



Report of Diversity and Inclusion Subcommittee

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Creation of the Subcommittee

On 19 June 2020, the LAP Board sent a memo to the officers of the North Carolina State Bar Council regarding diversity and inclusion. In this memo, the LAP Board presented several ideas relating to diversity and inclusion and asked State Bar leadership to consider and discuss these ideas for implementation. In response to this memo, the officers, among other things, tasked the Issues Committee with studying diversity and inclusion at the State Bar. In December 2020, incoming State Bar President Barbara R. Christy created the Diversity and Inclusion Subcommittee of the Issues Committee. The subcommittee was chaired by A. Todd Brown. Its members were George Cleland, Charles Davis, Ted Edwards, Katherine Frye, Jennifer Hammond, Dorothy Hairston Mitchell, Gena Morris, The Honorable Robert Rader, Nana Asante, and John Silverstein.

Subcommittee Meetings

The subcommittee held seven meetings from 12 January 2021 through 6 October 2021. At each of these meetings, the subcommittee considered and discussed information related to diversity and inclusion and the work of the State Bar. The subcommittee did not consider whether changes should be made to the Rules of Professional Conduct because subcommittees of the Ethics Committee were already considering proposed revisions related to diversity, equity, and inclusion for the Preamble and Comment to Rule 1.1.

12 January 2021 Meeting

The first subcommittee meeting was held via Zoom on 12 January 2021. Prior the meeting, the subcommittee was asked to review the 19 June 2020 LAP Board Memorandum, 31 August 2020 Response from the State Bar Council Officers to the LAP Board's Memorandum, and the November 2020 Report from the Executive Director to the North Carolina Bar Association Board of Governors and the North Carolina Bar Foundation Board of Directors Regarding Relationships between the NCBA and Systemic Racism in North Carolina. At the meeting, the subcommittee members oriented themselves to the task and reviewed the list of recommendations made by the LAP Board and the officers' response to the LAP Board memorandum. The purpose of the first

meeting was organizational. The goal of the subcommittee was identified as study and review of diversity and inclusion issues concluding with recommendations to the Issues Committee regarding diversity and inclusion. The subcommittee received a summary of the Keller v. State Bar of California decision which sets forth parameters of permissible diversity and inclusion efforts by a regulatory entity.

16 February 2021 Meeting

On 16 February 2021, the subcommittee met via Zoom to hear from guest Dana Cutler, Past-President of the Missouri Bar, about the diversity and inclusion efforts of Missouri. Ms. Cutler explained the history of the efforts in Missouri including the creation of the Ferguson Commission and its findings. Among the issues revealed by the Ferguson Commission were issues of implicit bias and access to justice in Missouri's Municipal Court.

After the findings of the Ferguson Commission were released, the Missouri Courts added a cultural competency, diversity, inclusion, and implicit bias CLE requirement to provide everyone with an opportunity to be educated about these topics. The Missouri Court concluded that it would be beneficial for everyone to have a similar base of knowledge about implicit bias and diversity and inclusion. At the time Ms. Cutler met with the subcommittee, Missouri was still gathering data to evaluate its diversity efforts but did not yet have the results.

15 April 2021 Meeting

The subcommittee held its third meeting on 15 April 2021 by Zoom. The subcommittee was invited to review the following documents before this meeting: (1) Demographic Study of the Profession prepared by Philip Lee, Professor of Law, University of the District of Columbia David A. Clarke School of Law, (2) Signposts In the Road: The Lawyer's Ethical Obligation to Promote Diversity in the Legal Profession, by David L. Douglass, Amber C. Thomson, and Eliazar Chacha, (3) State Bar of Arizona Task Force on Social Justice, Bias and Inclusion Report, (4) Recommendations for The Florida Bar's Diversity Initiative, and (5) the Oregon State Bar 2018-2020 Diversity Action Plan. The subcommittee began this meeting with consideration of whether it should solicit input from other stakeholders before making recommendations to the Issues Committee and concluded that recommendations should be made before soliciting input from those outside the subcommittee. The subcommittee then reviewed and discussed the diversity and inclusion initiatives of three states with integrated bars (bars that perform the regulatory function but also include volunteer membership activities): Arizona, Florida, and Oregon. The subcommittee considered the various initiatives in the context

of the Keller decision and its required nexus of either enhancing the quality of legal services provided to the public or enhancing the performance of the profession.

24 June 2021 Meeting

At its fourth meeting on 24 June 2021 via Zoom, the subcommittee considered whether to recommend to the Issues Committee that the State Bar adopt a diversity statement. The subcommittee then discussed a proposed statement on diversity, equity, and inclusion and the intended audience for such a statement.

14 July 2021 Meeting

The subcommittee held its first in-person meeting in Asheville, North Carolina on 14 July 2021. The subcommittee was asked to review prior to the meeting Proposed Recommendations of the Diversity and Inclusion Subcommittee to the NC State Bar Council Issues Committee and a recent decision of the United States Court of Appeals for the Fifth Circuit: *McDonald, et al. v. Longley, et al.* At its July meeting, the subcommittee reviewed and discussed the revised diversity statement and agreed that the version of the statement discussed at the meeting should be recommended to the Issues Committee for adoption.

13 September 2021 Meeting

The subcommittee met again on 13 September 2021 by Zoom. At this meeting, the subcommittee continued its discussion of the proposed recommendations to the Issues Committee.

6 October 2021 Meeting

The subcommittee held its final meeting of the year on 6 October 2021 in-person at the State Bar building in Raleigh. The subcommittee began the meeting with additional discussion about the diversity statement. The subcommittee then continued its discussion of the remaining proposed recommendations to the Issues Committee. At this meeting, the subcommittee adopted a list of proposed recommendations to the Issues Committee and concluded its work for the year.

Recommendations of the Diversity and Inclusion Subcommittee to the NC State Bar Council Issues Committee

- Adopt the following written Diversity, Equity, and Inclusion (DEI) Statement:

Lawyers swear an oath to defend the United States and North Carolina Constitutions. These constitutions decree all persons are created equal and endowed with certain inalienable rights and guarantee all persons equal protection of the laws. The North Carolina Constitution also specifically prohibits discrimination by the State against any person because of race, color, religion, or national origin. The North Carolina State Bar considers diversity and inclusion essential elements of promoting equity and preventing discrimination. Diversity encompasses characteristics that make each of us unique, including our race, sex, national origin, religion, age, disability, sexual orientation, gender identity, marital status, and socioeconomic status. Equity promotes fairness by aiming to ensure fair treatment, access, opportunity, resources, and advancement for everyone to succeed. Inclusion fosters a collaborative and respectful environment where diversity of thought, perspective, and experience is valued and encouraged. The North Carolina State Bar therefore recognizes diversity, equity and inclusion as core values and is committed to being intentional about incorporating diversity, equity and inclusion into its operations and mission.

To be published on the State Bar's website in the About Us section, Lawyer's Handbook, State Bar Journal, and on social media as appropriate.

- Incorporate DEI education, including implicit bias, into the State Bar's orientation program for new State Bar councilors
- Analyze the State Bar's current policies, procedures, practices, workforce, work environment, culture, personnel, etc. to assess DEI enhancement opportunities at all levels
- Add questions requesting demographic information (race, gender, age) to State Bar members' annual registration forms effective for 2023 dues cycle, which include appropriate opt-out provisions, and consider adding other categories

listed in the DEI statement to the extent inclusion of such categories furthers the State Bar's regulatory function

- Encourage the CLE Board and CLE providers to develop robust and engaging CLE offerings on matters of DEI, cultural awareness, and implicit bias and to identify lawyer-presenters from historically underrepresented groups
- Recognize Juneteenth and other state holidays by issuing an internal written acknowledgement of the holidays for staff
- Ensure all persons, including English-language learners, have access to the State Bar's public protection programs
- Continue the work of the Diversity and Inclusion Subcommittee, changing its name to Diversity Equity and Inclusion (DEI) Subcommittee to reflect its scope of work more accurately, to study, among other things, whether a DEI staff position and DEI standing committee of the State Bar should be created
- Study, research, and prepare a written report identifying relationships between the NC State Bar and systemic racism in North Carolina, including recommendations for eliminating any current vestiges of racism

Attachments

19 June 2020 Memorandum to NC State Bar Officers from LAP Board Re: Diversity and Inclusion

31 August 2020 Memorandum from NC State Bar Officers in Response to LAP Board's Diversity and Inclusion Memorandum of June 19, 2020

Demographic Study of the Profession prepared by Philip Lee, Professor of Law, University of the District of Columbia David A. Clarke School of Law

Signposts In the Road: The Lawyer's Ethical Obligation to Promote Diversity in the Legal Profession, by David L. Douglass, Amber C. Thomson, and Eliazar Chacha

State Bar of Arizona Task Force on Social Justice, Bias and Inclusion Report

Recommendations for The Florida Bar's Diversity Initiative

Oregon State Bar 2018-2020 Diversity Action Plan

Memorandum

6/19/2020

To: Colon Willoughby
Barbara Christy
Darrin Jordan
Alice Mine
Peter Bolac

From: LAP Board

Cc: Ted Edwards, LAP Board Chair

Re: Diversity and Inclusion

At our recent LAP Board Meeting, which several of you attended, we discussed the Minority Outreach Conference and ways the Bar might take a leadership role on the still-prevalent race issues within the profession. We discussed some ideas that we would like to have leadership consider and discuss for possible implementation. Here is a list, in no particular priority order, of ideas for consideration.

- Diversity and inclusion person or committee at Bar (staff and Bar Council) to evaluate and propose suggestions (like those contained in this memorandum and more) to bar leadership at both a staff level and to the Bar Council.
- Ask that all Bar Officers and State Bar Leadership (Executive Director, Ethics Counsel, Assistant Executive Director, and General Counsel) attend the annual LAP Minority Outreach Conference as part of their duties, not just as a welcome, but to stay for the day's event.
- Include some form of minority viewpoint column in the State Bar Journal
- Include some form of minority viewpoint column in Sidebar
- Enroll in some kind of meaningful structural training on race and bias (not a 3-hour workshop but a 2-year program like Race Equity Institute offers),
 - At the State Bar staff level
 - At the Bar Council level
 - Consider having an employee certified in a training to be able to offer it in-house as newly elected bar councilors come in.
- Research and adopt policies that support diversity or at least do not disproportionately adversely affect minorities
- Commit to a Diversity & Inclusion 360 Degree Association Scan (i.e., <https://kgdiversity.com/assessment/>)
- Promote diversity at the district bar level to increase numbers of elected black and other minority bar councilors
- Have black bar councilors speak at Minority Outreach Conference to encourage black lawyers to run for elected bar council positions in their districts
- Examine the actual bar council structure to determine whether it has a disproportionate adverse impact on solo/minority lawyers and evaluate whether rule changes can fix (ie., judges giving elected bar councilors the week off during quarterly meetings).
- Champion and promote black and other minority bar councilors for leadership positions, like ethics chair, grievance chair and eventually State Bar officers
- Recognize Juneteenth as a paid staff holiday



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MEMORANDUM

Via Email

To: Theodore C. Edwards, II, Chair of the LAP Board
Robynn Moraites, LAP Director

From: Alice Neece Mine

Cc: C. Colon Willoughby
Barbara Christy
Darrin D. Jordan
G. Gray Wilson
Marcia Armstrong
Katherine Jean
Peter Bolac

Date: August 31, 2020

RE: LAP Board's Diversity and Inclusion Memorandum of June 19, 2020

The officers met on August 12, 2020, and again on August 28, 2020, to discuss, among other things, the ideas on how the State Bar might take a leadership role on race issues within the profession suggested by the LAP Board in its memo to the officers of June 19, 2020. This email explains the officers' decisions relative to the many suggestions listed in the memo.

As a preliminary matter, the Office of Counsel was asked for an opinion on whether any of the items on the list might present a *Keller* problem for the State Bar. As you may know, in *Keller v. California State Bar* (1990), the U.S. Supreme Court held that attorneys who are required to be members of a state bar association have a First Amendment right to refrain from subsidizing the organization's political or ideological activities. The Office of Counsel has opined that recognizing Juneteenth as a paid holiday for State Bar employees might present such a problem. However, the remaining suggestions on the list are germane to the State Bar's regulatory mission, do not present a *Keller* problem, and are not otherwise prohibited. Therefore, the officers determined that a Juneteenth holiday could not be pursued but the other items on the list were all discussed.

The officers agreed that State Bar leadership, including the officers and executive staff, should attend the LAP Minority Outreach Conference (MOC) and stay for the one-day event. The officers made this commitment for the next MOC and will ask the executive director, assistant executive director, ethics counsel, and general counsel to do the same. In addition, Sharon Lewis, events manager, will be instructed to add the MOC to the officers' annual calendar of events.



The officers felt that the following suggestions were entirely within the purview of the LAP Board, did not require authorization from the officers or the Council, and could be pursued by LAP on its own initiative:

- Include some form of minority viewpoint column in Sidebar.
- Ask Black State Bar councilors speak at the MOC to encourage Black lawyers to seek election as a State Bar councilor for their judicial district bars.

Regarding the suggestion that the State Bar Journal include a minority viewpoint column, the officers ask that the LAP Board present this suggestion to the Publications Editorial Board, chaired by Andrea Capua, for its consideration.

The officers determined that the following suggestions should be submitted to the Issues Committee, and ultimately a special subcommittee of the Issues Committee (including all officers), for study and to make recommendations to the council:

- Establish a diversity and inclusion committee or staff position to evaluate and propose initiatives to bar leadership at both the council and staff levels.
- Research and adopt policies that support diversity or do not disproportionately adversely affect minorities.
- Commit to a diversity and inclusion “360 Degree Association Scan” for the State Bar.
- Better promote diversity at the district bar level to increase the number of minority members of the council.
- Examine the council structure to determine whether it has a disproportionately adverse impact on solo/minority lawyers and to evaluate ways to address any such disproportionate impact.
- Champion and promote Black and other minority bar councilors for leadership positions on the council.

Regarding the remaining suggestion on the list—enrolling officers, councilors, and staff, in a meaningful structural training program on race and bias—the officers decided to proceed with such training but, at least initially, on preliminary basis. Alice Mine was instructed to investigate the cost of enrolling the following groups in introductory training: the officers, executive staff, chairs of all standing committees of the council, members of the ethics subcommittees studying proposed rule amendments on discrimination and bias, and members of the CLE Board’s committee that is studying requiring regular CLE on the same. After the introductory training, the officers will determine whether to (1) pursue more extensive training, (2) include more councilors in such training, and (3) train a State Bar employee serve as a trainer on race, bias, and diversity for new councilors and staff members.

The recommendation to establish a subcommittee to study these suggestions will be on the agenda for the next meeting of the Issues Committee. I hope you and other members of the LAP Board will attend.

Please let me know if you have questions about anything in this memorandum.



Theodore C. Edwards, II
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August 31, 2020

DEMOGRAPHIC SUMMARY

Philip Lee

Professor of Law, University of the District of Columbia David A. Clarke School of Law

An executive summary of the most current statistical and demographic data on the legal profession by an expert on the intersection of diversity, race, and law.

The Institute for Inclusion in the Legal Profession (IILP) was created in 2009 to promote demographic and cultural diversity and inclusion in the U.S. legal profession. As part of this effort, the *IILP Review* publishes a statistical summary regarding the status of traditionally underrepresented groups within the profession. Such data are critical for assessing the profession's progress toward greater diversity and inclusion.

This summary takes stock of the profession's progress as of March 2019. Its goal is to provide a current, comprehensive picture of the demographics of the profession and to use this information to help the profession set an agenda for effective future action.

The summary is based on a review of academic, government, professional, and popular data sources. Most sources focus primarily on providing racial and ethnic data, or data about gender and minority¹ representation, and these emphases are reflected below. Where available, however, the summary also includes data about the representation of lesbian, gay, bisexual and transgender (LGBT) lawyers, lawyers with disabilities, and other demographic categories relevant to diversity and inclusion, broadly defined. One goal of the *IILP Review* is to promote the systematic collection of a wide range of demographic data.

The main findings of the 2019-2020 demographic summary are as follows:

GENDER

- The number of women in the legal profession continues to increase. Female representation among lawyers stood at 37.4% in 2018, up from 34.4% in 2008 and 28.5% in 1998 according to the Bureau of Labor Statistics (see Table 1). In 2018, female representation among resident active attorneys was 36% according to American Bar Association data (see Table 2).
- Compared to most other professions, women remain under-represented in the legal profession. Women's representation among lawyers (37.4%) is higher than their representation in some other professions, including software developers (19.3%), architects (29.7%), civil engineers (14.8%), and clergy (22.4%). Women's representation among lawyers is lower than their representation among financial managers (55.2%), accountants and auditors (60.6%), biological scientists (47.5%), and post-secondary teachers (49.0%); and significantly lower than their representation within the management and professional workforce as a whole (51.5%) (see Table 3).
- The number of women applicants to law school has been declining. The overall number of law school applicants has been declining from fall 2010 to fall 2015, with double-digit percentage declines in 2011-2013 (see Table 4). However, the large drop in applicants seemed to be tapering off in 2015 with only a 2.2% decrease of applicants from the prior year (see Table 4). The number of women admitted to law school has declined during each year from fall 2010 to fall 2015, with less pronounced declines in fall 2014 and fall 2015 (see Table 6).

1. The term "minority" typically is used to refer to aggregated data about African Americans, Asian Americans, Hispanics, and Native Americans, although there are variations from source to source. Unless otherwise noted, we follow the categories used in the original source and provide clarifications in the footnotes.

- Women comprise the majority of enrolled law students. Women’s law school enrollment has fluctuated over the past twenty years. After peaking in the early 2000s at about 49%, female representation among law students has dropped to around 47% in 2010, according to the most recent aggregate data (see Table 7). However, in 2016, women have, for the first time, become a majority of enrolled law students in the US.² This transition to majority female enrollment occurred, in part, because the rate of decline for admitted male law students was greater than the rate of decline for admitted female law students from fall 2010 to fall 2015 (see Table 6).
- The number of J.D. degrees awarded to women seems to be rebounding toward highs not seen since the years before the economic downturn of 2008. The number of J.D. degrees awarded to women has increased dramatically over the past few decades. In 1980-81, 32.8% of J.D.s went to women (see Table 9). The percentage jumped to 42.7% in 1990-91 and 47.5% in 2000-01 (see Table 9). In 2003-04, the percentage was at an all-time high at 49.5%, fell to 45.9% in 2008-09, and went back up to 47.3% in 2010-11 (see Table 9).
- Women’s entry into private practice has increased in the past few years. In 2016, 52.1% of white female and 49.3% of minority female law graduates began their careers in private practice, compared to 48.8% of white female and 43.5% of minority female law graduates in 2011 (see Table 11). In 2015, women’s representation among law firm associates dipped to 44.7%, but was up to 45.9% in 2018 (see Table 15).
- Women continue to be underrepresented in top-level jobs within the legal profession, such as law firm partner. In 2017, women made up only 22.7% of law firm partners (see Table 15)—and only 18.7% of equity partners that year (see Table 18). Minority women, especially, are underrepresented among law firm partners. In 2018, minority women made up only 3.2% of law partners nationally (see Table 15), and even this figure is skewed upward by a few standout cities, such as Miami (11.7%), San Jose (6.4%), Los Angeles (6.3%), and San Francisco (5.3%) (see Table 21). In many other cities, minority women’s representation among partners is less than 3.2% (see Table 21).
- Women who are racial/ethnic minorities continue to be underrepresented in the upper echelons of law firm partnerships. In 2018, only 0.7% of all law firm partners are African American women, only 0.8% are Hispanic women, and only 1.4% are Asian American women (see Table 22).
- Women’s representation among in-house lawyers has increased. The Association of Corporate Counsel’s 2015 global census found that women make up 49.5% of all in-house lawyers, including both entry-level and senior positions (see Table 23). This is up from 39.0% in 2006 (see Table 23).
- Women’s representation among judges also has dropped from a peak of 56.7% in 2004 to 32.3% in 2018 (see Table 25). However, these data appear somewhat noisy, with significant year-to-year fluctuations. Based on three-year (unweighted) averages, aggregate female representation among judges has decreased from 50.7% in 2003-05 to 31.5% in 2016-18 (see Table 25). For Article III federal court judges, 27% are women (see Table 29). President Trump’s judicial appointments have consisted of about 23% women judges (see Table 26).
- In 2013, women made up 28.7% of law deans, 32.7% of tenured law faculty, and 48.4% of tenure-track law faculty (see Table 30).

2. Elizabeth Olson, Women Make Up Majority of U.S. Law Students for the First Time, NY Times, Dec. 16, 2016, <https://www.nytimes.com/2016/12/16/business/dealbook/women-majority-of-us-law-students-first-time.html>.

RACE/ETHNICITY

- The pace of racial/ethnic minority representation in the legal profession has been steadily increasing during the past decade. Aggregate racial minority representation among U.S. lawyers stood at 16.5% in 2018, according to the Bureau of Labor Statistics (see Table 1). Based on three-year (unweighted) averages, aggregate minority representation among lawyers has increased from 11.3% in 2006-08 to 15.3% in 2016-18 (see Table 1).
- Progress for different groups varies. African American representation among lawyers has increased over the past ten years, from an average of 4.8% in 2006-08 to an average of 5.2% in 2016-18 (see Table 1). During the same period, Hispanic representation among lawyers increased from an average of 3.7% to an average of 5.5%, and Asian American representation among lawyers increased from an average of 2.8% to an average of 4.7% (see Table 1). In 2018, according to American Bar Association data, minority representation for resident active attorneys consisted of 5% African American, 5% Hispanic, 3% Asian American, 1% Native American, and 1% Multiracial (see Table 2).
- Compared to other professions, the legal profession remains one of the least diverse of all professions in the US. Aggregate minority representation among lawyers is significantly lower than minority representation in most other management and professional jobs. In 2018, minority representation among lawyers was 16.5%, compared to 24.9% among financial managers, 29.6% among accountants and auditors, 44.6% among software developers, 34.8% among physicians and surgeons, and 27.8% within the management and professional labor force as a whole (see Table 3).
- The overall number of admitted law school applicants has been declining since fall 2010, with the largest decreases in fall 2012 and fall 2013 (see Table 4). However, the number of admitted law school applicants for different minority groups has fluctuated during the same period (see Table 5).
- The entry of racial/ethnic minorities as a group into the legal profession has increased. When we disaggregate the data, however, a different picture emerges. The pace of African American entry into the profession has remained steady since 2010, with about 10,000 African American students enrolled in law school each year, according to data from the American Bar Association Section of Legal Education and Admissions to the Bar (see Table 8). Moreover, as overall law school enrollment has dropped since 2010-11 (see Table 7), African American representation among law students has increased, from 7.0% in 2010-11 to 8.0% in 2013-14—an all-time high (see Table 8). Hispanic representation among law students also has increased in both absolute and relative terms, from 10,454 students (7.1%) in 2010-11 to 11,215 students (8.7%) in 2013-14 (see Table 8). Also, law students self-reporting as two or more races has increased in both absolute and relative terms, from 2,048 students (1.4%) in 2010-11 to 3,088 students (2.4%) in 2013-2014 (see Table 8). As a result, aggregate minority representation among law students increased from 23.2% in 2010-11 to 26.7% in 2013-14 (see Table 8). Meanwhile, Asian American enrollment in law school has dropped in both absolute and relative terms, from 10,215 students (6.9%) in 2010-2011 to 8,696 students (6.8%) in 2013-14 (see Table 8). Native American enrollment has dropped in absolute but not relative terms, from a high of 1,208 (0.8%) in 2010-11 to 1,065 (0.8%) in 2013-14 (see Table 8).
- Initial employment patterns continue to differ between racial and ethnic groups, according to data from the National Association of Law Placement (NALP). African Americans are significantly less likely than other groups to start off in private practice, and more likely to start off in business or government. In 2016, only 38.9% of African American law graduates were initially employed in private practice, compared to 54.9% of Hispanic graduates, 57.6% of Asian American graduates, 41.2% of Native American graduates, and 53.7% of white graduates (see Table 12).
- In 2018, African Americans made up only 4.5% of associates in U.S. law firms, down from 4.7% in 2009, but up from a low point of 4.0% in 2014 and 2015 (see Table 16).

- Asian Americans are the most likely minority group to enter private practice (see Table 12). In 2018, Asian Americans made up 11.7% of associates in law firms, up from 9.3% in 2009 (see Table 16). Notably, a majority of Asian American associates have been women (see Table 16). Hispanics comprise 4.7% of law firm associates in 2018, up from 3.9% in 2009 (see Table 16).
- Despite this progress at the associate level, minority representation among law firm partners remains stubbornly low. In 2017, minorities made up only 8.4% of all partners (see Table 15) and only 6.1% of equity partners that same year (see Table 18).
- In 2018, only 1.8% of all law firm partners are African American, only 2.5% are Hispanic, and only 3.6% are Asian American (see Table 17).
- Initial employment differences can be identified based upon race/ethnicity and gender. From 2011-16, minority law school graduates were more likely to start their careers in business or public interest than white graduates (see Table 11). Among minorities in 2016, African Americans (20.5%) are the most likely to start off in business and Hispanics (13.8%) and Native Americans (13.2%) the least likely (see Table 12). African Americans (11.4%) and Hispanics (10.8%) are the most likely to start off in public interest jobs (see Table 12); and minority women are more likely to do so than minority men (see Table 11). In 2016, 11.3% of minority women began their careers in public interest positions, compared to 7.9% of white women, 5.8% of minority men, and 4.3% of white men (see Table 11).
- Among all J.D. graduates in 2017, the percentage of all law graduates who start their careers with judicial clerkships has increased from 7.7% in 2011 to 9.3% in 2017 (see Table 10). The percentage of minority law graduates starting with judicial clerkships has increased from 6.9% in 2011 to 7.9% in 2016 (see Table 11). However, minority men are the least likely to begin their careers with a judicial clerkship (see Table 11).
- Based on the limited data available for different employment settings, African American representation is highest among federal government attorneys (8.7% in 2010, see Table 24) and in law schools (see Table 31); Hispanic representation is highest among in-house lawyers (5% in 2015, see Table 23) and tenure-track faculty (6.4% in 2013, see Table 31); and Asian American representation is highest among law firm associates (11.7% in 2018, see Table 16) and tenure-track faculty (8.5% in 2013, see Table 31).
- In 2018, the Bureau of Labor Statistics reported that 21.2% of all judges were minorities (see Table 25). Article III judges have greater minority representation, with 20.4% minority judges in 2018 (see Table 28). This greater representation for federal court judges appears to stem from the diversity of many of President Obama's judicial appointments (see Table 26).
- As of July 26, 2018, President Trump has appointed one Hispanic judge and four Asian American judges to the federal bench, but no African American or Native American judges (see Table 26).

