



NEW YORK STATE BAR ASSOCIATION



2017 ANNUAL MEETING

Committee on Civil Rights Committee on Diversity and Inclusion Annual Meeting

Thursday, January 26, 2017
New York Hilton Midtown

CLE NotePad

Note: Complete course materials are being distributed in electronic format online in advance of the program.

Committee Chairs

Civil Rights

Jeremy Benjamin, Esq.

Paul, Weiss, Rifkind, Wharton & Garrison LLP

Diversity and Inclusion

Sandra Buchanan, Esq.

Office of Court Administration

Program Co-Chairs

Jeremy Benjamin, Esq.

Paul, Weiss, Rifkind, Wharton & Garrison LLP

Paula Edgar, Esq.

Principal, PGE LLC

This program is offered for educational purposes. The views and opinions of the faculty expressed during this program are those of the presenters and authors of the materials, including all materials that may have been updated since the books were printed. Further, the statements made by the faculty during this program do not constitute legal advice.

**Copyright ©2017
All Rights Reserved
New York State Bar Association**

New York State Bar Association

FORM FOR VERIFICATION OF PRESENCE AT THIS PROGRAM

Pursuant to the Rules pertaining to the Mandatory Continuing Legal Education Program for Attorneys in the State of New York, as an Accredited Provider of CLE programs, we are required to carefully monitor attendance at our programs to ensure that certificates of attendance are issued for the correct number of credit hours in relation to each attendee's actual presence during the program. Each person may only turn in his or her form—you may not turn in a form for someone else. Also, if you leave the program at some point prior to its conclusion, you should check out at the registration desk. Unless you do so, we may have to assume that you were absent for a longer period than you may have been, and you will not receive the proper number of credits.

Speakers, moderators, panelists and attendees are required to complete attendance verification forms in order to receive MCLE credit for programs. Faculty members and attendees please complete, sign and return this form to the registration staff **before you leave** the program.

Please turn in this form at the end of the program.

<p>Disrupting Implicit Bias to Advance Diversity and Inclusion Sponsored by the New York State Bar Association Committee on Civil Rights and Committee on Diversity and Inclusion January 26, 2017, Hilton New York Midtown, New York City</p>
--

Name: _____
(Please print)

I certify that I was present for the entire presentation of this program

Signature: _____ Date: _____

Speaking Credit: In order to obtain MCLE credit for speaking at today's program, please complete and return this form to the registration staff before you leave. **Speakers** and **Panelists** receive three (3) MCLE credits for each 50 minutes of presenting or participating on a panel. **Moderators** earn one (1) MCLE credit for each 50 minutes moderating a panel segment. Faculty members receive regular MCLE credit for attending other portions of the program.



NEW YORK STATE BAR ASSOCIATION

One Elk Street, Albany, New York 12207 • PH 518.463.3200 • www.nysba.org

Thank you for participating in today's Annual Meeting program - **Civil Rights & Diversity and Inclusion (New York) on 1/26/2017.**

Please note the following important items:

1. In order to receive your MCLE credit, you are required to complete and return to the registration personnel, at the appropriate times, the Verification of Attendance forms you received with your materials.
2. The New York State Bar Association is committed to providing high quality continuing legal education courses, and your feedback is important to us. We request that you complete your confidential online program evaluation within the next 72 hours, using one of the following links:

Online Evaluation Form link for this Annual Meeting Program:

<https://survey.vovici.com/se/109446f37b3b9efd>

If you have any questions or concerns, please feel free to call (518) 487-5500.

Thank you for choosing NYSBA MCLE programs.

ACCESSING THE ONLINE ELECTRONIC COURSE MATERIALS

All program materials will be distributed exclusively online in PDF format. It is strongly recommended that you save the course materials in advance in the event that you will be bringing a computer or tablet with you to the program.

Printing the complete materials is not required for attending the program.

To access the complete set of course materials, please insert the following link into your browser's address bar and click 'enter' www.nysba.org/AM2017IMPLICITBIAS

A NotePad© (paper) will be provided to all attendees at the live program site. The NotePad© includes lined pages for taking notes on each topic and speaker biographies.

Please note:

- You must have Adobe Acrobat on your computer in order to view, save, and/or print the files. If you do not already have this software, you can download a free copy of Adobe Acrobat Reader at this link: <http://get.adobe.com/reader/>
- In the event that you are bringing a laptop, tablet or other mobile device with you to the program, please be sure that your batteries are fully charged in advance as additional electrical outlets may not be available at your program location.
- NYSBA cannot guarantee that free or paid WI-FI access will be available for your use at your program location.

ATTENDANCE VERIFICATION FOR NEW YORK MCLE CREDIT AND PROGRAM EVALUATION PROCESS

Attendance Verifications: In order to receive your New York MCLE credit, you are required to complete and return the Verification of Attendance form. If you are attending a two-day program, you will receive a separate form on each day of the program.

- The form should be filled out and returned to the Registration Staff after the session has ended each day. Please be sure to turn in your form at the appropriate times – we cannot issue your New York MCLE credit without it. Your MCLE Certificate will be emailed to you within three months after the program.
- Please note: Partial credit for program segments not allowed. Under the New York State Continuing Legal Education Board Regulations and Guidelines, attendees at CLE programs cannot receive MCLE credit for a program segment unless they are present for the entire segment. Persons who arrive late, depart early, or are absent for any portion of the segment will not receive credit for that segment.

Evaluations: Program evaluations are processed online. After the program is over, you will receive an email from NYSBA with a link to the online evaluation form.

- To complete your registration process, click on the link in the email within the next 72 hours and fill out your confidential online program evaluation.

The New York State Bar Association is committed to providing high quality continuing legal education courses, and your feedback regarding speakers and program accommodations is important to us. Please be sure to fill out the online evaluation form after the program!

Thank you for choosing NYSBA programs.

**Committee on Civil Rights and
Committee on Diversity and Inclusion**

Disrupting Implicit Bias to Advance Diversity and Inclusion:
Practical Steps to Counter the Effects of Implicit Bias
in the Legal Profession

Thursday, January 26, 2017 | New York Hilton Midtown | NYC

3.5 Credits: Ethics and Professionalism

Program

2:00 – 5:30 p.m. | Nassau East

COMMITTEE CHAIRS

Jeremy Benjamin, Esq.

Committee on Civil Rights

Paul, Weiss, Rifkind, Wharton & Garrison LLP

Sandra Buchanan, Esq.

Committee on Diversity and Inclusion

Office of Court Administration

2:00 – 2:10

Welcome and Introduction of Professor Williams

2:10 – 3:00

An Empirical Look at Implicit Bias and Bias Interrupters in the Legal Profession

- Pervasiveness of implicit bias
- Patterns of implicit bias
- Strategies for combating bias

Prof. Joan C. Williams

3:00 – 3:15

Break

3:15 – 3:20

Introduction of Panelists

3:20 – 5:00

Practical Strategies for Identifying and Interrupting Implicit Bias within the Legal Profession

- Criminal Justice
- The Courts / Civil Legal Services
- Private Practice
- Law Schools

Wayne McKenzie, Esq.; Hon. Karen Peters; Valerie E. Radwaner, Esq; Rosevelie Marquez Morales, Esq.

PROGRAM CO-CHAIR

Jeremy Benjamin, Esq.

Paul, Weiss, Rifkind, Wharton & Garrison LLP

PROGRAM CO-CHAIR AND MODERATOR

Paula Edgar, Esq.

Principal, PGE LLC

NYSBA 2017 ANNUAL MEETING

5:00 – 5:30

Recognizing Our Own Biases

- Discussion of scenarios and practical steps to disrupt implicit bias
- Overview of resources and best practices within the profession for attorneys to combat implicit bias

Paula Edgar, Esq.

Speakers/Panelists

Wayne McKenzie, Esq. General Counsel, New York City Department of Probation, New York, NY

Rosevelie Marquez Morales, Esq. East Coast Diversity Director, Sidley Austin LLP, New York, NY

Hon. Karen Peters Presiding Justice, Appellate Division, Third Department Albany, NY

Valerie E. Radwaner, Esq. Deputy Chair and Partner, Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, NY

Prof. Joan C. Williams Distinguished Professor of Law, UC Hastings Foundation Chair and Director of the Center for WorkLife Law, San Francisco, CA

IMPORTANT INFORMATION

Under New York's MCLE rule, this program has been approved for a total of 3.5 credit hours. This program is transitional and is suitable for MCLE credit for both newly-admitted attorney and experienced attorneys.

Discounts and Scholarships: New York State Bar Association members and non-members may apply for a discount or scholarship to attend this program, based on financial hardship. This discount applies to the educational portion of the program only. Under this policy, any member of our Association or non-member who has a genuine basis for their hardship, if approved, can receive a discount or scholarship, depending on the circumstances. Request for discounts or scholarships must be received prior to January 13th, 2017. For more details, please contact Bridget Donlon in writing at New York State Bar Association, One Elk Street, Albany, New York 12207 or bdonlon@nysba.org.

An Empirical Look at Implicit Bias and Bias Interrupters in the Legal Profession

**PRESENTED BY:
Professor Joan C. Williams, Esq.**

Center for WorkLife Law

Bias Interrupters

Toolkits for organizations to interrupt implicit bias in practical, easily-implementable, and proven ways.

Available for free download at **BiasInterrupters.org**

[**BIAS INTERRUPTERS**] *small steps big change*

PERFORMANCE EVALUATIONS

Tools for Organizations

Incremental steps that improve diversity in your law firm or legal organization can yield large gains. Diverse work groups perform better and are more committed, innovative and loyal.¹ Gender diverse workgroups have better collective intelligence, which improves performance by the group and its members, leading to better financial performance.² Racially diverse workgroups consider a broader range of alternatives, make better decisions, and are better at solving problems.³ Bias, if unchecked, affects many different groups: modest or introverted men, LGBT+ people, individuals with disabilities, class migrants (professionals from blue-collar backgrounds), women, and people of color. We've distilled the huge literature on bias into simple steps that help you and your firm or department perform better.

Bias interrupters are small adjustments to your existing systems. They should not require you to abandon systems currently in place.

THE CHALLENGE

Law firm partners found 41% more errors in the same legal brief they thought was written by an African-American male associate as compared with a white associate.⁴ We know now that workplaces that view themselves as being highly meritocratic often are, in fact, *more* biased than other organizations⁵ and the usual responses—one-shot diversity trainings, mentoring and networking programs—typically don't work.⁶

THE SOLUTION: A 3 Step Approach

Bias interrupters are tweaks to basic business systems that can yield large gains for your legal organization, using a 3 step process:

1) Use metrics: Law firms and legal departments use metrics to assess whether they have progressed towards any strategic goal. Metrics can help you pinpoint where bias exists, and assess the effectiveness of the measures you've taken. (Whether metrics are made public will vary from company to company, and from metric to metric.)

2) Implement a Bias Interrupter: For example, use a bounceback: When a supervising attorney's performance ratings go askew for certain groups, ask them to re-look at their reviews to determine whether they have a disproportionate number of poor performers or if unconscious bias may have seeped in. One organization that did this found that over time, supervisors' ratings of underrepresented groups converged with those of majority men.

3) Repeat as needed. After you implement bias interrupters, return to your key metrics: did it produce any change? If not, you may need to implement stronger Interrupters, or you may be targeting the wrong place in the performance evaluation process. Use an iterative process until your metrics improve.

¹ e.g., Dahlin et al., 2005; Ely & Thomas, 2001; Jehn et al., 1999

² Richard et al., 2004, Wooley et al, 2011; Lewis, 2016

³ Phillips et al., 2006, Antonio et al., 2004; Richard et al., 2003

⁴ Reeves, 2014

⁵ Kalev, Dobbin, & Kelly, 2006

⁶ Castilla, 2015

[**BIAS INTERRUPTERS**] *small steps big change*

1. Use Metrics

Data and metrics help you spot problems—and assess the effectiveness of the measures you’ve taken. Businesses use metrics to help them achieve any strategic goal. Key metrics:

- Do your performance evaluations show consistently higher ratings for majority men than for women, people of color, or other relevant groups?
- Do women’s ratings fall after they have children? Do employees’ ratings fall after they take parental leave or adopt flexible work arrangements?
- Do the same performance ratings result in different promotion or compensation rates for different groups?

Keep metrics by: 1) supervising attorney; 2) department; and 3) the law firm or legal department as a whole.

2. Implement Bias Interrupters

All bias interrupters should apply both to written evaluations and in meetings, where relevant. Because every organization is different, not all interrupters will be relevant. Consider this a menu.

To understand the research and rationale behind the suggested bias interrupters, read our **Identifying Bias in Performance Evaluations Worksheet (2-page version or with citations)** which summarizes hundreds of studies (available on our website BiasInterrupters.org.)

- **Empower people** involved in the evaluation process to spot and interrupt bias by reading our **Identifying Bias in Performance Evaluations Worksheet**. Read and distribute the **Worksheet** to help you understand the rationale behind the steps suggested below.
- **Appoint Bias Interrupters.**
Have team members or HR business partners who have been trained to spot bias involved at every step of the evaluation process.
- **Begin with clear and specific performance criteria** directly related to job requirements.
Try: “He is able to write an effective summary judgement motion under strict deadlines,” instead of: “He writes well.”
- **Require evidence from the evaluation period that justifies the rating.**
Try: “In March, she argued X motion in front of Y judge on Z case, answered his questions effectively, and was successful in getting the optimal judgement,” instead of: “She’s quick on her feet.”
- **Consider performance and potential separately** for each candidate.
Performance and potential should be appraised separately, given the tendency for majority men to be judged on potential; others on performance.
- **Separate personality issues from skill sets** for each candidate.

BIAS INTERRUPTERS *small steps big change*

Personal style should be appraised separately from skills, because a narrower range of behavior often is accepted from women and people of color. For example, women may be labeled “difficult” for doing things that are accepted in majority men.

- **Level the playing field** by ensuring everyone knows how to promote themselves effectively and sending the message they are expected to do so. Distribute our **Writing an Effective Self-Evaluation Worksheet**, which can help.
- **Offer alternatives to self-promotion.**
Encourage or require supervising attorneys to set up more formal systems for sharing successes, such as a monthly email that lists employees’ accomplishments.
- **Provide a bounceback.**
Supervising attorneys whose performance evaluations show persistent bias should receive a bounceback (i.e. someone should talk through the evidence with them).
- **Have Bias Interrupters play an active role in calibration meetings.**
In many law firms and legal departments, the Executive Committee or another body meets to produce a target distribution of ratings or cross-calibrate rankings. Have participants read our **Identifying Bias in Performance Evaluations Worksheet** of bias before they meet. Have a trained Bias Interrupter in the room.
- **Don’t eliminate your performance appraisal system.**
Eliminating formal performance evaluation systems and replacing them with feedback-on-the-fly creates conditions for bias to flourish.

What’s a bounceback?

An example: in one organization, when a supervisor’s ratings of an underrepresented group deviate dramatically from the mean, the evaluations are returned to the supervisor with the message: either you have an undiagnosed performance problem that requires a Performance Improvement Plan (PIP), or you need to take another look at your evaluations as a group. The organization found that a few people were put on PIPs—but that over time supervisors’ ratings of underrepresented groups converged with those of majority men. The organization that used this found that all groups thought the performance evaluations were equally fair.

3. Repeat as needed

- **Return to your key metrics.** Did the bias interrupters produce any change?
- **If you don’t see change,** you may need to implement a stronger bias interrupter, or you may be targeting the wrong place in the performance evaluation process.
- **Use an iterative process** until your metrics improve.



Bias Interrupters Worksheet

Prove-It-Again! (PIA)	
Pattern	Bias Interrupters
<ul style="list-style-type: none"> • Women, people of color, individuals with disabilities (“PIA Groups”) often need to provide more evidence of competence than others to be judged equally competent •PIA groups’ mistakes noticed more, remembered longer •PIA groups’ successes attributed to luck or circumstance, men’s to skill •Objective requirements applied rigorously to PIA groups, leniently to others •PIA groups judged on their performance, others on their potential 	<ul style="list-style-type: none"> •If you are in the meeting, say “I think we have now realized what we are looking for: someone with A, B, and C. Let’s go back to the top of the pile and make sure we’ve picked up everyone who has those qualifications.” • If you are running the meeting: <ul style="list-style-type: none"> -pre-commit to a specific set of criteria -require people to explain why if they diverge from those criteria
<ul style="list-style-type: none"> • Stolen idea: a woman makes a suggestion in a meeting that a man gets credit for. 	<ul style="list-style-type: none"> • “I’ve been pondering that ever since Pam first said it.”
Tightrope	
Pattern	Bias Interrupters
<ul style="list-style-type: none"> • “He’s assertive, she’s aggressive” (or a prima donna, outspoken, a b*tch, has sharp elbows, etc.) 	<ul style="list-style-type: none"> • “Would we be saying the same thing about a man?” • Developmental feedback for men tends to focus on skill sets; for women, on personality traits
<ul style="list-style-type: none"> • Anger: Understandable from men, unacceptable from women 	<ul style="list-style-type: none"> • Put appropriate limits on public displays of anger in the office: don’t tolerate “screamers”.
<ul style="list-style-type: none"> • Self-promotion: Are women expected to be the selfless “team players”? 	<ul style="list-style-type: none"> • Limit self-promotion to formal contexts •Provide alternatives for self-promotion, such as a company email once a month sharing everyone’s accomplishments.
<p>Office Housework:</p> <ul style="list-style-type: none"> •Literal housework (planning parties) •Notetaking/Billing •Emotion Work (“She’s so upset; can you help?”) 	<ul style="list-style-type: none"> •Assign an admin to do it, or establish a rotation • Everyone do their own, or establish a rotation • Handling difficult conversations is part of good citizenship

<ul style="list-style-type: none"> • Undervalued work: diversity/women’s initiatives • Undervalued work vs. career-enhancing work (Managing the paralegals vs. arguing motions; doing the document list vs. running the closing) 	<ul style="list-style-type: none"> • Don’t assign only people of color and/or women to these initiatives: if an organization lacks diversity, it’s an organizational problem (not a woman’s problem) • Figure out who is doing the undervalued work and who gets the glamour assignments, adjust if this division aligns with gender, race, etc..
--	---

Maternal Wall

Pattern	Bias Interrupters
<ul style="list-style-type: none"> • “She’s only part time” 	<ul style="list-style-type: none"> • “Yes, but for matters she is in charge of she takes full responsibility.”
<ul style="list-style-type: none"> • “She’s a mother” (on a performance evaluation); “She has other priorities.” 	<ul style="list-style-type: none"> • “What’s relevant is her performance, not her parental status.”
<ul style="list-style-type: none"> • “I didn’t consider you for that assignment because I know it’s not a good time for you, with the two young kids.” 	<ul style="list-style-type: none"> • “I have a stretch assignment that you would be perfect for. If this is not a good time, don’t hesitate to say so. These things come around from time to time.”
<ul style="list-style-type: none"> • “I worry about her kids” 	<ul style="list-style-type: none"> • “Based on the care and attention she gives her work, I think her kids are just fine.”

