

MCC INTERVIEW: Joe West / Duane Morris

IN-HOUSE OPS

All Inclusive

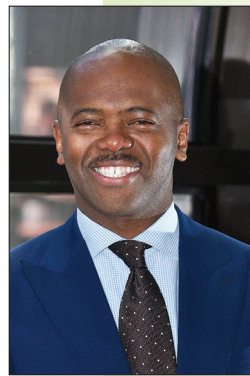
At Minority Corporate Counsel Association and now at Duane Morris, Joe West champions diversity and inclusion in the legal sector

After four years as president and CEO of MCCA, Joe West is returning to private practice as a litigation partner with Duane Morris in Washington, D.C., and co-chief diversity and inclusion officer. He reflects on MCCA's achievements during his tenure and shares his insights on the success and proliferation of diversity programs in the legal space.

MCC: Why private practice and why now?

West: I think the question is really threefold: Why private practice, why Duane Morris and why now? I'll take the last one first. When I came to MCCA, I originally made a three-year commitment to the organization; I stayed four. I wanted to accomplish a few things. One: Develop programming that was more granular. MCCA had a tremendous reputation for research and advocacy in the diversity and inclusion space. One thing we wanted and needed to do was take those findings and create programming that would directly benefit our member organizations in their specific diversity and inclusion journeys. We also wanted to develop programming to assist individual lawyers with business development and other skill development. I think we've been able to do that.

I've served as a diversity professional, and this gets to the question of why private practice. Over the course of my career, I've worked in law firms, I've been a trial lawyer, I've served as in-house counsel and I've worked as a diversity professional. This opportunity gives



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me the chance to focus in all three of those areas. I get the chance to develop my practice again, continue to work in the diversity and inclusion space, and utilize the contacts that I've established in the corporate legal space, hopefully for the benefit of the work that we're doing at Duane Morris.

MCC: Membership in MCCA tripled during your tenure. It's a phenomenal accomplishment in just four years. To what do you attribute this growth?

West: First and foremost, our staff and our board of directors. MCCA is very fortunate to have a board of directors, 24 general counsels of major corporations, who are very engaged, very involved and very active. They lend the support of not just their organizations but themselves to each of our efforts. They are involved in the programming that we do, and they support it in a very meaningful way. That's a very powerful testament to their commitment. Secondly, I inherited from my predecessor, who, by the way, did a fantastic job, a very strong, dedicated, hard-working staff. They do a really good job

focusing on engagement with our members and providing them the services needed to address their individualized needs within the diversity and inclusion space.

Every organization has challenges that are unique and specific to them. Whether it is a corporate law department or a law firm, many of them are at different places in the diversity and inclusion journey. Some are more focused on trying to learn how to recruit more diverse slates of candidates; others have issues around retention; still others have issues around advancement and providing oppor-

tunities for growth and development so that their leadership ranks look more diverse. We've tried to embrace our members and meet them where they are and provide services for them so they can grow and develop their diversity and inclusion programs. The combination of those things has allowed us to grow our membership. I've played a small part in that and have been fortunate to have a strong supporting cast.

MCC: As associate general counsel at Walmart, you led the outside counsel management group, which involved 600 firms, 25,000 lawyers and paralegals, and \$300 million in spending.

Our readers would love to hear how you got your arms around such a gargantuan task and how Walmart's low-cost, high-value ethos informed your approach to the company's outside counsel spending.

Joe West

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Duane Morris

West: First of all, there's no one person at Walmart who can take credit for any of the success at that company. I certainly can't and won't. There are a couple of people at Walmart who helped establish the framework for a lot of the movement that happened in the diversity and inclusion space as it relates to Walmart's dealings with its outside counsel. The first was Tom Mars, who was a general counsel at Walmart when I got there. Tom was very much a visionary in the diversity and inclusion space. He was one of the first GCs to purposefully insist that companies like Walmart seek out diverse talent, recruit diverse talent and provide opportunities for diverse talent to control significant books of business with major companies. That was pretty revolutionary at the time, but as a white male GC of a major company, he had the courage, wisdom and foresight to be very purposeful about that. I've always respected and admired him for that.

One of my predecessors in the outside counsel management role at Walmart was Sam Reeves. Sam is now the general counsel at Walmart International. Sam was the person responsible for putting together the initial framework for Walmart's pretty robust diversity and inclusion program as related to its outside counsel. My goal was to try as best as I could to be creative about extending the programming. Diversity was only one component of my interactions with our outside counsel, but it was an important part of it.