DISABILITY

- The initial employment of lawyers with disabilities varies from year to year, due in part to the small number of lawyers in the sample. In general, however, the percentage of graduates with disabilities who start off in private practice has declined in recent years, whereas the percentage who start off in business or public interest has increased. In 2016, 40.9% of law graduates with disabilities started off in private practice, down from 48.9% in 2011; whereas 20.7% started off in business and 11.5% in public interest in 2016, compared to 16.9% and 9.3%, respectively, in 2011 (see Table 13). From 2011-16, judicial clerkship rates for graduates with disabilities has fluctuated between 5.3% to 9.6% (see Table 13).



Among all J.D. graduates in 2017, the percentage of all law graduates who start their careers with judicial clerkships has increased.

- The representation of lawyers with disabilities in law firms has increased among associates, from 0.2% in 2009 to 0.5% in 2018, and from 0.3% in 2009 to 0.5% in 2018 among partners (see Table 20). More data are needed to place these figures in perspective, including data from other employment settings and occupations.
- President Trump has not appointed any judges with disabilities to the federal bench (see Table 27).

LGBT

- Law graduates identifying as LGB are less likely than most other groups to start off in private practice and more likely to start off in public interest jobs. In 2016, 14.6% of the law graduates identifying as LGB took public interest jobs—the highest percentage of any demographic group that year (see Tables 11, 12, and 14).
- Despite this, the representation of LGBT lawyers in law firms has been steadily inching upward since NALP began compiling these data. In 2018, 3.8% of associates and 2.1% of partners identified as LGBT, up from 2.3% and 1.4%, respectively, in 2009 (see Table 19).
- President Trump has not appointed any judges who identify as LBGT to the federal bench (see Table 27).

LACK OF DATA

- Tracking the profession's progress toward diversity and inclusion is made difficult by the continuing lack of data. Outside of law firms and Article III judgeships, the profession lacks even basic gender and racial/ethnic breakdowns by employment category, not to mention more detailed breakdowns by title, seniority and region; or more inclusive efforts covering sexual orientation and disability status. More robust statistics on the demographic distribution of lawyers are sorely needed.
- Gathering systematic data on diversity and inclusion in the profession requires a sustained commitment by the entire profession, including bar associations, employers, law schools, and research institutions. Contributing to this effort is a chief goal of the *IILP Review*.

Table 1 - U.S. Lawyers by Gender and Race/Ethnicity¹

	Lawyers	Female	Af Am.	Hisp.	As Am.	Minority
1995	894,000	26.4%	3.6	3.2		6.8
1996	880,000	29.5	3.5	2.8		6.3
1997	885,000	26.6	2.7	3.8		6.5
1998	912,000	28.5	4.0	3.0		7.0
1999	923,000	28.8	5.1	4.0		9.1
2002	929,000	29.2	4.6	3.1		7.7
2003	952,000	27.6	3.6	4.0	2.8	10.4
2004	954,000	29.4	4.7	3.4	2.9	11.0
2005	961,000	30.2	4.7	3.5	2.0	10.2
2006	965,000	32.6	5.0	3.0	2.9	10.9
2007	1,001,000	32.6	4.9	4.3	2.6	11.8
2008	1,014,000	34.4	4.6	3.8	2.9	11.3
2009	1,043,000	32.4	4.7	2.8	4.1	11.6
2010	1,040,000	31.5	4.3	3.4	4.3	12.0
2011	1,085,000	31.9	5.3	3.2	4.2	12.7
2012	1,061,000	31.1	4.4	4.0	4.3	12.7
2013	1,092,000	33.1	4.2	5.1	5.1	14.4
2014	1,132,000	32.9	5.7	5.6	4.4	15.7
2015	1,160,000	34.5	4.6	5.1	4.8	14.5
2016	1,133,000	35.7	4.4	5.6	4.7	14.7
2017	1,137,000	37.4	5.6	4.8	4.4	14.8
2018	1,199,000	37.4	5.5	6.1	4.9	16.5

1. Bureau of Labor Statistics, *Table 11: Employed Persons by Detailed Occupation, Sex, Race, and Hispanic or Latino Ethnicity*, U.S. DEP'T OF LABOR, <http://www.bls.gov/cps/tables.htm> (follow links for individual years and scroll down to "Characteristics of the Employed," Table 11). Figures for 2000 and 2001 are not available. Figures for minorities are derived from aggregating the minority categories listed. Note that the "Asian" category was not tracked from 1995-2002.

Graphic Representation of Table 1

Chart 1: Minority Lawyers in the US (2018)

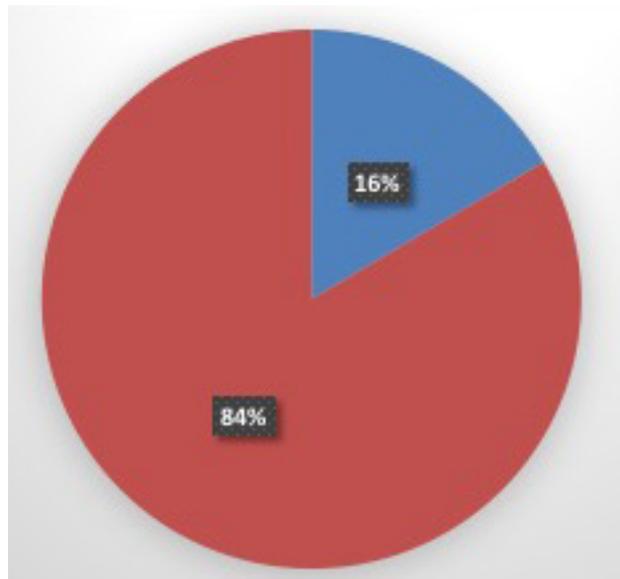


Chart 2: Women Lawyers in the US (2018)

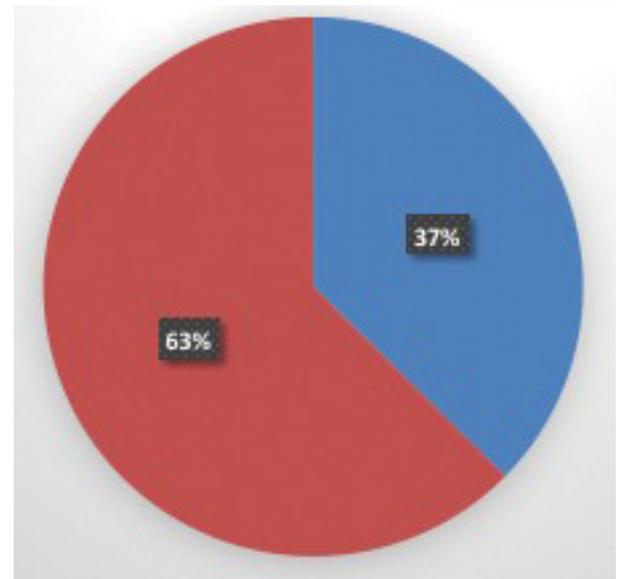


Table 2 - Resident Active Attorney Demographics by Gender and Race/Ethnicity²

	Female	Af Am.	Hisp.	As Am.	Na Am.	Multiracial
2008	32%	4	3	2	1	
2009	31	5	5	2	1	
2010	31	5	4	2	1	
2011	33	5	4	2	1	
2012	33	5	3	2	1	
2013	34	5	4	2	1	
2014	35	5	4	2	1	
2015	35	5	5	2	1	
2016	36	5	5	3	0	1
2017	35	5	5	2	1	2
2018	36	5	5	3	1	1

2. Am. Bar Ass'n (ABA), *National Lawyer Population Survey, 10-Year Trend in Lawyer Demographics*, ABA, https://www.americanbar.org/content/dam/aba/administrative/market_research/National_Lawyer_Population_Demographics_2008-2018.authcheckdam.pdf. Figures for Asian Americans do not include Native Hawaiians or Pacific Islanders. During 2016-2018, the data reflect that 0% (less than 0.5%) of the U.S. resident active attorneys responded as Hawaiian/Pacific Islander. Beginning with the 2016 survey, the "Multiracial" category was added for race/ethnicity. In the same year, the "Other" category was added for gender; however, from 2016-2018, the data show that 0% (less than .5%) of resident active attorneys responded as "Other" gender.

Table 3 – Selected U.S. Occupations by Gender and Race/Ethnicity (2018)³

	Total Employed	Female	Af Am.	Hisp.	As Am.	Minority
Civilian Labor Force	155,761,000	46.9%	12.3	17.3	6.3	35.9
All Management/ Professional	62,436,000	51.5%	9.6	9.7	8.5	27.8
Management Occupations	18,263,000	40.0	7.6	10.3	5.9	23.8
Chief Executives	1,573,000	26.9	3.5	6.1	5.9	15.5
Financial Managers	1,231,000	55.2	8.1	9.4	7.4	24.9
Business and Finance	7,587,000	53.8	9.8	8.7	9.1	27.6
Accountants/Auditors	1,929,000	60.6	9.3	7.6	12.7	29.6
Human Resources Workers	664,000	70.7	10.5	13.2	7.0	30.7
All Computer/ Mathematical	5,126,000	25.6	8.4	7.5	22.0	37.9
Computer Systems Analysts	652,000	37.5	10.0	7.9	20.4	38.3
Software Developers	1,682,000	19.3	3.9	5.3	35.4	44.6
All Architecture/ Engineering	3,263,000	15.9	6.5	8.9	11.9	27.3
Architects	239,000	29.7	4.5	10.1	11.5	26.1
Civil Engineers	456,000	14.8	4.4	7.9	9.3	21.6
Life/Physical/ Social Sciences	1,529,000	46.7	7.1	8.7	12.8	28.6
Biological Scientists	104,000	47.5	1.6	3.6	13.7	18.9
Psychologists	224,000	75.9	7.7	11.2	3.0	21.9
All Community/ Social Services	2,680,000	66.5	20.4	12.1	3.9	36.4
Counselors	895,000	72.0	22.2	12.7	3.9	38.8
Clergy	415,000	22.4	12.5	6.4	4.3	23.2
Legal Occupations	1,891,000	51.6	7.3	9.9	4.7	21.9
Lawyers	1,199,000	37.4	5.5	6.1	4.9	16.5
Paralegals/ Legal Assistants	444,000	86.4	11.3	18.5	5.3	35.1
Education	9,313,000	73.2	10.6	10.7	5.2	26.5
Postsecondary Teachers	1,417,000	49.0	7.9	7.3	13.7	28.9
Secondary School Teachers	1,062,000	58.0	7.3	9.0	2.6	18.9
Healthcare Practitioners	9,420,000	75.0	12.6	8.5	9.9	31.0
Physicians/Surgeons	1,094,000	40.3	7.6	7.4	19.8	34.8
Registered Nurses	3,213,000	88.6	13.1	7.2	9.0	29.3

3. Bureau of Labor Statistics, *Table 11: Employed Persons by Detailed Occupation, Sex, Race, and Hispanic or Latino Ethnicity*, U.S. DEPT OF LABOR (2018), <https://www.bls.gov/cps/cpsaat11.pdf>. Figures for minorities are derived from aggregating the minority categories listed. Note that the “Asian” category was not tracked from 1995-2002.

Table 4 - End-of-Year J.D. Applicants by Enrollment Year⁴

	Fall 2010	Fall 2011	Fall 2012	Fall 2013	Fall 2014	Fall 2015
Final End-of-Year Applicants	87,900	78,500	67,900	59,400	55,700	54,500
% Change From Prior Year		-10.7%	-13.5	-12.4	-6.3	-2.2

4. Law Sch. Admissions Council, *Archive: ABA End-of-Year Summary—Applicants, Admitted Applicants & Applications*, LSAC, <https://www.lzac.org/lzacresources/data/aba-eoy/archive>. (last visited July 5, 2018).

Graphic Representation of Table 4

J.D. Applicants by Enrollment Year

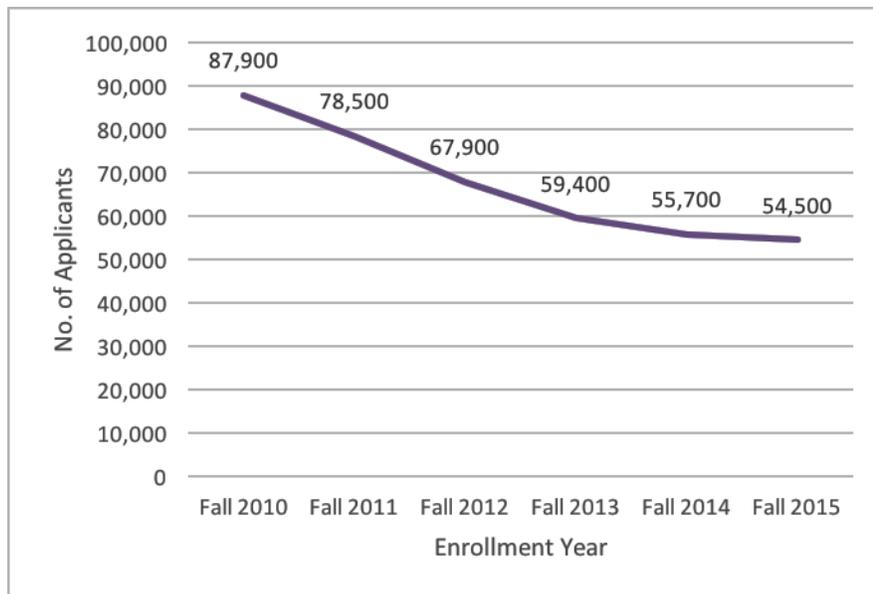


Table 5 - Admitted J.D. Applicants by Race/Ethnicity and Enrollment Year⁵

	Fall 2010	Fall 2011	Fall 2012	Fall 2013	Fall 2014	Fall 2015
All	60,400	55,800	50,600	45,700	43,500	42,300
% Change From Prior Year		-7.7%	-9.2	-9.8	-4.9	-2.8
Af Am.	4,680	4,610	4,860	4,670	4,760	4,680
% Change From Prior Year		-1.3%	5.3	-3.9	2.0	-1.8
Hisp.	4,430	4,560	4,700	4,630	4,550	4,670
% Change From Prior Year		3.0%	2.9	-1.3	-1.8	2.6
As Am.	5,310	5,450	5,050	4,620	4,650	4,320
% Change From Prior Year		2.6%	-7.3	-8.5	0.7	-7.2
Nat Am.	780	900	900	930	890	840
% Change From Prior Year		16.2%	0.0	2.7	-4.0	-6.0
Nat Haw/Pac Islander	160	180	160	200	170	180
% Change From Prior Year		10.4%	-8.9	21.3	-13.6	4.1
Puerto Rican	1,140	1,220	1,060	1,130	1,060	1,100
% Change From Prior Year		7.8%	-13.2	6.5	-6.5	4.2

5. Law Sch. Admissions Council, *Archive: 2010-2015 Admitted Applicants by Race/Ethnicity*, LSAC, <https://www.lsac.org/lsacresources/data/ethnicity-sex-admits/archive-1>. (last visited July 5, 2018).

Table 6 - Admitted J.D. Applicants by Gender and Enrollment Year⁶

	Fall 2010	Fall 2011	Fall 2012	Fall 2013	Fall 2014	Fall 2015
Female	27,610	25,750	23,950	21,990	21,160	20,900
% Change From Prior Year		-6.8%	-7.0	-8.2	-3.8	-1.2
Male	32,560	29,710	26,490	23,580	22,210	21,230
% Change From Prior Year		-8.7%	-10.8	-11.0	-5.8	-4.4
Declined to Respond	270	300	200	130	100	140
% Change From Prior Year		11.1%	-32.7	-35.1	-26.0	43.3

6. Law Sch. Admissions Council, *Archive: 2010-2015 Admitted Applicants by Gender/Sex*, LSAC, <https://www.lsac.org/lsacresources/data/ethnicity-sex-admits/archive-3>. (last visited July 5, 2018).

Table 7 – J.D. Enrollment by Gender and Minority Status⁷

	Total	Female (%)	Minority (%)
1976-77	112,401	29,343 (26.1)	9,589 (8.5)
1977-78	113,080	31,650 (28.0)	9,580 (8.5)
1978-79	116,150	35,775 (30.8)	9,952 (8.6)
1979-80	117,297	37,534 (32.0)	10,013 (8.5)
1980-81	119,501	40,834 (34.2)	10,575 (8.8)
1981-82	120,879	43,245 (35.8)	11,134 (9.2)
1982-83	121,791	45,539 (37.4)	11,611 (9.5)
1983-84	121,201	46,361 (38.3)	11,866 (9.8)
1984-85	119,847	46,897 (39.1)	11,917 (9.9)
1985-86	118,700	47,486 (40.0)	12,357 (10.4)
1986-87	117,813	47,920 (40.7)	12,550 (10.7)
1987-88	117,997	48,920 (41.5)	13,250 (11.2)
1988-89	120,694	50,932 (42.2)	14,295 (11.8)
1989-90	124,471	53,113 (42.7)	15,720 (12.6)
1990-91	127,261	54,097 (42.5)	17,330 (13.6)
1991-92	129,580	55,110 (42.5)	19,410 (15.0)
1992-93	128,212	64,644 (50.4)	21,266 (16.6)
1993-94	127,802	55,134 (43.1)	22,799 (17.8)
1994-95	128,989	55,808 (43.3)	24,611 (19.1)
1995-96	129,397	56,961 (44.0)	25,554 (19.7)
1996-97	128,623	57,123 (44.4)	25,279 (19.7)
1997-98	125,886	56,915 (45.2)	24,685 (19.6)
1998-99	125,627	57,952 (46.1)	25,266 (20.1)
1999-00	125,184	59,362 (47.4)	25,253 (20.2)
2000-01	125,173	60,633 (48.4)	25,753 (20.6)
2001-02	127,610	62,476 (49.0)	26,257 (20.6)
2002-03	132,885	65,179 (49.0)	27,175 (20.5)
2003-04	137,676	67,027 (48.7)	28,325 (20.6)
2004-05	140,376	67,438 (48.0)	29,489 (21.0)
2005-06	140,298	66,613 (47.5)	29,768 (21.2)
2006-07	141,031	66,085 (46.9)	30,557 (21.6)
2007-08	141,719	66,196 (46.7)	30,657 (21.6)
2008-09	142,922	66,968 (46.9)	31,368 (21.9)
2009-10	145,239	68,502 (47.2)	32,505 (22.4)
2010-11	147,525	69,009 (46.8)	35,045 (23.8)
2011-12	146,288	68,262 (46.7)	35,859 (24.5)
2012-13	139,055	65,387 (47.0)	35,914 (25.8)
2013-14	128,712		34,584 (26.9)

7. ABA Section of Legal Educ. & Admissions to the Bar, Enrollment and Degrees Awarded, 1963-2012 Academic Years, ABA (2013), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/enrollment_degrees_awarded.authcheckdam.pdf (for data on female enrollment) (aggregate figures for 2013-14 and later years are not available); ABA Section of Legal Educ. & Admissions to the Bar, Resources: Legal Education Statistics: Ethnic/Gender Data: Longitudinal Charts, First-Year and Total J.D. Minority, ABA, http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “First-Year and Total J.D. Minority”) (for data on minority enrollment) (aggregate figures for 2014-15 and later years are not available). Some figures differ slightly from those previously reported by the ABA. Note that the apparent spike in female J.D. enrollment in the 1992-1993 academic year appears to be a transcription error. See ABA Section of Legal Educ. & Admissions to the Bar, First-Year & Total Enrollment by Gender, 1947-2011, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf (previously listing the 1992-1993 female J.D. enrollment as 54,572 and 42.6%).

Table 8 - J.D. Enrollment by Race/Ethnicity⁸

	Total	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	≥ 2 Races (%)
2010-11	147,525	10,352 (7.0)	10,454 (7.1)	10,215 (6.9)	1,208 (0.8)	2,048 (1.4)
2011-12	145,288	10,452 (7.2)	11,027 (7.6)	10,415 (7.2)	1,165 (0.8)	2,508 (1.7)
2012-13	139,055	10,435 (7.5)	11,328 (8.1)	9,666 (7.0)	1,063 (0.8)	3,058 (2.2)
2013-14	128,712	10,241 (8.0)	11,215 (8.7)	8,696 (6.8)	1,065 (0.8)	3,088 (2.4)

8. BA Section of Legal Educ. & Admissions to the Bar, *Resources: Legal Education Statistics: Ethnic/Gender Data: Longitudinal Charts, First-Year and Total J.D. Minority*, ABA, http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “First-Year and Total J.D. Minority”) (for total J.D. enrollment figures from 2010 to 2014); ABA Section of Legal Educ. & Admissions to the Bar, *Resources: Legal Education Statistics: Ethnic/Gender Data: Longitudinal Charts, Black or African American*, ABA, http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “Black or African American”) (for black/African American figures, 2010-2014); ABA Section of Legal Educ. & Admissions to the Bar, *Resources: Legal Education Statistics: Ethnic/Gender Data: Longitudinal Charts, All Hispanic*, ABA, http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “All Hispanic”) (for Hispanic figures, 2010-2014); ABA Section of Legal Educ. & Admissions to the Bar, *Resources: Legal Education Statistics: Ethnic/Gender Data: Longitudinal Charts, Asian*, ABA, http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “Asian”) (for Asian American figures, 2010-2014); ABA Section of Legal Educ. & Admissions to the Bar, *Resources: Legal Education Statistics: Ethnic/Gender Data: Longitudinal Charts, American Indian or Alaska Native*, ABA, http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “American Indian or Alaska Native”) (for Native American figures, 2010-2014); ABA Section of Legal Educ. & Admissions to the Bar, *Resources: Legal Education Statistics: Ethnic/Gender Data: Longitudinal Charts, Two or More Races*, http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “Two or More Races.”) (for Two or More Races figures, 2010-2014). Figures include all J.D. candidates enrolled at ABA-approved law schools, excluding Puerto Rican law schools. Figures for Hispanics include Hispanics of any race. Figures for Asian Americans do not include “Native Hawaiians or Pacific Islanders.” In 2013–14, there were 279 Hawaiian Natives or other Pacific Islanders enrolled in ABA-approved law schools. ABA Section of Legal Educ. & Admissions to the Bar, *Resources: Legal Education Statistics: Ethnic/Gender Data: Longitudinal Charts, Native Hawaiian or Other Pacific Islander*, http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “Native Hawaiian or Other Pacific Islander”).

Graphic Representation of Table 9

J.D.s Awarded by Gender

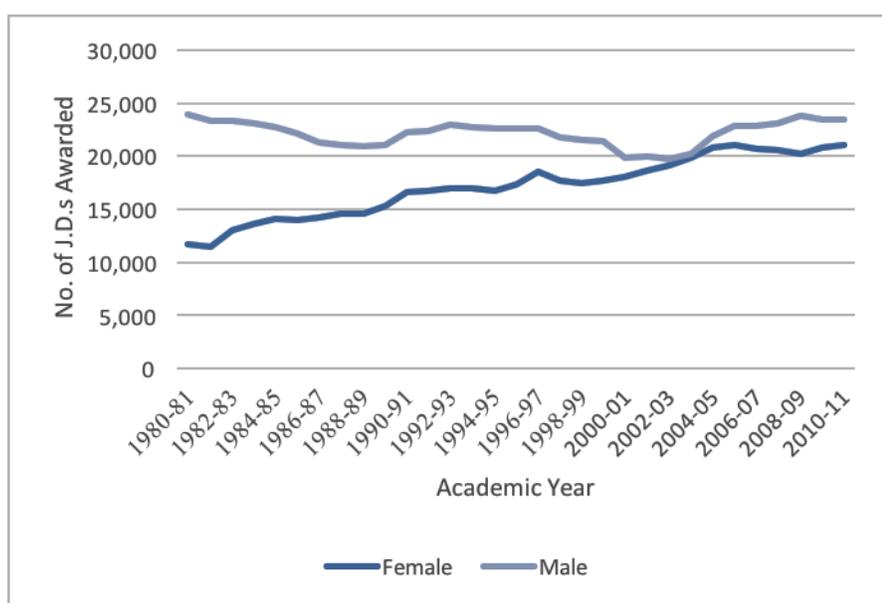


Table 9 - J.D.s Awarded by Gender⁹

	Total	Female (%)
1980-81	35,604	11,693 (32.8)
1981-82	34,847	11,494 (33.0)
1982-83	36,390	13,060 (35.9)
1983-84	36,688	13,586 (37.0)
1984-85	36,830	14,119 (38.3)
1985-86	36,122	13,980 (38.7)
1986-87	35,479	14,206 (40.0)
1987-88	35,702	14,595 (40.9)
1988-89	35,521	14,553 (41.0)
1989-90	36,386	15,345 (42.2)
1990-91	38,801	16,580 (42.7)
1991-92	39,082	16,680 (42.7)
1992-93	39,915	16,972 (42.5)
1993-94	39,711	16,997 (42.8)
1994-95	39,355	16,790 (42.7)
1995-96	39,921	17,366 (43.5)
1996-97	41,115	18,552 (45.1)
1997-98	39,456	17,662 (44.8)
1998-99	39,072	17,516 (44.8)
1999-00	39,158	17,713 (46.4)
2000-01	37,910	18,006 (47.5)
2001-02	38,606	18,644 (48.3)
2002-03	38,865	19,133 (49.2)
2003-04	40,024	19,818 (49.5)
2004-05	42,672	20,804 (48.8)
2005-06	43,883	21,074 (48.0)
2006-07	43,518	20,669 (47.5)
2007-08	43,588	20,537 (47.1)
2008-09	44,004	20,191 (45.9)
2009-10	44,258	20,852 (47.1)
2010-11	44,495	21,043 (47.3)

9. ABA Section of Legal Educ. & Admissions to the Bar, *Resources: Legal Statistics: Degrees Awarded: Longitudinal Charts, JD & LLB*, ABA, http://www.americanbar.org/groups/legal_education/resources/statistics.html/. Some figures differ slightly from those previously reported by the ABA.

Table 10 - End-of-Year J.D. Applicants by Enrollment Year¹⁰

Class of	2011	2012	2013	2014	2015	2016	2017
Total Graduates	43,979	46,364	46,776	43,832	39,984	37,124	34,992
Unemployed (%)	4,402 (9.2)	4,929 (10.6)	5,229 (11.2)	4,295 (9.8)	3,871 (9.7)	3,271 (8.8)	2,755 (7.9)
Solo Practice (%)	1,170 (2.7)	1,050 (2.3)	1,086 (2.3)	936 (2.1)	688 (1.7)	538 (1.4)	443 (1.3)
Law Firm (%)	16,734 (38.1)	18,214 (39.3)	18,545 (39.6)	17,856 (40.7)	16,282 (40.7)	16,403 (44.1)	16,021 (45.9)
Business (%)	6,578 (15.0)	6,881 (14.9)	7,130 (15.2)	6,723 (15.3)	5,854 (14.6)	5,024 (13.5)	4,252 (12.2)
Government (%)	4,324 (9.8)	4,654 (10.0)	4,953 (10.6)	5,102 (11.6)	4,655 (11.6)	4,459 (12.0)	4,204 (12.0)
Public Interest (%)	2,684 (6.1)	2,715 (5.9)	2,227 (4.8)	2,170 (5.0)	1,883 (4.7)	1,645 (4.4)	1,625 (4.7)
Clerkship (%)	3,394 (7.7)	3,389 (7.3)	3,447 (7.4)	3,379 (7.7)	3,368 (8.4)	3,327 (8.9)	3,263 (9.3)
Education (%)	1,052 (2.4)	1,031 (2.2)	973 (2.1)	784 (1.8)	645 (1.6)	601 (1.6)	493 (1.4)

10. ABA Section of Legal Educ. & Admissions to the Bar, *2012 Law Graduate Employment Data*, ABA (2013), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/law_grad_employment_data.authcheckdam.pdf (for classes of 2011 and 2012 data); ABA Section of Legal Educ. & Admissions to the Bar, *2014 Law Graduate Employment Data*, ABA (2015), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2014_law_graduate_employment_data_042915.authcheckdam.pdf (for classes of 2013 and 2014 data); ABA Section of Legal Educ. & Admissions to the Bar, *2016 Law Graduate Employment Data*, ABA (2017), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2016_law_graduate_employment_data.authcheckdam.pdf (for classes of 2015 and 2016 data); ABA Section of Legal Educ. & Admissions to the Bar, *2017 Law Graduate Employment Data*, ABA (2018), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2017_law_graduate_employment_data.authcheckdam.pdf (for class of 2017 data). Figures exclude data for unknown employment status and law school funded positions. Data for the classes of 2011, 2012, and 2013 reflect the graduates' employment status 9 months following graduation. Starting with the class of 2014, the data reflect the graduates' employment status approximately 10 months after graduation due to a change in ABA reporting requirements.