Tug of War

Pattern	Bias Interrupters
<ul style="list-style-type: none"> • Tokenism 	<ul style="list-style-type: none"> • Make sure there is not a culture of “only one woman” per plum committee/team etc.
<ul style="list-style-type: none"> • Prove-It-Again! Pass-through (“I don’t want to work with women, they give me a much harder time than the men.”) 	<ul style="list-style-type: none"> • Find out if there is a problem with female admins and their female bosses, if there is it may be time to meet with support staff to figure out a solution.
<ul style="list-style-type: none"> • Tightrope bias pass-through She’s too feminine (e.g. “With that little girl voice, no wonder she doesn’t get ahead”) She’s too masculine (e.g. “I wouldn’t want to make partner here. The partners just turned into men.”) 	<ul style="list-style-type: none"> • “There are lots of different ways to be a man and to be a woman. Everyone has their own way.”
<ul style="list-style-type: none"> • Maternal wall pass-through She’s too focused on family (“I worked full time my whole career and my kids are fine.”) She’s too focused on work (“I want to raise my own kids—unlike you.”) 	<ul style="list-style-type: none"> • “Younger women have different expectations of balancing work and family. We need to keep up.” • “There’s no one ‘right’ way to balance work and family. Happy families are not all alike.”

Additional resources:

Joan C. Williams & Rachel Dempsey, *What Works for Women at Work* (2014)
 Women’s Leadership Edge, Webinar on Bias Interrupters for Male Allies.
 Contact dolkasj@uchastings.edu for information.

Practical Strategies for Identifying and Interrupting Implicit Bias within the Legal Profession

PRESENTED BY:

Wayne McKenzie, Esq.

Hon. Karen Peters

Valerie E. Radwaner, Esq.

Rosevelie Marquez Morales, Esq.



Staff Memorandum

HOUSE OF DELEGATES Agenda Item #10

REQUESTED ACTION: Approval of the report and recommendations of the Committee on Continuing Legal Education supporting a diversity and inclusion requirement in New York's mandatory continuing legal education regulations.

Attached is a report from the Committee on Continuing Legal Education supporting an amendment to the rules governing mandatory continuing legal education to provide for one credit hour of diversity and inclusion CLE as part of the 32 credit hours required for new attorneys and as part of the 24 credit hours required of experienced attorneys. The proposal is based on a proposal adopted by the American Bar Association's House of Delegates in February 2016. As set forth in the report, the changing demographics of the United States demonstrate a need for attorneys to be well versed in issues relating to the representation of minorities and other diverse individuals. The report sets forth a proposed definition of diversity and inclusion to encompass diversity and inclusion in both the legal profession and the practice of law.

The report notes that in July 2016, the New York City Bar Association submitted a letter, subscribed to by a number of other bar associations, supporting diversity CLE, followed by letters to Hon. Betty Weinberg Ellerin, chair of the New York State CLE Board. These letters are attached as Appendix A to the report. An Appendix B sets forth sample CLE programs focusing on diversity and inclusion.

This report was submitted on October 19, 2016 and posted in the Reports Community. It is supported by the Committee on Diversity and Inclusion.

The proposal will be presented by Ellen G. Makofsky, chair of the Committee on Continuing Legal Education.

REPORT OF THE NYSBA COMMITTEE ON CONTINUING LEGAL EDUCATION
Presentation to the House of Delegates November 5, 2016

Re: Proposed Diversity and Inclusion and Elimination of Bias CLE Requirement for
New York State Attorneys

A. The Proposed Mandatory Diversity and Inclusion and Elimination of Bias CLE
Requirement for New York State Attorneys

The New York State Bar Association (“NYSBA”) has a long history of encouraging and promoting diversity and inclusion and elimination of bias in the legal profession and in our society. Accordingly, we support the American Bar Association’s (“ABA”) proposal that diversity and inclusion and elimination of bias be made a mandatory part of the attorney continuing legal education (“CLE”) requirement in New York (“D&I CLE”), and propose a method to achieve this goal as described more fully in Sections E and F, below.¹

The issue of diversity and inclusion and elimination of bias was an agenda item at the ABA’s mid-year meeting in February 2016 as Resolution 107, which was approved unanimously and without opposition by the ABA House of Delegates.²

Resolution 107 in relevant part:

[E]ncourages all state, territorial and tribal courts, bar associations and other licensing and regulatory authorities that *currently* require mandatory continuing legal education (MCLE) to modify their rules to include, as a separate required credit, programs regarding diversity and inclusion in the legal profession of all persons, regardless of race, ethnicity, gender, sexual orientation, gender identity, or disabilities, and programs regarding the elimination of bias (“D&I CLE”).

California and Minnesota have already established D&I CLE requirements for their attorneys.³ We believe that New York should also.

¹ In July 21, 2016, the New York City Bar Association submitted a letter, subscribed to by a number of diversity bar associations, supporting the call for a mandatory D&I CLE requirement. This was followed by additional correspondence from the leadership of the New York City Bar to the Chair of the New York State CLE Board, Justice Betty Weinberg Ellerin. See Appendix A. Upon review, NYSBA decided to submit its own proposal based on the makeup and needs of its membership and the legal profession as a whole, rather than sign onto the City Bar letter. After a period of extensive review and discussion by the NYSBA CLE Subcommittee on Diversity, Mirna M. Santiago, Chair of the NYSBA CLE Subcommittee on Diversity, and H. Douglas Guevara, Senior Director of NYSBA CLE, drafted the proposal for the implementation of a D&I CLE requirement, which was reviewed and approved by the majority of the NYSBA CLE Committee and also approved without comment by the NYSBA Committee on Diversity and Inclusion.

² Resolution 107 and the ABA’s related report are available at http://www.americanbar.org/news/reporter_resources/midyear-meeting-2016/house-of-delegates-resolutions/107.html.

³ The California Bar’s website (<http://mcle.calbar.ca.gov/MCLE/OnlineCLE.aspx>) lists 34 online programs that qualify for “elimination of bias” credit and which are offered in a variety of formats, including on demand,

B. The Historical, Societal and Legal Profession Backdrop

Issues of race, ethnicity, gender identity and religion⁴ – including issues related to economic disparity, unequal access to opportunities, statistically disproportionate outcomes in the criminal justice system,⁵ educational differences, mistrust of minority ethnic groups or religions, bias crimes, police conduct, overt discrimination, and even implicit or unintended bias by well-meaning people – remain among the most critical and divisive issues of our time. In addition, other diverse groups (such as the disabled and the elderly) are now a large segment of the population due to returning war veterans and “baby boomers” reaching retirement age.

Women continue to lag behind men with respect to earnings in the legal profession.⁶ A recent survey by Vault.com and The Minority Corporate Counsel Association showed that successful recruitment of minority lawyers continues at a glacial pace, with 15% of attorneys at surveyed firms in 2016 as compared to 13.8% in 2007. In addition, lawyers of color continue to leave their firms at a disproportionate rate⁷ and female attorneys of color, in particular, feel like they are being pushed out of Big Law.⁸ These statistics reflect a small part of the obstacles faced overall in the society at large by people of color and other diverse groups, including attorneys of color and others who do not fit within the norms recognized by society.

These findings, coupled with the changing demographics of the nation, where – as of 2014 – 50.2% of all children born in the United States were minorities,⁹ make it clear that lawyers – as thought leaders – must address the issues flowing from these historical and societal realities.

C. How Will Mandatory D&I CLE Increase New York Attorneys’ Professional Legal Competency?

CLEtoGo (podcasts), and self-study articles. The Minnesota State Bar Association also has an established D&I CLE requirement offering a wide variety of D&I/Elimination of Bias CLE courses through their website (<http://www.mnbar.org/cle-events/on-demand-cle/on-demand-elimination-of-bias-cles>). See Appendix B for a complete list of courses.

⁴ “Actions Speak Too: Uncovering Possible Implicit and Explicit Discrimination in the Employment Interview Process,” Therese Macan and Stephanie Merritt, *International Review of Industrial and Organizational Psychology* 2011, Volume 26 (2011).

⁵ Incarceration rates for men and women of color continue to be significantly higher than those of white prisoners. A 2013 U.S. Department of Justice report cited that non-Hispanic blacks (37%) comprised the largest portion of male inmates under state or federal jurisdiction as compared to non-Hispanic whites, while the imprisonment rate for black females was twice the rate of white females. <http://www.bjs.gov/content/pub/pdf/p13.pdf>

⁶ “Male partners make 44% more on average than female partners, survey finds,” *ABA Journal*, October 13, 2016. http://www.abajournal.com/news/article/male_partners_make_44_percent_more_on_average_than_female_partners_survey_f/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email

⁷ <http://abovethelaw.com/2016/03/high-minority-attrition-rates-continue-to-plague-large-law-firms/>.

⁸ A recent report in the *ABA Journal* showed that 85% of female attorneys of color in the United States will quit large firms within seven years of starting their practice, with a number surveyed stating that they “feel they have no choice.”

http://www.abajournal.com/mobile/mag_article/minority_women_are_disappearing_from_biglaw_and_heres_why

⁹ <http://www.usnews.com/news/articles/2015/07/06/its-official-the-us-is-becoming-a-minority-majority-nation>. See also <https://www.census.gov/quickfacts/table/PST045215/00> (showing declining numbers of “white alone” individuals in the United States).

NYSBA considers increasing diversity and inclusion and elimination of bias in the profession and in the practice of law to be essential to respond effectively to the needs of our changing society. The D&I CLE requirement proposed by NYSBA relates directly to professional legal competency because it is designed to educate lawyers to better serve their clients.

Mandatory CLE was initially conceived, supported and implemented as a way to enhance both lawyer competence and public trust in the profession. The ABA's 1992 MacCrate Report entitled "Law Schools and the Profession: Narrowing the Gap," which provided a platform for states considering whether to mandate CLE requirements, identified four basic values of professional responsibility. As described by one commentator in 1998:

The [four] values are: '1) providing competent representation; 2) striving to promote justice, fairness and morality; 3) striving to improve the profession; and 4) professional self-development.' This [MacCrate] report helped to solidify the ABA's commitment to recommending MCLE programming. . . . The ABA and various state bar associations are talking seriously about what can be done to enforce the four values emphasized in the MacCrate Report. Michigan hired through bar dues a public relations firm to provide enhanced access to the media. This, however, only treats a symptom and does not focus on preventing the problem. The root of the problem is attorney behavior.... At least twenty-one bar associations have recognized that the public perception is based, with good reason, on how attorneys behave. The way to solve the problem is to provide better training for attorneys through MCLE programs aimed at professionalism and ethics.¹⁰

Including a mandatory diversity and inclusion component as part of New York lawyers' CLE obligations will help advance all four values, by providing attorneys with ongoing education in this important area while helping erode discrimination and implicit bias in the practice of law.

D. Other New York Bars' Support for D&I CLE

The New York City Bar Association has taken the lead in advocating for adoption of a D&I CLE requirement, initially focusing on the elimination of bias in attorney hiring, retention and promotion, advising the State CLE Board that a "required D&I CLE program would be an important tool to raise awareness of both explicit and implicit bias within the profession and to educate and empower those who can affect change, particularly law firm leaders."¹¹ The New York City Bar subsequently submitted two additional letters to the CLE Board, discussing the

¹⁰ Grigg, L., *The Mandatory Continuing Legal Education (MCLE) Debate: Is It Improving Lawyer Competence or Just Busy Work?*, 12 *BYU J. Pub. L.* 417, 430 (1998).

¹¹ See note "1" above and Appendix A..

need for a D&I CLE requirement and the proposed scope of courses that would satisfy that requirement.¹²

There is agreement among the Amistad Long Island Black Bar Association, Association of Black Women Attorneys, Association of Law Firm Diversity Professionals, Dominican Bar Association, Hispanic National Bar Association, Jewish Lawyers Guild, LGBT Bar Association of Greater New York, Long Island Hispanic Bar Association, Metropolitan Black Bar Association, Muslim Bar Association of New York, Puerto Rican Bar Association, New York City Bar Association and South Asian Bar Association of New York that the adoption of a mandatory D&I CLE credit would be a positive development for attorneys in New York. The presidents of these organizations signed onto the letter sent by the New York City Bar to the New York State CLE Board in July 2016, recommending this action.¹³

E. NYSBA's Proposal

NYSBA recommends that all CLE providers should be encouraged to create a wide range of programs for all practice areas that incorporate diversity and inclusion, which would include the elimination of bias – whether dealing with other attorneys, clients, courts or anyone else in the legal system.

The NYSBA CLE Committee concluded that diversity and inclusion CLE need not be limited to employment decisions and trends in the legal profession or to the elimination of bias in the profession itself. As noted above, because of the changing demographics of the country, the need is apparent for attorneys to be fully versed in issues relating to the legal representation of minorities and other diverse individuals (e.g., LGBTQ, the elderly and the disabled). In discussions between NYSBA and the New York City Bar, a consensus was reached that any D&I CLE requirement should be broadly defined.

Based on a survey of existing offerings by accredited providers, it appears that courses that would satisfy a D&I CLE requirement fall into one or more of the following categories: (I) how lawyers perceive and interact with each other as employers, colleagues and partners; (II) how lawyers perceive and interact with those they come in contact with during the course of practicing law, such as court personnel, witnesses, jurors, judges and opposing counsel; (III) ways in which lawyers can better understand and represent their clients who face barriers, biases and discrimination; (IV) non-discrimination, non-harassment and competent representation as part of a lawyer's ethical obligations; (V) discrimination and bias in the broader legal and societal context and the role of lawyers in addressing them; and (VI) the law and legal issues as they relate to diverse groups and protected classes.¹⁴

F. How NYSBA Proposes the Mandatory CLE Be Implemented

The NYSBA CLE Committee proposes that one (1) or two (2) credit hours of D&I CLE be required for the biennial reporting period. We recommend that the diversity and inclusion

¹² Id.

¹³ See Appendix A.

¹⁴ See Appendix A (October 17, 2016 letter) and Appendix B.

CLE be a stand-alone (“floating”) CLE requirement, but not add to the thirty-two (32) credit hours required for new attorneys or the twenty-four (24) hours required for more experienced attorneys.¹⁵ The D&I CLE could count toward any of the required credit hours, including Ethics, Skills or Areas of Professional Practice/Law Practice Management.

To implement this change, NYSBA proposes that §1500.2 (Definitions) of the CLE Board Rules and Regulations be amended to include the following definition for “Diversity and Inclusion”:

Diversity and Inclusion must address diversity and inclusion in the legal profession and the practice of law of all persons regardless of race, ethnicity, national origin, gender, sexual orientation, gender identity, religion, age or disability and may include, among other things, how issues of diversity and inclusion may arise within the scope of the Rules of Professional Conduct, application within the procedural and substantive aspects of law practice, and law practice management, including elimination of bias. The diversity and inclusion requirement may be fulfilled through courses addressing diversity and inclusion within the existing categories of credit listed in §1500.2.

Should the D&I CLE rule be implemented, New York State accredited providers would continue to consider each program on its individual merits and decide whether to award skills, professional practice, ethics, law practice management or D&I credit, or some combination thereof. CLE providers make these assessments in the ordinary course of business and it is not anticipated that a different approach would be used in assessing D&I CLE programming for potential accreditation.

G. Conclusion

We urge the members of the House of Delegates to support this important initiative by voting in support of NYSBA’s recommendation to the New York State CLE Board.

¹⁵ For example, a one-hour program titled “Disparate Impact of Sentencing Guidelines” would fall under both the Professional Practice category and Diversity and Inclusion. The attorney would count that class as one credit (not two) that would count toward a practice area CLE and the aggregate biennial CLE requirement of 24 or 32 credits, but the attorney would also be able to attest in his/her biennial registration that s/he met his/her D&I requirement. Similarly, a one-hour program titled “The Ethics of Diversity and Inclusion” would count toward the Ethics requirement, but – again – the attorney also would be able to attest that the D&I requirement had been met.

Appendix A:

New York City Bar Association D&I CLE Proposal and
Subsequent Correspondence with New York State CLE Board

July 21, 2016

Hon. Janet DiFiore
Chief Judge of the State of New York
New York State Unified Court System
Office of Court Administration, Rm. 852
25 Beaver Street
New York, NY 10004

Re: Diversity & Inclusion CLE requirement for New York State attorneys

Dear Chief Judge DiFiore:

The undersigned bar associations respectfully urge the licensing and regulatory authorities governing attorney admission in New York State to include, as a separate required credit, programs regarding diversity and inclusion in the legal profession and programs regarding the elimination of bias (“D&I CLE”).

This issue was an agenda item at the American Bar Association (ABA)’s mid-year meeting this past February as Resolution 107, which was approved unanimously and without opposition by the ABA House of Delegates.¹ The resolution expands upon a 2004 House of Delegates resolution—Resolution 110—which amended the language of the Commentary to Section 2 of the Model Rule for Minimum Continuing Legal Education to provide that regulatory systems require lawyers—either through a separate credit or through existing ethics and professionalism credits—to complete programs related to racial and ethnic diversity and the elimination of bias in the profession. Resolution 107 **expands the definition** of diversity and inclusion to include all persons regardless of race, ethnicity, gender, sexual orientation, gender identity or disabilities; and it also encourages all licensing and regulatory authorities that currently require mandatory continuing legal education (MCLE) to include, **as a separate required credit**, D&I CLE. The resolution does not specify the number of hours of D&I CLE required or call for an increase in the total number of MCLE credits required per cycle.