MCC: *While at Walmart, you developed a number of highly innovative and highly controversial programs. They included the relationship partner initiative, where the company actually named Walmart's relationship partners; the origination credit certification program, which required the company's outside counsel to certify that the relationship partners selected by the company received origination credit for all Walmart work; and the requirement that outside counsel adopt flex time programs or risk losing Walmart work. Tell us about the programs and the impact they had. Have other companies followed suit?*

West: The purpose of these programs was pretty simple. The coin of the realm inside large law firms, the currency that everyone respects and understands, is who has the relationship with the client, who benefits from that relationship, who can direct how work is distributed within the firm and who benefits financially from that relationship. What we

tried to do was provide opportunities for diverse lawyers who had previously not had the opportunity to develop significant books of business for major companies. There was a huge wealth of talent among the ranks of diverse lawyers, talent that was being underutilized and underappreciated. We found that when we gave lawyers like that the opportunity to manage work and to serve as relationship partner for a significant client, like Walmart, they exceeded expectations.

There are a lot of other companies that now have very creative programs designed to accomplish the same goals of advancement for diverse lawyers. Microsoft, for example, has very innovative programming where they provide a cash bonus to their outside firms that meet specific diversity metrics. The outgoing general counsel, Brad Smith, had a program where his direct reports actually had to forego portions of their bonuses if they didn't meet certain diversity objectives.

There are a lot of ways along the carrot-stick continuum to incentivize firms to become more serious about diversity and inclusion. More and more companies are becoming more and more creative and insistent in the ways that they incentivize their law firms to put their money where their mouth is.

MCC: *Walmart is notorious among law firms for its own commitment to diversity, for tracking diversity among its outside firms and for being willing to fire firms that fail to measure up. Did the company drop firms based on their diversity stats?*

West: The company did. As I've pointed out, there are different approaches to encouraging and incentivizing outside firms to become more serious about diversity. I think at that time Walmart's approach was decidedly closer to the stick than to the carrot. There are many examples of companies that have done it and done it successfully with the carrot approach, by incentivizing firms. Money is a great way to incentivize.

The interesting thing about that approach, which some companies find problematic, is you lose an opportunity when you fire a firm to provide some growth and development and encourage more teachable moments for the firm. You lose some institutional knowledge when you lose the firm, and a lot of companies believe it's more constructive to encourage them to develop more robust programs and actually help them do so. A big trend that I see now is companies actually having more

robust engagement with law firms around how they can develop more appropriate and robust recruitment programs around diversity and inclusion. I've even seen GCs and lawyers in corporate law departments develop individualized relationships with diverse lawyers and serve as mentors and help them ensure that they have a positive career trajectory within the law firm. Sometimes that's a more productive way to go about interfacing with a firm that has fallen short on your diversity expectations.

If you have expectations around diversity and inclusion, and if you, as a corporate law department, are serious about it yourself, then you should be willing to point out and communicate with them on a regular basis, just like you do about any other aspect of the relationship, what your expectations are and provide them with whatever support they need in order to grow and develop and improve.

MCC: *While at MCCA, you launched an incredible array of programs, including the Academy for Leadership and Inclusion. Which program has had the biggest impact and which are you the most proud of?*

West: I'll mention three. The Academy I'm really proud of because that gave us the opportunity to take many of the findings from the research we conducted and integrate them into training programs and take them out into the field. It assisted us in the development of valuable tools for organizations to help them address diversity and inclusion. One of the other things that the Academy did was put front and center an issue that many people really weren't talking about four years ago when we developed this program. That is implicit bias, or unconscious bias. Now there's a greater understanding of these types of biases, how they manifest themselves and how they play out at very critical junctures in the career trajectory of all lawyers but particularly diverse lawyers, whether it's in the recruiting process, whether it's around discussions dealing with compensation, whether it's the evaluation of work product, the assignment of work, discussions around elevation to leadership roles and even decisions related to ending the relationship of the employee to the organization. At each of those very critical junctures, bias plays out and has a long-term impact on the numbers.

We've tracked the numbers, demographically, of general counsels, of in-house counsel, and of law firm associates and partners for

many, many years. What we've seen is that the number of diverse general counsels has been increasing steadily over the past 15 to 20 years. But you don't see corresponding growth in the ranks of law firm partners or even in associates who are diverse. Why is that? What is it about the environment in-house that is different from the environment in law firms? The answer is the environments tend to be more collaborative; they tend to be more supportive in-house.