Table 11 – Initial Employment by Minority Status and Gender¹¹

2011	White				Minority		
	Male	Female	Total		Male	Female	Total
Private Practice	52.8%	48.8	51.0		46.4	43.5	44.8
Business	18.4	16.6	17.6		21.1	19.5	20.2
Government	11.7	11.2	11.5		13.2	13.0	13.1
Judicial Clerkships	9.3	11.3	10.2		6.4	7.2	6.9
Public Interest	5.0	8.4	6.5		8.8	11.8	10.5

2012	White				Minority		
	Male	Female	Total		Male	Female	Total
Private Practice	52.7%	50.4	51.6		49.2	46.2	47.5
Business	19.4	16.0	17.9		20.5	17.5	18.8
Government	11.5	11.7	11.6		13.5	13.5	13.5
Judicial Clerkships	8.7	10.8	9.7		5.8	7.1	6.6
Public Interest	4.9	7.9	6.3		7.2	11.9	9.9

Table 11 – Initial Employment by Minority Status and Gender¹¹ (continued)

2013	White				Minority		
	Male	Female	Total		Male	Female	Total
Private Practice	53.6%	50.2	52.2		49.1	46.6	47.7
Business	19.3	16.1	17.9		22.0	18.6	20.2
Government	10.9	11.5	11.2		13.2	12.5	12.8
Judicial Clerkships	9.0	10.9	9.8		5.5	7.4	6.5
Public Interest	4.6	8.5	6.3		6.8	11.1	9.1
2014	White				Minority		
	Male	Female	Total		Male	Female	Total
Private Practice	52.8%	49.6	51.4		51.0	47.5	49.0
Business	19.0	16.1	17.7		22.1	17.4	19.4
Government	12.0	12.1	12.0		12.1	13.3	12.7
Judicial Clerkships	9.5	11.1	10.2		5.6	7.1	6.5
Public Interest	4.9	8.5	6.5		6.8	11.2	9.4
2015	White				Minority		
	Male	Female	Total		Male	Female	Total
Private Practice	53.9%	50.3	52.3		50.2	48.2	49.0
Business	17.9	15.3	16.8		19.3	17.2	18.1
Government	11.6	11.8	11.7		14.7	13.5	14.0
Judicial Clerkships	10.4	12.4	11.3		6.6	7.4	7.0
Public Interest	4.4	8.1	6.1		6.7	10.8	9.1
2016	White				Minority		
	Male	Female	Total		Male	Female	Total
Private Practice	55.0%	52.1	53.7		52.7	49.3	50.7
Business	16.0	13.7	15.0		18.7	15.6	16.9
Government	11.9	12.2	12.0		12.9	12.9	13.0
Judicial Clerkships	11.3	12.2	11.7		7.2	8.5	7.9
Public Interest	4.3	7.9	6.0		5.8	11.3	9.1

11. NAT'L ASS'N FOR LAW PLACEMENT, JOBS & JDS: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2011 60 (2012) [hereinafter CLASS OF 2011] (for 2011 figures); NAT'L ASS'N FOR LAW PLACEMENT, JOBS & JDS: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2012 64 (2013) [hereinafter CLASS OF 2012] (for 2012 figures); NAT'L ASS'N FOR LAW PLACEMENT, JOBS & JDS: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2013 64 (2014) [hereinafter CLASS OF 2013] (for 2013 figures); NAT'L ASS'N FOR LAW PLACEMENT, JOBS & JDS: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2014 64 (2015) [hereinafter CLASS OF 2014] (for 2014 figures); NAT'L ASS'N FOR LAW PLACEMENT, JOBS & JDS: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2015 66 (2016) [hereinafter CLASS OF 2015] (for 2015 figures); NAT'L ASS'N FOR LAW PLACEMENT, JOBS & JDS: EMPLOYMENT AND SALARIES OF NEW LAW GRADUATES, CLASS OF 2016 68 (2017) [hereinafter CLASS OF 2016] (for 2016 figures). Figures for 2011-2016 exclude graduates with education jobs and unknown employer type.

Table 12 - Initial Employment by Race/Ethnicity¹²

2012	White	Af Am.	Hisp.	As Am.	Na Am.	Multi-racial
Private Practice	51.6%	36.3	52.3	52.6	43.9	49.5
Business	17.9	22.8	14.8	19.0	20.5	16.8
Government	11.6	16.0	13.7	11.2	18.7	12.9
Judicial Clerkships	9.7	7.5	4.8	6.9	7.0	7.4
Public Interest	6.3	12.3	11.5	6.6	8.2	10.6
2014	White	Af Am.	Hisp.	As Am.	Na Am.	Multi-racial
Private Practice	51.4%	37.4	53.5	55.6	46.6	48.6
Business	17.7	23.2	15.7	18.9	18.9	19.9
Government	12.0	17.4	11.4	9.4	16.2	13.5
Judicial Clerkships	10.2	7.0	5.8	6.7	4.1	6.4
Public Interest	6.5	10.7	11.6	6.9	11.5	8.4
2016	White	Af Am.	Hisp.	As Am.	Na Am.	Multi-racial
Private Practice	53.7%	38.9	54.9	57.6	41.2	50.2
Business	15.0	20.5	13.8	17.6	13.2	14.9
Government	12.0	17.4	12.7	8.1	21.1	14.6
Judicial Clerkships	11.7	7.8	6.4	8.6	11.4	10.7
Public Interest	6.0	11.4	10.8	5.8	8.8	6.8

12. CLASS OF 2012, *supra* note 11, at 65 (for 2012 figures); CLASS OF 2014, *supra* note 11, at 65 (for 2014 figures); CLASS OF 2016, *supra* note 11, at 69 (for 2016 figures). Figures for “Asian American” include Native Hawaiian/Pacific Islander graduates. Figures for 2012, 2014, and 2016 exclude graduates with education jobs and unknown employer type.

Table 13 - Initial Employment of Graduates with Disabilities¹³

	2011	2012	2013	2014	2015	2016
Private Practice	48.9%	50.7	46.2	42.2	47.9	40.9
Business	16.9	16.4	20.7	19.8	19.0	20.7
Government	13.4	10.0	14.6	13.2	10.7	13.7
Judicial Clerkships	6.5	7.0	5.3	9.4	6.9	9.6
Public Interest	9.3	11.4	8.3	12.2	11.4	11.5
Education	6.5	4.0	4.3	3.3	3.4	3.7

13. CLASS OF 2011, *supra* note 11, at 62 (for 2011 figures); CLASS OF 2012, *supra* note 11, at 66 (for 2012 figures); CLASS OF 2013, *supra* note 11, at 66 (for 2013 figures); CLASS OF 2014, *supra* note 11, at 66 (for 2014 figures); CLASS OF 2015, *supra* note 11, at 68 (for 2015 figures); CLASS OF 2016, *supra* note 11, at 70 (for 2016 figures). Figures for 2011-2016 exclude graduates with unknown employer type.

Table 14 - Initial Employment of Graduates Identifying as LGB¹⁴

	2014	2015	2016
Private Practice	41.6%	43.1	44.5
Business	16.1	16.9	13.1
Government	11.2	11.4	12.9
Judicial Clerkships	11.2	11.2	12.0
Public Interest	15.9	14.3	14.6
Education	4.2	3.0	3.0

14. CLASS OF 2014, *supra* note 11, at 66 (for 2014 figures); CLASS OF 2015, *supra* note 11, at 68 (for 2015 figures); CLASS OF 2016, *supra* note 11, at 70 (for 2016 figures). Figures for 2014-2016 exclude graduates with unknown employer type. Jobs & JDs started collecting data on LGB graduates starting for the Class of 2014.

Table 15 - Representation of Female and Minority Lawyers in Law Firms¹⁵

	Partners			Associates		
	Female	Minority	Minority F.	Female	Minority	Minority F.
2009	19.2%	6.1	1.9	45.7	19.7	11.0
2010	19.4	6.2	2.0	45.4	19.5	10.9
2011	19.5	6.7	2.0	45.4	19.9	11.0
2012	19.9	6.7	2.2	45.1	20.3	11.1
2013	20.2	7.1	2.3	44.8	20.9	11.3
2014	21.1	7.3	2.5	44.9	21.6	11.5
2015	21.5	7.5	2.6	44.7	22.0	11.8
2016	22.1	8.1	2.9	45.0	22.7	12.4
2017	22.7	8.4	2.9	45.5	23.3	12.9
2018	23.4	9.1	3.2	45.9	24.2	13.5

15. NAT'L ASS'N FOR LAW PLACEMENT, 2018 REPORT ON DIVERSITY IN U.S. LAW FIRMS 9 (Jan. 2019), https://www.nalp.org/uploads/2018NALPReportonDiversityinUSLawFirms_FINAL.pdf [hereinafter 2018 DIVERSITY REPORT]. Figures are based on statistics provided by firms in the NALP DIRECTORY OF LEGAL EMPLOYERS.

Table 16 - Associates by Gender and Race/Ethnicity¹⁶

	Af Am.		Hisp.		As Am.	
	Total	Female	Total	Female	Total	Female
2009	4.7%	2.9	3.9	2.0	9.3	5.1
2010	4.4	2.8	3.8	1.9	9.4	5.2
2011	4.3	2.6	3.8	1.9	9.7	5.3
2012	4.2	2.6	3.9	2.0	10.0	5.4
2013	4.1	2.4	3.8	1.9	10.5	5.6
2014	4.0	2.3	4.0	1.9	10.8	5.8
2015	4.0	2.3	4.3	2.0	10.9	6.0
2016	4.1	2.3	4.4	2.2	11.3	6.4
2017	4.3	2.4	4.6	2.2	11.4	6.5
2018	4.5	2.6	4.7	2.5	11.7	6.6

16. *Id.*

Table 17 - Partners by Gender and Race/Ethnicity¹⁷

	Af Am.		Hisp.		As Am.	
	Total	Female	Total	Female	Total	Female
2009	1.7%	0.6	1.7	0.4	2.2	0.8
2010	1.7	0.6	1.7	0.4	2.3	0.8
2011	1.7	0.6	1.9	0.5	2.4	0.8
2012	1.7	0.6	1.9	0.5	2.5	0.9
2013	1.8	0.6	2.0	0.5	2.7	0.9
2014	1.7	0.6	2.2	0.6	2.7	1.0
2015	1.8	0.6	2.2	0.6	2.9	1.1
2016	1.8	0.6	2.3	0.7	3.1	1.2
2017	1.8	0.7	2.4	0.7	3.3	1.2
2018	1.8	0.7	2.5	0.8	3.6	1.4

17. *Id.*

Table 18 - Equity Partners by Gender and Minority Status¹⁸

	Equity		Non-equity	
	Female	Minority	Female	Minority
2011	15.6%	4.7	27.7	8.3
2012	15.3	4.8	27.3	8.4
2013	16.5	5.4	27.6	9.1
2014	17.1	5.6	28.2	8.9
2015	17.4	5.6	28.8	9.4
2016	18.1	5.8	29.4	9.9
2017	18.7	6.1	30.7	10.4

18. Nat'l Ass'n for Law Placement, *Representation of Women and Minorities Among Equity Partners Slowly Increasing*, NAT'L ASS'N FOR LAW PLACEMENT (Apr. 2018), <https://www.nalp.org/0418research>. Figures are based on statistics provided by firms in the NALP DIRECTORY OF LEGAL EMPLOYERS.

Table 19 - Representation of LGBT Lawyers in Law Firms¹⁹

	Partners	Associates
2009	1.4%	2.3
2010	1.5	2.4
2011	1.4	2.4
2012	1.6	2.7
2013	1.7	2.8
2014	1.8	2.9
2015	1.8	3.1
2016	1.9	3.2
2017	2.0	3.5
2018	2.1	3.8

19. Nat'l Ass'n for Law Placement, *Although Most Firms Collect GLBT Lawyer Information, Overall Numbers Remain Low*, NAT'L ASS'N FOR LAW PLACEMENT (Dec. 2009), <http://www.nalp.org/dec09glbt> (for 2009 figures); Nat'l Ass'n for Law Placement, *Most Firms Collect LGBT Lawyer Information—LGBT Representation Up Slightly*, NAT'L ASS'N FOR LAW PLACEMENT (Dec. 2010), <http://www.nalp.org/dec10lgbt> (for 2010 figures); Nat'l Ass'n for Law Placement, *Most Firms Collect LGBT Lawyer Information, LGBT Representation Steady*, NAT'L ASS'N FOR LAW PLACEMENT (Dec. 2011), http://www.nalp.org/lgbt_lawyers_dec2011 (for 2011 figures); Nat'l Ass'n for Law Placement, *LGBT Representation Up in 2012*, NAT'L ASS'N FOR LAW PLACEMENT (Jan. 2013), http://www.nalp.org/lgbt_representation_up_in_2012 (for 2012 figures); Nat'l Ass'n for Law Placement, *LGBT Representation Up Again in 2013*, NAT'L ASS'N FOR LAW PLACEMENT (Jan. 2014), <http://www.nalp.org/jan14research> (for 2013 figures); Nat'l Ass'n for Law Placement, *LGBT Representation Among Lawyers in 2014*, NAT'L ASS'N FOR LAW PLACEMENT (Mar. 2015), <http://www.nalp.org/0315research> (for 2014 figures); Nat'l Ass'n for Law Placement, *LGBT Representation Among Lawyers in 2015*, NAT'L ASS'N FOR LAW PLACEMENT (Dec. 2015), <http://www.nalp.org/1215research> (for 2015 figures); Nat'l Ass'n for Law Placement, *LGBT Representation Among Lawyers in 2017*, NAT'L ASS'N FOR LAW PLACEMENT (Jan. 2018), <https://www.nalp.org/0118research> (for 2016 and 2017 figures); NAT'L ASS'N FOR LAW PLACEMENT, 2018 DIVERSITY REPORT, *supra* note 15, at 18 (for 2018 figures). Figures are based on statistics provided by firms in the NALP DIRECTORY OF LEGAL EMPLOYERS.

Table 20 – Representation of Lawyers with Disabilities in Law Firms²⁰

	Partners	Associates
2009	0.3%	0.2
2010	0.2	0.2
2011	0.2	0.2
2012	0.3	0.2
2013	0.3	0.3
2014	0.3	0.3
2015	0.4	0.3
2016	0.4	0.3
2017	0.4	0.6
2018	0.5	0.5

20. Nat'l Ass'n for Law Placement, *Reported Number of Lawyers with Disabilities Remains Small*, NAT'L ASS'N FOR LAW PLACEMENT (Dec. 2009), <http://nalp.org/dec09disabled> (for 2009 figures); Press Release, Nat'l Ass'n for Law Placement, *Law Firm Diversity Among Associates Erodes in 2010*, NAT'L ASS'N FOR LAW PLACEMENT (Nov. 4, 2010), <http://www.nalp.org/2010lawfirmdiversity?s=disabilities> (for 2010 figures); Press Release, Nat'l Ass'n for Law Placement, *Law Firm Diversity Wobbles: Minority Numbers Bounce Back While Women Associates Extend Two-Year Decline*, NAT'L ASS'N FOR LAW PLACEMENT (Nov. 3, 2011), http://www.nalp.org/2011_law_firm_diversity?s=disabilities (for 2011 figures); Press Release, Nat'l Ass'n for Law Placement, *Representation of Women Among Associates Continues to Fall, Even as Minority Associates Make Gains*, NAT'L ASS'N FOR LAW PLACEMENT (Dec. 13, 2012), <http://www.nalp.org/2012lawfirmdiversity?s=disabilities> (for 2012 figures); Press Release, Nat'l Ass'n for Law Placement, *Representation of Women Associates Falls for Fourth Straight Year as Minority Associates Continue to Make Gains - Women and Minority Partners Continue to Make Small Gains*, NAT'L ASS'N FOR LAW PLACEMENT (Dec. 11, 2013), http://www.nalp.org/lawfirmdiversity_2013 (for 2013 figures); Press Release, Nat'l Ass'n for Law Placement, *Diversity Numbers at Law Firms Eke Out Small Gains - Numbers for Women Associates Edge Up After Four Years of Decline*, NAT'L ASS'N FOR LAW PLACEMENT (Feb. 17, 2015), http://www.nalp.org/lawfirmdiversity_feb2015 (for 2014 figures); Nat'l Ass'n for Law Placement, *NALP Diversity Infographic – Disabilities*, NAT'L ASS'N FOR LAW PLACEMENT, (June 2016), <http://www.nalp.org/uploads/Membership/DiversityInfographic-Disabilities.pdf> (for 2015 figures); NAT'L ASS'N FOR LAW PLACEMENT, 2016 REPORT ON DIVERSITY IN U.S. LAW FIRMS 16 (Jan. 2017), <https://www.nalp.org/uploads/Membership/2016NALPReportonDiversityinUSLawFirms.pdf> (for 2016 figures); NAT'L ASS'N FOR LAW PLACEMENT, 2017 REPORT ON DIVERSITY IN U.S. LAW FIRMS 18 (Dec. 2017), <https://www.nalp.org/uploads/2017NALPReportonDiversityinUSLawFirms.pdf> (for 2017 figures); NAT'L ASS'N FOR LAW PLACEMENT, 2018 DIVERSITY REPORT, *supra* note 15, at 18 (for 2018 figures). Figures are based on statistics provided by firms in the NALP DIRECTORY OF LEGAL EMPLOYERS.



In general, however, the percentage of graduates with disabilities who start off in private practice has declined in recent years, whereas the percentage who start off in business or public interest has increased.

Table 21 – Partners by Gender, Minority Status, Firm Size, and City (2018)²¹

	Partners			
	Total	Female	Minority	Minority F.
Nationwide	47,625	23.4%	9.1%	3.2%
<100 lawyer firms	2,759	22.2	7.9	3.0
101-250 lawyer firms	8,497	23.2	6.6	2.4
251-500 lawyer firms	9,577	24.1	8.4	3.1
501-700 lawyer firms	5,779	22.7	8.7	2.9
701+ lawyer firms	21,013	23.5	10.8	3.7
Atlanta	1,051	22.0	8.0	2.7
Austin	301	25.6	12.0	4.3
Boston	1,563	24.3	4.5	1.7
Charlotte	430	16.1	4.7	1.4
Chicago	3,260	22.9	7.9	2.7
Cleveland	405	18.5	3.0	0.7
Columbus	378	24.1	6.9	2.9
Dallas	985	20.3	9.8	3.7
Denver	511	27.6	6.7	2.2
Detroit area	550	25.8	6.2	2.6
Houston	1,129	18.0	12.1	3.9
Indianapolis	335	24.5	3.0	1.2
Kansas City	493	24.5	3.9	1.2
Los Angeles	1,832	24.5	16.7	6.3
Miami	384	25.8	37.8	11.7
Milwaukee	631	25.0	4.0	1.9
Minneapolis	1,127	29.2	4.1	1.9
New York City	6,254	20.4	10.9	3.3
Newark area	426	19.5	5.6	1.9
Orange County	510	18.0	12.9	4.1
Philadelphia	630	19.8	5.2	1.9
Phoenix	524	22.3	6.9	1.9
Pittsburgh	325	21.2	4.3	1.5
Portland, OR	448	27.0	6.3	2.7
San Diego	277	21.7	13.4	4.3
San Francisco	1,311	28.0	15.5	5.3
San Jose area	709	23.0	19.2	6.4
Seattle area	831	28.8	10.1	3.9
St. Louis	774	24.8	5.4	1.4
Washington DC	4,558	23.6	10.1	3.9

21. NAT'L ASS'N FOR LAW PLACEMENT, 2018 DIVERSITY REPORT, *supra* note 15, at 10-11. Some city information includes one or more offices in adjacent suburbs. *Id.* at 11.

Table 22 – Partners by Race/Ethnicity, Gender, Firm Size, and City (2018)²²

	Af Am.		Hisp.		As Am.	
	Total	Female	Total	Female	Total	Female
Nationwide	1.8%	0.7	2.5	0.8	3.6	1.4
<100 lawyer firms	1.3	0.4	1.5	0.6	3.7	1.6
101-250 lawyer firms	1.3	0.5	1.8	0.6	2.7	1.1
251-500 lawyer firms	1.8	0.8	2.6	0.8	2.9	1.2
501-700 lawyer firms	1.9	0.6	2.3	0.7	3.3	1.1
701+ lawyer firms	2.1	0.8	3.0	0.9	4.4	1.7
Atlanta	3.6	1.1	0.9	0.4	2.4	0.8
Austin	3.0	1.3	6.6	2.7	1.7	0.3
Boston	0.9	0.3	1.2	0.3	2.0	1.0
Charlotte	2.3	1.2	0.9	0.0	0.9	0.2
Chicago	1.8	0.6	1.8	0.5	3.7	1.3
Cleveland	1.2	0.5	0.3	0.0	1.2	0.3
Columbus	2.9	1.1	0.5	0.0	1.9	1.3
Dallas	1.7	0.9	3.5	1.1	2.3	0.7
Denver	0.6	0.0	2.7	0.4	1.6	0.4
Detroit area	3.1	1.8	0.9	0.0	1.3	0.6
Houston	2.8	1.2	4.8	1.1	3.9	1.5
Indianapolis	0.9	0.0	0.6	0.3	1.2	0.6
Kansas City	2.0	0.2	0.6	0.2	0.8	0.4
Los Angeles	2.0	0.8	4.2	1.4	8.7	3.7
Miami	2.9	1.3	32.8	9.1	1.3	1.0
Milwaukee	0.6	0.2	2.2	1.1	0.8	0.5
Minneapolis	0.6	0.4	0.8	0.0	1.2	0.9
New York City	1.6	0.5	2.6	0.8	4.8	1.7
Newark area	1.2	0.5	1.6	0.5	2.1	0.7
Orange County	0.8	0.2	3.7	1.0	7.1	2.8
Philadelphia	1.4	0.6	0.5	0.0	2.2	0.8
Phoenix	0.0	0.0	2.7	1.0	1.7	0.8
Pittsburgh	0.9	0.3	1.2	0.6	1.9	0.6
Portland, OR	1.3	0.7	2.2	0.7	1.3	0.9
San Diego	0.7	0.4	4.7	1.1	5.8	2.5
San Francisco	1.8	0.5	2.4	1.0	9.6	3.5
San Jose area	1.1	0.4	3.0	1.0	13.5	4.5
Seattle area	1.6	0.5	1.4	0.5	5.7	2.5
St. Louis	2.5	0.8	1.3	0.5	0.9	0.0
Washington DC	2.8	1.3	2.2	0.7	4.3	1.5

22. *Id.* at 14-15. The few Native American, Native Hawaiian, and multi-racial lawyers reported are included in the overall minority percentages but are not reported separately. Some city information includes one or more offices in adjacent suburbs. *Id.* at 15.

Table 23 - Female and Minority Representation Among Corporate Counsel²³

	Female	Af Am.	Hisp.	As Am.	Na Am.	Mixed/Other	Minority
2001	31.5%						12.5
2004	37.0	2.0	3.0	3.0	0.0	2.0	10.0
2006	39.0	3.0	3.0	3.0	0.0	2.0	11.0
2011	41.0	4.0	3.0	5.0	<1.0	3.0	15.0
2015	49.5	4.0	5.0	7.0			

23. ASS'N OF CORPORATE COUNSEL, ACC 2001 CENSUS OF U.S. IN-HOUSE COUNSEL (2001) (for 2001 figures); ASS'N OF CORPORATE COUNSEL, 2011 CENSUS REPORT 72 (2012) (for 2004, 2006, and 2011 figures); ASS'N OF CORPORATE COUNSEL, 2015 ACC GLOBAL CENSUS: A PROFILE OF IN-HOUSE COUNSEL 26 (2015), http://www.acc.com/_cs_upload/v1/public/Surveys/1411922_6.pdf (for 2015 figures). Figures for 2015 are based on survey of 5,012 in-house counsel from 73 countries. *Id.* at 1. Figures include lawyers at all levels of in-house work, from entry level to chief legal officer. Race and ethnic data are based on U.S. respondents only. *Id.* at 26.