¹ Resolution 107 and the ABA’s related report are available at http://www.americanbar.org/news/reporter_resources/midyear-meeting-2016/house-of-delegates-resolutions/107.html.

Of the 45 states that currently have mandatory continuing legal education, only two—California and Minnesota—have adopted stand-alone D&I CLE requirements. Thus, the resolution, if implemented nationally, would have a wide-ranging impact on attorneys licensed to practice law in the United States. Despite efforts by many New York City law firms to increase their engagement and investment in diversity progress and retention, the attrition rate of minority attorneys at those and other New York law firms remains disproportionately high. We must do more to reverse this trend.

Instituting D&I CLE as a separate required credit for attorneys licensed to practice in New York would be a significant step toward addressing this pervasive, but often unspoken, problem within our profession. We believe this change would be straightforward and easily understood by attorneys. Similar to the stand-alone ethics requirement under our current continuing legal education system, all lawyers renewing their New York State registration would certify that they had completed, as part of their required 20 hours of non-ethics credits, the required number of credit hours in D&I CLE during the immediately preceding biennial reporting cycle.

Moreover, we need not limit diversity and inclusion to the ABA's suggested definition. Rather, we suggest that the Board adopt the broader definition set forth in New York's Human Rights Law, which prohibits discrimination on the basis of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status or marital status (Executive Law § 296). Since New York has defined its protected classes under state law, any New York CLE program that educates lawyers on diversity, inclusion and the elimination of bias should follow suit.

The legal profession is grounded on principles of equality, access to justice and the rule of law. It therefore behooves us—as legal practitioners who advocate for these principles in the courtroom—to learn to recognize discrimination within our own organizations and law firms and to work toward eliminating bias in all aspects of the profession, including in our workplaces, in the courthouses and vis-à-vis our clients. CLE programs are an important tool to raise awareness of both explicit and implicit bias within the profession and to educate and empower those who can effect change, particularly law firm leaders. And, like the ABA, we believe that D&I

programs are appropriate for MCLE certification because their “primary objective [is] to increase the professional legal competency of the attorney in ethics and professionalism, skills, practice management and/or areas of professional practice.” See 22 NYCRR 1500.4(b)(2).

We stand ready to assist in whatever way will help the Board to implement this important addition to our state’s CLE requirements. Thank you for your consideration.

Respectfully,

Amistad Long Island Black Bar Association

Cherice Vanderhall, *President*

Association of Law Firm Diversity Professionals

Carlos Dávila-Caballero, *President*

Hispanic National Bar Association

Robert Maldonado, *National President*

LGBT Bar Association of Greater New York (LeGaL)

Meredith R. Miller, *President*

Metropolitan Black Bar Association

Taa Grays, *President*

Puerto Rican Bar Association

Betty Lugo, *President*

South Asian Bar Association of New York

Rippi Gill, *President*

Association of Black Women Attorneys

Kaylin Whittingham, *President*

Dominican Bar Association

Queenie Paniagua, *President*

Vianny Pichardo, *Director & President-Elect*

Jewish Lawyers Guild

Bruce Raskin, *Board Chair*

Shoshana Bookson, *President*

Long Island Hispanic Bar Association

Frank Torres, *President*

Muslim Bar Association of New York

Atif Rehman, *President*

New York City Bar Association

John S. Kiernan, *President*

Cc: Hon. Betty Weinberg Ellerin, Chair, NYS Continuing Legal Education Board
Elise Geltzer, Esq., Counsel, NYS Continuing Legal Education Board

Contact: Maria Cilenti, Senior Policy Counsel, New York City Bar Association
mcilenti@nycbar.org or 212-382-6655



NEW YORK
CITY BAR

JOHN S. KIERNAN
PRESIDENT
Phone: (212) 382-6700
Fax: (212) 768-8116
jkiernan@nycbar.org

August 25, 2016

Hon. Betty Weinberg Ellerin
Chair, NYS Continuing Legal Education Board
c/o Alston & Bird LLP
90 Park Ave.
New York, NY 10016-1387

Re: Diversity & Inclusion CLE requirement for New York State attorneys

Dear Judge Ellerin:

Thank you for taking the time to speak with me and Maria Cilenti recently regarding the proposal that New York modify its existing CLE requirement (calling for 24 hours of training every two years, of which at least four must be directed to ethics), by adding a further required allocation to training in enhancing diversity and inclusion and promoting the elimination of bias in the legal profession. As explained in our July 21 letter to Chief Judge DiFiore, this proposal is modeled after ABA Resolution 107 passed by the House of Delegates in February, 2016.¹ This letter represents an effort to provide some further context for this proposal, in a manner responsive to points you raised in our call.

The Problem

As news events of the past year have dramatically illustrated, issues of race – including issues related to economic disparity, unequal access to opportunities, statistically disproportionate outcomes in the criminal justice system, educational differences, mistrust of minority ethnic groups or religions, bias crimes, police conduct, overt discrimination, and even implicit or unintended bias by well-meaning people – remain among the most critical and divisive issues of our time. Our country’s defining national commitment to equality, tolerance and embrace of differences has always been, and remains today, in fundamental tension with our historical legacy of racial discrimination and segregation, and with the continuing current effects of that legacy. That incongruity warrants continued effort to promote equal opportunity, to attack and remedy discrimination and to promote and celebrate diversity. That need exists not

¹ The City Bar’s July 21 letter is available at <http://bit.ly/29On4j9>.

only with regard to race discrimination, but also with regard to treatment based on gender, religion, national origin, sexual orientation, age, disability and other categorizations that have led to intentional or unintentional discrimination.

The legal profession has recognized that it must participate in this effort, engaging in critical self-analysis regarding the persistent underrepresentation of minorities in its ranks, a topic that has been the subject of bar association reports and public discussion in recent years.² While lawyers have been in the forefront of efforts to combat discrimination – through innumerable instances of claims advanced, laws advocated for and enacted, programs developed, judicial decisions issued and positions taken in support of promoting diversity, inclusion and equality of opportunity – the legal profession has fallen short, too, particularly as a model for professional development. Studies show that members of minority groups continue to lag white males significantly in hiring, retention and leadership within the legal profession – more even

² Rhode, Deborah L, *Law is the Least Diverse Profession in the Nation. And Lawyers Aren't Doing Enough to Change That*, May 27, 2015, available at https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/?utm_term=.c047d0733fbd (“Women constitute more than a third of the profession, but only about a fifth of law firm partners, general counsels of Fortune 500 corporations and law school deans. . . . Although blacks, Latinos, Asian Americans and Native Americans now constitute about a third of the population and a fifth of law school graduates, they make up fewer than 7 percent of law firm partners and 9 percent of general counsels of large corporations. In major law firms, only 3 percent of associates and less than 2 percent of partners are African Americans.”);

Jackson, Liane, *Minority women are disappearing from BigLaw – and here's why*, March 1, 2016, available at http://www.abajournal.com/magazine/article/minority_women_are_disappearing_from_biglaw_and_heres_why (“Studies and surveys by groups such as the ABA and the National Association of Women Lawyers show that law firms have made limited progress in promoting female lawyers over the course of decades, and women of color are at the bottom.”);

Greene, Michael, *Minorities, Women Still Underrepresented in Law*, April 16, 2015, available at <https://bol.bna.com/minorities-women-still-underrepresented-in-law/> (“Based on Department of Labor Statistics, the IILP [Institute for Inclusion in the Legal Profession] found that ‘aggregate minority representation among lawyers is significantly lower than minority representation in most other management and professional jobs.’”);

National Association for Law Placement Press Release, *Women, Black/African-American Associates Lose Ground at Major U.S. Law Firms*, Nov. 19, 2015, available at <http://www.nalp.org/uploads/PressReleases/2015NALPWomenandMinorityPressRelease.pdf> (noting in particular that the percentage of African-American firm associates has declined each year since 2009);

American Bar Association, *Summary Report and Recommendations From 2009 ABA Study of the State of Diversity in the Legal Profession, examining Race and Ethnicity Gender Sexual Orientation Disabilities*, April 2010, available at http://www.americanbar.org/content/dam/aba/administrative/diversity/next_steps_2011.authcheckdam.pdf (citing as a top disappointment that “[t]he legal profession is less racially diverse than most other professions, and racial diversity has slowed considerably since 1995.”);

Lam, Bourree, *The Least Diverse Jobs in America*, June 29, 2015, available at <http://www.theatlantic.com/business/archive/2015/06/diversity-jobs-professions-america/396632/> (citing data from the U.S. Census showing that 81% of lawyers are white, topping the list);

New York State Bar Association, *Judicial Diversity: A Work in Progress*, Sept. 17, 2014, available at http://www.nysba.org/Sections/Judicial/2014_Judicial_Diversity_Report.html (“People of color and women remain significantly under-represented on the bench. This under-representation most starkly manifests in our upstate judicial districts, but can also be observed in certain downstate districts with large minority populations”), at p. 8.

than in other professions – and that women and people of color make up a far smaller portion of the legal community than of the population generally.³ While representation of women and minorities in legal jobs has improved over the past few decades, the rate of progress has been very slow, and some recent evidence has suggested the movement has not been steadily forward.

For example, the City Bar’s 2014 Diversity Benchmarking Report of results from 55 firms that have signed a public statement of commitment to enhance diversity and inclusion presented results reflecting “multiple setbacks for minority attorneys, with small declines in representation at key levels, reduced racial and ethnic diversity across the associate pool, and a small increase in the percentage of signatory firms with no attorneys of color on the management committee. Additionally, the prevalence of attorneys of color in non-equity versus equity roles increased in 2014.”⁴ Despite broadly asserted support for diversity and inclusion goals, New York City law firms continue to experience higher rates of attrition among minority and women attorneys: 23.6% of minority attorneys and 21.3% of women of all levels of seniority left signatory firms in 2014, for example, compared to 14.7% of white men. These firms obviously represent only a portion of the New York State legal marketplace, but these disappointing results may be particularly notable, and possibly even somewhat better than the overall legal market, because they come from legal enterprises that have made public commitments to diversity, have allowed their results to be counted and generally have had larger numbers to work with.

These results do not arise in a statistical vacuum. Minority and women lawyers at law firms and other legal offices consistently confirm believing that their professional experiences are adversely impacted by their “otherness” and unfamiliarity to the white male majority, by implicit bias and sometimes by outright instances of discriminatory speech or conduct.⁵ Those lawyers also bring to their law firm environment their experiences of implicit or explicit bias outside their offices. (As just one example, at a recent discussion of racial issues at my firm, a highly regarded Black member of our staff reported that police officers have stopped and aggressively questioned and/or frisked him dozens of times in the past few years, including within a block of our offices and when he was wearing a suit as he does every workday.)

³ See n. 2, *supra*.

⁴ New York City Bar Office of Diversity and Inclusion, *2014 Benchmarking Report*, available at <http://www.nycbar.org/images/stories/pdfs/diversity/benchmarking2014.pdf>

⁵ See, e.g., Strickler, Andrew, *How Minority Attorneys Encounter BigLaw Bias*, available at <http://www.law360.com/articles/795806/how-minority-attys-encounter-biglaw-bias>; Rhode, n. 1, *supra* (“Minorities still lack a presumption of competence granted to white male counterparts, as illustrated in a recent study by a consulting firm. It gave a legal memo to law firm partners for “writing analysis” and told half the partners that the author was African American. The other half were told that the writer was white. The partners gave the white man’s memo a rating of 4.1 on a scale of 5, while the African American’s memo got a 3.2.”); Negowetti, Nicole E., *Implicit Bias and the Legal Profession’s “Diversity Crisis”: A Call for Self-Reflection*, University of Nevada Law Journal, Spring 2015, available at <http://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1600&context=nlj> (examining, at pp. 945-949, the relationship between implicit bias and lawyering and the impact on associate experience and retention: “[t]he nature of lawyering predisposes lawyers to evaluate each other using a subjective system of evaluation. Legal work contains discretionary judgment, a product of external factors and ‘the lawyer’s own character, insight, and experience.’ . . . Without specific metrics to objectively evaluate the quality of an associate’s work, stereotypes and implicit biases will influence one’s judgment.”); Reeves, A., *Diversity in Practice: What Does Your Brain See?*, Nov. 2012, available at http://www.nextions.com/wp-content/files_mf/1352727388_magicfields_attach_1_1.pdf (“The research effectively disproves that any of us are ‘color-blind’ or ‘gender-blind.’ We ‘see’ race and gender even when those characteristics are undefined.”).

Promotion of diversity, inclusiveness and non-discrimination will remain essential as the face of our country and of New York continues to change. Based on census data, the population of white New York State residents has decreased from 62% to 56% from 2000-2015, while the percentage of Black, Asian and Hispanic New Yorkers has increased roughly 3% each during that period.⁶ Legal clients are more diverse, practices are more international and multi-jurisdictional, and the judiciary continues to grow in its diversity. Lawyers need to be equipped to recognize cultural differences and biases that may impact their personal interactions in all aspects of their practice – not just as lawyers, but as arbitrators, mediators, advisors, employers, partners and officers of the court.

The Importance of Efforts to Increase Diversity and Inclusion and Promote Equality of Opportunity in the Legal Profession

Legislatures, bar groups, diversity professionals and law firms and other law offices have increasingly acknowledged the importance of leadership within the legal profession in promotion of diversity, inclusion and equal opportunity.

In January 2016, New York State’s Assembly Judiciary Committee and its Subcommittee on Diversity in Law held a roundtable to discuss strategies for promoting increased diversity in the legal profession. That roundtable arose directly out of views regarding the importance of ensuring that the legal profession be as diverse and inclusive as the population it serves, and in response to reports highlighting continued minority under-representation in the profession. The City Bar’s Director of Diversity and Inclusion and the Chair of our Diversity Pipeline Initiatives Committee provided testimony to discuss the work of the Association, its most recent law firm benchmarking report and its student pipeline initiative.

Studies of law firm and other enterprise dynamics have demonstrated that diversity in staffing promotes differences in perspective that enhance professional performance.⁷ Many law firms and law offices are already engaging in diversity and inclusion trainings, often through law firm professional development efforts, diversity offices and bar association programs. Some trainings are afforded CLE credits as ethics or practice management courses, but the granting of credit has been on an ad hoc basis.⁸ The U.S. Department of Justice also recently announced

⁶ For 2010-15 data, see <http://www.census.gov/quickfacts/table/PST045215/36>. Note that 2015 data is estimated. For 2000-10 actual census data, see “Comparison of 2000 and 2010 Populations by Race and Ethnicity” at <https://labor.ny.gov/stats/nys/statewide-population-data.shtm>.

⁷ Roellig, M., *Why Diversity and Inclusion are Critical to the Success of Your Law Department*, 2011, available at <https://www.massmutual.com/~media/files/why-diversity-and-inclusion-is-critical-to-the-success-of-your-law-department.pdf> (“Building a culture of diversity and inclusion in your legal team is critical because it will improve your team’s performance.”), at p. 1; Phillips, Katherine W., *How Diversity Makes Us Smarter*, *Scientific American*, Oct. 2014, available at <http://www.scientificamerican.com/article/how-diversity-makes-us-smarter> (“Decades of research by organizational scientists, psychologists, sociologists, economists and demographers show that socially diverse groups [that is, those with a diversity of race, ethnicity, gender and sexual orientation] are more innovative than homogeneous groups.”), at p. 2; Reeves, A., *Value Proposition for Diversity and Inclusion in the Legal Profession*, Summer 2010, available at <http://www.nextions.com/wp-content/uploads/ABA-Diversity-Voice-2.pdf>.

⁸ See, e.g., the following two most recent City Bar programs: April 22, 2016 Professional Development Workshop Series, *The Explicit Impact of Implicit Bias: Unpacking and Interrupting Implicit Bias to Create More*

(June 27, 2016 press release) the roll-out of a department-wide required Implicit Bias Training Program for 28,000 lawyers and investigators, predicating this step on views that “[t]he research is clear that most people experience some degree of unconscious bias, and that the effects of that bias can be countered by acknowledging its existence and utilizing response strategies.” On August 23, 2016, New York City Corporation Counsel Zachary W. Carter wrote to Chief Judge DiFiore in support of requiring CLE credit in diversity and inclusion and elimination of bias. Mr. Carter indicated that “[f]or the last ten years the Law Department has required all of its employees to participate in Diversity and Inclusion programs” and that the “evaluations of our programs by our participants have been overwhelmingly favorable, notwithstanding some initial skepticism.” The New York State Judicial Institute also offers diversity training for new judges as part of its curriculum.

One of the signatories to our July 21 letter is the Association of Law Firm Diversity Professionals, indicating institutional support for this initiative from law firms they represent. Legal Services NYC publicly supported this proposal in a letter to the New York Law Journal.⁹ Such widespread support and efforts reflect an environment in which many lawyers want to improve their understanding of diversity, inclusion and anti-bias issues and to contribute to improving the profession. These efforts are proceeding against a national backdrop that includes ongoing debate about how this country can best address perceived and indisputable racial disparities in our justice system, a challenge of particular importance to lawyers as essential champions and guardians of the rule of law.

The ABA has taken two major steps in the past six months to act on a broad consensus among the legal profession’s leadership regarding the importance of addressing nationwide concerns and reinforcing the profession’s commitment to diversity and equal opportunity. First, in February 2016 the ABA House of Delegates unanimously passed Resolution 107, encouraging states to require lawyers to participate in diversity and inclusion training as a standalone component of their CLE requirements.¹⁰ As explained in our July 21 letter, this can and should be done without increasing New York’s current 24-credit biennial requirement. Resolution 107 was co-sponsored by the ABA Standing Committee on CLE, reflecting its perceived importance as part of a lawyer’s continuing education. Resolution 107 was meant to expand on Resolution 110, passed in 2004, which encouraged states to require D&I training either as part of ethics or professionalism credits, or as a standalone credit. Resolution 107’s recommendation that D&I

Diverse and Inclusive Workplaces (featuring Dr. Arin N. Reeves and awarding 2.0 CLE credits in law practice management), and May 24, 2016 *Diversity and Inclusion Conference* (1.5 CLE credits in ethics). For a sample of “elimination of bias” CLE offerings, some of which are recognized in particular states, *see* <http://mcleblog.net/category/elimination-of-bias/>. *See also* Kang, Jerry, *Implicit Bias: A Primer for Courts*, Aug. 2009, available at <http://wp.jerrykang.net.s110363.gridserver.com/wp-content/uploads/2010/10/kang-Implicit-Bias-Primer-for-courts-09.pdf>.

