

# Carrot Money to Diversify

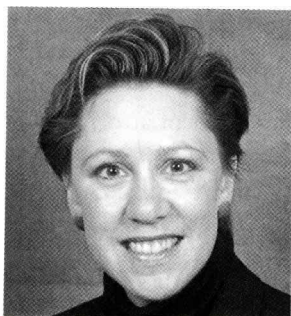
Microsoft modifies its revenue structure for its top law firms in an effort to accelerate the pace of diversity efforts.

By Melanie Lasoff Levs





Mary Snapp



Susan E. Foster



Karen K. Russell

**I**n the business world, compensation is “pay for performance:” the results you produce determine how much you get paid. In law firm culture, attorneys get paid based on the billable hour. Beginning on July 1, those divergent fee structures merged through Microsoft Corp.’s new law firm diversity initiative.

The Redmond, Wash.-based technology company has created an economic incentive program for its 17 “premier preferred provider” law firms to increase the number of attorneys of diverse backgrounds within their walls and working on Microsoft matters. In a July 2008 memo sent to those firms’ leaders, Microsoft general counsel, Brad Smith, announced that firms that reach specific, concrete diversity goals will be eligible for a 2 percent annual bonus.

Though this is a compensation change for law firms, it’s how the business world works, says Mary Snapp, Microsoft corporate vice president and deputy general counsel. “At the end of the day, economics and financial incentives matter to people,” she says. “Creating incentives for success is the basis of most business models, so we thought this could work for diversity as well.”

## Measurable Progress

Law firms and corporate law departments have long embraced diversity within their ranks of summer associates, new hires, mid-level attorneys, and partners. In the past 10 years, leaders within the legal industry have created the 1999 Statement of Principle, the 2004 Call to Action, and various in-house mentoring programs and affinity groups. They have started the momentum,

and Microsoft’s economic incentive program is the next step, says Snapp. “Call to Action has laid some great groundwork. This program, we hope, will move things forward at a faster pace.”

It also shifts diversity efforts to tangible results. As Smith wrote in the memo, “In the context of legal diversity, for example, we believe that there needs to be a more consistent and stable set of metrics against which results can be compared. New initiatives and supporting activities need to be launched, but one cannot confuse activities with outcomes. When it comes to big goals, almost all progress is incremental. But progress in producing results needs to be both real and sustained in measurable terms.”

The concept of a diverse legal force is widely accepted, Smith tells MCCA. “Yet at the same time, progress in achieving concrete results could accelerate,” he says. “Everyone is very proud of the activities they’re pursuing, but there’s not necessarily the same focus on outcomes or results that one typically sees in the world of business.”

Incorporating a bonus plan into a legal fee structure is a proactive approach to enhancing diversity, Smith says. “We think it’s important to create opportunities for both rewards and risks. If firms do well, they will see their revenue rise, and if they do poorly, they won’t.”

## Partners in Dialogue

Microsoft did not just spring the program on its principal firms. In May, at an annual event for Microsoft attorneys and professionals, Smith and the leaders of Microsoft’s legal department began discussing its



diversity incentive plan with its premier firms. They invited senior members of the 17 firms to offer feedback about the initiative during meetings as well as through an anonymous online survey. Smith, Snapp, associate general counsel Neal Suggs, and other Microsoft legal leadership collected the comments and then started working in earnest to develop how to measure progress and pay the incentive bonus that firms would get for increasing diversity.

In the July memo to the firms, Smith explains that each firm can choose one of two formulas:

1. A 2 percent bonus if the U.S. office(s) of the firm increases by 2 percentage points the number of hours worked by diverse attorneys on Microsoft matters over the preceding year; or
2. A 2 percent bonus if the firm increases its number of diverse attorneys by 0.5 percent of the total

number of attorneys in the United States, as compared to the same time period last year.

Firms had until August 15 to inform Microsoft of which formula it planned to use, and are required to stick to that formula for the whole of fiscal year 2009. Firms also have the option to collect their bonuses annually or quarterly, and if they choose annually, agree to a midyear “check point,” Smith wrote in the memo.

Why these formulas? Based on feedback from the firms, Smith wrote, “it makes sense to adopt a formula based on year-to-year progress rather than on outperforming a national average. ... This gives everyone a comparable incentive opportunity to earn the bonus.”

As the program moves through its first year, Microsoft’s legal department will continue to partner with its law firms on diversity efforts and help them



Photograph by Verla Hawkins for Microsoft Photography

*Microsoft general counsel Brad Smith (center) enlisted the support of deputy general counsel Mary Snapp and associate general counsel Neal Suggs to make Microsoft’s Law Firm Diversity Program a reality.*



achieve their goals, says Snapp. "It will be very important for the lawyers in our department to collaborate well with the lawyers in the firms to ensure the program is successful," she says. "We'll work to strengthen relationships with senior leaders of the law firms and offer checkpoints along the way. We have an ambitious program of ongoing connection with the firms, so it will be a collaborative process."

To support the program, Microsoft's legal department is implementing its own set of diversity initiatives during the fiscal year, says Smith. One planned event is a Summer Associate Day at the company, where participating premier firms can send summer class members who are interested in technology and intellectual property issues. Another proposed plan is an Advocacy Academy to help increase lead-attorney litigation and trial skills for diverse attorneys.