Table 24 - Federal Government Lawyers by Race/Ethnicity and Gender²⁴

2002	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Law Clerks	26 (9.4)	21 (7.6)	28 (10.1)	2 (0.7)	77 (27.9)
Male	12 (4.3)	6 (2.2)	9 (3.3)	1 (0.4)	28 (10.1)
Female	14 (5.1)	15 (5.4)	19 (6.9)	1 (0.4)	49 (17.8)
General Attorneys	2,461 (8.7)	1,141 (4.0)	1,013 (3.6)	144 (0.5)	4,759 (16.9)
Male	977 (3.5)	593 (2.1)	443 (1.6)	74 (0.3)	2,087 (7.4)
Female	1,484 (5.3)	548 (1.9)	570 (2.0)	70 (0.2)	2,672 (9.5)
Admin. Law Judges	54 (4.1)	51 (3.8)	11 (0.8)	16 (1.2)	132 (9.9)
Male	39 (2.9)	45 (3.4)	8 (0.6)	12 (0.9)	104 (7.8)
Female	15 (1.1)	6 (0.5)	3 (0.2)	4 (0.3)	28 (2.1)
2006	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Law Clerks	29 (9.4)	11 (3.6)	24 (7.8)	4 (1.3)	69 (22.5)
Male	7 (2.3)	8 (2.6)	10 (3.3)	2 (0.7)	28 (9.1)
Female	22 (7.2)	3 (1.0)	14 (4.6)	2 (0.7)	41 (13.4)
General Attorneys	2,570 (8.7)	1,218 (4.1)	1,291 (4.4)	145 (0.5)	5,237 (17.6)
Male	935 (3.2)	624 (2.1)	548 (1.8)	66 (0.2)	2,179 (7.3)
Female	1,635 (5.5)	594 (2.0)	743 (2.5)	79 (0.3)	3,058 (10.3)
Admin. Law Judges	67 (4.8)	54 (3.9)	8 (0.6)	17 (1.2)	147 (10.5)
Male	44 (3.1)	49 (3.5)	6 (0.4)	11 (0.8)	111 (7.9)
Female	23 (1.6)	5 (0.4)	2 (0.1)	6 (0.4)	36 (2.6)
2010	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	Minority (%)
Law Clerks	33 (9.0)	13 (3.5)	32 (8.7)	1 (0.3)	79 (21.5)
Male	9 (2.4)	3 (0.8)	8 (2.2)	0 (0.0)	20 (5.4)
Female	24 (6.5)	10 (2.7)	24 (6.5)	1 (0.3)	59 (16.0)
General Attorneys	3,026 (8.7)	1,391 (4.0)	1,888 (5.4)	202 (0.6)	6,507 (18.7)
Male	1,068 (3.1)	701 (2.0)	757 (2.1)	93 (0.3)	2,619 (7.5)
Female	1,958 (5.6)	690 (2.0)	1,131 (3.3)	109 (0.3)	3,888 (11.2)
Admin. Law Judges	100 (6.1)	72 (4.4)	23 (1.4)	19 (1.2)	214 (13.0)
Male	50 (3.0)	55 (3.3)	10 (.6)	13 (0.8)	128 (7.8)
Female	50 (3.0)	17 (1.0)	13 (0.8)	6 (0.4)	86 (5.2)

24. Kay Coles James, U.S. Office of Pers. Mgmt., *Demographic Profile of the Federal Workforce as of September 2002*, U.S. OFFICE OF PERS. MGMT. (2003), <http://www.opm.gov/feddata/demograp/02demo.pdf> (for 2002 figures); U.S. Office of Pers. Mgmt., *Demographic Profile of the Federal Workforce as of September 2006: Table 3*, U.S. OFFICE OF PERS. MGMT. (2007), <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/demographics/2006-demographic-profile/> (scroll down to Table 3 and click “Men and Women Combined,” “Men Only,” and “Women Only”) (for 2006 figures); U.S. Office of Pers. Mgmt., *Demographic Profile of the Federal Workforce as of September 2010: Table 3*, U.S. OFFICE OF PERS. MGMT. (2011), <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/demographics/2010-demographic-profile/> (scroll down to Table 3 and click “Men and Women Combined,” “Men Only,” and “Women Only”) (for 2010 figures). Figures for Asian Americans include “Pacific Islanders.”

Table 25 - U.S. Judges by Gender and Race/Ethnicity²⁵

	Judges	Female	Af Am.	Hisp.	As Am.	Minority
2003	59,000	54.1%	15.5	4.4	0.5	20.4
2004	64,000	56.7	12.8	7.4	2.2	22.4
2005	70,000	41.2	7.0	5.9	4.6	17.5
2006	66,000	35.5	11.3	2.0	1.9	15.2
2007	68,000	43.3	9.1	8.1	0.1	17.3
2008	54,000	43.6	6.8	3.2	0.3	10.3
2009	73,000	44.2	4.8	7.0	3.2	15.0
2010	71,000	36.4	12.5	7.8	3.9	24.2
2011	67,000	44.4	11.5	8.3	1.1	20.9
2012	67,000	39.0	12.8	4.5	0.7	18.0
2013	55,000	35.6	7.8	6.3	0.1	14.2
2014	53,000	51.7	10.9	4.8	3.2	18.9
2015	58,000	39.0	11.8	6.4	6.2	24.4
2016	59,000	34.2	11.0	3.5	1.2	15.7
2017	66,000	28.1	12.7	7.0	0.0	19.7

25. Dep't of Labor, Bureau of Labor Statistics, Labor Force Statistics from the Current Population Survey, Annual Average Data, *Table 11: Employed Persons by Detailed Occupation, Sex, Race, and Hispanic or Latino Ethnicity*, U.S. DEP'T OF LABOR, <http://www.bls.gov/cps/tables.htm> (follow links for individual years and scroll down to "Characteristics of the Employed," Table 11). Figures represent those reported for "judges, magistrates, and other judicial workers," available beginning in 2003. Figures for minorities are derived from aggregating the minority categories listed.

Table 26 - Article III Judicial Appointments by Gender and Race/Ethnicity²⁶

	Total	Female (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)
Reagan (1981-88)	383	32 (8.8)	7 (1.8)	14 (3.6)	2 (0.5)	0 (0.0)
Bush I (1989-92)	193	36 (18.7)	13 (6.7)	8 (4.1)	0 (0.0)	0 (0.0)
Clinton (1993-00)	378	111 (29.4)	62 (16.4)	25 (6.6)	5 (1.3)	1 (0.3)
Bush II (2001-08)	327	71 (21.8)	24 (7.3)	30 (9.1)	4 (1.2)	0 (0.0)
Obama (2009-16)	329	138 (42.0)	62 (18.8)	36 (10.9)	21 (6.4)	1 (0.3)
Trump (2017-18)	44	10 (22.7)	0 (0.0)	1 (2.3)	4 (1.2)	0 (0.0)
Trump (pending)	92	23 (25.0)	4 (4.3)	4 (4.3)	2 (2.2)	0 (0.0)

26. All. for Justice, *Judicial Selection Snapshot*, ALLIANCE FOR JUSTICE (2018) (for 1981–2018 data) (On file with the ILLP). Figures for Trump (Jan. 20. 2017–July 26, 2018) include all judges confirmed along with a separate row for pending nominees. Figures for Asian Americans do not include "Native Hawaiian or other Pacific Islanders." *Id.*

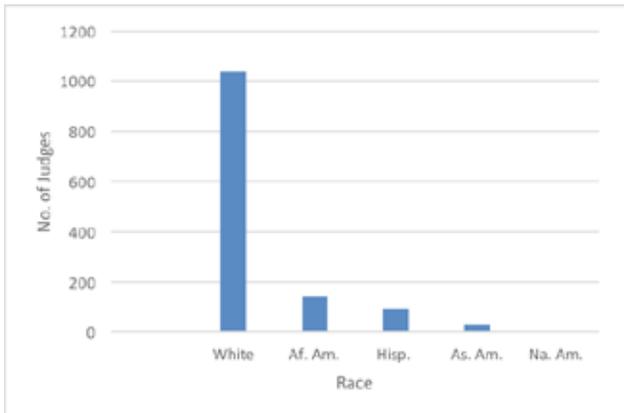
Table 27 - Article III Judicial Appointments by LGBT and Disability Status²⁷

	Total	LGBT (%)	Disabled (%)
Reagan (1981-88)	383	0 (0.0)	1 (0.3)
Bush I (1989-92)	193	0 (0.0)	1 (0.5)
Clinton (1993-00)	378	1 (0.4)	3 (0.8)
Bush II (2001-08)	327	0 (0.0)	2 (0.6)
Obama (2009-16)	329	11 (3.3)	0 (0.0)
Trump (2017-18)	39	0 (0.0)	0 (0.0)

27. *Id.* Figures for LGBT judges and judges with disabilities are not available for pending nominees. Even though the figures list the number of judges with disabilities seated by President Obama as 0, Supreme Court Justice Sonia Sotomayor, who was appointed by President Obama in 2009 and confirmed that same year, is a life-long diabetic who was diagnosed with type-1 diabetes at age seven. See Nina Totenberg, *Sotomayor Opens Up About Diabetes For Youth Group*, NPR, June 21, 2011, <https://www.npr.org/2011/06/21/137328180/sotomayor-opens-up-about-diabetes>. Justice Sotomayor, thus, seems to fall within the category of a judge with a disability. See *Questions & Answers About Diabetes in the Workplace and the Americans With Disabilities Act*, EEOC, accessed on Aug. 2, 2018, <https://www.eeoc.gov/laws/types/diabetes.cfm#fn9> (noting that “individuals who have diabetes should easily be found to have a disability within the meaning of the first part of the ADA’s definition of disability because they are substantially limited in the major life activity of endocrine function.”).

Table 28 - Article III Judges by Race/Ethnicity²⁸

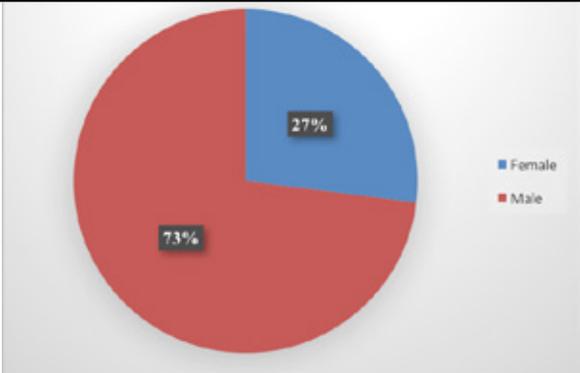
Race	No. of Judges
White	1,037
Af Am.	142
Hisp.	92
As Am.	29
Na Am.	2
Total	1,302



28. Minority Corp. Counsel Ass’n, *Tracking the Integration of the Federal Judiciary*, <https://www.mcca.com/resources/reports/federal-judiciary/> (last visited July 5, 2018). Figures are current up to October 18, 2017.

Table 29 - Article III Judges by Gender²⁹

Gender	% of Total
Female	27%
Male	73%



29. *Id.*

Table 30 - Law Faculty by Gender and Minority Status³⁰

Fall, 2013	Deans (%)	Tenured (%)	Tenure-Track (%)
Minority	42 (20.8)	907 (16.8)	460 (30.5)
Female	58 (28.7)	1,766 (32.7)	731 (48.4)

30. ABA Section of Legal Educ. & Admissions to the Bar, *Statistics: Ethnic/Gender Data: Longitudinal Charts, Law School Faculty & Staff by Ethnicity and Gender*, http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll down and click “Law School Faculty & Staff by Ethnicity and Gender”) [hereinafter *Law School Faculty Chart*] (for 2013 data). Figures are based on all full-time faculty listed in the AALS DIRECTORY OF LAW TEACHERS for whom race/ethnicity is known.

Table 31 – Law Faculty by Gender and Race/Ethnicity (2013)³¹

	Total (%)	Af Am. (%)	Hisp. (%)	As Am. (%)	Na Am. (%)	≥2 Races (%)
Deans	202 (100.0)	26 (12.9)	12 (5.9)	3 (1.5)	1 (0.5)	0 (0.0)
Male	144 (71.3)	15 (7.4)	7 (3.5)	3 (1.5)	0 (0.0)	0 (0.0)
Female	58 (28.7)	11 (5.4)	5 (2.5)	0 (0.0)	1 (0.5)	0 (0.0)
Tenured	5,398 (100.0)	464 (8.6)	222 (4.1)	181 (3.4)	28 (0.5)	12 (0.2)
Male	3,632 (67.3)	226 (4.2)	140 (2.6)	115 (2.1)	18 (0.3)	9 (0.2)
Female	1,766 (32.7)	238 (4.4)	82 (1.5)	66 (1.2)	10 (0.2)	3 (0.0)
Tenure-Track	1,509 (100.0)	200 (13.3)	97 (6.4)	129 (8.5)	15 (1.0)	19 (1.3)
Male	778 (51.6)	76 (5.0)	52 (3.4)	68 (4.5)	4 (0.3)	8 (0.5)
Female	731 (48.4)	124 (8.2)	45 (3.0)	61 (4.0)	11 (0.7)	11 (0.7)
Part-Time	8,361 (100.0)	337 (4.0)	293 (3.5)	214 (2.6)	22 (0.3)	17 (.2)
Male	5,667 (67.8)	173 (2.0)	190 (2.3)	119 (1.4)	12 (0.1)	11 (0.1)
Female	2,694 (32.2)	164 (2.0)	103 (1.2)	95 (1.1)	10 (0.1)	6 (0.1)

31. *Id.* Figures for Asian Americans do not include “Native Hawaiian or Pacific Islander.”

Signposts In The Road: The Lawyer's Ethical Obligation to Promote Diversity In the Legal Profession

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Has the time come for the ABA to amend its model rules to codify a lawyer's ethical obligation to promote equality and diversity in the profession?

I. INTRODUCTION

The legal profession has long espoused increasing diversity in the profession,¹ but making the case for taking affirmative steps to promote diversity has proven to be an enduring challenge.² A moral case has been made: "It's the right thing to do."³ A business case has been made: "Our clients and

1. In 2009, then-ABA President H. Thomas Wells, Jr., launched a comprehensive initiative to assess the "State of Diversity in the Legal Profession." The ABA conducted a qualitative survey, held four regional hearings with testimony from representatives of all sectors of the profession, held an invitational summit in June of that year with more than two-hundred participants, and conducted a summit follow-up program at that year's ABA Annual Meeting. A team of legal scholars prepared summary reports of each stage from this year-long process. They found that Caucasians constituted about seventy percent of the working population over the age of sixteen, and they represented eighty-nine percent of all lawyers and ninety percent of all judges. This led the Chair of the Presidential Commission on Diversity, Ellen F. Rosenblum, to conclude, "In the 21st century, the legal profession faces no greater challenge than the imperative to advance diversity throughout our ranks." ABA Presidential Diversity Initiative Comm. on Diversity, *Diversity in the Legal Profession: The Next Steps, Report and Recommendations* (2009–2010), https://www.americanbar.org/content/dam/aba/administrative/diversity/next_steps_2011.authcheckdam.pdf [hereinafter ABA Diversity].

2. Six years prior to the ABA's comprehensive initiative to assess the "State of Diversity in the Legal Profession," then-ABA President-Elect Dennis W. Archer acknowledged, "While there has been improvement in the numbers of [diverse] lawyers since the 1990s, they remain woefully underrepresented in the legal profession. Clearly, we have failed to promote diversity throughout our profession." Dennis W. Archer, *The Value of Diversity: What the Legal Profession Must Do To Stay Ahead of the Curve*, 12 WASH. U. J. L. & POL'Y 25, 27 (2003), https://openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1307&context=law_journal_law_policy. Yet, not much changed in those six years nor from 2009 to 2018.

3. ABA Diversity, *supra* note 1, at 4 ("It is incumbent upon each one of us to do something that will make a real difference.")

customers demand it.”⁴ There have even been arguments based upon political,⁵ leadership,⁶ and demographic considerations.⁷

The business case for diversity has been especially successful in encouraging efforts to advance diversity in large law firms.⁸ The business case is compelling because it bypasses differences of opinion about the value of promoting diversity, i.e., whether it is the right thing to do, by refocusing on the shared business imperative of meeting client demand.⁹ To the question, “Why should we promote diversity in our organization?”, the answer is, “Because our clients and customers want it and, if we don’t meet that demand, our competitors will.”¹⁰

There is, however, another consensus value that holds the same transformative power for advancing diversity in the profession as the business case for diversity. It is the ethical case for diversity. The historical role of lawyers in this nation demonstrates lawyers have a clear and compelling ethical duty to promote diversity in the legal profession.¹¹ It is time for codified rules of ethics to acknowledge this duty. The ABA should lead this change by amending its Model Rules of Professional Responsibility (Model Rules) to acknowledge that duty. Specifically, we propose the ABA amend its Model Rules by inserting a new rule 8.5 as follows:

As a learned member of society with an ethical obligation to promote the ideal of equality for all members of society, every lawyer has a professional duty to undertake affirmative steps to remedy *de facto* and *de jure* discrimination, eliminate bias, and promote equality, diversity and inclusion in the legal profession. Every lawyer should aspire to devote at least 20 hours per year to efforts to eliminating bias and promoting equality, diversity, and inclusion in the legal profession. Examples of such efforts include but are not limited to: adopting measures to promote the identification,

4. ABA Diversity, *supra* note 1, at 5 (“Business entities are rapidly responding to the needs of global customers, suppliers, and competitors by creating workforces from many different backgrounds, perspectives, skill sets, and tastes. Ever more frequently, clients expect and sometimes demand lawyers who are culturally and linguistically proficient.”)

5. ABA Diversity, *supra* note 1, at 5 (“Lawyers and judges have a unique responsibility for sustaining a political system with broad participation by all its citizens. A diverse bar and bench create greater trust in the mechanisms of government and the rule of law.”)

6. ABA Diversity, *supra* note 1, at 5 (“Individuals with law degrees often possess the communication and interpersonal skills and the social networks to rise into civic leadership positions, both in and out of politics.”)

7. ABA Diversity, *supra* note 1, at 5 (“Our country is becoming diverse along many dimensions and we expect that the profile of LGBT lawyers and lawyers with disabilities will increase more rapidly. With respect to the nation’s racial/ethnic populations, the Census Bureau projects that by 2042 the United States will be a ‘majority minority’ country.”)

8. Archer, *supra* note 2, at 27 (“In the 1980’s, after learning about what social scientists and demographers termed the ‘browning of America,’ corporations began embracing cultural diversity. When they heard that people of color would constitute a majority of the U.S. population by 2056, corporations developed vendor and employee affirmative action programs and changed the content of their advertising.”)

9. Archer, *supra* note 2, at 27 (“Corporations knew that their bottom-line would be affected if they did not reach out to the changing consumer demographic.”)

10. This sentiment is best epitomized by the fact that, in 1999, the Chief legal Officers of nearly five-hundred major corporations signed a document entitled “Diversity in The Workplace – A Statement of Principle,” which was intended to be a mandate for law firms to make immediate and sustained improvement in the area of diversity in the legal profession. In essence, signatories pledged to end or limit their relationships with law firms whose track records reflected a lack of meaningful interest in diversity. In 2004, then-Executive Vice President, General Counsel, and Chief Compliance and Risk Management Officer of General Mills Roderick “Rick” Palmore wrote “A Call to Action – Diversity in the Legal Profession” to serve as a renewed commitment to the 1999 mandate after noticing in the five years since “Diversity In The Workplace — A Statement of Principle” that “all objective assessments show that the collective efforts and gains of law firms in diversity have reached a disappointing plateau.” Rick Palmore, *A Call to Action – Diversity in the Legal Profession* (2004), <https://www.lclldnet.org/resources/2004-call-to-action/>.

11. Archer, *supra* note 2, at 28-29 (“Our profession requires diversity because lawyers not only speak for the legal rights of citizens, but also for the Constitution, the judicial system, and the rule of law—the regulations and problem-solving mechanisms that make our heterogeneous democracy possible. As representatives of the third branch of government, we are responsible for ensuring the checks and balances that our founding fathers deemed necessary for a just society.”)

hiring, and advancement of diverse lawyers and legal professionals; attending CLE and non-CLE programs concerning issues of discrimination, explicit and implicit bias, and diversity; and active participation in and financial support of organizations and associations dedicated to remedying bias and promoting equality, diversity and inclusion in the profession.

Why would such a change matter? Because recognizing a lawyer's ethical obligation requires and empowers lawyers to act even in the absence of a business case. It bridges the gap between the moral case for diversity and the business case for diversity. It says that, as lawyers, we have the obligation and the agency to pursue liberty and justice for all, within and outside our commercial practices. It compels us to use our skills, voice and station independent of our clients' interests. Requiring lawyers to act to promote diversity in the profession has the potential to be as impactful as making *pro bono* legal services an ethical responsibility. Codifying the long-established ethical obligation to promote equality gives us jurisdiction to address existing inequality.

II. THE FOUNDATIONS OF LEGAL ETHICS

In this day and age, the importance of ongoing formal education in legal ethics is undeniable.¹² Accordingly, most states with mandatory Continuing Legal Education (CLE) rules require ongoing education on legal ethics.¹³ Yet, lawyers attending CLE courses ordinarily cannot be assumed to have a common base of knowledge about the subject.¹⁴ In this vein, to understand the case for an ethical obligation to promote diversity in the legal profession, it is necessary to first understand what ethics are and, importantly, how they differ from morals.

[Ethics and morals] are often used interchangeably. Among lawyers and other regulated professionals, "ethics" is often taken to mean the positive rules governing conduct by those professionals by virtue of their profession being state-regulated. "Morals," on the other hand, cover what a lawyer should do, all things considered, or how the lawyer should live, including norms of conduct that relate to the relationship between a person and a deity.¹⁵

Thus, while both terms relate to "right" and "wrong" conduct, morals are subjectively held beliefs or a belief system. Ethics, by contrast, are externally imposed, binding and enforceable rules that govern conduct to achieve a shared belief as to what is right.

When it comes to diversity and lawyers' duties, the distinction between ethics and morals is critical. The Reverend Dr. Martin Luther King was a Baptist minister who attained national recognition during the mid-1950's as a symbolic leader of the civil rights movement in the United States. In one of his most memorable sermons entitled "On Being a Good Neighbor," Dr. King famously said, "Morality cannot be legislated, but behavior can be regulated. Judicial decrees may not change the heart, but they can restrain the heartless."¹⁶ As Dr. King recognized, an ethical call to action operates as an imperative in a way that a moral call does not.

12. Martin P. Moltz, *Viewpoint: Debate Over MCLE Continues: Mandatory CLE-A Better Idea Now than Ever Before*, 11 CBA REC. 44 (1997) ("When one objectively analyzes the number and variety of [disciplinary] findings yearly against individual practitioners, it becomes exceedingly clear that a yearly 'refresher' seminar on ethics is highly desirable. No matter our area or areas of practice, we all need to be acutely aware of the pitfalls prevalent in those areas of the profession.")

13. Jack W. Lawson, *Mandatory Continuing Legal Education and the Indiana Practicing Attorney*, 40 VAL. U. L. REV. 401, 403 (2006).

14. Bruce A. Green, *Teaching Lawyers Ethics*, 51 ST. LOUIS U. L. J. 1091, 1097 (2007).

15. Dennis J. Tuchler, *Teaching Legal Profession: Ethics Under the Model Rules*, 51 ST. LOUIS U. L. J. 1161 (2007).

16. MARTIN LUTHER KING JR., *STRENGTH TO LOVE* 29 (1963).



The concept of law as a system of rules (ethics) that regulate and constrain the affairs of individuals emerged from, and is inextricably linked to, the concept of Justice (morality).

The concept of law as a system of rules (ethics) that regulate and constrain the affairs of individuals emerged from, and is inextricably linked to, the concept of Justice (morality). Marcus Tullius Cicero was a Roman statesman, lawyer, scholar, and writer who is famous for his writings that attempted to uphold republican principles in the final civil wars that destroyed the Roman Republic. In one of these time-tested writings, entitled “*De Legibus*,” Cicero said:

It is agreed, of course, that laws were invented for the safety of citizens, the preservation of States, and the tranquility and happiness of human life, and that those who first put statutes of this kind in force convinced their people that it was their intention to write down and put into effect such rules as, once accepted and adopted, would make possible for them an honourable and happy life; and when such rules were drawn up and put in force, it is clear that men called them “laws.” From this point of view, it can be readily understood that those who formulated wicked and unjust statutes for nations, thereby breaking their promises and agreements put into effect anything but “laws.” It may thus be clear that in the very definition of the term “law” there inheres the idea and principle of choosing what is just and true.¹⁷

We must then ask ourselves, “And what is our conception of the ‘just and true?’” For Americans, it is defined in our founding documents: the Declaration of Independence, the Constitution and the Bill of Rights. The Preamble to the Constitution, for example, proclaims:

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The elevation of the rule of law finds its ultimate expression in Thomas Paine’s “Common Sense.”¹⁸ Thomas Paine was an English-born American political activist, philosopher, political theorist, revolutionary, and one of the Founding Fathers of the United States. Paine wrote “Common Sense” in 1775 and 1776 to advocate independence from Great Britain and to encourage common people in the Colonies to fight for egalitarian government. In support of these efforts, Paine exclaimed:

But where, says some, is the King of America? I’ll tell you. Friend, he reigns above,

17. SARA ROBBINS, *LAW: A TREASURY OF ART AND LITERATURE* 52 (1990).

18. Thomas Paine, *The Writings of Thomas Paine*, 99 (1776), http://calhum.org/files/uploads/program_related/TD-Thomas-Paine-Common-Sense.pdf.



It fell to the legal profession to make real the rights conferred in our founding documents.

and doth not make havoc of mankind like the Royal Brute of Britain. Yet that we may not appear to be defective even in earthly honors, let a day be solemnly set apart for proclaiming the charter; let it be brought forth placed on the divine law, the word of God; let a crown be placed thereon, by which the world may know, *that so far we approve of monarchy, that in America THE LAW IS KING. For as in absolute governments the King is law, so in free countries the law ought to be King; and there ought to be no other.* But lest any ill use should afterwards arise, let the crown at the conclusion of the ceremony, be demolished, and scattered among the people whose right it is.¹⁹

If, as Paine writes, in America law is king, then lawyers by virtue of training and social status, are its knights:

The original account of the American Lawyer's role was that of America's governing class. The core of this approach was that lawyers—in contrast to business people—are above self-interest, and accordingly, are uniquely able to discern and pursue the common good. As America's governing class, lawyers were obligated to manage society in the interest of promoting the rule of law.²⁰

It is important to remember that at the time of the Nation's founding, the idea of a representative government based on the consent of the governed was, with a few insignificant exceptions, virtually unprecedented.²¹ Thus, it fell to the legal profession to make real the rights conferred in our founding documents. Lawyers and the judiciary debated and ultimately defined and enforced these rights. *Marbury v. Madison*,²² which established the doctrine of Judicial Review, legitimized and endorsed the legal profession's right and obligation to enforce our social contract. The Supreme Court has continued to perform this mission over the entire course of our Nation's existence, through cases such as *Gideon v. Wainwright*²³ (Sixth Amendment right to counsel), *Brown v. Board of Education*²⁴ (declaring separate but equal unconstitutional), *Roe v. Wade*²⁵ (woman's right to privacy) and, most recently, *Obergefell v. Hodges*²⁶ (equal protection for same-sex marriage). In each of these cases, the Supreme Court enforced fundamental protections enshrined in the Constitution, sometimes even before widespread public acceptance.²⁷

19. See *id.* (emphasis added).

20. Russell Pearce, *The Lawyer and Public Service*, 9 AM. U.J. Gender Soc. PoL'y & L. 171 (2001) [hereinafter Pearce, *The Lawyer and Public Service*]. This concept is echoed in Alexis De Tocqueville's description of lawyers as the American aristocracy. See *id.* at 172 (citing Alexis De Tocqueville, *Democracy in America*, 266-270 (1969)). De Tocqueville's writings reflected the republican understanding of lawyers as "providing the enlightened political leadership that protected 'life, liberty, and property....'" *Id.*

21. See, e.g., Joseph Ellis, *Founding Brothers: The Revolutionary Generation* 6 (2000).

22. *Marbury v. Madison*, 5 U.S. 137 (1803).

23. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

24. *Brown v. Bd. of Educ. of Topeka*, 347 U.S. 483 (1954).

25. *Roe v. Wade*, 410 U.S. 113 (1973).

26. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

27. To be clear, at the time of the Nation's founding, the realization of our founding ideals was not preordained. Public acceptance of the legal profession's authority to translate our founding and constitutional principles into a binding set

III. THE EMERGENCE OF CODIFIED ETHICAL DUTIES.

While the first role of lawyers in society was selfless pursuit of the common good,²⁸ the second role became advocacy on behalf of individual clients.²⁹ It was in this phase, as discussed below, that Rules of Professional Responsibility emerged to regulate the inherent tension between the interests of society and the interests of individuals.