⁹ Rasmussen, Raun J., *CLE Should Include Diversity Training*, New York Law Journal, Aug. 1, 2016, available at http://www.newyorklawjournal.com/id=1202764038752/CLE-Should-Include-Diversity-Training?cmp=share_twitter&slreturn=20160725141143.

¹⁰ Resolution 107 and the ABA’s related report are available at http://www.americanbar.org/news/reporter_resources/midyear-meeting-2016/house-of-delegates-resolutions/107.html.

CLE be a standalone credit was intended to increase overall attorney participation in D&I trainings.¹¹ Resolution 107's approach appears appropriate and sound.

Then, two weeks ago, on August 8, the ABA House of Delegates unanimously passed Resolution 109, which amends Model Rule of Professional Conduct 8.4 to provide that it is professional misconduct to “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.”¹² As explained in the Resolution's underlying report, “Discrimination and harassment by lawyers . . . undermines confidence in the legal profession and the legal system.” Although non-discrimination/non-harassment is only one component of the umbrella of diversity, inclusion and anti-bias concerns facing the legal profession, Resolution 109 reaffirms its importance to the legal profession as an institutional matter. While New York has not yet considered and determined whether to expand Rule 8.4 of the N.Y. Rules of Professional Conduct to mirror the language of Resolution 109, the sensibilities about how a lawyer should act as a professional that underlie this new language should be a matter of consensus.¹³

The Value of CLE in Advancing Diversity, Inclusion and Equality of Opportunity

CLE plays an important role in both the quality and public perception of our self-regulated profession.¹⁴ Like the mandatory allocation of at least four hours to ethics training, an allocation of a portion of the CLE requirement to D&I training will convey an important

¹¹ At present, only California and Minnesota have adopted standalone D&I CLE requirements. A representative from the Minnesota Board of Law Examiners reported that in 2014, 508 of the 12,619 courses approved for credit in Minnesota had at least one segment qualifying for elimination of bias credit. Given the speed of market reactions and plentitude of diversity training programs already in place, there is ample reason to expect that there will be numerous available offerings from which lawyers can satisfy a D&I training requirement. In addition, a diversity and inclusion segment could readily be included as part of a broader course and could be tailored to diversity issues particular to a lawyer's location or substantive practice area.

¹² Resolution 109 and the ABA's related report are available at http://www.americanbar.org/news/reporter_resources/annual-meeting-2016/house-of-delegates-resolutions/109.html.

¹³ New York's judges are required to hold trial lawyers to a standard similar to the one expressed in Resolution 109. Therefore, judges also stand to benefit from diversity and inclusion training for lawyers. Judicial Code of Conduct Section 100.3(B)(5) states, “A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, against parties, witnesses, counsel or others. This paragraph does not preclude legitimate advocacy when age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, or other similar factors are issues in the proceeding.”

¹⁴ See, e.g., Harris, C., *MCLE: The Perils, Pitfalls, and Promise of Regulation*, 40 Val. U. L. Rev. 359, 365 (Spring 2006) (citing a 2005 paper delivered by Professor Linda Sorenson Ewald “pointing out that for decades ABA committee and conference reports have reflected concern over the state of the profession and recommended MCLE as part of the solution. She describes this as a ‘**unanimous belief that continuing [legal] education has a role to play in addressing these concerns.**’”). (Emphasis added.)

message about the weight that the legal profession and those who oversee it attach to these values.

Mandatory CLE was initially conceived, supported and implemented as a way to enhance both lawyer competence and public trust in the profession. The ABA's 1992 MacCrate Report entitled "Law Schools and the Profession: Narrowing the Gap," which provided a platform for states considering whether to mandate CLE requirements, identified four basic values of professional responsibility. As described by one commentator in 1998:

"The [four] values are: '1) providing competent representation; 2) striving to promote justice, fairness and morality; 3) striving to improve the profession; and 4) professional self-development.' This [MacCrate] report helped to solidify the ABA's commitment to recommending MCLE programming. . . . The ABA and various state bar associations are talking seriously about what can be done to enforce the four values emphasized in the MacCrate Report. Michigan hired through bar dues a public relations firm to provide enhanced access to the media. This, however, only treats a symptom and does not focus on preventing the problem. The root of the problem is attorney behavior.... At least twenty-one bar associations have recognized that the public perception is based, with good reason, on how attorneys behave. The way to solve the problem is to provide better training for attorneys through MCLE programs aimed at professionalism and ethics."¹⁵

These values were expressed even earlier by the group of over 100 lawyers who attended what came to be known as the "Arden House Conference" held in New York in 1958. As described in a 1960 paper by then-City Bar President Harrison Tweed, who attended the conference:

"Until 1957 almost all of the education offered to practicing lawyers was designed to improve professional competence and to do nothing more. In the fall of that year, it was felt by many of those interested in the cause that something should be done to put new life into the movement. The formula adopted contained two innovations. First, putting the education offered to practicing lawyers on a somewhat professional basis.... Second, introducing education designed to equip the practicing lawyer to understand and meet his professional responsibilities beyond his primary obligation to be competent."¹⁶

¹⁵ Grigg, L., *The Mandatory Continuing Legal Education (MCLE) Debate: Is it Improving Lawyer Competence or Just Busy Work?*, 12 *BYU J. Pub. L.* 417, 430 (1998).

¹⁶ 15 *Rec. Ass'n B. City N.Y.* 481, 485 (1960) (available on HeinOnline).

Of particular relevance here, the lawyers who convened at the Arden House Conference developed a Final Statement that

“brought into the continuing legal education picture for the first time, and in bold relief, the importance that the educational opportunities should not be aimed simply at an improvement in professional competence but, in addition, should be designed to ‘help the lawyer to fulfill a wide range of professional responsibilities: to the courts, to the administration of justice, to law reform, to the law-making process, to his profession and to the public.’”¹⁷

Including a mandatory diversity and inclusion component as part of lawyers’ CLE obligations should advance all of these purposes. It should continue the ongoing education of the profession in one of the most foundational and important elements of our national self-definition and one of the core components of the rule of law. It should foster an ongoing increase in the vitality of diversity and inclusion, and ongoing progress in the slow erosion of discrimination and implicit bias. It should also convey an important public message, in a time of intense attention to matters of race and other forms of discrimination, regarding the legal profession’s institutional commitment to equality of opportunity.

Just as Justice Sandra Day O’Connor expressed in a 2003 opinion the hope that the need for legal protection for affirmative efforts to increase diversity in education would diminish or disappear in 25 years, *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003), it is possible to hope that including diversity, inclusion and anti-bias training as a mandatory component of CLE will not necessarily have to be permanent. But history suggests that this focused effort will likely need to continue into the currently foreseeable future. As one commentator has observed, “The first thing to acknowledge about diversity is that it can be difficult. In the U.S., where dialogue of inclusion is relatively advanced, even the mention of the word ‘diversity’ can lead to anxiety and conflict.”¹⁸ Improvements in diversity, inclusion and avoidance of discrimination tend to come slowly.

We fully appreciate that even if there is broad consensus regarding the need for greater diversity and inclusion, greater equality of opportunity and less overt or unintended discrimination in the operations of the legal profession and in the administration of justice, some lawyers may resist the notion that an authority can properly require each individual lawyer to undergo further education on this subject over the course of a career. But just as the imposition of a particularized ethics requirement was intended, at least in part, to convey a message about priority and commitment rather than to imply that this requirement was needed because all lawyers were unethical, imposition of a diversity and inclusion requirement would reflect the profession’s formal public embrace of its aspirational best self. We expect that the passage of ABA Resolution 107 will spur numerous states to act, and we believe that New York should be in the forefront of these actions.

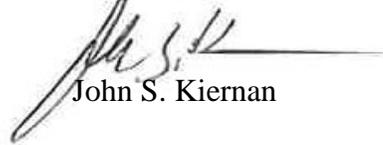
¹⁷ Id. at 486.

¹⁸ Phillips, *supra* n. 7 at p. 3.

We at the New York City Bar Association, and the other signatories of the July 21 letter to Chief Judge DiFiore, would welcome an opportunity to support and participate in further discussions regarding the Continuing Legal Education Board's consideration of this issue. The City Bar and many firms also have worked with numerous experts on these subjects, and we would be happy to make some of these resources available to the Board if you think that would be helpful.

Thank you for your consideration of this important matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John S. Kiernan", is written over a horizontal line. The signature is fluid and cursive.

Cc: Elise Geltzer, Esq., Counsel, NYS Continuing Legal Education Board
Hon. Rosalyn Richter & Nate Saint-Victor, Co-Chairs, New York City Bar Association
Enhance Diversity in the Profession Committee



NEW YORK
CITY BAR

JOHN S. KIERNAN
PRESIDENT
Phone: (212) 382-6700
Fax: (212) 768-8116
jkiernan@nycbar.org

October 17, 2016

Hon. Betty Weinberg Ellerin
Chair, NYS Continuing Legal Education Board
c/o Alston & Bird LLP
90 Park Ave.
New York, NY 10016-1387

Re: Proposal that New York adopt a separate CLE requirement for diversity, inclusion and the elimination of bias (“D&I CLE”) as per ABA Resolution 107

Dear Justice Ellerin:

Thank you for your continued consideration of the proposal to modify New York’s existing CLE requirements (without increasing the total required hours) by adopting a separate CLE requirement for diversity, inclusion and the elimination of bias. I am writing in response to your request for information about programs that already are being offered for CLE credit either under the D&I category or, in those states that do not currently recognize a D&I category, under some other category for accreditation.

To respond to your request, we surveyed CLE program offerings that we believe providers would consider accrediting for a D&I CLE requirement in New York, as well as courses that already are accredited in California and Minnesota, the two states that have long required attorneys to fulfill separate D&I CLE requirements. We also reviewed multistate online D&I CLE offerings because they provide a good overview of the types of courses that will be accessible to lawyers regardless of the location or size of their practices.

Based on our survey of existing offerings, it appears that D&I CLE courses fall into one or more of the following categories: (i) how lawyers perceive and interact with each other as employers, colleagues and partners; (ii) how lawyers perceive and interact with those they come in contact with during the course of practicing law, such as court personnel, witnesses, jurors, judges, opposing counsel, etc.; (iii) ways lawyers can better understand and represent their clients who face barriers, biases and discrimination; (iv) non-discrimination, non-harassment and competent representation as part of a lawyer’s ethical obligations; (v) discrimination and bias in the broader legal and societal context and the role of lawyers in addressing them; and (vi) the law and legal issues as they relate to diverse groups and protected classes.

This letter provides an overview of CLE courses we believe may be relevant to your consideration of this proposal. We understand that definitional and apportionment issues among the accreditation categories – i.e., ethics and professionalism, skills, areas of professional practice, law practice management, and diversity, inclusion and the elimination of bias - may still need to be discussed and ironed out. We are happy to continue participating in those discussions if you think that would be helpful.

New York City Bar Association:

In 2016, the New York City Bar Association hosted two diversity and inclusion programs as to which we awarded CLE credit. In light of the City Bar's position as a New York State accredited CLE provider, the City Bar's programs are presumptively accredited after being reviewed by our CLE Department for compliance with the CLE Board's regulations. Because of the special nature of these programs, however, we engaged in a dialogue with the CLE Board staff to ensure "pre-approval" and to maintain our own best practices for program review.

On April 22, 2016, we hosted Dr. Arin N. Reeves as she presented, "The Explicit Impact of Implicit Bias: Unpacking and Interrupting Implicit Bias to Create More Diverse and Inclusive Legal Workplaces," for which attendees received 2.0 credits of law practice management. The program materials are attached. Dr. Reeves is in great demand for this type of programming and we hope to engage her for similar programming in the future. Her program was extremely well received and well reviewed.

On May 24, 2016, we hosted a full-day Diversity and Inclusion Conference, sponsored by our Enhance Diversity in the Profession Committee. We had originally advocated for accreditation of three separate segments: (i) "Intersectionality"; (ii) "From Bystanders to Upstanders: Activating Allies and Advocates for Inclusion"; and (iii) a General Counsel and Managing Partners Forum. We received approval for only the third segment because, in the view of the CLE Board, the first two were not sufficiently related to the legal profession or the practice of law, and did not have the required legal "wrapper". Therefore, for the third segment, attendees received 1.5 credits in ethics. The program materials are attached.

In addition, the City Bar frequently hosts programs that cover anti-discrimination laws, civil rights and legal issues pertaining to diverse groups and protected classes. These programs currently are typically accredited for professional practice credits.

We anticipate that, should New York adopt this proposal, our CLE Department would consider each program on its individual merits and decide whether to award skills, professional practice, ethics, law practice management or D&I credit, or some combination. CLE providers make these assessments in the ordinary course of business and we do not anticipate a different approach to assessing D&I CLE programming for potential accreditation.

New York State Bar Association:

A sampling of recent and upcoming offerings of the State Bar that appear to fall into one of the above-mentioned six categories include:

- Representing LGBT Clients After Obergefell
- Human Trafficking in NYS: Legal Issues and Advocating for the Victim
- Representing the Transgender Client Through the Arc of Life
- The Path to Marriage Equality & Beyond: Representing LGBT Clients in a Post-DOMA World
- Justice, Race and Police Force
- Contemporary Civil Rights in Relation to the 50th Anniversary of the Civil Rights Act
- The Impact of Implicit Bias on Lawyers and the Legal Profession

Timed agendas and outlines for these programs are attached.¹

American Bar Association:

The ABA² offers online D&I/elimination of bias CLEs, including, “Canaries in the Coalmine: Succeeding as Female Counsel in Male-Dominated Industries,” and recently hosted a webinar entitled, “Transgender Issues in the Legal Profession and its Impact on Diversity and Inclusion.” Furthermore, as part of Resolution 107, the ABA has pledged to assist in the development and creation of D&I CLE. Thus, we can anticipate additional relevant programming and materials to be offered through the ABA in the future. For instance, on October 6, 2016, the ABA held a program entitled “Implicit Bias: How to Recognize and Address It – and New Model Rule 8.4(g),” which awarded attendees 1.0 credit in the “elimination of bias” category.

California:

The State Bar of California website³ lists 34 online programs that qualify for elimination of bias credit and are offered in a variety of formats, including on demand, CLEtoGo (podcasts), self-study articles (review an article and answer 20 questions at the end—counts as 1 hour of credit) and webcasts.

Some programs focus on elimination of bias within the profession:

- Bias in the Legal Profession
- Discrimination and Bias: Strategies for Preventing and Responding in the Intellectual Property Bar
- Guess Who’s Coming to Court

¹ Questions regarding State Bar programming can be directed to H. Douglas Guevara, Senior Director, Continuing Legal Education, 518-487-5580 or dguevara@nysba.org.

² <http://www.americanbar.org/aba.html>.

³ <http://mcle.calbar.ca.gov/MCLE/OnlineCLE.aspx>.

- Recognizing and Addressing Implicit Gender Bias in the Arena of the Solo & Small Firm
- Avoiding Cultural Missteps

Other programs focus on elimination of bias across a broad range of practice areas, relevant to both large firm and solo practitioners, including criminal justice, environmental law, family law and litigation:

- Addressing the Needs of Persons with Disabilities in the Criminal Justice System
- Bias: The Enemy of Persuasion
- Bring Diversity and Equity in Environmental Planning
- Cultural Competency in Domestic Violence Cases
- Delights, Diversions, and Discriminations: The Bias and Business of Show Business
- Elimination of Bias in Jury Selection: Wheeler/Batson/Lenix in the Courtroom
- Religion Issues Affecting Family Law Strategy
- Does Gender Matter in Antitrust Law? Tips from Experienced Practitioners in Private Practice, Government and In-house Roles on How to Survive and Thrive in Your Antitrust Practice
- Ten Common Mistakes in Mediation and How to Avoid Them

In addition, California lawyers can access CLE programs sponsored by State Bar of California-approved MCLE providers through online vendors like Versatape,⁴ which offers elimination of bias programs such as:

- Elimination of Bias: Transgender Rights
- Challenges Faced by Minorities and Women in the Legal Profession
- How to Recognize Cross Cultural Issues in Litigation, Negotiation and Mediation
- Understanding and Mitigating Bias (including a professional responsibility segment)

Minnesota:

The Minnesota State Bar Association offers a wide variety of D&I/Elimination of Bias CLE courses through their website,⁵ including the following programs on-demand or through teleconference and webcast:

⁴ <http://www.versatape.com/>.

⁵ <http://www.mnbar.org/cle-events/on-demand-cle/on-demand-elimination-of-bias-cles>.

- Impact of Technology on Diversity and Inclusion in the Legal Profession
- Fisher v. University of Texas at Austin (a conversation about the value of diversity in education and legal practice as well as the challenges and contributions of black attorneys and law students in Minnesota, in response to questions raised by Chief Justice Roberts)
- Helping Your Client Legally Change Gender
- The Mall of America Protest Cases, Black Lives Matter, and the Minnesota Legal System
- Understanding Ogbergefell v. Hodges: The decision and its effects on related areas of law
- Clients from Other Cultures: Traps & Tips
- Transgender People Interacting with the Legal and Healthcare Industries— Personal and Practical Insights

In addition, the Minnesota state court system offered a program in May 2012, “Ramsey County Mental Health Court: Working with the Mentally Ill Defendant”.⁶

Multistate:

Multistate CLE providers offer a range of programs as well. For example, the Practising Law Institute⁷ lists upcoming online programs that qualify for elimination of bias credit in California and/or Minnesota, as well as for ethics or other CLE credit in multiple other states, including New York:

- PLI’s California MCLE Marathon 2016: Current Developments in Legal Ethics – Competence Issues—Elimination of Bias (approved in California for 4 credits in ethics, 1 credit in elimination of bias, and 1 credit in competence issues; approved in New York for 7 credits in ethics)
- How to Become a Culturally Competent Attorney (approved in California for 1 credit in elimination of bias; approved in New York for 1 credit in ethics)
- Representing Transgender Clients: Practical Skills and Cultural Competency (approved in California for 1 credit in elimination of bias and 5.25 general credits; approved in New York for 1 ethics credit and 6.5 credits in professional practice)
- Working with Immigrants: The Intersection of Basic Immigration, Housing and Domestic Violence Issues in California (approved in California for 1 credit in elimination of bias and 5.25 general credits; approved in New York for 7 credits in professional practice)

⁶ Available at http://www.mncourts.gov/Documents/2/Public/Criminal/RCMHC_CLE_Flyer_5-23-12.pdf.