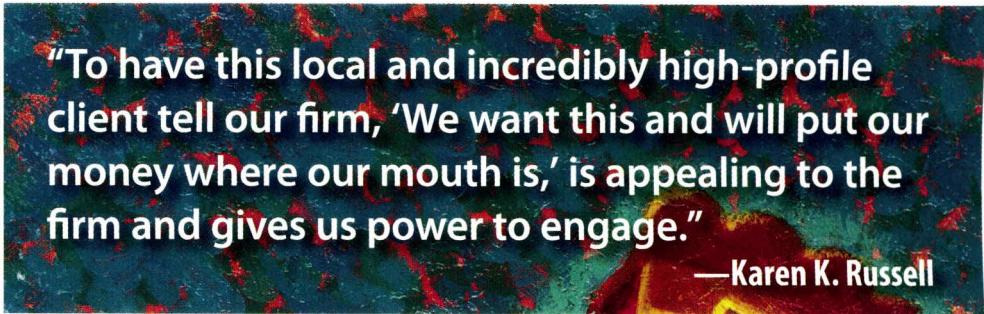
To further support the program, Microsoft legal staff will informally mentor diverse firm attorneys working on the company's matters, says Smith. Microsoft has tripled its budget this year from \$250,000 to \$750,000 to sponsor diversity scholarships and develop closer relationships with diversity-related law associations, he adds.

This first year of the diversity incentive plan is an experiment, Smith admits. "We want to see if this is something that can begin to accelerate the progress in promotion of diversity in the law firms working closely with us," he says, adding that other goals include deepening partnerships among the company and its leading law firms, and continuing the diversity dialogue between corporations and law firms in general. "This is a good time to broaden all our minds and broaden conversation in the profession about the types of steps that might accelerate progress."

## Firms are Impressed

Susan E. Foster, a partner in Perkins Coie's Seattle office, was a senior firm leader who offered feedback about the initiative to Microsoft. Much of her input involved a discussion of what constitutes diversity and how to measure it.

Foster says that even though law firms do not like rate caps, she is pleased with Microsoft's efforts. "For a corporation to stand up and say, 'What's been happening isn't working and we need to do more and think



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out of the box,' was very impressive to me." Foster says Perkins Coie will choose the formula to increase diversity in the firm as a whole. She calls the initiative "a great first effort" that "reenergizes" firms and their client company's legal department.

"I sense a lot of excitement [within the firm] about the program," Foster says. "Will we as a firm be making that additional 0.5 percent as a result of the program? I don't know if at the end of the day, [the financial incentive] will be a reason [for increasing diversity], but it certainly provides some additional incentive."

Creating that incentive shows law firms that Microsoft is committed to helping them achieve diversity goals, says Karen K. Russell, director of diversity initiatives and an of-counsel attorney in the Seattle office of Davis Wright Tremaine. Though the firm has had a mentoring program with Microsoft attorneys since February 2008, before the economic incentive was created, participating in the diversity initiative provides additional opportunities to partner with a treasured client, she says.



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"We're getting to know our clients better, and that can only make us better lawyers," Russell says. "Brad [Smith] hit the nail on the head when he said good intentions are great, but the results [of increasing diversity] have fallen short. To have this local and incredibly high-profile client tell our firm, 'We want this and will put our money where our mouth is,' is appealing to the firm and gives us power to engage."

Davis Wright Tremaine is choosing to increase diversity among attorneys working on Microsoft matters, Russell says. She adds that she and others in the firm look forward to participating in the pilot year of Microsoft's program as a true partnership. "The future of successful diversity initiatives will be in partnering [between corporations and law firms], as opposed to companies saying, 'You should do this,'" she says. "This is the future of diversity, and we're on the ground floor."

**To support recruitment of diverse attorneys across the board for firms, Microsoft has tripled its budget this year to sponsor diversity scholarships and develop closer relationships with diversity-related law associations.**

At Microsoft, general counsel Brad Smith appreciates that view. "In any free market economy, you get what you pay for," he says. "If we want firms to be more diverse, it seems appropriate to us to add an economic incentive and leave it to the firms themselves to decide how and whether to achieve that goal. We won't know until we try if this will work, but we think it's important to try." **DB**

*Melanie Lasoff Levs is a freelance writer based in Atlanta, Ga.*

**MICROSOFT**  
PLEDGES  
**\$500,000**  
TO MCCA'S 10X10X10 CAMPAIGN



**The Minority Corporate Counsel Association thanks Microsoft Corporation for its pledge of half a million dollars to support MCCA's new strategic initiatives.**

The generous donation demonstrates Microsoft's continuing support for advancing diversity in the legal profession. Approximately \$270,000 of the pledge will go towards MCCA's scholarship program to fund fellowships for deserving law students. The remaining funds will be contributed toward MCCA's new strategic initiatives in the areas of research, education and diversity training.

MCCA is now a quarter of the way to reaching its fundraising goal of \$10 million for the 10x10x10 campaign.

If you would like information about how you can join Microsoft in support of the MCCA 10x10x10 Campaign, please contact [vetarichardson@mcca.com](mailto:vetarichardson@mcca.com) or any member of the MCCA Board of Directors.