The emergence of codified ethical rules followed the emergence of lawyers representing private clients. Because lawyers were previously considered an exalted class obligated to serve the social good, the notion of representing private citizens for pecuniary gain was frowned upon. As private, commercial practice on behalf of clients became more common, there arose a corresponding need for rules to regulate the competing interests and obligations of the lawyer *viz-a-viz* his client, opposing counsel, the court, and the public.

The history of codified legal ethics standards dates back to 1836 when David Hoffman, considered the grandfather of American legal ethics,³⁰ first published “Fifty Resolutions in Regard to Professional Department.”³¹ Hoffman’s Resolutions proposed to balance the tension between lawyer as servant for the common good and lawyer as private advocate. In doing so, however, Hoffman’s rules illustrate the tensions inherent in the then prevailing view that a lawyer’s duty to the common good transcended his duty to his client.

Hoffman’s Rule 15, for example, provided guidance as to how a lawyer should balance his duty to public service and his duty to a client accused of murder:

When employed to defend those charged with crimes of the deepest dye, and the evidence against them, whether legal or moral, be such as to leave no just doubt of their guilt, I shall not hold myself privileged, much less obliged, to use my endeavors to arrest or to impede the course of justice, by special resorts to ingenuity, to the artifices of eloquence, to appeals to the morbid and fleeting sympathies of weak juries, or of temporizing courts, to my own personal weight of character—nor finally, to any of the overweening influences I may possess from popular manners, eminent talents, exalted learning, etc. Persons of atrocious character, who have violated the laws of God and man, are entitled to no such special exertions from any member of our pure and honorable profession; and, indeed, to no intervention beyond securing to them a fair and dispassionate investigation of the facts of their cause, and the due application of the law. *All that goes beyond this, either in manner or substance, is unprofessional, and proceeds, either from a mistaken view of the relation of client and counsel, or from some unworthy*

of external rules was necessary but by no means assured. Through public consent to legally binding judicial pronouncements, the general framework established in the Constitution was transformed into an externally imposed set of rules that guide and constrain the citizenry’s behavior. Although casually the Supreme Court is often described as establishing the law of the land, the reality is the Court’s pronouncements carry no more force than the other two branches of government and the lower courts accord them. That the Court’s pronouncements are overwhelmingly obeyed even when politically unpopular, demonstrates the force of normative pronouncements, such as ethical precepts.

28. See Pearce, *The Lawyer and Public Service*, at 171 (“The original account of the American lawyer’s role was that of America’s governing class. The core of this approach was that lawyers—in contrast to business people—are above self-interest, and accordingly, they are uniquely able to discern and pursue the common good.”) (citing Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professionalism Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U. L. Rev. 1229, 1241 (1995)).

29. See *id.* at 172. However, this does not mean that governing class lawyers were not zealous advocates for their clients. Rather, their zealous advocacy occurred within the bounds of governing class obligations. *Id.* (citing Russell G. Pearce, *Rediscovering the Republican Origins of the Legal Ethics Codes*, 6 GEO. J. LEGAL ETHICS 241 (1992)).

30. Thomas L. Shaffer, *Inaugural Howard Lichtenstein Lecture on Legal Ethics: Lawyer Professionalism as Moral Argument*, 26 Gonz. L. Rev. 393, 396 n.9 (1991).

31. David Hoffman, *Fifty Resolutions in Regard to Professional Department* (1836), <https://lonang.com/commentaries/curriculum/professional-department/> (last visited Sept. 6, 2018).

*and selfish motive which sets a higher value on professional display and success than on truth and justice, and the substantial interests of the community.*³²

In other words, if the lawyer adjudged the accused to have committed a murder or other heinous offense, by legal or *moral* standards, his duty to the rule of law precluded him from using the full range of his knowledge, skill or reputation to obtain his client's acquittal. But, ethical standards evolve with society.³³ Today, the pendulum has swung fully in the opposite direction; the notion that a lawyer might give his criminal client a less than zealous defense due to his belief in his client's guilt would be considered unethical.

The ABA adopted Canons of Professional Ethics in 1908.³⁴ These were subsequently revised to become the ABA Model Code of Professional Responsibility, which were further revised in 1983 to become the Model Rules of Professional Conduct.³⁵ The ABA Rules, in their various incarnations, are an authoritative source of ethical obligations for the legal profession, as are their state counterparts.³⁶

Neither the Model Rules nor individual state rules are a comprehensive compendium of a lawyer's ethical obligations, however. Rather they provide, with a few exceptions, rules of decision for lawyers representing individual clients. Codified rules emerged as the profession wrestled with the tension between lawyers as individuals who put serving the public good above self-interest and the emergence of lawyers representing clients for remuneration.³⁷ Viewed from the vantage point of the legal profession's obligation to advance the common good, rules of professional responsibility are revealed to be rules for allocating duties within that overall responsibility. Lawyers, whether prosecutor or defense attorney, advocate zealously (within the bounds of the Rules); judges decide impartially (subject to Rules of Judicial Conduct); and, collectively, the profession fulfills its duty to society.

The prominent legal ethicist Thomas Haffernce observed, "Somewhere between Hoffman's day (he died in 1854) and our own, professionalism stopped meaning that lawyers are responsible for justice."³⁸ This epitaph, however understandable, reflects the error of focusing narrowly on ethics as rules adopted to govern the private practice and disregarding the broader, preexisting yet equally binding ethical responsibility to serve the public good. Codified rules of professional conduct have not displaced pre-existing ethical obligations. Rather, they focus narrowly on representing individual clients in commercial practice. It is the undue focus on codified Rules to the exclusion of common law legal ethics that leads to frustration with, and arguably even disdain for, the profession and for lawyers. For example, another legal ethicist argued, "[T]he adversary system is justified only by the very weakest of reasons, namely, that it is not demonstrably worse than other systems."³⁹ This cynical view fails to recognize the allocative character of the adversary system by which the interests of society and the individual are simultaneously advanced and balanced. The lawyer representing

32. *See id.* (emphasis added).

33. The next milestone in the development of codified ethical rules occurred in 1854 when a series of lectures given by Judge George Sharswood, Chief Justice of the Pennsylvania Supreme court, were combined and published as Professional Ethics. These works in turn became the basis for the first formal code of ethics for lawyers adopted in the United States, the Alabama Code of Ethics, in 1887. *See* ABA, *Model Rules of Professional Conduct: Preface*, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preface.html (last visited Spt. 6, 2018) [hereinafter ABA, *Model Rules*].

34. *See id.*

35. *See id.*

36. *See id.* Puerto Rico is the only U.S. jurisdiction besides California to not adopt the ABA Model Rules. *See* ABA, *Jurisdictions That Have Adopted the ABA Model Rules of Professional Conduct* (previously the Model Code of Professional Responsibility), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules.html (last visited Sept. 6, 2018).

37. *See* Pearce, *The Lawyer and Public Service*, at 174 ("At times, however, the governing class lawyer's higher duty to the law resulted in conflict with cause lawyers and activists.").

38. Shaffer, *supra* note 30, at 402-403.

39. David Luban, *Lawyers And Justice: An Ethical Study* xxiii (1988).



Thus, considered in their historical context, codified ethical rules are revealed to be neither the source nor the limit of the profession's ethical obligations.

an individual client is not obligated to balance his client's interests against the numerous competing interests she has been retained to fight because she is not alone in the fight. She acts in community with the profession, which collectively bears the burden of ensuring that each interest has an equally zealous advocate. But of course, if the profession does not zealously discharge its duty to ensure that all voices are represented, then it fails to honor its heritage or perform its role in society and as importantly, it will deserve the disdain society casts upon it.

Thus, considered in their historical context, codified ethical rules are revealed to be neither the source nor the limit of the profession's ethical obligations. Rather, they serve to regulate the roles and responsibilities of individual lawyers representing competing interests so that the profession as a whole can achieve its mission of advancing and defending our nation's founding compact. As New York's Rules of Professional Conduct explicitly acknowledge, "The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules."⁴⁰

IV. CODIFIED RULES EVOLVE TO REFLECT COMMON LAW ETHICAL RESPONSIBILITIES

Pearce argues, if the legal profession's first role in society was to serve the public good and the second was commercial, private practice, then recognition of pro bono lawyers represents the third phase of lawyers' role in society.⁴¹ The Canons originally made no mention of pro bono service. Their successor Model Code of Professional Responsibility, however, encouraged lawyers to donate their services on behalf of those unable to pay:

Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. Thus it has been necessary for the profession to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs have been developed, and others will be developed, by the profession.⁴²

40. New York Rules of Professional Conduct: Preamble, at ¶ 8.

41. See Pearce, *The Lawyer and Public Service*, at 175 ("The third approach of lawyers to public service is unpaid pro bono services, often referred to by the short hand 'pro bono.' It refers to lawyers who or no fee donate a limited amount of their work to public service.").

42. Model Code of Professional Conduct: EC2-25, <https://www.law.cornell.edu/ethics/aba/mcpr/MCPR.HTM> (foot-

The Model Code of Conduct was replaced by the Model Rules of Professional Conduct (the “Model Rules”) in 1983.⁴³ Model Rule 6.1, Voluntary Pro Bono Publico Services provided:

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.⁴⁴

Rule 6.1 was amended in 1993 to recognize a lawyers’ ethical duty to provide *pro bono* services and to include an aspirational call to render 50 hours annually of *pro bono* legal services:

Rule 6.1 (Voluntary Pro Bono Publico Service): Every lawyer has a professional responsibility to provide legal services to those unable to pay. *A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.* In fulfilling this responsibility, the lawyer should: provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to: (1) persons of limited means or (2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and provide any additional services through: (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization’s economic resources or would be otherwise inappropriate; (2) delivery of legal services at a substantially reduced fee to persons of limited means; or (3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.⁴⁵

Thus, since 1908 the ABA’s rules of professional responsibility have evolved from no recognition of a professional obligation to provide *pro bono* legal services, to general encouragement, to an established professional responsibility and a 50-hour aspirational standard.⁴⁶ In recognizing that a lawyers’ ethical obligations extend beyond the commercial practice of law, the ABA and state rules of professional conduct are evolving toward closing the gap between common law and codified rules of ethics.

notes omitted) (last visited Sept. 6, 2018).

43. See ABA, *Model Rules* (“In 1977, the American Bar Association created the Commission on Evaluation of Professional Standards to undertake a comprehensive rethinking of the ethical premises and problems of the legal profession. Upon evaluating the Model Code and determining that amendment of the Code would not achieve a comprehensive statement of the law governing the legal profession, the Commission commenced a six-year study and drafting process that produced the Model Rules of Professional Conduct. The Model Rules were adopted by the House of Delegates of the American Bar Association on August 2, 1983. At the time this edition went to press, all but eight of the jurisdictions had adopted new professional standards based on these Model Rules.”).

44. See ABA CPR Policy Implementation Comm., *Variations of the ABA Model Rules of Professional Conduct Rule 6.1: Voluntary Pro Bono Service*, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_6_1.authcheckdam.pdf.

45. Model Rule 6.1 (emphasis added).

46. Although aspirational, the fifty-hour standard has affected the profession. Numerous law firms have adopted the goal of having each lawyer perform fifty-hours of *pro bono* services.



Numerous “signposts in the road”⁴⁷ indicate the time has come for bar associations to recognize and require an ethical duty to promote diversity in the profession.

V. THE ETHICAL CASE FOR DIVERSITY: IT’S TIME

In the case of diversity and equality, if serving the public good was the first stage of ethical responsibility, serving clients the second, and *pro bono* the third, then promoting the ideal of equality is the fourth. Numerous “signposts in the road”⁴⁷ indicate the time has come for bar associations to recognize and require an ethical duty to promote diversity in the profession and in society at large, in discharge of the profession’s common law ethical duty to advance and protect our Nation’s founding values.

Signpost 1: State Bar Efforts to Attack Discrimination and Promote Diversity

State bar associations for years have developed their own initiatives, rules and strategies for dealing with sensitive issues that affect their members. Prior to 2016, when the ABA declared discriminatory conduct to be professional misconduct, 24 jurisdictions had adopted some form of anti-bias, anti-prejudice and/or anti-harassment mandates in the black letter of their rules of conduct. Another 15 had adopted an official Comment in their Rules to address bias, discrimination, and prejudicial behavior by lawyers.⁴⁸

Of the 24 states that have established anti-discrimination rules on their books, there exists a wide variation in the language adopted. For example, California has incorporated a duty to refrain from discriminating “on the basis of race, national origin, sex, sexual orientation, religion, age or disability in hiring, promoting, discharging or otherwise determining the condition of employment.”⁴⁹ Indiana’s ethics rules also have dispensed with a *mens rea* element to the prohibition on discriminatory conduct. Indiana Rule of Court 8.4(g) explicitly states it is misconduct for a lawyer to “engage in conduct, in a professional capacity, manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, sexual orientation, age, socioeconomic

47. In *Allegheny College v. National Chautauqua County Bank of Jamestown*, 246 N.Y. 369 (1927), Chief Judge Cardozo outlined the standards of promissory estoppel, a doctrine that, at that time, had yet to be fully developed in New York. In his opinion, Cardozo acknowledged that, “[w]hether [promissory estoppel] has made its way in this state to such an extent as to permit us to say that the general law of consideration has been modified accordingly, we do not attempt to say.” *Id.* Still, by supporting his opinion using earlier and similar jurisprudence as “signposts in the road,” Cardozo laid the foundation for introducing the doctrine of promissory estoppel into New York courts. Likewise, our argument, that the time has come for bar associations to recognize and require an ethical duty to promote diversity in the profession and in society at large, will be supported using earlier and similar “signposts in the road.”

48. A chart outlining the jurisdictional adoption of Model Rule 8.4(g) is attached as Appendix B.

49. California Rules of Professional Conduct, Rule 2-400.



The missing element, however, continues to be the link between these established diversity initiatives and a professional obligation to promote and support diversity and inclusion in the legal profession.

status, or similar factors.”⁵⁰ Colorado⁵¹ and Missouri⁵² have similar rules addressing bias and omitting the *mens rea* requirement.⁵³

Although state bars have taken important steps toward remediating discrimination in the industry, none have taken the additional step of issuing a clear mandate regarding the lawyer’s affirmative obligation to enforce and advance equality. Many are actively tackling discrimination and disparity issues: establishing diversity committees, drafting strategic plans, and conducting benchmarking studies. The missing element, however, continues to be the link between these established diversity initiatives and a professional obligation to promote and support diversity and inclusion in the legal profession. Without this link, these rules do not have the force necessary to drive real change in the profession.

Signpost 2: International Efforts to Combat Discrimination and Promote Diversity.

The topic of diversity in the legal profession is not limited to the United States. Other countries have recognized the impact discrimination and harassment can have on lawyers, clients, and the profession. Two countries in particular – Canada and the UK – have drafted Codes of Conduct that explicitly recognize lawyers have heightened social and professional responsibilities which derive from their privileged status.

In Canada, the Ontario Rules of Professional Conduct outlines lawyers’ special responsibility to address discrimination, by setting out the special role of the profession to recognize and protect the dignity of individuals and the diversity in the community. Specifically, the Rule states:

A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences (as defined in the Ontario Human Rights Code), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other licensees or any other person.⁵⁴

50. Indiana Rules of Court, Rules of Professional Conduct, Rule 8.4(g).

51. Colorado Rules of Professional Conduct, Rule 8.4(g).

52. Missouri Rules of Professional Conduct, Rule 4-8.4(g).

53. As of March 2018, however, there are approximately twenty-one states that have no language in their Rules addressing discrimination, although three of those states are studying Rule 8.4(g). As of 2018, none of the fifty states have adopted rules contemplating the ethical obligations of attorneys to promote diversity in the workplace and beyond.

54. Law Society of Ontario, Rules of Professional Conduct, Rule 6.3.1-1.

The Commentary to the Rule explains that Ontario’s Law Society “acknowledges the diversity of the community of Ontario in which lawyers serve and expects them to respect the dignity and worth of all persons and to treat all persons equally without discrimination.”⁵⁵ The Rule is interpreted according to the provisions of Ontario’s Human Rights Code, which includes as discrimination conduct which, though not intended to discriminate, has an adverse impact on individuals or groups on the basis of the prohibited grounds. The Rule places additional responsibilities on the lawyer to take reasonable steps to prevent or stop discrimination by third parties subject to the lawyer’s control or direction.

The UK Code of Conduct includes a chapter on equality and diversity, which is meant to encourage equality of opportunity and respect for diversity. It mandates that “Everyone needs to contribute to compliance with these requirements, for example by treating each other, and clients, fairly and with respect, by embedding such values in the workplace and by challenging inappropriate behaviour and processes.”⁵⁶ Taking it one step further than Canada’s Rule, the UK Code of Conduct outlines specific outcomes lawyers must achieve in order to comply with the Chapter. These include: (1) an approach to recruiting and employment that encourages equality of opportunity and respect for diversity; (2) monitoring and reporting workforce diversity data; and (3) refraining from discriminating, victimizing or harassing anyone (in the course of professional dealings).⁵⁷ The Code goes on to identify for lawyers ways in which they can determine whether they have complied with the Code. These include having a written equality and diversity policy and providing employees and managers with training and information about complying with the equality and diversity requirements. Lawyers with management responsibilities are required to take “all reasonable steps to encourage equality of opportunity and respect for diversity” in the workplace.

Perhaps most notable in these provisions is the clear connection drawn between lawyers’ moral and ethical obligations and their duty to promote diversity in the profession. Lawyers are held accountable for their conduct and the conduct of those who are under their control. In the UK, lawyers’ obligations are outlined in the black letter of the Code (not merely in the Commentary).

Signpost 3: Corporate Defense of our Founding Ideals

Corporate America is becoming increasingly vocal and engaged in promoting equality and inclusion. In a number of major Supreme Court cases, such as *Trump v. Hawaii*⁵⁸ (U.S. travel restrictions); *Obergefell v. Hodges*⁵⁹ (equal protection for same-sex marriage); *Fisher v. University of Texas*⁶⁰ (affirmative action in university application processes); and *Gloucester County School Board v. Gavin Grimm (G.G.)*⁶¹ (transgender student issues), major corporations have submitted amicus briefs in support of the underrepresented and underserved. In *Obergefell*, for example, 379 companies, ranging from Amazon to Starbucks, filed an amicus brief in which they argued that their businesses benefit from diversity and inclusion.⁶²

Recently, Brad Smith, President and Chief Legal Officer of Microsoft, forcefully expressed Microsoft’s commitment to supporting legislation giving formal legal status to the Dreamers, undocu-

55. *Id.*

56. Solicitor’s Regulation Authority Code of Conduct, Chapter 2.

57. *Id.*

58. *Trump v. Hawaii*, 138 S. Ct. 2392 (2018).

59. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

60. *Fisher v. Univ. of Tex.*, 570 U.S. 297 (2013).

61. *Gloucester Cnty. Sch. Bd. v. G.G.*, 136 S. Ct. 2442 (2016).

62. See *Obergefell v. Hodges*, SCOTUSBLOG, <http://www.scotusblog.com/case-files/cases/obergefell-v-hodges/> (last visited Sept. 6, 2018).

mented individuals illegally brought to America as minors and who have lived most of their lives here. Smith issued an official statement on behalf of Microsoft, “As an employer, we appreciate that Dreamers add to the competitiveness and economic success of our company and the entire nation’s business community. In short, urgent DACA legislation is both an economic imperative and a humanitarian necessity.”⁶³ Other corporations, such as Apple⁶⁴ and IBM,⁶⁵ issued similar statements.

Similarly, in 2017, in the wake of comments by President Trump in response to the violent actions of white supremacists at a rally at the University of Virginia, three CEO’s condemned the President’s statements and resigned from his American Manufacturing Council.⁶⁶ Ken Frazier, an attorney and CEO of Merck, said, “America’s leaders must honor our fundamental values by rejecting expression of hatred, bigotry and group supremacy, which run counter to the American ideal that all people are created equal.”⁶⁷

Corporate America is not just speaking out, it is also devoting renewed efforts to drive change. In 2016, Diversity Lab, an incubator for innovative ideas and solutions that boost diversity and inclusion in law, joined with Bloomberg Law and the Stanford Law School to convene the Women in Law Hackathon.⁶⁸ The Hackathon’s goal was to generate innovative and new solutions to the lack of diversity in the legal profession.⁶⁹ One of the solutions developed during the Hackathon was the Mansfield Rule.⁷⁰ Named after Arabella Mansfield, the first woman admitted to the practice of law in the United States, the Mansfield Rule measures whether law firms have affirmatively considered women, LGBTQ+, and minority lawyers – at least 30% of the candidate pool – for promotions, senior level hiring, and significant leadership roles in the firm, including:

- Equity Partner Promotions
- Lateral Partner and Mid/Senior Level Associate Searches
- Practice Group & Office Head Leadership
- Executive Committee and/or Board of Directors
- Partner Promotions/Nominations Committee
- Compensation Committee
- Chairperson and/or Managing Partner

63. Brad Smith, *Urgent DACA Legislation is Both an Economic Imperative and Humanitarian Necessity*, MICROSOFT ON THE ISSUES (Sept. 5, 2017), <https://blogs.microsoft.com/on-the-issues/2017/09/05/urgent-daca-legislation-economic-imperative-humanitarian-necessity/>.

64. Catherine Clifford, *Apple CEO Tim Cook ‘deeply offended’ by ‘DACA situation’*, CNBC (April 6, 2018, 12:19 PM), <https://www.cnbc.com/2018/04/06/as-an-american-apple-ceo-tim-cook-is-offended-by-daca-repeal.html>.

65. Ali Breland, *IBM Pushing for DACA Legislation by the End of the Year*, THE HILL, (Oct. 09, 2017, 12:59 PM), <http://thehill.com/policy/technology/354549-ibm-is-pushing-for-daca-legislation-by-the-end-of-the-year>.

66. Michael Erman, *Three CEOs resign from Trump council over Charlottesville*, REUTERS, (Aug. 14, 2017, 8:54 AM), <https://www.reuters.com/article/us-virginia-protests-merck/three-ceos-resign-from-trump-council-over-charlottesville-idUSKC-N1AU1FM>.

67. Lucinda Shen, *Business Leaders Are Not Happy With President Trump’s Charlottesville Response*, FORTUNE (Aug. 14, 2017), <http://fortune.com/2017/08/14/ken-frazier-trump-charlottesville-response/>.

68. *2016 Women in Law Hackathon*, DIVERSITYLAB, <http://www.diversitylab.com/hackathons/> (last visited Sept. 6, 2018).

69. *See id.*

70. *See id.*

For example, if a law firm's management has identified a short list of five candidates for an opening on the executive committee, under the Mansfield Rule guidelines two of the candidates would need to be women and/or attorneys of color.⁷¹ Firms that consider women and attorneys of color for 70% or more of their existing leadership committees/roles that exist at the firm and are open during the review period qualify to become Mansfield Certified.⁷² Mansfield Certified firms will be offered the opportunity to send their recently promoted diverse partners to a two-day Client Forum to be hosted in late 2018 to build relationships with and learn from influential in-house counsel. More than 40 firms agreed to adopt the first iteration of the Rule and many more have signed on to the 2.0 iteration. 70 legal departments have signed on to support this effort by attending the Client Forum.⁷³

Signpost 4: The ABA Recognizes the Need to Actively Combat Discrimination and Promote Diversity in the Legal Profession

Formed in 1878, the ABA Constitution proclaims:

The purposes of the Association are to uphold and defend the Constitution of the United States and maintain representative government; to advance the science of jurisprudence; to promote through the nation the administration of justice and the uniformity of legislation and of judicial decisions; to uphold the honor of the profession of law; to apply the knowledge and experience of the profession to the promotion of the public good; to encourage cordial intercourse among the members of the American bar; and to correlate and promote the activities of the bar organizations in the nation within these purposes and in the interests of the profession and of the public.⁷⁴

Consistent with this mission, the ABA has adopted four goals. Goal III is the elimination of bias and enhance diversity (discussed *infra*). Goal IV is to advance the rule of law which, as discussed above, includes five objectives that derive from the profession's historical obligations to promote the public interest:

1. Increase public understanding of and respect for the rule of law, the legal process, and the role of the legal profession at home and throughout the world.
2. Hold governments accountable under law.
3. Work for just laws, including human rights, and a fair legal process.
4. Assure meaningful access to justice for all persons.
5. Preserve the independence of the legal profession and the judiciary.⁷⁵

Thus, the ABA's mission has always been to advance the American legal profession's established role as guardian of the Nation's founding principles and ideals. Yet, in its formation, the ABA did

71. *See id.*

72. DiversityLab, *Mansfield Rule 2.0: 65 Law Firms Pilot Mansfield Rule 2.0 to Boost Diversity in Leadership Ranks*, <http://www.diversitylab.com/pilot-projects/mansfield-rule/> (last visited Sept. 6, 2018).

73. *See id.*

74. *ABA Constitution and Bylaws: Rules of Procedure House of Delegates 2015-2016*, https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/aba_constitution_and_bylaws_2015.authcheckdam.pdf.

75. *ABA Mission and Goals* (June 11, 2018), https://www.americanbar.org/about_the_aba/aba-mission-goals.html.

not live up to its professed ideals. Membership was initially reserved exclusively to white men.⁷⁶ The first woman member was not admitted until 1918.⁷⁷ Membership was not opened to non-whites until 1943.⁷⁸ And yet, the first African-American was not admitted to the ABA until 1950.⁷⁹

ABA rules did not address discrimination for more than a century after the ABA's founding. In 1988, the ABA adopted Comment 2 to Rule 8.4(d), which provided that discriminatory conduct in the course of representing a client violates Rule 8.4(d), conduct prejudicial to the administration of justice. Comments, however, are mere guidance, not rules, and thus unenforceable.

It would take almost another 30 years before the ABA squarely addressed the problem of discrimination, and the lack of diversity, in the profession. In 2016, the ABA amended Rule 8.4 to directly prohibit lawyers from harassing or discriminating against certain classes of persons while engaged in the practice of law.⁸⁰ The ABA did so by adding a new paragraph (g),⁸¹ so that Misconduct was defined to include discriminatory conduct:

It is professional misconduct for a lawyer to:

...

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

The amendment, although a welcome step forward, was nevertheless more measured than several of the state model rules. The new rule, for example, contains a *mens rea* element. It prohibits only discriminatory conduct engaged in knowingly (including constructive knowledge).⁸² California, Indiana and New York, for example, have eliminated the *mens rea* element. California's rule also extends to discriminatory employment practices.

In recent years, however, science has revealed that all of us—regardless of race, creed, ethnicity, gender identification or sexual orientation—harbor and act on implicit biases against disfavored

76. ABA Timeline, <http://abaleaders.org/timeline/index.html> (last visited Sept. 6, 2018).

77. New York Women's Bar Ass'n, *Major Milestones in the History of Women Attorneys and Judges in the United States*, <https://web.archive.org/web/20140916055711/http://www.nywba.org/history2.shtml> (last visited Sept. 6, 2018).