⁷ <http://www.pli.edu/>.

- Diversity & Inclusion in Law Practice 2016 (approved in California and Minnesota for 2.25 elimination of bias credits and 1 general credit; approved in New York for 2.5 ethics credits and 1.5 credits in professional practice)
- Providing Respectful and Culturally Competent Services to LGBT Clients (approved in California for 1 credit in elimination of bias; approved in New York for 1 credit in professional practice)

Likewise, LawLine⁸ offers multiple programs that qualify for elimination of bias credit in states that have that requirement and for ethics or other types of CLE credit in other states, including New York. Course offerings include:

- Steps to Eliminate Bias in the Profession (approved in California and Minnesota for 1 elimination of bias credit; approved in New York for 1 ethics credit)
- Implicit Bias: The Bias You Didn't Know You Have... But You Do (approved in Minnesota for 1 elimination of bias credit; approved in New York for 1 ethics credit)
- Leveling the Playing Field: Elimination of Bias in the Legal Profession (approved in California and Minnesota for 1 elimination of bias credit; approved in New York for 1 ethics credit)

Similarly, LexVid⁹ offers courses that qualify for elimination of bias credit in California and/or Minnesota and are approved for credit in multiple other states, including New York, such as:

- Respect in the Workplace—The Legal Landscape of Harassment, Bias & Discrimination in the Workplace, Part II (approved in California for 1.75 elimination of bias credits; approved in New York for 2.0 credits {unspecified; presumably professional practice});
- Unconscious Bias and the Legal Profession (approved in California for 1 hour of elimination of bias credit; approved in New York for 1 hour of ethics credit)
- Bias and LGBT Issues in the Legal Workplace (approved in California for 1 elimination of bias credit; approved in New York for 1 ethics credit)
- The Elimination of Bias in the Practice of Law (approved in California for 1 hour of elimination of bias credit; approved in New York for 1 hour of ethics credit)

⁸ <https://www.lawline.com/>.

⁹ <http://www.lexvid.com/>.

* * *

I hope this information is useful for your purposes. Please let me know if I can be of any further assistance. Thank you again for your attention to this important proposal.

Respectfully,

A handwritten signature in black ink, appearing to read "John S. Kiernan", with a horizontal line extending to the right from the end of the signature.

John S. Kiernan

Encl.

cc: Elise Geltzer, Esq., Counsel, NYS Continuing Legal Education Board (w/encl.)
Office of Court Administration
25 Beaver Street
New York, NY 10004

Appendix B:

Sample D&I CLE Programs from
New York and Around the Country

Appendix B

Sample Programs from New York and Around the Country

New York:

Despite not having a mandatory diversity and inclusion and/or elimination of bias CLE requirement, the New York State Bar Association has presented the following programs that would qualify for D&I credit:

- Justice, Race and Police Force
- Going Beyond Ferguson and Garner
- Constance Baker Motley Symposium: The Impact of Implicit Bias on Lawyers and the Legal Profession
- Representing LGBT Clients after Obergefell
- Human Trafficking in New York State: Legal Issues and Advocating for the Victim
- Contemporary Civil Rights in Relation to the 50th Anniversary of the Civil Rights Act
- The Path to Marriage Equality & Beyond: Representing LGBT Clients in a Post-DOMA World
- Representing the Transgender Client through the Arc of Life

The New York City Bar Association has presented the following programs that would also qualify for D&I credit:

- The Explicit Impact of Implicit Bias: Unpacking and Interrupting Implicit Bias to Create More Diverse and Inclusive Legal Workplaces
- Diversity and Inclusion Conference: a General Counsel and Managing Partners Forum

Other CLE providers have also presented D&I programs.

California:

California is one of two states that currently have a D&I CLE requirement. California Bar's website (<http://mcle.calbar.ca.gov/MCLE/OnlineCLE.aspx>) lists 34 online programs that qualify for elimination of bias credit and which are offered in a variety of formats, including on demand, CLEtoGo (podcasts), self-study articles (review an article and answer 20 questions at the end—counts as 1 hour of credit) and webcasts.

Some programs focus on elimination of bias within the profession:

- Bias in the Legal Profession
- Discrimination and Bias: Strategies for Preventing and Responding in the Intellectual Property Bar
- Guess Who's Coming to Court
- Recognizing and Addressing Implicit Gender Bias in the Arena of the Solo & Small Firm
- Avoiding Cultural Missteps

Other programs focus on diversity and inclusion and the elimination of bias across a broad range of practice areas, relevant to both large firm and solo practitioners, including criminal justice, environmental law, family law and litigation:

- Addressing the Needs of Persons with Disabilities in the Criminal Justice System
- Bias: The Enemy of Persuasion
- Bring Diversity and Equity in Environmental Planning
- Cultural Competency in Domestic Violence Cases
- Delights, Diversions, and Discriminations: The Bias and Business of Show Business
- Elimination of Bias in Jury Selection: Wheeler/Batson/Lenix in the Courtroom
- Religion Issues Affecting Family Law Strategy
- Does Gender Matter in Antitrust Law? Tips from Experienced Practitioners in Private Practice, Government and In-house Roles on How to Survive and Thrive in Your Antitrust Practice
- Ten Common Mistakes in Mediation and How to Avoid Them

In addition, California lawyers can access CLE programs sponsored by State Bar of California-approved MCLE providers through online vendors like Versatape (www.versatape.com), which offers elimination of bias programs, such as:

- Elimination of Bias: Transgender Rights
- Challenges Faced by Minorities and Women in the Legal Profession
- How to Recognize Cross Cultural Issues in Litigation, Negotiation and Mediation
- Understanding and Mitigating Bias (including a professional responsibility segment)

Minnesota:

Minnesota is the second state with a mandatory D&I CLE requirement. The Minnesota State Bar Association offers a wide variety of D&I/Elimination of Bias CLE courses through their website (<http://www.mnbar.org/cle-events/on-demand-cle/on-demand-elimination-of-bias-cles>), including the following programs on-demand or through teleconference and webcast:

- Impact of Technology on Diversity and Inclusion in the Legal Profession
- *Fisher v. University of Texas at Austin* (a conversation about the value of diversity in education and legal practice as well as the challenges and contributions of black attorneys and law students in Minnesota, in response to questions raised by Chief Justice Roberts)
- Helping Your Client Legally Change Gender
- The Mall of America Protest Cases, Black Lives Matter, and the Minnesota Legal System
- Understanding *Ogbergefell v. Hodges*: The decision and its effects on related areas of law
- Clients from Other Cultures: Traps & Tips
- Transgender People Interacting with the Legal and Healthcare Industries—Personal and Practical Insights

In addition, the Minnesota state court system offered a program in May 2012, “Ramsey County Mental Health Court: Working with the Mentally Ill Defendant” at http://www.mncourts.gov/Documents/2/Public/Criminal/RCMHC_CLE_Flyer_5-23-12.pdf.

Multistate:

There are a range of programs offered through multistate CLE providers as well. By way of example, the Practising Law Institute (<https://pli.edu/>) lists upcoming online programs that qualify for elimination of bias credit in California and/or Minnesota, as well as for ethics or other CLE credit in multiple other states, including New York. For example:

- PLI’s California MCLE Marathon 2016: Current Developments in Legal Ethics – Competence Issues—Elimination of Bias (approved in California for 4 credits in ethics, 1 credit in elimination of bias, and 1 credit in competence issues; approved in New York for 7 credits in ethics)
- How to Become a Culturally Competent Attorney (approved in California for 1 credit in elimination of bias; approved in New York for 1 credit in ethics)
- Representing Transgender Clients: Practical Skills and Cultural Competency (approved in California for 1 credit in elimination of bias and 5.25 general credits; approved in New York for 1 ethics credit and 6.5 credits in professional practice)
- Working with Immigrants: The Intersection of Basic Immigration, Housing and Domestic Violence Issues in California (approved in California for 1 credit in elimination of bias and 5.25 general credits; approved in New York for 7 credits in professional practice)
- Diversity & Inclusion in Law Practice 2016 (approved in California and Minnesota for 2.25 elimination of bias credits and 1 general credit; approved in New York for 2.5 ethics credits and 1.5 credits in professional practice)
- Providing Respectful and Culturally Competent Services to LGBT Clients (approved in California for 1 credit in elimination of bias; approved in New York for 1 credit in professional practice)

Likewise, LawLine (www.lawline.com) offers multiple programs that qualify for elimination of bias credit in states that have that requirement and for ethics or other types of CLE credit in other states, including New York. Course offerings include:

- Steps to Eliminate Bias in the Profession (approved in California and Minnesota for 1 elimination of bias credit; approved in New York for 1 ethics credit)
- Implicit Bias: The Bias You Didn’t Know You Have... But You Do (approved in Minnesota for 1 elimination of bias credit; approved in New York for 1 ethics credit)
- Leveling the Playing Field: Elimination of Bias in the Legal Profession (approved in California and Minnesota for 1 elimination of bias credit; approved in New York for 1 ethics credit)

Similarly, LexVid (www.lexvid.com) offers courses that qualify for elimination of bias credit in California and/or Minnesota and are also approved for credit in multiple other states, including New York, such as:

- Respect in the Workplace—The Legal Landscape of Harassment, Bias & Discrimination in the Workplace, Part II (approved in California for 1.75 elimination of bias credits; approved in New York for 2.0 credits {unspecified; presumably professional practice});
- Unconscious Bias and the Legal Profession (approved in California for 1 hour of elimination of bias credit; approved in New York for 1 hour of ethics credit)
- Bias and LGBT Issues in the Legal Workplace (approved in California for 1 elimination of bias credit; approved in New York for 1 ethics credit)
- The Elimination of Bias in the Practice of Law (approved in California for 1 hour of elimination of bias credit; approved in New York for 1 hour of ethics credit)

Finally, the ABA (<http://www.americanbar.org/aba.html>) also offers online D&I/elimination of bias CLEs, including:

- Canaries in the Coalmine: Succeeding as Female Counsel in Male-Dominated Industries
- Transgender Issues in the Legal Profession and its Impact on Diversity and Inclusion.



Race & Ethnic Fairness in the Courts

Implicit Bias

A Primer for Courts

Jerry Kang

Prepared for the National Campaign to Ensure the Racial and
Ethnic Fairness of America's State Courts

August 2009

©National Center for State Courts, 2009

Reprinted with the permission of the National Center for State
Courts. All rights reserved.



ABOUT THE PRIMER

This Primer was produced as part of the National Campaign to Ensure the Racial and Ethnic Fairness of America’s State Courts. The Campaign seeks to mobilize the significant expertise, experience, and commitment of state court judges and court officers to ensure both the perception and reality of racial and ethnic fairness across the nation’s state courts. The Campaign is funded by the Open Society Institute, the State Justice Institute, and the National Center for State Courts. Points of view or opinions expressed in the Primer are those of the author and do not represent the official position of the funding agencies. To learn more about the Campaign, visit www.ncsconline.org/ref.

ABOUT THE AUTHOR & REVIEWERS

Jerry Kang is Professor of Law at UCLA School of Law. He has written and lectured extensively on the role of implicit bias in the law. For more information on Professor Kang, please visit jerrykang.net. The Primer benefited from the review and comments of several individuals working with the National Campaign, including Dr. Pamela Casey, Dr. Fred Cheesman, Hon. Ken M. Kawaichi, Hon. Robert Lowenbach, Dr. Shawn Marsh, Hon. Patricia M. Martin, Ms. Kimberly Papillon, Hon. Louis Trosch, and Hon. Roger K. Warren.

Table of Contents

Implicit Bias: A Primer.....	1
Schemas and Implicit Cognitions	1
Implicit Social Cognitions.....	1
Asking about Bias.....	2
Implicit measurement devices.....	2
Pervasive implicit bias.....	3
Real-world consequences.....	4
Malleability	4
The big picture	5
Glossary.....	7
Bibliography	10

Implicit Bias: A Primer

Schemas and Implicit Cognitions (or “mental shortcuts”)

Stop for a moment and consider what bombards your senses every day. Think about everything you see, both still and moving, with all their color, detail, and depth. Think about what you hear in the background, perhaps a song on the radio, as you decode lyrics and musical notes. Think about touch, smell, and even taste. And while all that’s happening, you might be walking or driving down the street, avoiding pedestrians and cars, chewing gum, digesting your breakfast, flipping through email on your smartphone. How does your brain do all this simultaneously?

It does so by processing through schemas, which are templates of knowledge that help us organize specific examples into broader categories. When we see, for example, something with a flat seat, a back, and some legs, we recognize it as a “chair.” Regardless of whether it is plush or wooden, with wheels or bolted down, we know what to do with an object that fits into the category “chair.” Without spending a lot of mental energy, we simply sit. Of course, if for some reason we have to study the chair carefully--because we like the style or think it might collapse--we can and will do so. But typically, we just sit down.

We have schemas not only for objects, but also processes, such as how to order food at a restaurant. Without much explanation, we know what it means when a smiling person hands us laminated paper with detailed descriptions of food and prices. Even when we land in a foreign airport, we know how to follow the crazy mess of arrows and baggage icons toward ground transportation.

These schemas are helpful because they allow us to operate without expending valuable mental resources. In fact, unless something goes wrong, these thoughts take place automatically without our awareness or conscious direction. In this way, most cognitions are [implicit](#).

Implicit Social Cognitions (or “thoughts about people you didn’t know you had”)

What is interesting is that schemas apply not only to objects (e.g., “chairs”) or behaviors (e.g., “ordering food”) but also to human beings (e.g., “the elderly”). We naturally assign people into various social categories divided by salient and chronically accessible traits, such as age, gender, race, and role. And just as we might have [implicit](#) cognitions that help us walk and drive, we have [implicit social cognitions](#) that guide our thinking about social categories. Where do these schemas come from? They come from our experiences with other people, some of them direct (i.e., real-world encounters) but most of them vicarious (i.e., relayed to us through stories, books, movies, media, and culture).

If we unpack these schemas further, we see that some of the underlying cognitions include [stereotypes](#), which are simply traits that we associate with a category. For instance, if we think that a particular category of human beings is frail--such as the elderly--we will not raise our guard. If we think that another category is foreign--such as Asians--we will be surprised by their fluent English. These cognitions also include [attitudes](#), which are overall, evaluative feelings that are positive or negative. For instance, if we identify someone as having graduated from our beloved alma mater, we will feel more at ease. The term “[implicit bias](#)”

includes both [implicit stereotypes](#) and [implicit attitudes](#).

Though our shorthand schemas of people may be helpful in some situations, they also can lead to discriminatory behaviors if we are not careful. Given the critical importance of exercising fairness and equality in the court system, lawyers, judges, jurors, and staff should be particularly concerned about identifying such possibilities. Do we, for instance, associate aggressiveness with Black men, such that we see them as more likely to have started the fight than to have responded in self-defense? Or have we already internalized the lessons of Martin Luther King, Jr. and navigate life in a perfectly “colorblind” (or gender-blind, ethnicity-blind, class-blind, etc.) way?

Asking about Bias (or “it’s murky in here”)

One way to find out about [implicit bias](#) is simply to ask people. However, in a post-civil rights environment, it has become much less useful to ask explicit questions on sensitive topics. We run into a “willing and able” problem.

First, people may not be willing to tell pollsters and researchers what they really feel. They may be chilled by an air of political correctness.

Second, and more important, people may not know what is inside their heads. Indeed, a wealth of cognitive psychology has demonstrated that we are lousy at introspection. For example, slight environmental changes alter our judgments and behavior without our realizing. If the room smells of Lysol, people eat more neatly. People holding a warm cup of coffee (versus a cold cup) ascribe warmer (versus cooler) personality traits to a stranger described in a vignette. The

experiments go on and on. And recall that by definition, [implicit biases](#) are those that we carry without awareness or conscious direction. So how do we know whether we are being biased or fair-and-square?

Implicit measurement devices (or “don’t tell me how much you weigh, just get on the scale”)

In response, social and cognitive psychologists with neuroscientists have tried to develop instruments that measure [stereotypes](#) and [attitudes](#), without having to rely on potentially untrustworthy self-reports. Some instruments have been linguistic, asking folks to write out sentences to describe a certain scene from a newspaper article. It turns out that if someone engages in stereotypical behavior, we just describe what happened. If it is counter-typical, we feel a need to explain what happened. ([Von Hippel 1997](#); Sekaquaptewa 2003).

Others are physiological, measuring how much we sweat, how our blood pressure changes, or even which regions of our brain light up on an fMRI (functional magnetic resonance imaging) scan. ([Phelps 2000](#)).

Still other techniques borrow from marketers. For instance, conjoint analysis asks people to give an overall evaluation to slightly different product bundles (e.g., how do you compare a 17” screen laptop with 2GB memory and 3 USB ports, versus a 15” laptop with 3 GB of memory and 2 USB ports). By offering multiple rounds of choices, one can get a measure of how important each feature is to a person even if she had no clue to the question “How much would you pay for an extra USB port?” Recently, social cognitionists have adapted this methodology by creating “bundles” that include demographic attributes. For instance, how

would you rank a job with the title Assistant Manager that paid \$160,000 in Miami working for Ms. Smith, as compared to another job with the title Vice President that paid \$150,000 in Chicago for Mr. Jones? ([Caruso 2009](#)).

Scientists have been endlessly creative, but so far, the most widely accepted instruments have used reaction times--some variant of which has been used for over a century to study psychological phenomena. These instruments draw on the basic insight that any two concepts that are closely associated in our minds should be easier to sort together. If you hear the word "moon," and I then ask you to think of a laundry detergent, then "Tide" might come more quickly to mind. If the word "RED" is painted in the color red, we will be faster in stating its color than the case when the word "GREEN" is painted in red.

