Sara J. Totonchi said.

Judge Beverly Martin's Dissents Show Concern Over 'Harsh' Sentences (https://www.law.com/dailyreportonline/2021/05/24/judge-beverly-martins-dissents-show-concern-over-harsh-sentences/)

KATHERYN TUCKER (/AUTHOR/PROFILE/KATHERYN-TUCKER/) |
MAY 24, 2021

Judge Beverly Martin said in a 2018 dissent that “at every turn” her colleagues in the majority have “erred in ways that stopped prisoners from getting their sentences reviewed and prevented people who had meritorious claims from getting relief.”

CORPORATE COUNSEL (HTTPS://WWW.LAW.COM/CORPCOUNSEL/)

Former Coca-Cola GC Was 'College Professor ... That No One Wanted to Take' (https://www.law.com/dailyreportonline/2021/05/05/former-coca-cola-gc-was-college-professor-that-no-one-wanted-to-take/)

PHILLIP BANTZ (HTTPS://WWW.LAW.COM/CORPCOUNSEL/AUTHOR/PROFILE/PHILLIP-BANTZ/) | MAY 05, 2021

“He’s demanding. Very demanding,” said Nancy Hazely, who worked with Gayton for nearly 20 years before he joined Coca-Cola.

More from ALM

CLE Center | Legal Compass | Events | Webcasts | Lawjobs | Professional Announcements

Premium Subscription

With this subscription you will receive unlimited access to high quality, online, on-demand premium content from well-respected faculty in the legal industry. This is perfect for attorneys licensed in multiple jurisdictions or for attorneys that have fulfilled their CLE requirement but need to access resourceful information for their practice areas.

View Now (http://clecenter.com/Program/Premium.aspx)

Team Accounts

Our Team Account subscription service is for legal teams of four or more attorneys. Each attorney is granted unlimited access to high quality, on-demand premium content from well-respected faculty in the legal industry along with administrative access to easily manage CLE for the entire team.

View Now (http://clecenter.com/CleForFirm/Default.aspx)

Bundle Subscriptions

Gain access to some of the most knowledgeabl and experienced attorneys with our 2 bundle options! Our Compliance bundles are curated b CLE Counselors and include current legal topics and challenges within the industry. Our second option allows you to build your bundle and strategically select the content that pertains to your needs. Both options are priced the same.

View Now (http://clecenter.com/Default.aspx)

CLE Center → (http://clecenter.com)