78. ABA Mission and Goals, *supra* note 76.

79. *See id.*

80. Samson Habte, *ABA Ethics Committee Floats Draft Anti-Bias Rule*, BLOOMBERG (July 29, 2015), <https://www.bna.com/aba-ethics-committee-n17179934053/>.

81. Peter Geraghty, *ABA adopts new anti-discrimination Rule 8.4(g)* ABA, (Sept 2016), <https://www.americanbar.org/publications/youraba/2016/september-2016/aba-adopts-anti-discrimination-rule-8-4-g-at-annual-meeting-in-.html>.

82. The inclusion of a *mens rea* element was a conscious decision of the ABA House of Delegates. "[T]he Ethics Committee was concerned that a model rule that did not include a *mens rea* would in effect impose a strict liability standard on the profession. The Ethics Committee was not convinced that this was necessary, or that prohibiting 'knowing' conduct would not adequately prevent the conduct this Rule is intended to address." ABA Standing Comm. on Ethics and Professional Responsibility Working Discussion Draft – Revisions to Model Rule 8.4 Language Choice Narrative (June 16, 2015), <https://lalegaethics.org/wp-content/uploads/2015-07-16-ABA-Proposed-Amendment-to-Rule-8.4-re-Harassment.pdf?x16384>.

groups in society.⁸³ The ABA has recognized the problem of implicit bias and has urged action to remedy it.⁸⁴ Importantly, because implicit bias is subconscious, it is imperceptible. Consequently, Rule 8.4(g)'s focus on *knowing* discrimination fails to address the fact that we all unconsciously discriminate. In that light, linking the professional obligation to a *mens rea* element is a bit of a red herring. All lawyers unconsciously discriminate. Moreover, the science of implicit bias reveals that we are incapable of willing ourselves to non-discrimination. The best we can do is take remedial steps. However, that is Rule 8.4(g)'s second limitation; it imposes no remedial obligation, either for intentional or unintentional discrimination.

In conjunction with amending Rule 8.4, the ABA House of Delegates also passed Resolution 113, "Promoting Diversity in the Legal Profession."⁸⁵ The Resolution urged providers of legal services to "expand and create opportunities at all levels of responsibility for diverse attorneys" and urged clients "to assist in the facilitation of opportunities for diverse attorneys, and to direct a greater percentage of the legal services they purchase ... to diverse attorneys."⁸⁶

The ABA followed this resolution with a letter to the chief legal officers of the Fortune 1000 companies seeking their commitment to supporting Resolution 113 and taking additional affirmative steps to increase diversity among the ranks of their outside counsel.⁸⁷ Responding to this call for action, 80 general counsel from Fortune 1000 companies signed the "GC Pledge," committing to support Resolution 113 and encourage their outside law firms complete a Model Diversity Survey regarding diversity in the legal profession.⁸⁸ The companies also agreed to use the results of the Model Diversity Surveys as a factor in determining which firms they would retain or terminate.⁸⁹

The Resolution was a resounding call for action directed not only at the legal community, but also toward consumers of legal services. The ABA enlisted the help of in-house counsel in promoting the Resolution because it understood that there is a "well-established business case for diversity and inclusion" and that clients, the profession and society are best served by organizations that are diverse and inclusive at every level. In fact, the Report issued by the ABA's Diversity & Inclusion 360 Commission concluded that:

The economic success of diverse attorneys would attract others into the profession, thereby building the pipeline; upend the implicit bias that stifles opportunities now; and result in the full and unhindered participation of diverse attorneys in the profession, thereby making the profession more representative of the populations it serves.⁹⁰

83. See, e.g., David L. Douglass, *The Scientific Basis For The Ethical Obligation To Require Action To Eliminate Bias And Promote Diversity In The Legal Profession*, IILP REVIEW 2017: THE STATE OF DIVERSITY AND INCLUSION IN THE LEGAL PROFESSION 66 (2017), http://theiilp.com/resources/Pictures/IILP_2016_Final_LowRes.pdf.

84. *Id.*; see also Paulette Brown, *Inclusion ≠ Exclusion: Understanding implicit bias is key to ensuring an inclusive profession* (Jan. 2016), http://www.abajournal.com/magazine/article/inclusion_exclusion_understanding_implicit_bias_is_key_to_ensuring.

85. ABA, 113: *Adopted*, https://www.americanbar.org/news/reporter_resources/annual-meeting-2016/house-of-delegates-resolutions/113.html (last visited Sept. 6, 2018).

86. *See id.*

87. Letter from Susan Alexander et al. (Sept. 7, 2016), <https://www.americanbar.org/content/dam/aba/administrative/diversity-portal/general-counsel-implementation-aba-resolution-113.authcheckdam.pdf>.

88. *Id.*

89. See ABA Diversity & Inclusion 360 Commission, *ABA Model Diversity Survey*, <https://www.americanbar.org/diversity-portal/diversity-inclusion-360-commission/diversity-survey.html> (last visited Sept. 6, 2018).

90. ABA Diversity and Inclusion 360 Commission Report to the House of Delegates, *Report: Resolution 113*, at 2 (Sept. 7, 2016), <https://www.americanbar.org/content/dam/aba/administrative/diversity-portal/general-counsel-implementation-aba-resolution-113.authcheckdam.pdf>.

While the resolution was a constructive effort to advance diversity in the profession, it cannot escape notice that the ABA was calling for in-house law departments to take efforts the ABA itself was not committing to undertake. Further, it is ironic that the ABA, a legal association, was making a business case for diversity rather than a legal case for diversity. Viewed in the larger context of international legal associations, state associations and corporate advocacy, the ABA's recent actions appear belated and timid.

VI. THE TIME HAS COME FOR THE ABA TO AMEND ITS MODEL RULES TO CODIFY A LAWYER'S ETHICAL OBLIGATION TO PROMOTE EQUALITY AND DIVERSITY IN THE PROFESSION.

The ABA's recent initiatives to promote diversity in the legal profession are admirable. The data however, reveals that more must be done. The National Association for Law Placement's ("NALP") 2017 Report on Diversity revealed that the representation of women associates has seen a net decrease, and the percentage of Black/African-American associates declined every year from 2010 to 2015, although there were small increases in 2016 and 2017.⁹¹ James Leipold, NALP's Executive Director poignantly reflected that:

Minority women and Black/African-American men and women continue to be the least well represented in law firms, at every level, and law firms must double down to make more dramatic headway among these groups most of all. And, while the relatively high levels of diversity among the summer associate classes is always encouraging, the fact that representation falls off so dramatically for associates, and then again for partners, underscores that retention and promotion remain the primary challenges that law firms face with respect to diversity.⁹²

Beyond merely remediating discrimination, however, the Model Rules should be amended to impose an affirmative obligation to promote equality, diversity and inclusion in the profession in recognition of a lawyers' duty to fulfill his or her obligation to enforce and advance the founding principles of equality for all. Indeed, this is the mandate expressed in Model Rules' Preamble:

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance.

*Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.*⁹³

91. NATIONAL ASSOCIATION FOR LAW PLACEMENT (NALP), 2017 REPORT ON DIVERSITY IN U.S. LAW FIRMS, <https://www.nalp.org/uploads/2017NALPReportonDiversityinUSLawFirms.pdf>.

92. NATIONAL ASSOCIATION FOR LAW PLACEMENT (NALP), 2016 REPORT ON DIVERSITY IN U.S. LAW FIRMS 3, <https://www.nalp.org/uploads/2016NALPReportonDiversityinUSLawFirms.pdf>.

93. ABA Model Rules of Professional Conduct, Preamble (emphasis added).

Through these words the Preamble evokes the concept of “lawyer as champion of the public good” that first characterized the role of lawyers in society. History and science lead us to conclude that the ABA should further amend Model Rule 8.4 to acknowledge a lawyer’s professional obligation to act affirmatively to promote equality and diversity in the profession. This could be accomplished by moving current Rule 8.5, Disciplinary Authority, to a new Rule 8.6 and drafting a new Rule 8.5 as follows:

As a learned member of society with an ethical obligation to promote the ideal of equality for all members of society, every lawyer has a professional duty to undertake affirmative steps to remedy *de facto* and *de jure* discrimination, eliminate bias, and promote equality, diversity and inclusion in the legal profession. Every lawyer should aspire to devote at least 20 hours per year to efforts to eliminating bias and promoting equality, diversity and inclusion in the legal profession. Examples of such efforts include but are not limited to: adopting measures to promote the identification, hiring, and advancement of diverse lawyers and legal professionals; attending CLE and non-CLE programs concerning issues of discrimination, explicit and implicit bias, and diversity; and active participation in and financial support of organizations and associations dedicated to remedying bias and promoting equality, diversity, and inclusion in the profession.

Amending the Model Rules in this fashion would elevate the ABA to a position of leadership in the cause of promoting equality, diversity and inclusion in the legal profession. The aspirational 20-hour commitment, like the aspirational 50-hour pro bono commitment, has the potential to mobilize law firms and legal departments to leverage current efforts to eradicating the persistent lack of diversity that plagues the legal profession in a common cause to realize the ideal of equality in our profession and in our society. The ABA should take this evolutionary and necessary step not only in recognition of the legal profession’s historic role as guardian of our founding values but out of self-preservation. In a society and profession that is becoming increasingly diverse, failure to do so will cause the ABA to cede its role as leader of the profession and risk relegating it to an anachronistic irrelevancy. Alternatively, as the Nation’s premier legal association, the ABA is uniquely positioned to speak as the voice of the legal profession. It can serve as a unifying and galvanizing voice for the numerous organizations that are currently addressing the imperative to promote diversity and inclusion in the profession. The time has come.

Task Force on Social Justice, Bias and Inclusion Report

December 4, 2020

The Task Force recommends the Board of Governors appoint a Working Group to supervise the implementation of the below recommendations.

A. Programs and Events Recommendations:

1. The State Bar should coordinate with the Arizona Supreme Court and the Supreme Court Commission on Minorities to create programs and events on issues surrounding Social Justice, Bias, Diversity & Inclusion in the legal profession.
2. The Task Force on Social Justice supports the petition before the Board to mandate D&I CLE training as part of Arizona attorneys annual CLE requirement. If approved, the State Bar should, for the inaugural year of this requirement, provide at least one (1) free CLE option on this topic.¹ If free CLE is not financially feasible, the Task Force recommends the State Bar offer this proposed CLE to State Bar members for the inaugural year for the nominal fee of \$10.
3. Collect demographic data on all CLE program faculty and the State Bar should establish a goal of increasing minority faculty. The Task Force recommends a goal that by December 31, 2023, faculty for all State Bar approved CLE programming be at least 30% diverse (Black or African American, Hispanic or Latinx, Asian or Pacific Islander, Native American, Native Hawaiian or Alaskan Native, LGBTQ+, or someone with a disability) and 40% women.
4. Survey membership to determine member demographic and where work is needed to increase diversity and inclusion within the Bar. ²
5. The State Bar should explore partnerships with other organizations to continue dialogues and programming around race, diversity and inclusion that would be available to both lawyers and non-lawyers. Consider:
 - a) Formalizing a partnership with the Arizona State University Center for the Study of Race and Democracy (“CSRD”) to:
 - Study the history of the legal profession in Arizona through the lens of race, ethnicity, gender, and sexual orientation.
 - Leverage CSRD resources to support other programming, including support with soliciting and analyzing the demographic data identified from the recommended Survey.
 - b) Explore similar partnerships with the University of Arizona and Northern Arizona University.
 - c) Support affinity bar associations and provide opportunities to collaborate on programs, workshops or seminars addressing the diversity of the judiciary and the judicial selection/appointment process

¹ Cost forecast for free CLE outlined in attached budget projection sheet.

² Preliminary costs range to hire third party survey vendor \$5,000-\$10,000.

6. Set aside each year \$7,000 of annual funding to affinity bar associations (Collaborative Bar Association members, Arizona Minority Bar Association, and the like) on relevant CLE programming for members of the State Bar. All events shall be consistent with the Mission of the State Bar and comply with Keller restrictions.³
7. Develop appropriate CLE programs based on Survey responses, Town Hall feedback and the demographic and utilization data. State Bar Leaders in all areas of practice (including in-house lawyers and lawyers practicing in the criminal justice system) should be recruited to implement programs. Consider:
 - a) Retaining a consultant or speaker. Thomas Harris, Asst. A.D. for Diversity, Inclusion and the University of Arizona and Dr. Lois Brown, Executive Director at CSRD at ASU are two suggestions.
 - b) A variety of professionally produced video programs be developed to separately address different issues of discrimination or bias based on race, religion, ethnicity, gender, disability, express and implicit bias, sexual harassment and how to create a more diverse bar and leadership and promote attitudes of inclusion. These programs should address not only how to improve behavior but also educate and empower victims of discrimination and harassment to how to deal with mistreatment.⁴
 - c) Research programs and activities created by other State Bars.
 - d) Train members of the Bar to facilitate the discussion and teaching of these programs.
8. Develop community workshops for the public, roundtables with community leaders and Bar members on topics or issues based on Survey and Town Hall findings.
9. Create a "Master Calendar" for State Bar, affinity bar associations and Collaborative Bar diversity and inclusion related CLEs, programming, scholarship deadlines and all other relevant diversity, inclusion and bias related information.
10. Revamp the "Diversity" tab of its website with new content, including links to the affinity bar associations and ABA websites.
11. Facilitate and publicize more pro bono opportunities and events that benefit the community, especially those communities historically disadvantaged and lack access to lawyers especially with respect to felony criminal convictions. The State Bar could partner with other organizations such as law schools, law firms, and affinity bar associations to facilitate and amplify pro-bono opportunities.

B. The Volunteer and Leadership Recommendations:

1. The State Bar should have a written diversity statement to the volunteer application form; add additional categories where applicants can indicate different ways that they are diverse and add an open-ended question to allow applicants to explain any other aspect of diversity they would like to share.
2. Encourage affinity bars to accept law student members and connect with appropriate law student associations.
3. Advertise volunteer opportunities, including circulating such opportunities to managing partners at law firms and heads of government agencies, and indicate which are appropriate for newer attorneys.

³ Budget impact is \$5,000

⁴ Preliminary cost range to create training video is \$650-\$3,000 depending on content and editing.

4. Add a section or question regarding disability to the anonymous survey that is sent to Bar members and ask partner bars to encourage their members to complete the survey.
5. Monitor and track the number of training and education programs that address diversity and inclusion issues, whether as a sole focus or as an integrated part of their meeting agenda and/or CLE programs.
6. Solicit affinity bars and Collaborative Bar for names of potential CLE presenters and circulate that list to section chairs and State Bar CLE department.
7. Ask for reviews from previous committee members to give a testimonial indicating how serving on the committee had helped their careers to encourage others to apply.
8. Add law students as ex-officio members where appropriate.

C. The Bar Operations Recommendations:

1. The State Bar should institute a system of retaining demographic information, related to disciplinary actions. Such records should be anonymized. The State Bar does not currently maintain demographic information related to disciplinary actions, and therefore cannot evaluate the potential impact of bias in the disciplinary process.
2. The State Bar as a diverse, sophisticated employer, maintains internal human resources policies, internal reporting mechanisms, and leadership initiatives focused on maintaining a safe, diverse, and supportive workplace. However, not all these efforts are recorded in written form or reduced to policy. The subcommittee recommends adopting written policies and procedures to reflect the Bar's ongoing commitment to D&I.
3. The Bar does not currently have a supplier diversity policy in place. In general, such policies commit that when all business considerations are determined to be equal among competitive suppliers, the entity will award contracts to local small businesses, minority owned business enterprises (MBE), women owned business enterprises (WBE), disadvantaged, and veteran owned businesses. The subcommittee recommends adopting a written procurement diversity policy.
4. The subcommittee recommends publishing an article or series of articles in the Arizona Attorney Magazine, detailing for the Membership, the steps and commitments the State Bar is taking related to bar operations and any other focus area under the charge of the Task Force.

Recommendations for The Florida Bar's Diversity Initiative
(Unanimously approved by the Program Evaluation Committee on May 27, 2010)

RECOMMENDATION I:

The Florida Bar shall adopt the following definition of diversity:

The term “diversity” has a dynamic meaning that changes as the demographics of Floridians change. Apart from differences in race, color, gender, national origin, religion, age, sexual orientation, citizenship, and geography, to mention a few, the public and our profession will experience changes in thought, culture, and beliefs. These demographics are constantly in flux. Defining “diversity” based on current differences would limit its application to future changes, and likewise restrict or limit The Florida Bar’s consideration of and response to such changes.

RECOMMENDATION II:

The Florida Bar shall adopt the following statement of commitment towards promoting diversity in the legal profession:

The Florida Bar is fully committed to the enhancement of diversity within the Bar, the legal profession, legal education, and in the justice system, and affirms its commitment toward a diverse and inclusive environment with equal access and equal opportunity for all.

RECOMMENDATION III:

Establish a Florida Bar diversity grant program for voluntary bars to support initiatives and programs which encourage diversity training and dialogue among lawyers in Florida through financial support of conferences, seminars, summits and symposia planned and hosted by local and specialty bar associations.

RECOMMENDATION IV:

Create a Florida Bar Special Committee for Diversity and Inclusion for the purpose of setting up the structure and implementing The Florida Bar diversity grant program, as well as handling other tasks as assigned by The Florida Bar President. The Committee's term will be one year.

RECOMMENDATION V:

Request that the President-elect appoint no less than one Board of Governor liaison to the Special Committee for Diversity and Inclusion.

RECOMMENDATION VI:

Ensure that each Annual Convention of The Florida Bar contains some type of diversity programming within its schedule of events.

RECOMMENDATION VII:

Increase communication efforts to sections, committees, divisions, voluntary bar associations and members of The Florida Bar regarding the Bar's diversity initiative.

RECOMMENDATION VIII:

Request that the President-elect of The Florida Bar create a video message for all members explaining The Florida Bar's committee appointment process and the importance of diversity and inclusion.

RECOMMENDATION IX:

Create a Florida Bar staff role for The Florida Bar's initiative on diversity and inclusion.

RECOMMENDATION X:

Ensure that support for diversity and inclusion is included both within Standing Board Policies and the strategic plan of The Florida Bar.

RECOMMENDATION XI:

Sunset The Florida Bar's Member Outreach Committee at the conclusion of the 2009-10 Bar year and transfer its mission and duties to the overall initiative, as identified in the various other recommendations.

RECOMMENDATION XII:

Conduct a Board of Governors Program Evaluation Committee review of The Florida Bar's diversity initiative in 2012-13 to ascertain how implementation efforts of the various recommendations have proceeded.

Oregon State Bar

2018-2020 Diversity Action Plan

2019 Revision 2.0



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Helen Hirschbiel
Chief Executive Officer

MESSAGE FROM THE CEO

The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice. Oregon State Bar leadership has long understood that this mission cannot be accomplished without a diverse bench and bar that is fully committed to a fair, inclusive, and equitable justice system. The challenge remains, as always, how to realize this mission.

My goal is to bring an equity and inclusion lens to all that we do at the Oregon State Bar—in our operations, for the public, and for the members. Our efforts to that end began with the development of this plan and will continue as we implement the plan over the next three years. We expect this work to be challenging, and we know we will need to continue to refine our approach, seek feedback, and embrace new lessons as we go. But I am confident that this plan is an important step forward.

I want to thank Jonathan Puente and Lucy Taylor for their excellent leadership throughout this strategic planning process. And I want to commend and thank the many bar staff leaders, specialty bar leaders, members of the Board of Governors and Advisory Committee on Diversity and Inclusion, all of whom have demonstrated their commitment to the bar's diversity, equity, and inclusion work by spending many hours thinking deeply and discussing openly how we can bring about the type of systemic change in the Oregon State Bar that will allow us to fully achieve the OSB mission.

January 2018



Vanessa Nordyke
2018 President



Michael Levelle
Immediate Past-President

MESSAGE FROM THE BOARD OF GOVERNORS

The Oregon State Bar plays many roles, but first and foremost it exists to protect and serve the public by creating an effective, fair, and accessible justice system.

In 1973, the members of the OSB, in their collective wisdom, recognized a vital truth: that Oregon’s justice system could never fully realize that vision of full equity unless the system itself reflected the cultural richness and diversity of all those touched by it, and until all lawyers and all clients trusted that it was fair and free of barriers.

After nearly five decades of progress since the creation of what is now the Diversity & Inclusion Department, that vital truth seems ever more relevant today, even as we still strive toward the ideal system it envisioned.

This Diversity Action Plan continues that progress, providing a framework for the next three years. It reflects nearly a year of work incorporating input by bar leaders throughout the OSB and its many community partners.

Most importantly, it reaffirms that the OSB as an institution remains fully focused on creating a justice system that serves every Oregonian, including those from traditionally underserved or marginalized communities.

We offer our thanks and congratulations to those whose commitment to inclusion, equity, and access to justice has moved us consistently forward for decades. We also invite every bar member to join in this work, which remains as vital today as it was when the OSB first committed to it.

Finally, we look forward to our continued progress toward that ideal vision of a justice system that is accessible to all, welcoming of all, and trusted by all.

January 2018

OVERVIEW

OSB DIVERSITY AND INCLUSION DEFINITION

Diversity and inclusion means acknowledging, embracing, and valuing the unique contributions our individual backgrounds make to strengthen our legal community, increase access to justice, and promote laws and creative solutions that better serve clients and communities. Diversity includes, but is not limited to, age, culture, disability, ethnicity, gender and gender identity or expression, geographic location, national origin, race, religion, sex, sexual orientation, veteran status, and socioeconomic status. A diverse and inclusive bar is necessary to attract and retain talented employees and leaders; effectively serve diverse clients with diverse needs; understand and adapt to increasingly diverse local and global markets; devise creative solutions to complex problems; and improve access to justice, respect for the rule of law, and credibility of the legal profession.

DIVERSITY ADVISORY COUNCIL (DAC)

The Diversity Advisory Council (DAC) was formed in 2012 by the Oregon State Bar (OSB) Board of Governors (BOG) and was charged with developing a Diversity Action Plan (DAP) by the end of 2013. The DAC, made up of OSB directors and BOG representatives, developed a three-year DAP that was adopted by the BOG in November 2013. Implementation of the DAP commenced in January 2014 and continued until the end of 2016. The DAC reported on the DAP's implementation progress annually; these implementation reports are available online:

2014 report: www.osbar.org/docs/diversity/DAC2014Implementation.pdf

2015 report: www.osbar.org/docs/diversity/DAC2015Implementation.pdf

2016 report: www.osbar.org/docs/diversity/DAC2016Implementation.pdf

The work of the DAC continued in 2017, when development of the OSB's second three-year DAP began.

DAC MISSION

To fully achieve the OSB's mission, we must ensure our programs, services, and activities are delivered in an inclusive and culturally responsive manner to our diverse bar and community. The DAC works to promote a systemic, collaborative, and strategic approach to achieve set goals and objectives to enhance the OSB's interest in advancing diversity and inclusion in the bar.

DAC CHARGE

Promoting access to justice, encouraging respect for the rule of law, increasing the quality of legal services, and developing a diverse and inclusive bar are key components of the OSB's mission and values. The DAC serves in an advisory capacity to the OSB's Chief Executive Officer (CEO). As stewards and agents of the OSB, the DAC is charged with developing a DAP to ensure that the OSB's programs, services, and activities are delivered in an inclusive, culturally competent, and responsive manner to our diverse bar and community. Upon approval of the DAP by the CEO and adoption by the BOG, the DAC is charged with implementation and ongoing monitoring of the DAP, including measuring progress toward achieving goals

and objectives. The DAC also advises the CEO generally on matters related to diversity and inclusion in all aspects of the OSB’s mission.

DAC RESPONSIBILITIES

The DAC’s responsibilities include developing a recommended DAP for the OSB that addresses all of the OSB’s departments and mission areas.

AUXILIARY COMMITTEE

An ad hoc Auxiliary Committee—made up of affinity bar leaders, community stakeholders, and members of the OSB’s Advisory Committee on Diversity and Inclusion (ACDI)—was created during the 2017 planning process, to provide input and feedback as the DAP developed. The work of the Auxiliary Committee will continue during the DAP implementation process, to facilitate ongoing communication between the OSB and its community stakeholders throughout the three-year implementation process.

PLAN IMPERATIVES

Throughout the DAP implementation process, the effectiveness of the strategies and action items for each goal will be reviewed and adjusted as necessary.

The process and criteria for appointment to the DAC will be submitted to the BOG for review.

PLAN STRUCTURE

SPHERE OF THE PLAN (Membership, Public Outreach, Bar Operations)

GOAL 1 Each sphere contains goals, designed to help achieve the mission.

STRATEGY 1 Each goal has a number of strategies – approaches designed to achieve the goal.

ACTION 1.1.1 Each strategy has been broken down into specific steps (actions) labeled according to the goal and strategy they sit under. (E.g. Action 1.1.1 = Goal 1, Strategy 1, Action 1)

- 2018 (Implementation date)| The target measures for each action are listed here, along with a date for implementation of each target measure. Implementation of certain target measures will be ongoing, as indicated by date ranges. THE DEPARTMENT RESPONSIBLE FOR CARRYING OUT THE TARGET MEASURE IS LISTED HERE

The Diversity Action Plan (2019 Revision) incorporates the updated target dates and action items detailed in the Implementation Report: Year One [https://www.osbar.org/docs/diversity/DAP2018-2020_ImplementationReport_Year1.pdf] plus any changes made per the redefined plan imperatives.

IMPLEMENTATION

All target measures within the DAP have been assigned to a particular department, denoting responsibility for target measure implementation. Ongoing reporting on plan implementation will take place, and formal annual reports will be released. Departments with target measure responsibility:

Accounting	General Counsel
Admissions	Human Resources
CEO	Legal Publications
Continuing Legal Education (CLE) Seminars	Legal Services Program (LSP)
Communications	Member Services
Diversity & Inclusion (D&I)	Oregon Law Foundation (OLF)
Executive Services	Public Affairs
Finance and Operations	

View depts at www.osbar.org/osbcenter/staff.html

DAC MEMBERS (2017-2018)

Judith Baker – Director of Legal Services Programs / OLF Executive Director

Danielle Edwards – Director of Member Services; DAC Membership Subcommittee Chair

Dawn Evans – Disciplinary Counsel / Director of Regulatory Services

Susan Grabe – Director of Public Affairs

Helen Hierschbiel – Chief Executive Officer

Amber Hollister – General Counsel

Christine Ford – Director of Human Resources; DAC Bar Operations Subcommittee Chair

Linda Kruschke – Director of Legal Publications

Karen Lee – Director of CLE Seminars

Michael Levelle – OSB President (2017)

Kay Pulju – Director of Communications & Public Services; DAC Public Outreach Subcommittee Chair

Jonathan Puente – Director of D&I; DAC Chair

Liani Reeves – Board of Governors

Traci Rossi – Board of Governors

Kateri Walsh – Public Relations Manager

Rod Wegener – Chief Financial Officer

DAC SUPPORTING MEMBERS (2017-2018)

Ralph Gzik – Oregon New Lawyers Division Member

Eric McClendon – Referral and Information Services Manager

Lucy Taylor – D&I Internal Coordinator; DAC Co-Chair

Troy Wood – Admissions Manager

AUXILIARY COMMITTEE MEMBERS (2017-2018)

Jacqueline Alarcon – ACDI member

Derily Bechthold – President, Oregon Asian Pacific American Bar Association

Bryson Davis – ACDI member

Angela Franco Lucero – President, Oregon Women Lawyers

Claudia Groberg – ACDI member

Andrea Montag – ACDI member

Jonathan Patterson – ACDI Secretary; OSB Diversity Section Chair

Iván Resendiz Gutierrez – President-Elect, Oregon Hispanic Bar Association; Oregon Minority Lawyers Association board member

Natasha Richmond – Assistant Director of Admissions, Lewis & Clark Law School

Dan Simon – ACDI Chair

Yazmin Wadia – ACDI member

OSB D&I DEPARTMENT



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DIVERSITY ACTION PLAN

MISSION STATEMENT

The Oregon State Bar practices and reflects the values of diversity, inclusion, and equity in its service to the public and its members, as well as in its internal operations.