Although there are various reaction time measures, the most thoroughly tested one is the [Implicit Association Test](#) (IAT). It is a sort of video game you play, typically on a computer, where you are asked to sort categories of pictures and words. For example, in the Black-White race [attitude](#) test, you sort pictures of European American faces and African American faces, Good words and Bad words in front of a computer. It turns out that most of us respond more quickly when the European American face and Good words are assigned to the same key (and African American face and Bad words are assigned to the other key), as compared to when the European American face and Bad words are assigned to the same key (and African American face and Good words are assigned to the other key). This average time differential is the measure of [implicit bias](#). [If the description is hard to follow, try an IAT yourself at [Project Implicit](#).]

Pervasive implicit bias (or "it ain't no accident")

It may seem silly to measure bias by playing a sorting game (i.e. the IAT). But, a decade of research using the IAT reveals pervasive reaction time differences in every country tested, in the direction consistent with the general social hierarchies: German over Turk (in Germany), Japanese over Korean (for Japanese), White over Black, men over women (on the [stereotype](#) of "career" versus "family"), light-skinned over dark skin, youth over elderly, straight over gay, etc. These time differentials, which are taken to be a measure of [implicit bias](#), are systematic and pervasive. They are statistically significant and not due to random chance variations in measurements.

These pervasive results do not mean that everyone has the exact same bias scores. Instead, there is wide variability among individuals. Further, the social category you belong to can influence what sorts of biases you are likely to have. For example, although most Whites (and Asians, Latinos, and American Indians) show an [implicit attitude](#) in favor of Whites over Blacks, African Americans show no such preference on average. (This means, of course, that about half of African Americans do prefer Whites, but the other half prefer Blacks.)

Interestingly, [implicit biases](#) are [dissociated](#) from [explicit](#) biases. In other words, they are related to but differ sometimes substantially from [explicit](#) biases--those [stereotypes](#) and [attitudes](#) that we expressly self-report on surveys. The best understanding is that [implicit](#) and [explicit](#) biases are related but different mental constructs. Neither kind should be viewed as the solely "accurate" or "authentic" measure of bias. Both measures tell us something important.

Real-world consequences (or “why should we care?”)

All these scientific measures are intellectually interesting, but lawyers care most about real-world consequences. Do these measures of [implicit bias](#) predict an individual’s behaviors or decisions? Do milliseconds really matter? ([Chugh 2004](#)). If, for example, well-intentioned people committed to being “fair and square” are not influenced by these [implicit biases](#), then who cares about silly video game results?

There is increasing evidence that [implicit biases](#), as measured by the IAT, do predict behavior in the real world--in ways that can have real effects on real lives. Prof. John Jost (NYU, psychology) and colleagues have provided a recent literature review (in press) of ten studies that managers should not ignore. Among the findings from various laboratories are:

- [implicit bias](#) predicts the rate of callback interviews ([Rooth 2007](#), based on [implicit stereotype](#) in Sweden that Arabs are lazy);
- [implicit bias](#) predicts awkward body language ([McConnell & Leibold 2001](#)), which could influence whether folks feel that they are being treated fairly or courteously;
- [implicit bias](#) predicts how we read the friendliness of facial expressions ([Hugenberg & Bodenhausen 2003](#));
- [implicit bias](#) predicts more negative evaluations of ambiguous actions by an African American (Rudman & Lee 2002), which could influence decisionmaking in hard cases;
- [implicit bias](#) predicts more negative evaluations of agentic (i.e. confident, aggressive, ambitious) women in certain hiring conditions ([Rudman & Glick 2001](#));

- [implicit bias](#) predicts the amount of shooter bias--how much easier it is to shoot African Americans compared to Whites in a videogame simulation ([Glaser & Knowles 2008](#));
- [implicit bias](#) predicts voting behavior in Italy (Arcari 2008);
- [implicit bias](#) predicts binge-drinking ([Ostafin & Palfai 2006](#)), suicide ideation ([Nock & Banaji 2007](#)), and sexual attraction to children ([Gray 2005](#)).

With any new scientific field, there remain questions and criticisms--sometimes strident. ([Arkes & Tetlock 2004](#); [Mitchell & Tetlock 2006](#)). And on-the-merits skepticism should be encouraged as the hallmark of good, rigorous science. But most scientists studying [implicit bias](#) find the accumulating evidence persuasive. For instance, a recent meta-analysis of 122 research reports, involving a total of 14,900 subjects, revealed that in the sensitive domains of stereotyping and prejudice, [implicit bias IAT](#) scores better predict behavior than [explicit](#) self-reports. ([Greenwald et al. 2009](#)).

And again, even though much of the recent research focus is on the IAT, other instruments and experimental methods have corroborated the existence of [implicit biases](#) with real world consequences. For example, a few studies have demonstrated that criminal defendants with more Afro-centric facial features receive in certain contexts more severe criminal punishment (Banks et al. 2006; [Blair 2004](#)).

Malleability (or “is there any good news?”)

The findings of real-world consequence are disturbing for all of us who sincerely believe that we do not let biases prevalent in our culture infect our individual decisionmaking. Even a little bit. Fortunately, there is evidence

that [implicit biases](#) are malleable and can be changed.

- An individual's motivation to be fair does matter. But we must first believe that there's a potential problem before we try to fix it.
- The environment seems to matter. Social contact across social groups seems to have a positive effect not only on [explicit attitudes](#) but also [implicit](#) ones.
- Third, environmental exposure to countertypical exemplars who function as "debiasing agents" seems to decrease our bias.
 - In one study, a mental imagery exercise of imagining a professional business woman (versus a Caribbean vacation) decreased [implicit stereotypes](#) of women. ([Blair et al. 2001](#)).
 - Exposure to "positive" exemplars, such as Tiger Woods and Martin Luther King in a history questionnaire, decreased [implicit bias](#) against Blacks. (Dasgupta & Greenwald 2001).
 - Contact with female professors and deans decreased [implicit bias](#) against women for college-aged women. (Dasgupta & Asgari 2004).
- Fourth, various procedural changes can disrupt the link between [implicit bias](#) and discriminatory behavior.
 - In a simple example, orchestras started using a blind screen in auditioning new musicians; afterwards women had much greater success. ([Goldin & Rouse 2000](#)).
 - In another example, by committing beforehand to merit criteria (is book smarts or street smarts more important?), there was less gender

discrimination in hiring a police chief. (Uhlmann & Cohen 2005).

- In order to check against bias in any particular situation, we must often recognize that race, gender, sexual orientation, and other social categories may be influencing decisionmaking. This recognition is the opposite of various forms of "blindness" (e.g., color-blindness).

In outlining these findings of malleability, we do not mean to be Pollyanish. For example, mere social contact is not a panacea since psychologists have emphasized that certain conditions are important to decreasing prejudice (e.g., interaction on equal terms; repeated, non-trivial cooperation). Also, fleeting exposure to countertypical exemplars may be drowned out by repeated exposure to more typical [stereotypes](#) from the media ([Kang 2005](#)).

Even if we are skeptical, the bottom line is that there's no justification for throwing our hands up in resignation. Certainly the science doesn't require us to. Although the task is challenging, we can make real improvements in our goal toward justice and fairness.

The big picture (or "what it means to be a faithful steward of the judicial system")

It's important to keep an eye on the big picture. The focus on [implicit bias](#) does not address the existence and impact of [explicit](#) bias--the [stereotypes](#) and [attitudes](#) that folks recognize and embrace. Also, the past has an inertia that has not dissipated. Even if all [explicit](#) and [implicit biases](#) were wiped away through some magical wand, life today would still bear the burdens of an unjust yesterday. That said, as careful stewards of the justice system, we

should still strive to take all forms of bias seriously, including [implicit bias](#).

After all, Americans view the court system as the single institution that is most unbiased, impartial, fair, and just. Yet, a typical trial courtroom setting mixes together many people, often strangers, from different social backgrounds, in intense, stressful, emotional, and sometimes hostile contexts. In such environments, a complex jumble of [implicit](#) and [explicit](#) biases will inevitably be at play. It is the primary responsibility of the judge and other court staff to manage this complex and bias-rich social situation to the end that fairness and justice be done--and be seen to be done.

Glossary

Note: Many of these definitions draw from Jerry Kang & Kristin Lane, A Future History of Law and Implicit Social Cognition (unpublished manuscript 2009)

Attitude

An attitude is “an association between a given object and a given evaluative category.” R.H. Fazio, et al., Attitude accessibility, attitude-behavior consistency, and the strength of the object-evaluation association, 18 J. EXPERIMENTAL SOCIAL PSYCHOLOGY 339, 341 (1982). Evaluative categories are either positive or negative, and as such, attitudes reflect what we like and dislike, favor and disfavor, approach and avoid. See also [stereotype](#).

Behavioral realism

A school of thought within legal scholarship that calls for more accurate and realistic models of human decision-making and behavior to be incorporated into law and policy. It involves a three step process:

First, identify advances in the mind and behavioral sciences that provide a more accurate model of human cognition and behavior.

Second, compare that new model with the latent theories of human behavior and decision-making embedded within the law. These latent theories typically reflect “common sense” based on naïve psychological theories.

Third, when the new model and the latent theories are discrepant, ask lawmakers and legal institutions to account for this disparity. An accounting requires either altering the law to comport with more accurate models of thinking and behavior or providing a

transparent explanation of “the prudential, economic, political, or religious reasons for retaining a less accurate and outdated view.” Kristin Lane, Jerry Kang, & Mahzarin Banaji, [Implicit Social Cognition and the Law](#), 3 ANNU. REV. LAW SOC. SCI. 19.1-19.25 (2007)

Dissociation

Dissociation is the gap between [explicit](#) and [implicit](#) biases. Typically, [implicit](#) biases are larger, as measured in standardized units, than [explicit](#) biases. Often, our [explicit](#) biases may be close to zero even though our [implicit biases](#) are larger.

There seems to be some moderate-strength relation between [explicit](#) and [implicit biases](#). See Wilhelm Hofmann, [A Meta-Analysis on the Correlation Between the Implicit Association Test and Explicit Self-Report Measures](#), 31 PERSONALITY & SOC. PSYCH. BULL. 1369 (2005) (reporting mean population correlation $r=0.24$ after analyzing 126 correlations). Most scientists reject the idea that [implicit biases](#) are the only “true” or “authentic” measure; both [explicit](#) and [implicit](#) biases contribute to a full understanding of bias.

Explicit

Explicit means that we are aware that we have a particular thought or feeling. The term sometimes also connotes that we have an accurate understanding of the source of that thought or feeling. Finally, the term often connotes conscious endorsement of the thought or feeling. For example, if one has an explicitly positive attitude toward chocolate, then one has a positive attitude, knows that one has a positive attitude, and consciously endorses and celebrates that preference. See also [implicit](#).

Implicit

Implicit means that we are either unaware of or mistaken about the source of the thought or feeling. R. Zajonc, Feeling and thinking: Preferences need no inferences, 35 AMERICAN PSYCHOLOGIST 151 (1980). If we are unaware of a thought or feeling, then we cannot report it when asked. See also [explicit](#).

Implicit Association Test

The IAT requires participants to classify rapidly individual stimuli into one of four distinct categories using only two responses (for example, in the traditional computerized IAT, participants might respond using only the “E” key on the left side of the keyboard, or “I” on the right side). For instance, in an age attitude IAT, there are two social categories, YOUNG and OLD, and two attitudinal categories, GOOD and BAD. YOUNG and OLD might be represented by black-and-white photographs of the faces of young and old people. GOOD and BAD could be represented by words that are easily identified as being linked to positive or negative affect, such as “joy” or “agony”. A person with a negative [implicit](#) attitude toward OLD would be expected to go more quickly when OLD and BAD share one key, and YOUNG and GOOD the other, than when the pairings of good and bad are switched.

The IAT was invented by Anthony Greenwald and colleagues in the mid 1990s. Project Implicit, which allows individuals to take these tests online, is maintained by Anthony Greenwald (Washington), Mahzarin Banaji (Harvard), and Brian Nosek (Virginia).

Implicit Attitudes

“[Implicit](#) attitudes are introspectively unidentified (or inaccurately identified) traces of past experience that mediate favorable or

unfavorable feeling, thought, or action toward social objects.” Anthony Greenwald & Mahzarin Banaji, [Implicit social cognition: attitudes, self-esteem, and stereotypes](#), 102 Psychol. Rev. 4, 8 (1995). Generally, we are unaware of our implicit attitudes and may not endorse them upon self-reflection. See also [attitude](#); [implicit](#).

Implicit Biases

A bias is a departure from some point that has been marked as “neutral.” Biases in [implicit stereotypes](#) and [implicit attitudes](#) are called “implicit biases.”

Implicit Stereotypes

“[Implicit](#) stereotypes are the introspectively unidentified (or inaccurately identified) traces of past experience that mediate attributions of qualities to members of a social category” Anthony Greenwald & Mahzarin Banaji, [Implicit social cognition: attitudes, self-esteem, and stereotypes](#), 102 Psychol. Rev. 4, 8 (1995). Generally, we are unaware of our [implicit stereotypes](#) and may not endorse them upon self-reflection. See also [stereotype](#); [implicit](#).

Implicit Social Cognitions

Social cognitions are [stereotypes](#) and [attitudes](#) about social categories (e.g., Whites, youths, women). [Implicit](#) social cognitions are [implicit stereotypes](#) and [implicit attitudes](#) about social categories.

Stereotype

A stereotype is an association between a given object and a specific attribute. An example is “Norwegians are tall.” Stereotypes may support an overall attitude. For instance, if one likes tall people and Norwegians are tall, it is likely that this attribute will contribute toward a positive orientation toward Norwegians. See also [attitude](#).

Validities

To decide whether some new instrument and findings are valid, scientists often look for various validities, such as statistical conclusion validity, internal validity, construct validity, and predictive validity.

- Statistical conclusion validity asks whether the correlation is found between independent and dependent variables have been correctly computed.
- Internal validity examines whether in addition to correlation, there has been a demonstration of causation. In particular, could there be potential confounds that produced the correlation?
- Construct validity examines whether the concrete observables (the scores registered by some instrument) actually represent the abstract mental construct that we are interested in. As applied to the IAT, one could ask whether the test actually measures the strength of mental associations held by an individual between the social category and an [attitude](#) or [stereotype](#)
- Predictive validity examines whether some test predicts behavior, for example, in the form of evaluation, judgment, physical movement or response. If predictive validity is demonstrated in realistic settings, there is greater reason to take the measures seriously.

Bibliography

Allen R. McConnell & Jill M. Leibold, [Relations Among the Implicit Association Test, Discriminatory Behavior, and Explicit Measures of Racial Attitudes](#), 37 J. Experimental Soc. Psychol. 435 (2001)

Anthony G. Greenwald, et al., [Understanding and Using the Implicit Association Test: III. Meta-Analysis of Predictive Validity](#), 97 J. Personality & Soc. Psychol. 17 (2009)

Brian D. Ostafin, & Tibor P. Palfai, [Compelled to Consume: The Implicit Association Test and Automatic Alcohol Motivation](#), 20 Psych. of Addictive Behav. 322 (2006)

Claudia Goldin & Cecilia Rouse, [Orchestrating Impartiality: The Impact of "Blind" Auditions on Female Musicians](#), 90 Am. Econ. Rev. 715 (2000)

Dan-Olof Rooth, [Implicit Discrimination in Hiring: Real World Evidence](#) (Institute for the Study of Labor, Discussion Paper No. 2764, April 2007)

Denise Sekaquaptewa, et al., Stereotypic Explanatory Bias: Implicit Stereotyping as a Predictor of Discrimination, 39 J. Experimental Soc. Psychol. 75 (2003).

Dolly Chugh, [Societal and Managerial Implications of Implicit Social Cognition: Why Milliseconds Matter](#), 17 Soc. Just. Res. 203 (2004)

Elizabeth A. Phelps, et. al., [Performance on Indirect Measures of Race Evaluation Predicts Amygdala Activation](#), 12 J. Cog. Neuroscience 729 (2000).

Eric Luis Uhlmann & Geoffrey L. Cohen, Constructed Criteria: Redefining Merit to Justify Discrimination, 16 Psychol. Sci. 474 (2005)

Eugene M. Caruso, Dobromir A. Rahnev, & Mahzarin Banaji, [Using Conjoint Analysis to Detect Discrimination: Revealing Covert Preferences from Overt Choices](#), 27 Soc. Cognition 128 (2009)

Gregory Mitchell & Philip E. Tetlock, [Antidiscrimination Law and the Perils of Mindreading](#), 67 Ohio St. L.J. 1023 (2006)

Hal R. Arkes & Philip E. Tetlock, [Attributions of Implicit Prejudice, or "Would Jesse Jackson 'Fail' the Implicit Association Test?,"](#) 15 Psychol. Inquiry 257 (2004)

Irene V. Blair et al, [The Influence of Afrocentric Facial Features in Criminal Sentencing](#), 15 Psychol. Sci. 674 (2004)

Irene V. Blair, Jennifer E. Ma, & Alison P. Lenton, [Imagining Stereotypes Away: The Moderation of Implicit Stereotypes Through Mental Imagery](#), 81 J. Person. & Soc. Psych. 828 (2001)

Jerry Kang, [Trojan Horses of Race](#), 118 Harv. L. Rev. 1491 (2005)

Kurt Hugenberg & Galen V. Bodenhausen, [Facing Prejudice: Implicit Prejudice and the Perception of Facial Threat](#). 14 Psychol. Sci. 640 (2003)

Laurie A. Rudman & Matthew R. Lee, Implicit and Explicit Consequences of Exposure to Violent and Misogynous Rap Music, 5 Group Processes & Intergroup Rel. 133 (2002)

Laurie A. Rudman & Peter Glick, [Prescriptive Gender Stereotypes and Backlash Toward Agentic Women](#), 57 J. Soc. Issues 743 (2001)

Luciano Arcuri et al., Predicting the Vote: Implicit Attitudes as Predictors of the Future Behavior of Decided and Undecided Voters, 29 Political Psychology 369

Matthew K. Knack & Mahzarin R. Banaji, [Prediction of Suicide Ideation and Attempts Among Adolescents Using a Brief Performance-Based Test](#), 75 J. Clinical & Consulting Psychology 707 (2007).