If you're the person who hoards contacts, who hoards resources, and you're in a corporate law department, you're ostracized, whereas in a lot of law firm settings, that same behavior is rewarded. It was incumbent upon us to take a closer look at this and try to figure out the heart of the problem. We kept coming back to the biases that infect each of those critical junctures that I mentioned earlier. The training program we developed was specifically designed to help organizations understand bias, to understand the lack of inclusiveness, to understand how to identify barriers to inclusion and barriers to inclusiveness, and to eliminate them. Two other programs that we implemented are the MCCA Exchange and the MCCA Blueprint programs. We do them at each of our major conferences. The Exchange program is designed to help lawyers develop business contacts and assist them with their career development and business development. The Blueprint program is designed to help younger lawyers develop their skill sets, particularly around pitching for business. Both programs are very popular and have been very, very successful. I hope and believe they will continue to be successful after I have moved on.

MCC: *As you noted, big law firms, by and large, have struggled to increase diversity in their ranks, and a recent survey by MCCA shows some slippage for minorities among top legal executives in the Fortune 500. Given this track record, your new role seems like it would be very challenging indeed. What will you do first?*

West: The legal profession has historically been slow to change, but I think we've seen that, in some instances, change has been forced upon us. We saw that with the economic downturn, when firms, I think, had to become more conscious of the cost considerations that their clients have. Even before that,

you had clients becoming more savvy consumers of legal services and more savvy about the business of retaining and compensating their firms. These things, I believe, have brought about a sort of new normal within law firms.

We are also on the cusp of seeing a similar change when it comes to diversity and inclusion. I believe that we're reaching a tipping point. Here's why. If you think about all of the entities to which law firms have to be responsive, each of those entities has seen an increase in diversity. Last year we launched a research project called the Integration of the Federal Judiciary, which is an interactive portal on MCCA's website that tracks, in real time and over the course of the history of the federal judiciary, the growth of diversity of the judiciary. The bench is as diverse now as it has ever been. Statistically speaking, there's about a 30 percent chance that the trier of fact for any given matter is going to be either a minority or a woman. Boards of directors have become more diverse; the ranks of the general counsel and in-house corporate law departments have become more diverse; the ranks of government regulators have also become more diverse. You even have a whole compliance overlay now in the government that has the creation of offices of minority and women's affairs. In the international setting, in the European Union, there is discussion about requirements for diversity and inclusion. What's happening is that in just about every entity to which law firms have to be responsive, there is a seriousness of purpose around diversity and inclusion. I think just the weight of demographic inevitability is going to cause firms to finally get serious. A decade ago, you had three Fortune 500 companies who had chief diversity officer positions. Now, two-thirds of the Fortune 500 have a chief diversity officer position. Corporations don't create positions like that if it's a passing fancy or flavor of the month. In some instances, they are C-suite-level positions.

The bottom line is this: We're reaching a tipping point because all of the entities to which law firms have to be responsive are becoming more diverse. A meaningful approach to diversity and inclusion in the corporate legal sector is here to stay and will only become more serious and more robust. Firms will find themselves at a decided competitive disadvantage if they don't embrace that change.

MCC: *Is there one piece of unfinished business associated with your role at MCCA that you wished you had time to get to?*

West: That's a long list. Two things. And, actually, I'm trying to tee these two issues up for the person who will succeed me. We have made some inroads in the tech sector, but there's still a lot of work to be done. I've been very fortunate in the last year to recruit two fantastic GCs who work in the tech sector: Dawn Smith, the GC at VMware, and Suzan Miller, who goes by Sam, is the deputy GC at Intel. They are actually helping to spearhead a working group focused on helping to increase diversity and inclusion in the tech sector. I really would like to see that bear some fruit. Hopefully they'll allow me to continue working on that initiative, even after I leave.

The other thing is diversity and inclusion from an international standpoint. As I alluded to earlier, every member organization, law firm or corporation of MCCA either has or seeks to have a more globalized presence. There are issues around diversity and inclusion that resonate differently depending upon where you do business. In some parts of the globe, the issues are similar to what we experience here in the U.S., but in other parts, they manifest themselves quite differently. Whether it's issues around class, gender or social status, the fact is, inclusion and inclusiveness are important and necessary in order for any organization to succeed, grow and thrive. There's an initiative that we're trying to get off the ground now that is focused on diversity and inclusion in an international setting.

MCC: *Is there anything you'd like to add?*

West: Just that I have really enjoyed my time at MCCA. It's been an honor for me to lead an organization that I came in having a tremendous amount of respect for. I am confident that I'll leave it in good hands. For the rest of my career, I will do everything I can to support MCCA, to support its mission and to support the person who succeeds me, the staff and the board of directors. I know the organization will continue to thrive and make a difference in our profession.