Membership

We strive to build and retain a diverse and inclusive bench and bar. We support members reaching their full professional potential by eliminating barriers and creating opportunities in the law.

Public Outreach

We strive to achieve equitable access to legal services and to generate public awareness about the legal system and bar services among all Oregon communities.

Bar Operations

We strive to create a welcoming environment where staff feel a sense of community and are fully engaged to achieve the bar's mission.



OUTLINE

MEMBERSHIP SPHERE	
GOAL 1	Increase and sustain a diverse OSB and bench.
Strategy 1	Identify and gather information on experiences of lawyers from nondominant cultures.
Strategy 2	Ensure the effective retention of diverse bar members, including members from nondominant cultures.
Strategy 3	Encourage, support, and promote diverse bar members, including members from nondominant cultures, in seeking judicial positions.
Strategy 4	Engage and collaborate with affinity bars and other organizations to advance diversity, equity, and inclusion in the Oregon legal community.
Strategy 5	Support an effective pipeline of diverse law students, including those from nondominant cultures, who feel sustained, welcomed, and encouraged to practice law in Oregon.
Strategy 6	Increase lawyer engagement in community organizations that encourage individuals from nondominant cultures to pursue legal education.
GOAL 2	Identify and work to eliminate barriers in the legal profession for members from nondominant cultures.
Strategy 1	Increase OSB efforts to educate members on the value of diversity, equity, and inclusion.
Strategy 2	The BOG functions in a way that is open and inclusive of different perspectives and experiences.
Strategy 3	Support an open and inclusive award selection process for all OSB groups.
Strategy 4	Review the admissions process to determine whether all applicants are treated equitably under the admission rules and procedures.
GOAL 3	Enrich the OSB by increasing the diversity of member representation in volunteer and leadership roles.
Strategy 1	Educate OSB member groups on the value of diversity, equity, and inclusion.
Strategy 2	Increase diversity on all OSB self-electing boards and in membership elected positions.
Strategy 3	Encourage diversity of volunteer speakers and planners for CLE events.
Strategy 4	Collaborate with the BOG and Board Development Committee to increase the diversity of lawyer and public member volunteers appointed by the BOG.
Strategy 5	Develop a leadership institute for Oregon lawyers who support the mission of the D&I Department, including lawyers from nondominant cultures.
Strategy 6	Encourage diversity of volunteer editorial review boards and authors for Legal Publications books.
Strategy 7	Evaluate the effectiveness of the New Lawyer Mentoring Program (NLMP) in respect to lawyers from nondominant cultures.

PUBLIC OUTREACH SPHERE	
GOAL 1	Increase representation and legal services to underserved and hard-to-reach communities in Oregon.
Strategy 1	Assess the civil legal needs of low-income Oregonians statewide, including hard-to-reach populations.
Strategy 2	Ensure that the integrated statewide legal aid programs are targeting their services based on the most compelling needs of the client community, including hard-to-reach and diverse populations, including nondominant cultures, in accordance with the OSB LSP Standards and Guidelines.
Strategy 3	Increase pro bono representation of low-income Oregonians and hard-to-reach populations.
Strategy 4	Increase representation through increased funding for the integrated statewide legal aid programs to increase access for low-income Oregonians, including underserved and hard-to-reach communities in Oregon.
GOAL 2	Ensure all Oregonians are able to access the bar’s public protection programs.
Strategy 1	Engage in outreach to marginalized communities regarding the availability and purpose of the bar’s public protection programs.
Strategy 2	Develop a comprehensive approach for providing English-language learners access to the bar’s public protection programs.
Strategy 3	Ensure that the operation of the bar’s public protection programs is fair, safe, and welcoming to all.
GOAL 3	Expand availability of public education, outreach, and self-navigation materials for underserved Oregon communities.
Strategy 1	Develop public legal information materials that are accessible to all Oregonians.
Strategy 2	Enhance outreach to underserved communities regarding the Modest Means Program and Lawyer Referral Service.
Strategy 3	Increase issue-based public education, targeting media outlets with legal trends and issues that affect underserved communities.
GOAL 4	Improve the administration of justice to better serve under-represented and marginalized communities.
Strategy 1	Support OSB justice system funding priorities.
Strategy 2	Collaborate with the courts and support the Procedural Fairness in Courts Initiative.
Strategy 3	Support access to justice in the legislative arena.

BAR OPERATIONS SPHERE	
GOAL 1	Bar employees have a high level of diversity and inclusion competence and ownership.
Strategy 1	Provide educational opportunities for OSB employees.
Strategy 2	Ensure managers and directors are held accountable for professional development in relation to diversity, inclusion, equity, and cultural competence.
Strategy 3	Review current OSB language used in relation to diversity and inclusion, and make updates according to current best practices.
Strategy 4	Ensure the OSB bylaws are consistent with the OSB and DAC mission and goals around diversity and inclusion.
GOAL 2	Foster a welcoming and inclusive workplace and accessible programs, services, and Bar Center.
Strategy 1	Acquire an understanding of the bar's workplace culture.
Strategy 2	Use the results of data collection to identify areas for improvement.
Strategy 3	Identify and resolve barriers to the OSB being a welcoming environment for all.
Strategy 4	Continue to identify and resolve barriers to accessibility for persons with disabilities to OSB programs, services, and Bar Center.
GOAL 3	Build a workforce that is diverse and inclusive at every level.
Strategy 1	Collect demographic data as one benchmark for measuring the diversity of applicants and the workforce.
Strategy 2	Ensure that the OSB recruitment process is inclusive and equitable.
Strategy 3	Increase the diversity of applicants for vacant positions at the OSB.
Strategy 4	Explore and use bias interrupters in the hiring process.
GOAL 4	Engage a diverse and inclusive group of contractors, suppliers, vendors, and consultants.
Strategy 1	Develop and implement a process for ensuring consideration of a diverse list of third-party vendors.

MEMBERSHIP SPHERE

GOAL 1 Increase and sustain a diverse OSB and bench.

STRATEGY 1 Identify and gather information on experiences of lawyers from nondominant cultures.

ACTION 1.1.1 Conduct climate surveys.

- 2018-2019 | Create climate surveys to identify the barriers and opportunities faced by lawyers from nondominant cultures in Oregon. COMMUNICATIONS
- 2019 | Conduct climate surveys. COMMUNICATIONS
- 2019 | Conduct exit surveys for lawyers from nondominant cultures who leave the state or withdraw from active practice. COMMUNICATIONS

ACTION 1.1.2 Facilitate focus groups to gather feedback on member experiences.

- 2019 | Create and conduct focus groups using the information gleaned from the climate surveys. COMMUNICATIONS
- 2020 | Report to bar leadership on the focus group findings. COMMUNICATIONS

ACTION 1.1.3 Analyze lawyer fee rates and economic survey data to identify disparities for lawyers from nondominant cultures.

- 2019 | Correlate information gleaned from Action 1.1.1 and Action 1.1.2. COMMUNICATIONS
- 2020 | Use the information gathered to identify issues that warrant addressing. MEMBER SERVICES

STRATEGY 2 Ensure the effective retention of diverse bar members, including members from nondominant cultures.

ACTION 1.2.1 Develop D&I programs and other bar resources to support diverse lawyers who are new to Oregon (“lateral hires”), including lawyers from nondominant cultures.

- 2019 | Use the results from the Goal 1, Strategy 1 surveys and focus groups to identify new program needs. D&I
- 2020 | Expand D&I programming to address lateral hire retention. D&I
- 2020 | Expand D&I programming to address new member retention. D&I

ACTION 1.2.2 Conduct outreach with legal employers to determine best practices for retaining lawyer employees from nondominant cultures.

- 2018-2019 | Collect information from legal employers. D&I

- 2020 | Provide revised best practices toolkit to legal employers. **D&I**
- 2020 | Evaluate toolkit and outreach efforts. **D&I**

ACTION 1.2.3 Develop resources to assist legal employers in creating a diverse workforce.

- 2019 | Create a business case identifying the benefits of employing lawyers from nondominant cultures. **D&I**
- 2019 | Create resources to assist employers with lateral hire retention programs for lawyers from nondominant cultures. **D&I**
- 2020 | Begin to assess impact and reach of resources. **D&I**

STRATEGY 3 Encourage, support, and promote diverse bar members, including members from nondominant cultures, in seeking judicial positions.

ACTION 1.3.1 Review the bar’s process for obtaining feedback on judicial candidates to ensure it is qualitative in nature and supports the DAC’s mission.

- 2018-2019 | Modify bar bylaws to eliminate bar polls for judicial selection process. **PUBLIC AFFAIRS**
- 2019 | Survey stakeholders regarding judicial screening process. **PUBLIC AFFAIRS**

ACTION 1.3.2 Increase outreach to bar members, including members from nondominant cultures, regarding judicial positions.

- 2018 | Assess notice-of-judicial-vacancy recipient list and webpage placement of notices. **PUBLIC AFFAIRS — Completed**
- 2018 | Assess placement of judicial vacancy notice to affinity bars and publications. **PUBLIC AFFAIRS — Completed**
- 2018 | Modify judicial appointment recommendations process to assess cultural competency. **PUBLIC AFFAIRS — Completed**

STRATEGY 4 Engage and collaborate with affinity bars and other organizations to advance diversity, equity, and inclusion in the Oregon legal community.

ACTION 1.4.1 Participate in meetings between affinity bars and OSB leadership to learn about affinity bars’ experiences and perceptions of the OSB as an institution, and of the OSB leadership.

- 2018 | Work with affinity bars as requested to choose a facilitator and develop agendas. **EXECUTIVE SERVICES — Completed**
- 2018-2019 | Provide OSB financial support for facilitating dialogue. **D&I**
- 2018-2019 | Attend the meetings and ensure OSB leadership participation, and follow up as appropriate. **EXECUTIVE SERVICES**

ACTION 1.4.2 Increase BOG awareness of and engagement in the work engaged of affinity bars.

- 2018 | Organize a reception in conjunction with a BOG meeting, and invite affinity bars to attend and network with the BOG. **EXECUTIVE SERVICES — Completed**
- 2019–2020 | Invite affinity bars to attend and/or submit reports to BOG meetings, to report on their activities and events. **EXECUTIVE SERVICES**
- 2018-2020 | Ensure BOG representation at affinity bar events. **EXECUTIVE SERVICES — 2018 target measure completed**
- 2019 | Implement changes to the BOG’s participation in affinity bar work, as agreed on during the facilitated joint leadership meetings. **CEO**

ACTION 1.4.3 Assist affinity bars in promoting their activities and events to OSB leadership and to OSB membership.

- 2018 | Conduct outreach with affinity bars on the services OSB can provide to the membership. **MEMBER SERVICES — Completed**
- 2018-2019 | Improve placement and accessibility of affinity bar information on the OSB website. **MEMBER SERVICES**
- 2018-2020 | Invite affinity bars to have a table and to include promotional materials at OSB events to showcase their organizations with membership. **MEMBER SERVICES — 2018 target measure completed**
- 2018-2020 | Include affinity bar events on the OSB website calendar in accordance with OSB communication guidelines. **MEMBER SERVICES — 2018 target measure completed**

ACTION 1.4.4 Increase OSB technical coordination with specialty bars.

- 2019 | Explore possibilities for adding information about joining specialty and affinity bars to membership fee statement at dues payment/renewal. **ACCOUNTING**
- 2019 | Enhance information sharing with affinity bars for continuing legal education and activities related to OSB functions. **MEMBER SERVICES**
- 2019 | Update and enhance resource list of OSB services available to membership and communicate to affinity bars. **MEMBER SERVICES**
- 2018-2020 | Provide affinity bars access to OSB membership lists through the public records request process. **MEMBER SERVICES — 2018 target measure completed**

STRATEGY 5 Support an effective pipeline of diverse law students, including those from nondominant cultures, who feel sustained, welcomed, and encouraged to practice law in Oregon.

ACTION 1.5.1 Increase D&I program effectiveness.

- 2019 | Analyze current effectiveness based on data, current trends, and known issues. **D&I**

- 2019 | Implement changes to D&I programming based on findings of analysis, to provide opportunities for law and pre-law students, including professional connections, legal experience, and financial support. **D&I**
- 2019 | Formalize D&I program applicant criteria and review the application process to ensure fairness, transparency, and applicant pool reach. **D&I**
- 2020 | Review progress based on implemented changes. **D&I**

ACTION 1.5.2 Support diverse law students in Oregon, including students from nondominant cultures, through mentorship and community building, to encourage them to practice in Oregon upon graduation.

- 2018-2020 | Collaborate with Oregon law schools and other partners to create a robust and effective Opportunities for Law in Oregon (OLIO) orientation program. **D&I — 2018 target measure completed**
- 2019 | Implement Oregon Council on Legal Education and Admissions to the Bar (OCLEAB) agenda item asking Oregon law schools to report on their diversity trends. **ADMISSIONS — Completed**
- 2020 | Review progress based on implemented changes. **D&I**

STRATEGY 6 Increase lawyer engagement in community organizations that encourage individuals from nondominant cultures to pursue legal education.

ACTION 1.6.1 Create awareness in the legal community about existing programs, to encourage individuals from nondominant cultures to pursue legal education.

- 2019 | Create a list of schools with pre-law programs, high schools with mock trial programs, and other educational organizations with school engagement initiatives. **D&I**
- 2019 | Work with affinity bars, sections, committees, and other bar members to encourage member participation in the programs. **D&I**
- 2020 | Obtain program feedback to evaluate effectiveness and reach. **D&I**

GOAL 2 Identify and work to eliminate barriers in the legal profession for members from nondominant cultures.

STRATEGY 1 Increase OSB efforts to educate members on the value of diversity, equity, and inclusion.

ACTION 2.1.1 Review the applicable minimum continuing legal education (MCLE) rules and regulations to determine whether programs approved for access-to-justice credit support the DAC’s mission.

- 2018-2019 | Identify and develop any changes needed to the MCLE rules and regulations. **D&I**

- 2019 | Secure MCLE Committee and Supreme Court approval of changes to MCLE rules and regulations. GENERAL COUNSEL

ACTION 2.1.2 Sponsor, promote, and encourage elimination-of-bias CLE programming, including implicit bias, equity, systemic racism, institutional racism, etc.

- 2018 | Deliver programming regarding Oregon Rule of Professional Conduct 8.4. CLE SEMINARS — Completed

ACTION 2.1.3 Promote Legal Employers Toolkit to legal employers.

- 2018-2019 | Work with the OSB Diversity Section to complete the toolkit. D&I
- 2020 | Distribute the toolkit. D&I
- 2020 | Obtain feedback from toolkit recipients. D&I

ACTION 2.1.4 Publish articles in the Bulletin related to diversity, equity, and inclusion.

- 2018-2020 | Develop a pool of potential authors and a publication schedule. COMMUNICATIONS
- 2018-2020 | Develop a process for inviting affinity bars to submit article ideas or written submissions for publication in the Bulletin. COMMUNICATIONS
- 2018-2019 | Consider developing a regular column on diversity, equity, and inclusion. COMMUNICATIONS
- 2019-2020 | Publish articles using the pool and according to the schedule. COMMUNICATIONS

STRATEGY 2 The BOG functions in a way that is open and inclusive of different perspectives and experiences.

ACTION 2.2.1 Task the Board Development Committee with assessing needs and with using the assessment to provide programming for the BOG on diversity, equity, and inclusion.

- 2018-2020 | BOG members conduct a self-assessment on bias (e.g., implicit bias test from the Harvard Project Implicit [<https://implicit.harvard.edu/implicit/takeatest.html>]). CEO — 2018 target measure completed
- 2018-2020 | Include at least one session on implicit bias, institutional racism, or equity principles for BOG members each year. CEO — 2018 target measure completed

ACTION 2.2.2 Adopt a BOG policy to review all bar programs, services, and activities with impact on lawyers from nondominant cultures as a factor for evaluation.

- 2018 | Policy is reviewed by BOG Policy & Governance Committee and BOG. CEO — Completed
- 2018 | Implement the policy and incorporate into BOG orientation materials and online resources. CEO — Completed

STRATEGY 3 Support an open and inclusive award selection process for all OSB groups.

ACTION 2.3.1 Encourage transparency in the award nomination and selection processes.

- 2018-2019 | Develop a policy and nomination form template for section awards. **MEMBER SERVICES**
- 2019-2020 | Encourage and assist sections and the Oregon New Lawyers Division (ONLD) with promoting their award nomination process to affinity bars. **MEMBER SERVICES**

STRATEGY 4 Review the admissions process to determine whether all applicants are treated equitably under the admission rules and procedures.

ACTION 2.4.1 Create policies and procedures establishing the appropriate collection and use of demographic data from applicants.

- 2018 | Review current rules, policies, and procedures to determine best practices for collecting and using demographic data. **ADMISSIONS — Completed**
- 2019 | Make changes to policies and procedures as needed, to safeguard data collected from being used or made available for an admission decision related to any particular applicant. **ADMISSIONS**
- 2020 | Make changes to policies and procedures, where necessary, to appropriately collect and use demographic data for statistical analysis. **ADMISSIONS**

ACTION 2.4.2 Collect data from the OSB Admissions Department, Oregon law schools, and applicants, to identify admissions trends of demographic groups.

- 2020 | Ask OSB applicants to self-identify as part of the application process. **ADMISSIONS**
- 2020 | Begin to review data in respect to identifying admissions trends by demographic. **ADMISSIONS**

GOAL 3 Enrich the OSB by increasing the diversity of member representation in volunteer and leadership roles.

STRATEGY 1 Educate OSB member groups on the value of diversity, equity, and inclusion.

ACTION 3.1.1 Create a benefit statement supporting the value of diversity.

- 2019 | Seek input from affinity bars and other stakeholders in creating the benefit statement. **MEMBER SERVICES**
- 2018 | Gather baseline data to determine current member involvement in OSB volunteer and leadership roles. **MEMBER SERVICES — Completed**
- 2019 | Distribute the benefit statement to bar groups. **MEMBER SERVICES**
- 2020 | Evaluate the effectiveness of these education efforts, based on changes identified in overall volunteer participation. **MEMBER SERVICES**

STRATEGY 2 Increase diversity on all OSB self-electing boards and in membership elected positions.

ACTION 3.2.1 Encourage a diverse pool of candidates for BOG and House of Delegates (HOD) elections.

- 2018–2020 | BOG members actively encourage diverse members, including members from nondominant cultures, to run for vacant positions on the BOG and HOD (annually). **MEMBER SERVICES — 2018 target measure completed**
- 2018–2020 | Encourage affinity and local bars to inform their members of BOG and HOD vacancies, including list serve and website postings. **MEMBER SERVICES — 2018 target measure completed**
- 2018–2020 | Encourage affinity and local bars to promote the importance of voting in HOD and BOG elections to their membership. **MEMBER SERVICES — 2018 target measure completed**

ACTION 3.2.2 Increase diversity of member representation on self-electing boards to reflect the diversity of the OSB membership.

- 2018 | BOG review of ONLD and section bylaws and policies to ensure the election process is transparent and supports equity and inclusion. **CEO — Completed**
- 2019 | Meet with sections during the annual meeting process to share the benefit statement (Action 3.1.1) **MEMBER SERVICES**
- 2018–2020 | Include demographic data on membership lists and rosters. **MEMBER SERVICES — 2018 target measure completed**

STRATEGY 3 Encourage diversity of volunteer speakers and planners for CLE events.

ACTION 3.3.1 Provide a resource list of affinity bars to bar groups planning CLE events.

- 2018 | Develop a list of affinity bars and include a description of the affinity bars' mission statements. **CLE SEMINARS — Completed**
- 2019 | Incorporate the DAC's mission and affinity bars list in CLE co-sponsorship guidelines. **CLE SEMINARS**

ACTION 3.3.2 Look for opportunities to collaborate with affinity bars for CLE events.

- 2018-2019 | Conduct an inventory of existing bar CLE events that would be suitable for collaboration with affinity bars; evaluate areas for further coordination for affinity bar CLEs. **CLE SEMINARS**
- 2019 | Create a bar CLE resource guide for affinity bars. **CLE SEMINARS**
- 2019 | Distribute the guide and begin CLE event collaboration with affinity bars. **CLE SEMINARS**

ACTION 3.3.3 Look for opportunities to diversify the pool of CLE speakers.

- 2018–2020 | Distribute the Leadership and Volunteer Opportunities CLE Speaker reports to section executive committees annually, with a reminder that the CLE planning committees have this resource and should consider diversity when selecting CLE subject-matter experts. MEMBER SERVICES — 2018 target measure completed

STRATEGY 4 Collaborate with the BOG and Board Development Committee to increase the diversity of lawyer and public member volunteers appointed by the BOG.

ACTION 3.4.1 Increase outreach to a diverse group of lawyers and nonlawyers, including individuals from nondominant cultures, for OSB volunteer positions.

- 2019 | Organize an event co-sponsored by the OSB’s D&I Department, the BOG, and affinity bars, to explain OSB leadership opportunities, selection processes for OSB volunteer appointments, and application processes for the BOG and HOD. D&I
- 2018–2020 | Request that affinity and local bars include a link to the OSB Volunteer Survey on their websites. MEMBER SERVICES — 2018 target measure completed
- 2018–2020 | Provide notices of volunteer and leadership opportunities to affinity and local bar organizations for distribution to their members and through their respective newsletters, including to community organizations that support individuals from nondominant cultures. MEMBER SERVICES — 2018 target measure completed

ACTION 3.4.2 Educate the Board Development Committee members on the need to review appointment recommendations and decisions through an equity lens.

- 2019–2020 | Conduct an annual review of appointments with focus on demographic and geographic factors. MEMBER SERVICES

ACTION 3.4.3 Ensure the appointment process is efficient and effective and that the BOG has enough member information.

- 2018 | Board Development Committee reviews and refines internal processes. MEMBER SERVICES — Completed

STRATEGY 5 Develop a leadership institute for Oregon lawyers who support the mission of the D&I Department, including lawyers from nondominant cultures.

ACTION 3.5.1 Address gaps and barriers to leadership positions within the BOG and affinity bars for underrepresented members of the bar.

- 2019 | Identify gaps and barriers. D&I
- 2019 | Craft a proposed course curriculum. D&I
- 2020 | Implement the course. D&I

STRATEGY 6 Encourage diversity of volunteer editorial review boards and authors for Legal Publications books.

ACTION 3.6.1 Increase representation of diverse members, including members from nondominant cultures, on Legal Publications editorial review boards and as authors.

- 2018-2019 | Contact local and affinity bars when recruiting new editorial board members and authors. **LEGAL PUBLICATIONS**
- 2019 | Revise Editorial Review Board Guidelines to strongly encourage editorial review boards to consider diversity in identifying potential authors. **LEGAL PUBLICATIONS**
- 2020 | Evaluate effectiveness of efforts to increase diversity of editorial boards and author pool. **LEGAL PUBLICATIONS**

ACTION 3.6.2 Include more detailed biographical information and pictures of authors in front matter of books, to showcase diversity involvement.

- 2018 | Select two publications to include more detailed biographical information. **LEGAL PUBLICATIONS**
— Completed
- 2019 | Increase the number of publications that include detailed biographical information. **LEGAL PUBLICATIONS**

STRATEGY 7 Evaluate the effectiveness of the New Lawyer Mentoring Program (NLMP) in respect to lawyers from nondominant cultures.

ACTION 3.7.1 Survey new lawyer participants to determine their level of satisfaction with the NLMP.

- 2018-2019 | Review the existing new lawyer survey and determine whether additional information needs to be gathered. **MEMBER SERVICES**
- 2018-2019 | Modify the survey as necessary and implement for all new lawyers upon program completion. **MEMBER SERVICES**
- 2019 | Use the information gathered to identify issues that warrant addressing. **MEMBER SERVICES**

ACTION 3.7.2 Increase the pool of diverse mentors participating in the NLMP, including mentors from nondominant cultures.

- 2018-2020 | Evaluate mentor availability and areas of underrepresentation. **MEMBER SERVICES**
— 2018 target measure completed
- 2019-2020 | Conduct targeted outreach to ensure adequate availability of mentors from diverse member groups, including nondominant cultures. **MEMBER SERVICES**

ACTION 3.7.3 Review NLMP database fields to ensure adequate information is available when matches are made.

- 2019 | Revise NLMP forms as needed. **MEMBER SERVICES**

PUBLIC OUTREACH SPHERE

GOAL 1 Increase representation and legal services to underserved and hard-to-reach communities in Oregon.

STRATEGY 1 Assess the civil legal needs of low-income Oregonians statewide, including hard-to-reach populations.

ACTION 1.1.1 Conduct planned Civil Legal Needs Study (CLNS) that provides comprehensive information about the legal needs of low-income Oregonians, including hard-to-reach populations.

- 2018 | Gather and analyze CLNS data. OLF — Completed
- 2019 | Publish and share CLNS data with a wide range of stakeholders. OLF
- 2019 | Conduct a media campaign to share the results of the CLNS. COMMUNICATIONS

ACTION 1.1.2 Use the results of the CLNS to inform the legal services provided by the integrated statewide legal aid programs in accordance with the OSB Legal Services Program (LSP) Standards and Guidelines.

- 2019 | Legal aid providers review the results and use these results on an ongoing basis as a factor when setting priorities for legal services and developing access strategies for low-income Oregonians, including hard-to-reach populations. LSP

ACTION 1.1.3 Use the results of the CLNS to inform the access strategies for low-income and hard-to-reach populations by the Oregon State Bar.

- 2019 | Review the results of the CLNS for possible OSB program changes. LSP
- 2020 | Develop a plan for implementing access strategies. LSP

STRATEGY 2 Ensure that the integrated statewide legal aid programs are targeting their services based on the most compelling needs of the client community, including hard-to-reach and diverse populations, including nondominant cultures, in accordance with the OSB LSP Standards and Guidelines.

ACTION 1.2.1 LSP staff conduct the accountability process outlined in the Standards and Guidelines.