Nicola S. Gray, et al., [An Implicit Test of the Associations Between Children and Sex in Pedophiles](#), 114 J. Abnormal Psych. 304 (2005)

Nilanjana Dasgupta & Anthony G. Greenwald, [On the Malleability of Automatic Attitudes:](#)

[Combating Automatic Prejudice with Images of Admired and the Disliked Individuals](#), 81 J. Person. & Soc. Psych. 800 (2001)

Nilanjana Dasgupta & Shaki Asgari, Seeing is Believing: Exposure to Counterstereotypic Women Leaders and Its Effect on the Malleability of Automatic Gender Stereotyping, 40 J. Experimental Soc. Psychol. 642 (2004)

R. Richard Banks, Jennifer L. Eberhardt, Lee Ross, Discrimination and Implicit Racial Bias in a Racially Unequal Society. 94 Calif. Law Rev. 1169 (2006)

William Von Hippel et al., [The Linguistic Intergroup Bias As an Implicit Indicator of Prejudice](#), 33 J. Experimental Soc. Psychol. 490 (1997)

Recognizing Our Own Biases

**PRESENTED BY:
Paula Edgar, Esq.**

Reprinted with the permission of the Association of the Bar
of the City of New York.

DIVERSITY

BENCHMARKING REPORT 2015



NEW YORK
CITY BAR



2015 DIVERSITY BENCHMARKING REPORT

EXECUTIVE SUMMARY

Methodology & Updates

After a decade of collecting diversity and inclusion metrics from signatory law firms and reporting stalled progress for minority and women attorneys, the New York City Bar Association (“City Bar”) Committee to Enhance Diversity in the Profession created a Task Force to review the benchmarking survey and recommend updates to strengthen the impact of the resulting data. Consequently, the 2015 Diversity Benchmarking Survey included several significant changes which are reflected in this year’s report.

First, participation in the survey was mandatory in order to be listed as a signatory to the City Bar Statement of Diversity Principles. As a result, signatory law firm participation in the survey nearly doubled, thus providing robust data not available in 2014 and a more accurate reflection of our signatory firms. We applaud the 75 law firms that have committed the time and energy to participate.

Additionally, for the first time since we began administering the survey in 2004, we requested a breakdown of individual racial/ethnic groups for men and women, rather than data on “minority attorneys” as an aggregate. This important change allows us to report specific details in each category where representative data was collected. We believe this specificity will allow the firms to explore challenges in a more nuanced way and create solutions tailored to a diverse population of lawyers.

To contextualize the data and empower law firms to look beyond the numbers to measure progress, the survey included three new sections: questions on workflow and bonus structures within the firm, engagement in pipeline efforts, and a “better practices” section to highlight initiatives that yield results within each firm. We have highlighted several of these initiatives throughout the report, in hopes that the information will inspire and connect firms facing similar challenges.

Reflecting on a decade of collecting and reporting data, one thing is patently clear: transparency and collaboration are necessary to effect meaningful change. The updates to the survey have equipped the City Bar with more detailed content to illustrate successes and challenges, so we are better positioned to advise our signatory firms and arm them with data to better guide and inform their efforts. It is our intent that this report—along with the individualized, confidential reports sent to each firm participant—will offer new, powerful tools to streamline each firm’s efforts while also allowing for greater accountability and collaboration. Since “you can’t fix what you can’t measure,” we consider this data collection to be a critical element in moving the needle toward quantitative and qualitative improvements within our firms and within our profession.

Trends & Challenges

In 2014, the City Bar reported increased support for diversity initiatives in firms as well as successes for women in leadership roles in firms; but we also found that overall representation of minority attorneys declined, and that attrition rates for both women and minorities remain significantly higher than rates for white men.

The 2015 data remains relatively consistent with these findings:

- **Voluntary attrition** continues to disproportionately impact minority and women attorneys, with 18.4% of women and 20.8% of minorities leaving signatory firms in 2015— a slight decrease from 2014, but still well above the 12.9% rate for white men.
- **Erosion in the associate pipeline** stalls progress for women and minority attorneys, and may have a long-term effect on the future of firm leadership. Gender diversity in the associate pipeline has leveled off at 45% for junior and mid-level women associates and 42% for senior women associates. Minority representation has leveled off or declined for junior, mid- and senior level associates from 2014 to 2015; in particular, fourth and fifth-year associates declined to around 25%, and seventh and eighth-year associates declined to around 20%. Asian/Pacific Islander women associates are the only group showing consistent increases since 2004.
- **Women attorneys** saw gains in leadership bodies, but racial/ethnic diversity among women partners, erosion in the associate pipeline, and voluntary attrition remain challenges. In 2015, women showed notable gains in representation on firm management committees and among practice group heads, and women partners peaked at 19%. However, white women make up 85% of all women partners and minority women make up less than 3% of all partners in signatory firms.
- Although representation of **minority attorneys** overall remains relatively flat, representation at the Special Counsel level increased, as well as minority representation in leadership bodies. The percentage of minority management committee members and minority practice group heads increased, and the percentage of law firms with three or more minority attorneys on the management committee doubled from 7% in 2014 to 14% in 2015.
- **LGBT attorney representation** has more than doubled since the City Bar began collecting self-reported data in 2004 and representation of LGBT partners has increased from 1.4% to 2.4%.
- In 2015, white men represented 77% of all **equity partners** at signatory firms. Minority and women partners continue to be concentrated at the income partner level, rather than among the ranks of equity partners. Furthermore, the turnover rate for women and minority income partners in 2015 was 8.6%, more than double the turnover rate of women and minority equity partners at 3.2%.
- **Flexible work arrangements** are used primarily by Special Counsel attorneys, and firms saw increased participation by men in these programs in 2015. Of all attorneys who report flexible work arrangements, 13% are racial/ethnic minorities.
- Signatory firms are **enhancing diversity efforts** within the firm and implementing initiatives to focus on firm leadership engagement, as well as undertaking comprehensive efforts to retain and promote minority and women attorneys.



Women attorneys make up 35% of all attorneys reported in our signatory firms, despite representing almost half of graduating law school classes for nearly two decades and 47% of summer associates in 2015. The 2015 benchmarking data reflects increases in representation at the leadership level, which indicates that long-term investment in women attorneys seems to be paying off. However, the data also raises concerns about erosion of the associate pipeline, and the lack of minority women within leadership roles.

Women Attorneys Gain in Leadership Roles

The City Bar benchmarking data has reflected incremental gains for women in leadership at signatory law firms since 2007. In 2015, women partners at signatory firms reached 19.7%, the highest level since the City Bar began tracking diversity data in 2004, but only a slight increase from 19.4% in 2014.

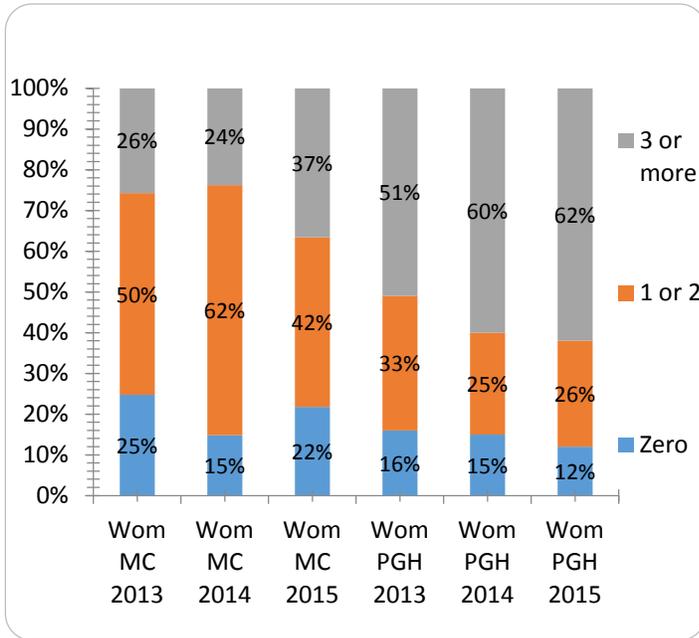
CHART A: REPRESENTATION OF WOMEN ATTORNEYS IN LEADERSHIP ROLES

LEVEL	March 2004	Jan 2006	Jan 2007	March 2009	March 2010	Dec 2011	Dec 2013	Dec 2014	Dec 2015
Partner	15.6	16.6	16.6	17.8	17.5	18.3	18.8	19.4	19.7
Management Comm.	NA	NA	13.5	17.8	17.1	17.7	16.9	18.3	20.3
Practice Group Heads	NA	NA	15.3	14.0	15.4	17.3	16.5	16.9	18.7

The 2015 data also reflected continued gains for women among top leadership bodies. The percentage of women serving on firms’ management committees rose to 20.3% in 2015, an increase from 13.5% in 2007 when diversity data on senior leaders at signatory firms was first captured, and a 2.0% increase from 2014. The percentage of law firms with three or more women serving on management committees increased from 26% in 2013 to 37% in 2015. The percentage of women practice group heads increased from 16.9% in 2014 to 18.7% in 2015, and the percentage of firms with three or more women practice group heads increased slightly from 60% to 62%. (See Chart B, p. 4)

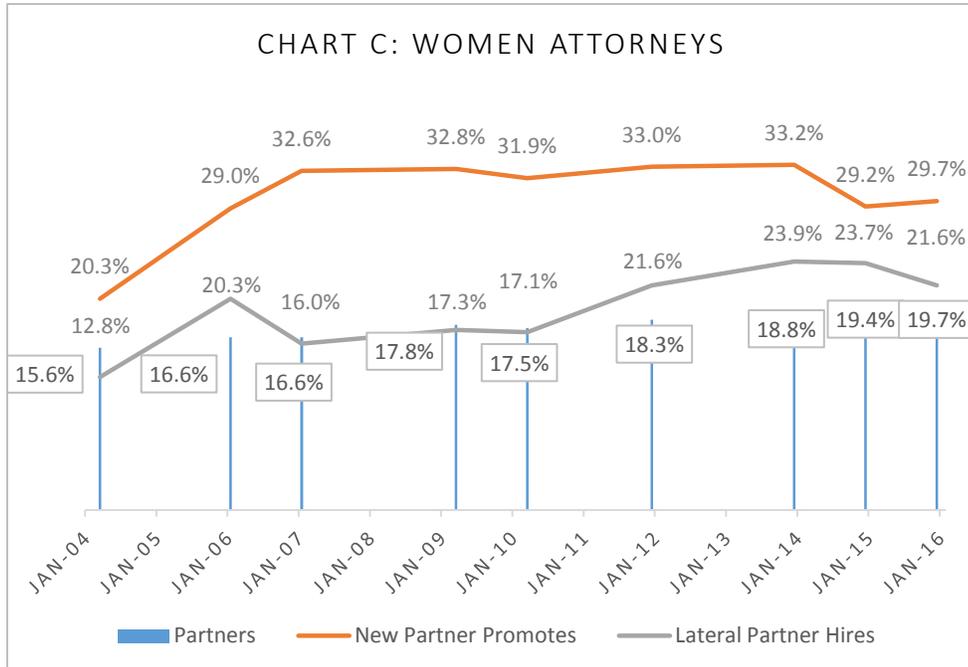
These gains for women attorneys indicate the results of long-term efforts to increase representation and advancement of women, including comprehensive sponsorship and monitoring initiatives, which go beyond traditional mentoring programs to cultivate development and progression opportunities for high-performing women attorneys. (See *Better Practices: Women’s Initiatives*, p. 6)

CHART B: REPRESENTATION OF WOMEN ATTORNEYS ON FIRM MANAGEMENT COMMITTEES (“WOM MC”) AND PRACTICE GROUP HEADS (“WOM PGH”)



Despite the increased representation at the partner level and on leadership bodies, challenges remain. **One in four signatory firms has no women on its management committee and one in eight has no women practice group leaders.** While the trend line for women partners and women in leadership roles continues to increase, the 2015 benchmarking data reflects that the percentage of female new partner promotions was essentially unchanged at 29.7% and has not reached the higher rates of prior years (2007 through 2013.) The representation of women lateral partner hires was slightly lower at 21.6% this year. Current flattening of the pool of female talent may affect the long-term representation of women leaders.

CHART C: WOMEN ATTORNEYS



Racial/Ethnic Diversity Among Women Attorneys Remains a Challenge

The 2015 benchmarking data reveals a lack of racial/ethnic diversity amongst women in leadership. Of all women partners reported, 85.2% are Caucasian, 7.0% are Asian/Pacific Islanders, 3.6% are Black/African American, and 2.5% are Hispanic. (See accompanying Chart D)

Among all partners, male and female, Caucasian women make up 16.8%, Asian/Pacific Islanders make up 1.4%, and Black and Hispanic partners represent 0.7% and 0.5%, respectively. (See Chart E)

In leadership bodies, which include practice group heads, management committee members, and New York office or firm-wide managing partners, these numbers remain staggeringly non-diverse. Of this group, 88.9% are Caucasian women, with Asian/Pacific Islander women representing 5.4%, and with Black/African American women and Hispanic women making up 2.6% and 2.3%, respectively.

Women attorneys at the associate level are more racially and ethnically diverse, although the numbers still reflect a greater representation of Asian/Pacific Islander attorneys over Black/African American or Hispanic attorneys.

CHART D: WOMEN PARTNERS BY RACE/ ETHNICITY

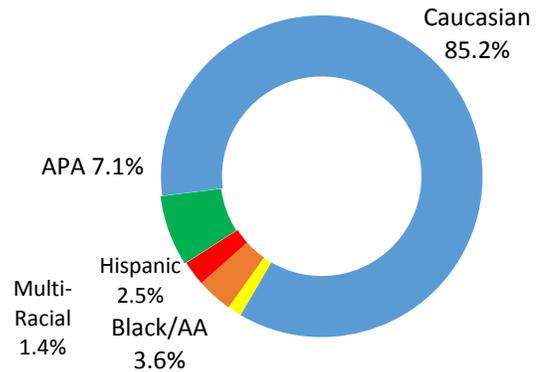


CHART E: ALL PARTNERS BY GENDER, RACE/ ETHNICITY

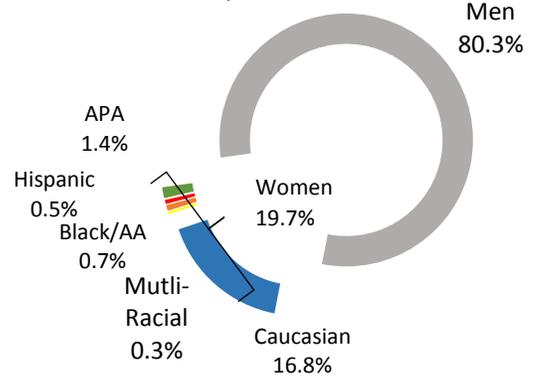
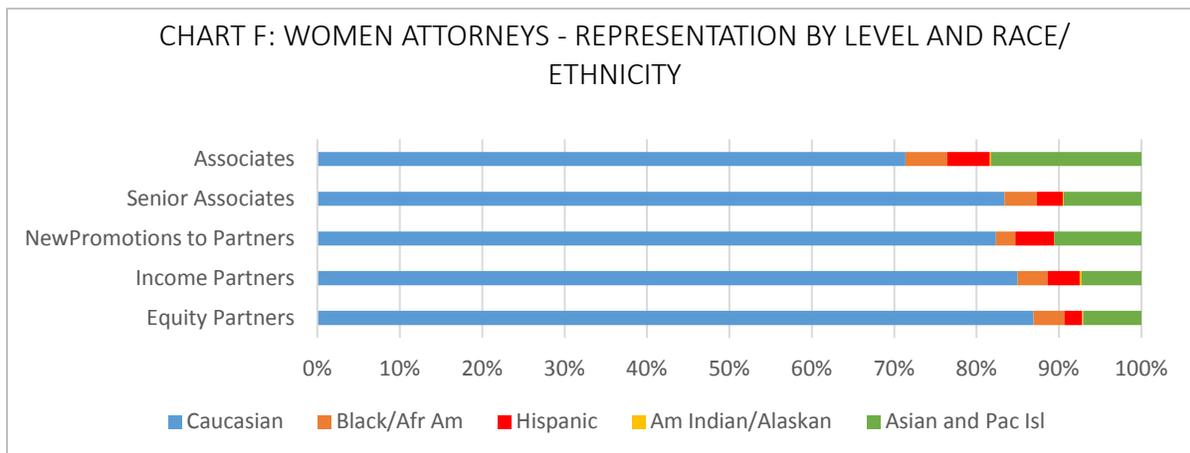


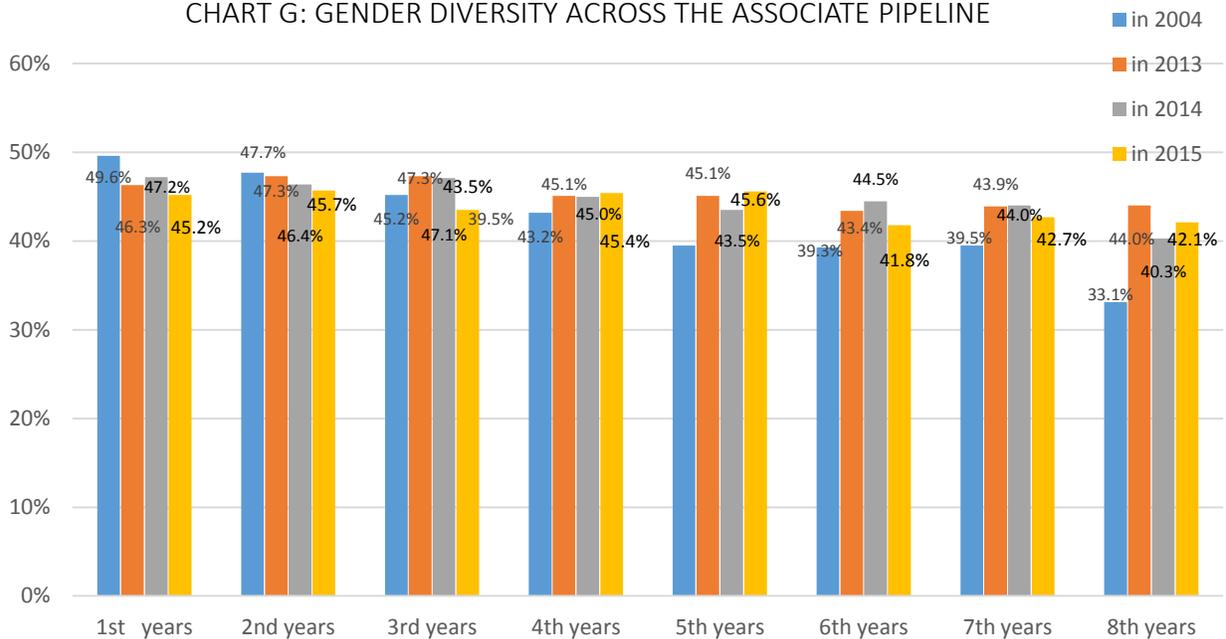
CHART F: WOMEN ATTORNEYS - REPRESENTATION BY LEVEL AND RACE/ ETHNICITY



Erosion in the Women Associate Pipeline

There is evidence that the increased gender diversity in the associate pipeline has begun to level off. While the first-year class was 50% female in 2004, representation has declined to just over 45% in 2015. The gender diversity of the mid-level associates has leveled off at 45% and senior-level associates at 42%.