- 2018 | Staff, legal aid providers, and the LSP Committee review the current accountability process and make changes as necessary, including incorporating review of effective technology. LSP — Completed
- 2018-2019 | Complete the accountability process, and submit a report to the BOG. LSP
- 2019 | Legal aid providers implement recommendations from the 2018 review process. LSP

STRATEGY 3 Increase pro bono representation of low-income Oregonians and hard-to-reach populations.

ACTION 1.3.1 Establish a baseline of current pro bono hours.

- 2018-2019 | Using the American Bar Association (ABA) survey results and hours reported by OSB Certified Pro Bono Programs, establish a baseline of pro bono hours. LSP

ACTION 1.3.2 Use the results of the ABA pro bono survey to develop strategies that are focused on nondominant cultures and hard-to-reach populations.

- 2018-2019 | Identify barriers to lawyers doing pro bono work and develop a plan for addressing them. LSP
- 2019-2020 | Implement the plan to address barriers to lawyers doing pro bono work. LSP
- 2020 | Survey OSB membership on pro bono work. LSP

ACTION 1.3.3 Continue to monitor the use of the ABA Free Legal Answers resource.

- 2019 | Determine whether ABA Free Legal Answers will work as a resource for the OSB. LSP
- 2020 | Implement, if identified as an appropriate resource. LSP

STRATEGY 4 Increase representation through increased funding for the integrated statewide legal aid programs to increase access for low-income Oregonians, including underserved and hard-to-reach communities in Oregon.

ACTION 1.4.1 Use the CLNS to inform banks about the scope of the unmet legal needs of low-income Oregonians to support increased legal aid funding in Oregon.

- 2018 | Increase Leadership Bank Program interest rate tiers to coincide with Federal Reserve Bank increases. OLF — Completed
- 2019 | Incorporate CLNS results into talking points to work with the Oregon Bankers Association and the banking community, to increase interest rates on Interest on Lawyer Trust Accounts (IOLTA) held in Oregon. OLF
- 2019 | Continue to monitor interest rate increases and adjust Leadership Bank Program interest rates as needed. OLF

ACTION 1.4.2 Use the CLNS to inform the legislature about the scope of the unmet legal needs of low-income Oregonians to support increased legal aid funding in Oregon.

- 2018 | Establish a diverse network of leaders to support relevant issues and trends. PUBLIC AFFAIRS — Completed
- 2018 | Meet with justice system partners during the interim period to discuss legislative concepts and funding priorities. PUBLIC AFFAIRS — Completed
- 2018-2019 | Present information on access to justice to lawyer-legislators and bar members, to ensure message consistency. PUBLIC AFFAIRS

ACTION 1.4.3 Conduct media outreach campaign to support funding efforts.

- 2019 | Develop and execute a CLNS media outreach campaign. COMMUNICATIONS

ACTION 1.4.4 Explore partnering with the philanthropic community on the importance of funding legal aid to alleviate poverty.

- 2018-2020 | Work with The Lawyers' Campaign for Equal Justice (CEJ) and legal aid providers to develop a plan to partner with the philanthropic community. OLF — 2018 target measure completed
- 2019 | Implement the plan. OLF

GOAL 2 Ensure all Oregonians are able to access the bar's public protection programs.

STRATEGY 1 Engage in outreach to marginalized communities regarding the availability and purpose of the bar's public protection programs.

ACTION 2.1.1 Develop relationships with community organizations working in the public protection arena.

- 2018 | Identify and create a list of potential community partners. GENERAL COUNSEL — Completed
- 2018-2019 | Have a discussion with a representative from each identified group. GENERAL COUNSEL

ACTION 2.1.2 Design and utilize a toolkit for member and public outreach on public protection programs.

- 2018 | Create program descriptions for public protection programs and collect related application and complaint forms to form a public protection programs toolkit. GENERAL COUNSEL — Completed
- 2019 | Discuss and review the toolkit with representatives from community organizations and member representatives. GENERAL COUNSEL
- 2020 | Share the toolkit with targeted audiences. GENERAL COUNSEL

STRATEGY 2 Develop a comprehensive approach for providing English-language learners access to the bar's public protection programs.

ACTION 2.2.1 Develop policy to enable access to programs for persons who speak, read, or write languages other than English.

- 2018-2019 | Evaluate staffing and other resources in relation to language needs. GENERAL COUNSEL
- 2018-2019 | Write and adopt a policy providing that individuals who file complaints in languages other than English have full access to programs. GENERAL COUNSEL
- 2018-2020 | Develop multilingual complaint/application forms and informational materials for public protection programs. COMMUNICATIONS

STRATEGY 3 Ensure that the operation of the bar’s public protection programs is fair, safe, and welcoming to all.

ACTION 2.3.1 Collect demographic data and feedback from users who access the bar’s public protection programs.

- 2018 | Explore methods to collect data. COMMUNICATIONS — Completed
- 2019 | Collect user demographic data and seek feedback on user experience. COMMUNICATIONS

ACTION 2.3.2 Analyze demographic data and feedback from users who access the bar’s public protection programs.

- 2019-2020 | Analyze the data collected. GENERAL COUNSEL
- 2020 | Meet with members, stakeholders, and possible community partners identified in Action 2.1.1, to discuss data and seek additional feedback. CEO
- 2019-2020 | Identify approaches for creating a safer and more welcoming public protection program process. GENERAL COUNSEL
- 2020 | Develop a plan to implement approaches. GENERAL COUNSEL

ACTION 2.3.3 Coordinate with the work of the Oregon Supreme Court Council on Inclusion and Fairness (OSCCIF).

- 2018-2020 | Participate in and support the work of the OSCCIF. CEO — 2018 target measure completed

GOAL 3 Expand availability of public education, outreach, and self-navigation materials for underserved Oregon communities.

STRATEGY 1 Develop public legal information materials that are accessible to all Oregonians.

ACTION 3.1.1 Improve the readability of all OSB public legal information materials.

- 2018 | Determine the readability/grade level of existing content, and set a target standard (e.g., “Plain English” 8th grade reading level). COMMUNICATIONS — Completed
- 2019 | Edit the 30 most accessed topics to meet the new standard. COMMUNICATIONS
- 2020 | Edit the next 30 most accessed topics to meet the new standard. COMMUNICATIONS

ACTION 3.1.2 Improve access to legal information materials for English-language-learners.

- 2018 | Present all public information materials online in formats that are compatible with the Google Translate app; post professionally translated materials available to the OSB online. COMMUNICATIONS — Completed

- 2019 | Produce professional translation of the 20 most accessed topics in high-demand languages. COMMUNICATIONS
- 2020 | Produce professional translation of the next 20 most accessed topics in high-demand languages. COMMUNICATIONS

ACTION 3.1.3 Increase availability of legal information provided in video and other non-text formats, featuring diverse presenters, including presenters from nondominant cultures.

- 2018-2020 | Continue the production of Legal Q&A videos in English, Spanish, and other high-demand languages; produce video introductions for OSB public protection programs in English and Spanish. COMMUNICATIONS — 2018 target measure completed
- 2019 | Produce and promote an instructional video for new statewide dissolution forms (petitioner) in English and Spanish, in collaboration with justice system partners. COMMUNICATIONS
- 2020 | Produce and promote instructional videos for other statewide family law forms. COMMUNICATIONS

ACTION 3.1.4 Increase the availability of legal information materials to people with disabilities and special needs.

- 2018-2019 | Review online materials for compatibility with screen readers; add captioning for public information videos. IT
- 2019-2020 | Continue updating and monitoring of materials. IT

STRATEGY 2 Enhance outreach to underserved communities regarding the Modest Means Program and Lawyer Referral Service.

ACTION 3.2.1 Assess current service levels and legal needs of underserved communities.

- 2018 | Compile internal statistics on the Lawyer Referral Service and Modest Means Program, including calls from English-language learners, languages offered by panelists, and website translations. COMMUNICATIONS — Completed
- 2019 | Compare services provided with results of the CLNS to identify underserved communities, and prioritize how the Lawyer Referral Service is meeting their legal needs. LSP

ACTION 3.2.2 Implement outreach plan to underserved communities, including marketing and coordination with community partners.

- 2018 | Begin outreach to already identified underserved communities. COMMUNICATIONS — Completed
- 2019-2020 | Continue outreach methods and monitor effectiveness. COMMUNICATIONS

STRATEGY 3 Increase issue-based public education, targeting media outlets with legal trends and issues that affect underserved communities.

ACTION 3.3.1 Establish a diverse network of lawyers and bar groups who are leaders in relevant areas of practice.

- 2018-2020 | Work with select committees, sections, and affinity bars to support justice system issues. PUBLIC AFFAIRS — 2018 target measure completed
- 2019 | Develop a framework to continue the discussion and coordinate ongoing efforts. PUBLIC AFFAIRS

ACTION 3.3.2 Adopt a plan for responding to breaking legal news when it offers an opportunity to educate and enhance awareness of issues affecting underserved communities.

- 2019-2020 | Work with bar leaders on a media response policy. COMMUNICATIONS
- 2019-2020 | Develop and implement the policy. COMMUNICATIONS

GOAL 4 Improve the administration of justice to better serve under-represented and marginalized communities.

STRATEGY 1 Support OSB justice system funding priorities.

ACTION 4.1.1 Develop coalitions and collaborate with justice system partners and bar members to achieve OSB legislative priorities.

- 2018 | Meet with justice system partners during the interim to discuss legislative concepts and funding priorities. PUBLIC AFFAIRS — Completed
- 2019 | Host a Day at the Capitol to motivate members and educate legislative leadership. PUBLIC AFFAIRS
- 2019 | Present information on access to justice to lawyer-legislators and bar members to ensure message consistency. PUBLIC AFFAIRS

STRATEGY 2 Collaborate with the courts and support the Procedural Fairness in Courts Initiative.

ACTION 4.2.1 Develop lunchtime CLE series (Lunch and Learn) at the Capitol for staff and public on implicit bias and procedural justice.

- 2018 | Conduct a lunchtime CLE on procedural justice. PUBLIC AFFAIRS — Completed
- 2019 | Conduct a lunchtime CLE on procedural justice. PUBLIC AFFAIRS
- 2020 | Conduct a lunchtime CLE on procedural justice. PUBLIC AFFAIRS

ACTION 4.2.2 Determine goals of the OSCCIF regarding data identification and collection.

- 2018 | Develop a plan on how to best assist. PUBLIC AFFAIRS — Completed

STRATEGY 3 Support access to justice in the legislative arena.

ACTION 4.3.1 Collaborate with other organizations to support procedural fairness and justice system reinvestment.

- 2019 | Host a Day at the Capitol; invite representatives from legal aid, indigent defense services, and coalition partners to participate in events. PUBLIC AFFAIRS

ACTION 4.3.2 Develop coalitions to support access-to-justice initiatives.

- 2018 | Meet with coalition partners during the interim to discuss legislative concepts and funding priorities. PUBLIC AFFAIRS — Completed

ACTION 4.3.3 Educate lawyer-legislators, bar members, and coalition partners about the need for legal aid services and indigent defense.

- 2018 | Host an access-to-justice event with coalition partners. PUBLIC AFFAIRS — Completed
- 2019 | Host an access-to-justice event with coalition partners. PUBLIC AFFAIRS
- 2020 | Host an access-to-justice event with coalition partners. PUBLIC AFFAIRS

ACTION 4.3.4 Pursue consumer protection initiatives

- 2018 | Pursue consumer protection initiatives related to the Futures Task Force Report (www.osbar.org/docs/resources/taskforces/futures/FuturesTF_Summary.pdf) PUBLIC AFFAIRS — Completed
- 2019 | Achieve progress in consumer protection initiatives in 2019 legislative session. PUBLIC AFFAIRS

ACTION 4.3.5 Improve resources for self-navigators.

- 2019 | Support court initiatives of the Futures Task Force. PUBLIC AFFAIRS
- 2019 | Hold a successful legislative session. PUBLIC AFFAIRS

ACTION 4.3.6 Use the CLNS to update legislators about the unmet legal needs of low-income Oregonians to support increased legal aid funding.

- 2018-2019 | Establish a diverse network of leaders, including leaders from nondominant cultures, to support relevant issues and trends. PUBLIC AFFAIRS
- 2019 | Hold a successful legislative session. PUBLIC AFFAIRS

BAR OPERATIONS SPHERE

GOAL 1 Bar employees have a high level of diversity and inclusion competence and ownership.

STRATEGY 1 Provide educational opportunities for OSB employees.

ACTION 1.1.1 Provide one annual mandatory session focused on inclusion, equity, or cultural competence for all staff.

- 2018 | Identify topic and schedule presenter. HUMAN RESOURCES — Completed
- 2019 | Identify topic and schedule presenter. HUMAN RESOURCES
- 2020 | Identify topic and schedule presenter. HUMAN RESOURCES

ACTION 1.1.2 Provide one annual mandatory session focused on diversity, inclusion, equity, or cultural competence for managers and directors (in addition to the annual all-staff training).

- 2019 | Identify topic and schedule presenter. HUMAN RESOURCES
- 2020 | Identify topic and schedule presenter. HUMAN RESOURCES

ACTION 1.1.3 Provide at least one annual cultural awareness day for all employees.

- 2018 | Identify culture to highlight; hold activity. D&I — Completed
- 2019 | Identify culture to highlight; hold activity. D&I
- 2020 | Identify culture to highlight; hold activity. D&I

ACTION 1.1.4 Develop a “tip of the month” feature on the intranet that focuses on information and topics relating to diversity, inclusion, equity, or cultural competence.

- 2018 | Source information and post monthly on intranet. D&I — Completed
- 2019 | Source information and post monthly on intranet. D&I
- 2020 | Source information and post monthly on intranet. D&I

STRATEGY 2 Ensure managers and directors are held accountable for professional development in relation to diversity, inclusion, equity, and cultural competence.

ACTION 1.2.1 Update managers' and directors' performance evaluation templates to ensure that diversity and inclusion ownership and competence are included as leadership attributes to be evaluated.

- 2018 | Review templates, change as necessary, and implement for year. HUMAN RESOURCES
— Completed
- 2019 | Review templates, change as necessary, and implement for year. HUMAN RESOURCES
- 2020 | Review templates, change as necessary, and implement for year. HUMAN RESOURCES

ACTION 1.2.2 Encourage managers and directors to identify and participate in external educational opportunities that focus on professional development around diversity and inclusion.

- 2018 | Discuss diversity and inclusion professional development during performance evaluation.
CEO — Completed
- 2019 | Discuss diversity and inclusion professional development during performance evaluation.
CEO
- 2020 | Discuss diversity and inclusion professional development during performance evaluation.
CEO

STRATEGY 3 Review current OSB language used in relation to diversity and inclusion, and make updates according to current best practices.

ACTION 1.3.1 Research best practices around diversity and inclusion language.

- 2018-2019 | Collate findings into a best-practices report. D&I

ACTION 1.3.2 Conduct an assessment of OSB language, including pronouns, used on all internal and external materials.

- 2018-2019 | Identify language and all language locations for updating, using the best-practices report. D&I
- 2019 | Develop a language update implementation plan. D&I
- 2019 | Implement consistent language updates per the implementation plan. D&I

ACTION 1.3.3 Update OSB staff regarding changes to best-practices terminology and language.

- 2019 | Include best-practices language updates within the annual staff education session.
HUMAN RESOURCES

STRATEGY 4 Ensure the OSB bylaws are consistent with the OSB and DAC mission and goals around diversity and inclusion.

ACTION 1.4.1 Review bylaws and identify bylaws that need to be amended.

- 2018-2019 | Identify bylaws. GENERAL COUNSEL
- 2020 | Draft and present amendments to the BOG for approval. GENERAL COUNSEL

GOAL 2 Foster a welcoming and inclusive workplace and accessible programs, services, and Bar Center.

STRATEGY 1 Acquire an understanding of the bar's workplace culture.

ACTION 2.1.1 Devise and conduct a workplace culture assessment.

- 2018-2019 | Conduct a workplace culture assessment and analyze data. HUMAN RESOURCES

ACTION 2.1.2 Evaluate employees' reasons for leaving the organization.

- 2019 | Review exit interview process and implement changes. HUMAN RESOURCES
- 2019 | Develop a method for reviewing and analyzing data. HUMAN RESOURCES
- 2020 | Analyze and evaluate current and historic data. HUMAN RESOURCES

ACTION 2.1.3 Conduct an internal salary equity assessment.

- 2018-2019 | Conduct an assessment by a third-party contractor and analyze data. HUMAN RESOURCES

STRATEGY 2 Use the results of data collection to identify areas for improvement.

ACTION 2.2.1 Develop a plan to address areas that need improvement.

- 2020 | Develop and implement the plan. HUMAN RESOURCES

STRATEGY 3 Identify and resolve barriers to the OSB being a welcoming environment for all.

ACTION 2.3.1 Develop and implement a plan to ensure inclusive restroom access for all employees and visitors.

- 2018-2019 | Develop the plan and identify needed resources. D&I
- 2019 | Implement the plan. FINANCE AND OPERATIONS

ACTION 2.3.2 Develop and implement a policy and procedure to create an inclusive environment for nonbinary and transgender employees.

- 2019 | Develop a plan and identify needed resources. HUMAN RESOURCES
- 2020 | Implement the plan. HUMAN RESOURCES

STRATEGY 4 Continue to identify and resolve barriers to accessibility for persons with disabilities to OSB programs, services, and Bar Center.

ACTION 2.4.1 Develop and implement a plan to identify and resolve barriers to OSB Center facility.

- 2018-2019 | Review building user feedback to identify ways to improve building accessibility. GENERAL COUNSEL
- 2020 | Create a plan and identify needed resources to improve building accessibility. GENERAL COUNSEL
- 2020 | Implement the accessibility plan. GENERAL COUNSEL

ACTION 2.4.2 Ensure OSB websites are compatible with screen readers.

- 2018 | Create a plan to continue identifying and updating portions of the website that are not accessible to persons utilizing screen readers. IT — Completed
- 2018-2020 | Implement the website accessibility plan. IT — 2018 target measure completed

ACTION 2.4.3 Continue to educate bar staff and bar leaders about accessibility.

- 2018-2019 | Gather feedback and identify areas where bar staff and bar leaders may require additional assistance or education on accessibility issues. GENERAL COUNSEL
- 2019 | Hold bar staff training on accessibility. GENERAL COUNSEL
- 2019 | Develop accessibility guides and recommendations that respond to bar staff and bar leaders' needs. GENERAL COUNSEL
- 2020 | Distribute accessibility guidelines and recommendations to bar staff and bar leaders. GENERAL COUNSEL

GOAL 3 Build a workforce that is diverse and inclusive at every level.

STRATEGY 1 Collect demographic data as one benchmark for measuring the diversity of applicants and the workforce.

ACTION 3.1.1 Evaluate the categories currently used by the OSB for measuring staff diversity.

- 2018-2019 | Assess categories and expand as necessary. HUMAN RESOURCES
- 2019 | Implement revised data collection. HUMAN RESOURCES
- 2020 | Develop and implement system for ongoing review and analysis of data. HUMAN RESOURCES

ACTION 3.1.2 Investigate options for assessing the diversity of applicants.

- 2019 | Evaluate electronic application systems. HUMAN RESOURCES
- 2020 | Update application process. HUMAN RESOURCES

STRATEGY 2 Ensure that the OSB recruitment process is inclusive and equitable.

ACTION 3.2.1 Assess the current OSB recruitment process.

- 2018-2019 | Develop a method for assessment. **D&I**
- 2019 | Conduct the assessment and analyze data. **D&I**

ACTION 3.2.2 Identify areas for improvement and develop a plan for improvement.

- 2019 | Develop a plan. **HUMAN RESOURCES**
- 2020 | Implement the plan. **HUMAN RESOURCES**

STRATEGY 3 Increase the diversity of applicants for vacant positions at the OSB.

ACTION 3.3.1 Build relationships with external groups and organizations that are focused on diversity.

- 2019 | Identify external groups and organizations. **D&I**
- 2019 | Develop a plan for building relationships with identified organizations that is appropriate to each organization. **D&I**
- 2020 | Implement the plan. **D&I**

ACTION 3.3.2 Expand outreach to a more diverse pool of potential applicants.

- 2018 | Evaluate current outreach for job openings to identify gaps. **HUMAN RESOURCES — Completed**
- 2019 | Identify potential resources for additional outreach and their job posting requirements and needs. **HUMAN RESOURCES — Completed**
- 2019 | Incorporate new resources into current advertising plans. **HUMAN RESOURCES — Completed**

STRATEGY 4 Explore and use bias interrupters in the hiring process.

ACTION 3.4.1 Incorporate hiring committees into the hiring process.

- 2018 | Identify opportunities for use of hiring committees. **HUMAN RESOURCES — Completed**
- 2018 | Investigate and experiment with alternative hiring models that incorporate hiring committees. **HUMAN RESOURCES — Completed**
- 2019 | Develop training for hiring committee participants. **HUMAN RESOURCES**
- 2019 | Identify staff interested in participating on hiring committees and provide training. **HUMAN RESOURCES**

ACTION 3.4.2 Create accountability for hiring process decisions.

- 2018 | Implement a step within the hiring process that requires decision makers to state a reason why they did not choose to take applicants to the next stage. HUMAN RESOURCES — Completed
- 2019 | Provide training for managers and directors on bias interrupters. HUMAN RESOURCES

GOAL 4 Engage a diverse and inclusive group of contractors, suppliers, vendors, and consultants.

STRATEGY 1 Develop and implement a process for ensuring consideration of a diverse list of third-party vendors.

ACTION 4.1.1 Review the current processes used organization-wide for selecting contractors, suppliers, vendors, and consultants.

- 2018 | Review and document the process. FINANCE AND OPERATIONS — Completed

ACTION 4.1.2 Create and implement a policy or policies for contracting with third-party vendors that account for the various needs of the organization and consider a diverse vendor pool.

- 2018-2019 | Develop a diverse list of third-party vendors. FINANCE AND OPERATIONS
- 2019 | Develop a policy. FINANCE AND OPERATIONS — Completed
- 2020 | Implement the policy. FINANCE AND OPERATIONS — Completed

ACTION 4.1.3 Review annual diversity spending before the next year budget is finalized.

- 2019 | Hold a review meeting with the CEO, General Counsel, the Director of Finance and Operations, and the Director of Diversity & Inclusion. FINANCE AND OPERATIONS

GLOSSARY

ACRONYMS

ABA	American Bar Association
ACDI	Advisory Committee on Diversity and Inclusion, Oregon State Bar
BOG	Board of Governors, Oregon State Bar
CEO	Chief Executive Officer, Oregon State Bar
CEJ	The Lawyers' Campaign for Equal Justice
CLE	Continuing Legal Education
CLNS	Civil Legal Needs Study
DAC	Diversity Advisory Council
DAP	Diversity Action Plan
D&I	Diversity & Inclusion Department, Oregon State Bar
HOD	House of Delegates, Oregon State Bar
IOLTA	Interest on Lawyers Trust Accounts
LSP	Legal Services Program
MCLE	Minimum Continuing Legal Education
NLMP	New Lawyer Mentoring Program
OCLEAB	Oregon Council on Legal Education and Admissions to the Bar
OLF	Oregon Law Foundation
OLIO	Opportunities for Law in Oregon
ONLD	Oregon New Lawyers Division
OSB	Oregon State Bar
OSCCIF	Oregon Supreme Court Council on Inclusion and Fairness

TERMS AND CONCEPTS

There may be multiple definitions of the words or terms below; the following definitions characterize how the DAC has defined them for the purposes of this plan.

Affinity bars

Professional organizations of lawyers whose missions are generally focused on advancing diversity, equity, and inclusion in the legal profession. www.osbar.org/diversity/index.html#affinitybarssections

Benefit statement

A statement summarizing and demonstrating the advantages and values of a particular approach or initiative.

Bias interrupters

Tactics and approaches for disrupting personal biases, including implicit biases.

Culture

The system of shared beliefs, values, customs, behaviors, and artifacts that are held by specific social or other groups and that are transmitted from generation to generation.

Cultural awareness

Knowledge, understanding, and appreciation of different cultures.

Consumer protection initiatives

Measures currently under development that will be implemented to help protect the public in light of the changing legal services market.

Cultural competence

The ability to interact effectively with people of different cultures. Cultural competence comprises four components: (a) awareness of one's own cultural worldview, (b) attitude toward cultural differences, (c) knowledge of different cultural practices and worldviews, and (d) cross-cultural skills. Developing cultural competence results in an ability to understand, communicate with, and effectively interact with people across cultures. Cultural competence is a developmental process that evolves over an extended period.¹

Diversity

The differences between us that make us individual and unique. Diversity includes, but is not limited to, age, culture, disability, ethnicity, gender and gender identity or expression, geographic location, national origin, race, religion, sex, sexual orientation, veteran status, and socioeconomic status.

Dominant culture

The dominant culture is the group or groups within society that possess power, influence, authority, and control over other groups, cultures, or factions of society on a systemic and institutional level, to the detriment and suppression of nondominant cultures.

Equity

Ensuring that all individuals and groups have fair access to the same opportunities and resources by identifying and eliminating barriers that face underrepresented groups, by acknowledging ingrained and systemic structural biases in society and striving to address these disparities.

English-language learners

People who speak, read, or write in languages other than English, people who are not fluent in English, or both.

Equity lens

Analyzing processes and systems to identify causes of disparate impact and inequity.

¹ Source: Diversity, Equity and Inclusion Terms, University of Houston Center for Diversity and Inclusion, https://www.uh.edu/cdi/diversity_education/resources/pdf/terms.pdf

Hard-to-reach communities

Includes those with limited English-language skills, homeless people, farmworkers, immigrant workers, communities with a distrust and fear of government agencies, and senior citizens.

High-demand languages

Languages most frequently spoken or requested by members of the public who contact the OSB for public services, as determined through ongoing tracking of these inquiries and requests.

Implicit bias

Unconscious stereotyping or unconscious attitudes toward specific groups of people that impact our behavior, actions, perceptions, or understanding.

Inclusion

Creating an environment that is welcoming, safe, and supportive for any individual or group by acknowledging, embracing, and valuing the unique contributions our individual backgrounds offer.

Lateral hires

Lawyers who have joined the OSB from states or locations other than Oregon. In the context of this DAP, the term “lateral hire” is not specific to sideways career movement.

Low-income Oregonians

For the purpose of statewide legal aid services, households with incomes at or lower than 125% of the federal poverty level. This would be \$30,750 for a household of four in 2017. Another way to look at it is that people in single-person households who makes minimum wage in Oregon would be ineligible for legal aid because they are over income.

Marginalized communities

Communities subjected to social exclusion and thus disadvantaged or prevented from participating in or benefiting from societal systems and processes.

Nondominant cultures

Groups that are historically underrepresented, politically, socially, and/or economically.

OSB public protection programs

OSB programs including the lawyer disciplinary process, the unlawful-practice-of-law complaint process, the fee-dispute resolution program, the client security fund, and malpractice coverage.

Specialty bars

Law-affiliated professional organizations.

Underserved communities

Low-income and other communities that lack access to or the ability to afford legal services.