CHART G: GENDER DIVERSITY ACROSS THE ASSOCIATE PIPELINE



BETTER PRACTICES: WOMEN'S INITIATIVES

To strengthen the pipeline to partnership, several firms have employed long-term initiatives to invest in the professional development of women in the firm and advance them to top leadership and professional roles within the firm and in the wider legal community.

For examples, please visit:

[Cadwalader Sponsorship Program](#)

[Norton Rose Fulbright Career Strategies Program](#)

[Paul Hastings Women in the Boardroom](#)

[Proskauer Women's Sponsorship Program](#)

[Skadden Women's Leadership Forum](#)

[Winston & Strawn Women's Leadership Initiative](#)

RECOMMENDATIONS

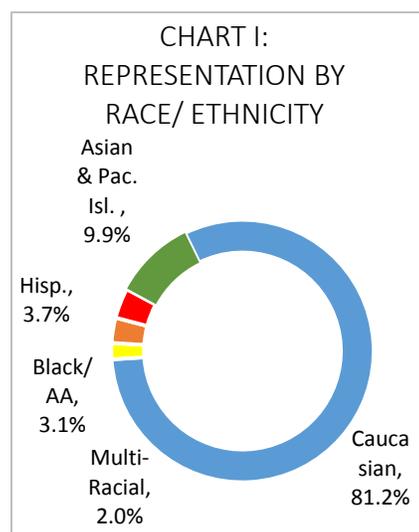
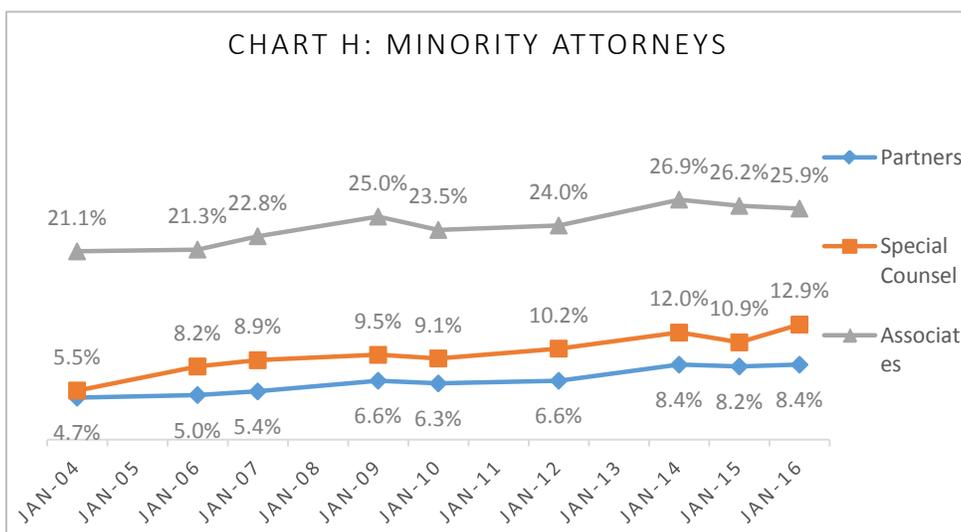
Many law firms have developed programs to enhance career opportunities for women attorneys, including:

- targeted business development and leadership training on communication styles, emotional quotient (EQ), leadership presence, and strategic career planning;
- sponsorship programs, which match women associates with partners;
- initiatives to strengthen relationships with clients;
- efforts to address intersectionality in women's initiatives to ensure that programs support women of color; and
- efforts to enhance gender diversity on corporate boards.

For specific examples, please see *Better Practices: Women's Initiatives*.

Minority Attorney Representation Stalled, But Gains in Leadership Levels

While signatory firms are more diverse at every level than they were when the City Bar first began tracking diversity benchmarking data, the 2015 data indicates that overall representation of minority attorneys has stalled in recent years. Overall representation of minority attorneys was largely unchanged in 2015 compared to 2014: minority associates dropped slightly to 25.9% in 2015 compared to 26.2% in 2014, which is nonetheless comparable to the National Association for Law Placement (NALP) data, which lists minorities at 26% representation within all NALP New York City firms. Minority special counsel attorneys increased to 12.9% in 2015 compared to 10.9% in 2014 and minority partners increased slightly to 8.4% in 2015, compared to 8.2% in 2014.

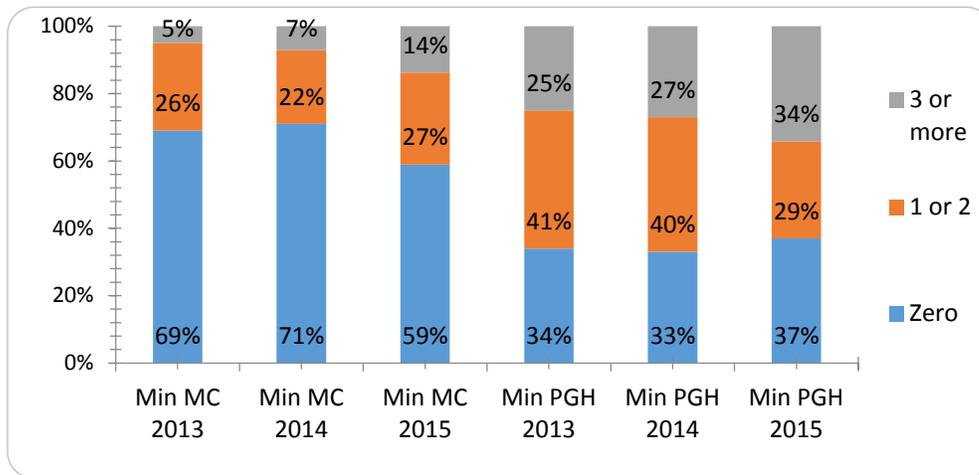


Minority attorney representation in firm leadership showed modest increases, as the percentage of management committee members increased from 6.4% in 2014 to 7.1% in 2015 and minority practice group heads increased from 6.1% in 2014 to 7.0% in 2015. Within this subset, Asian/Pacific Islander attorneys make up 3%, Hispanic attorneys make up 2%, and Black/African American Attorneys make up 1%. (See Chart L, p. 8)

CHART J: REPRESENTATION OF MINORITY ATTORNEYS IN LEADERSHIP ROLES

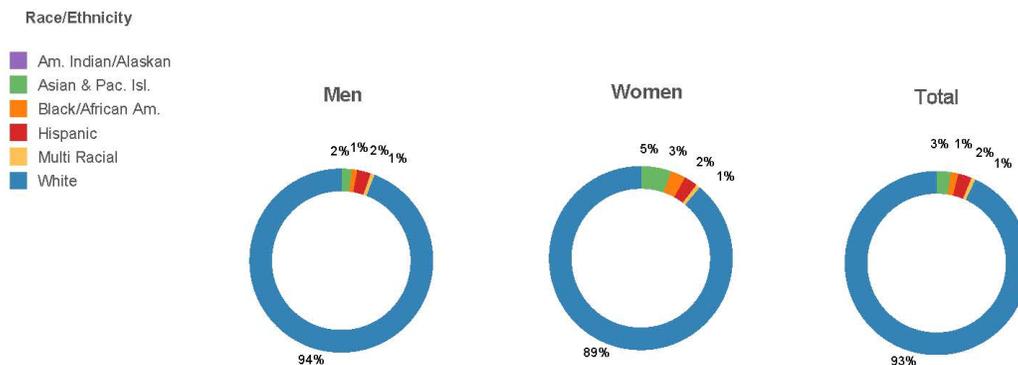
LEVEL	Jan 2007	March 2009	March 2010	Dec 2011	Dec 2013	Dec 2014	Dec 2015
Partner	5.4	6.6	6.3	6.6	8.4	8.2	8.4
Management Comm.	4.7	6.3	6.9	5.7	5.2	6.4	7.1
Practice Group Heads	5.1	4.5	5.7	5.9	5.8	6.1	7.0

CHART K: REPRESENTATION OF MINORITY ATTORNEYS ON FIRM MANAGEMENT COMMITTEES (“MIN MC”) AND PRACTICE GROUP HEADS (“MIN PGH”)

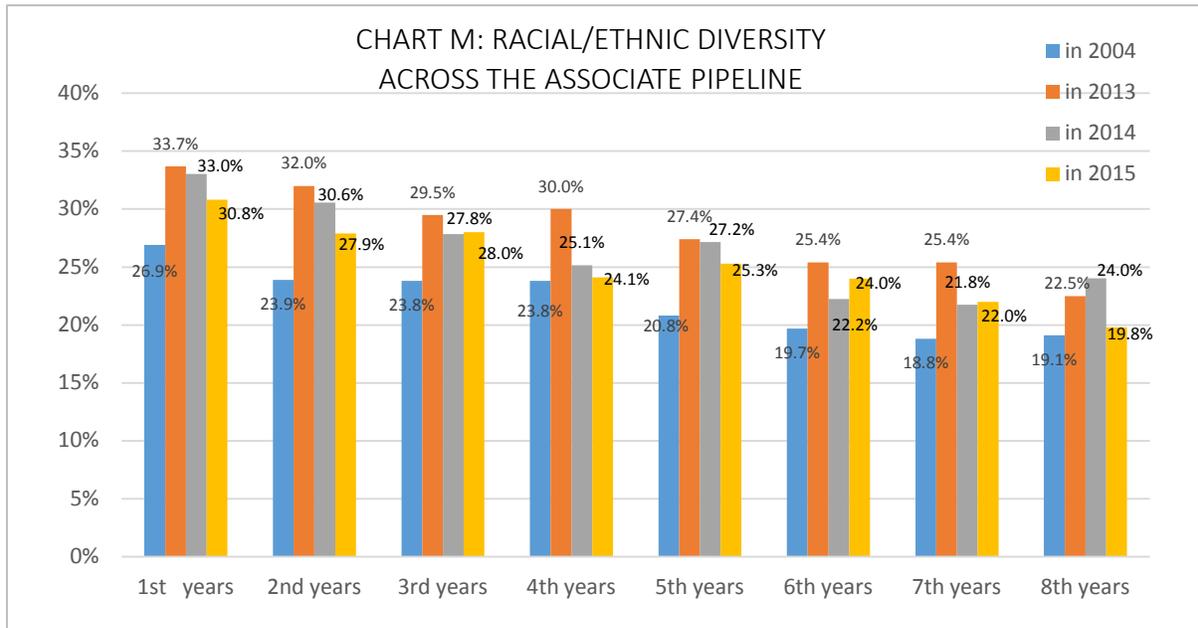


The percentage of firms with three or more minority attorneys on the management committee doubled from 7% in 2014 to 14% in 2015, and the percentage of firms with three or more minority practice group heads increased from 27% in 2014 to 34% in 2015. **However, the majority of signatory firms have no minorities on their management committees and more than one-third have no racial/ethnic minorities as practice group heads.**

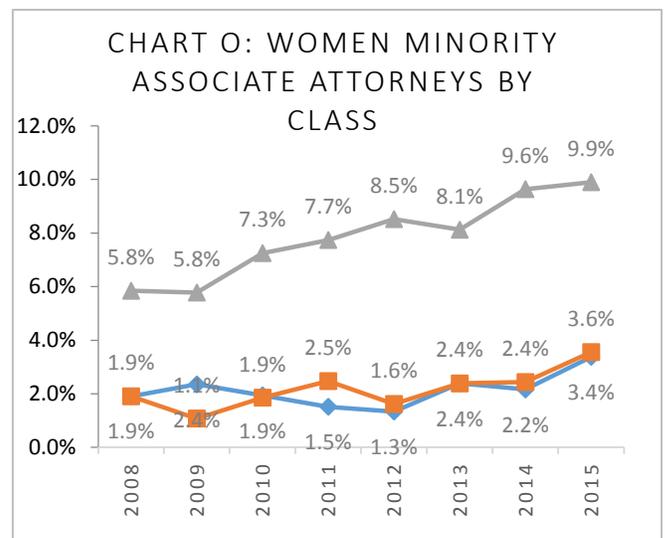
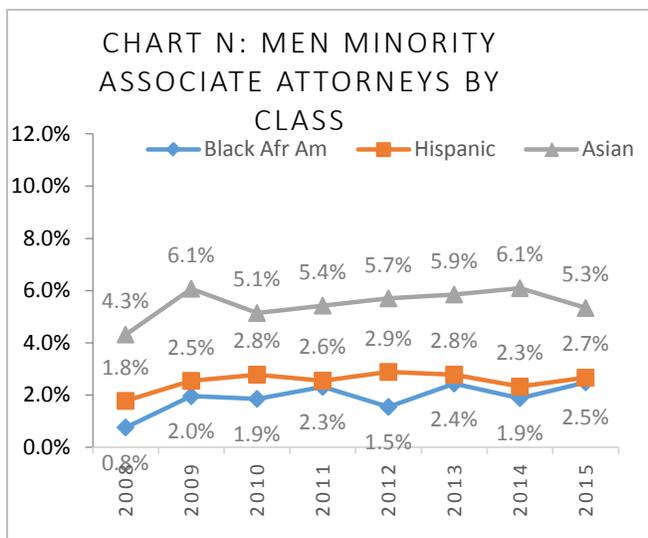
CHART L: LEADERSHIP ROLES BY GENDER, RACE/ETHNICITY



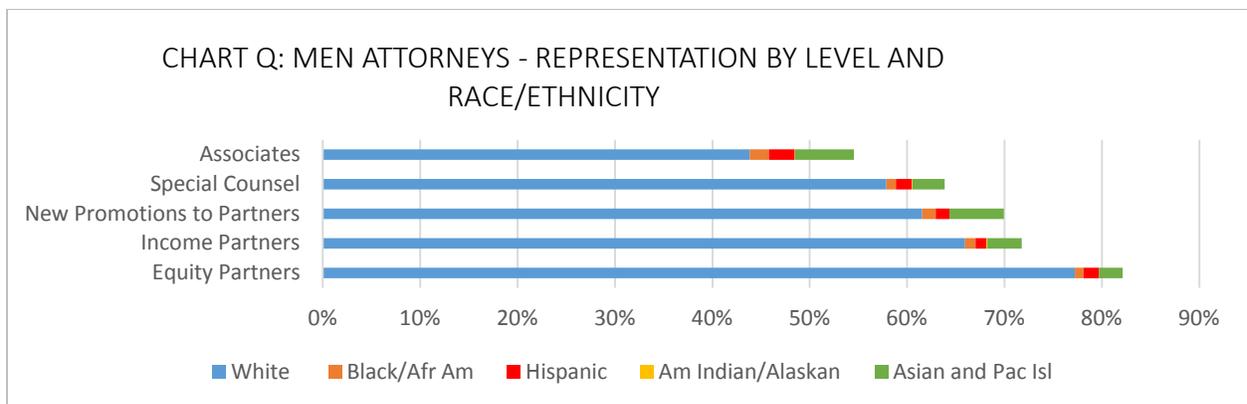
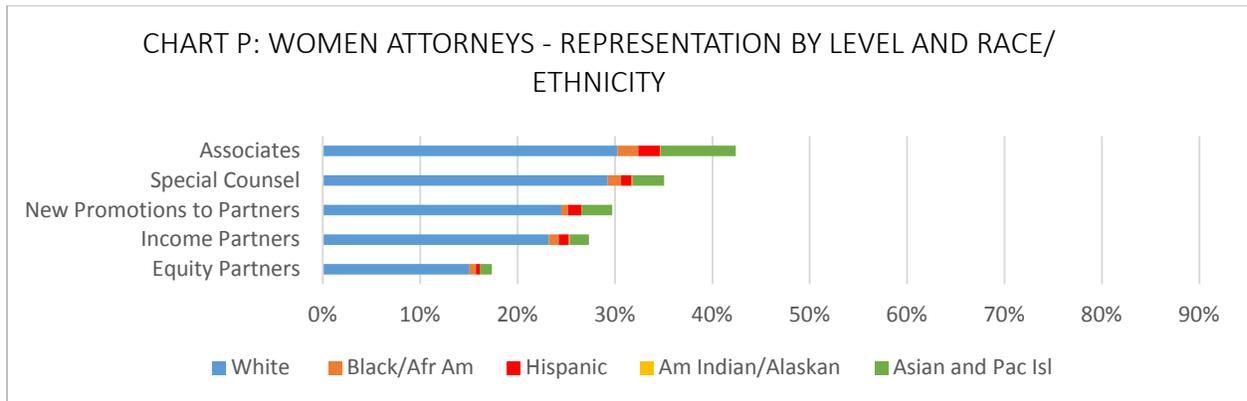
While firms have been successful in recruiting more racially and ethnically diverse new classes, this diversity is eroded as minority associates continue to turn over at higher rates than their white male colleagues. The accompanying Chart M illustrates this differential over time. Furthermore, the percentage of racial/ethnic minority attorneys in 2014 and 2015 has declined for all classes of junior, mid- and senior level associates compared with 2013 levels and erodes the gains made over several years. In particular, third-year minority attorneys remained at 28.0%, fourth-years at 24.1% and seventh-years at 22.0%. Eighth-year associates declined to 19.8% from 24.0% in 2014.



As illustrated in Charts N and O, the only group of minority associates that has shown consistent increases in representation in recent years is Asian/Pacific Islander women.

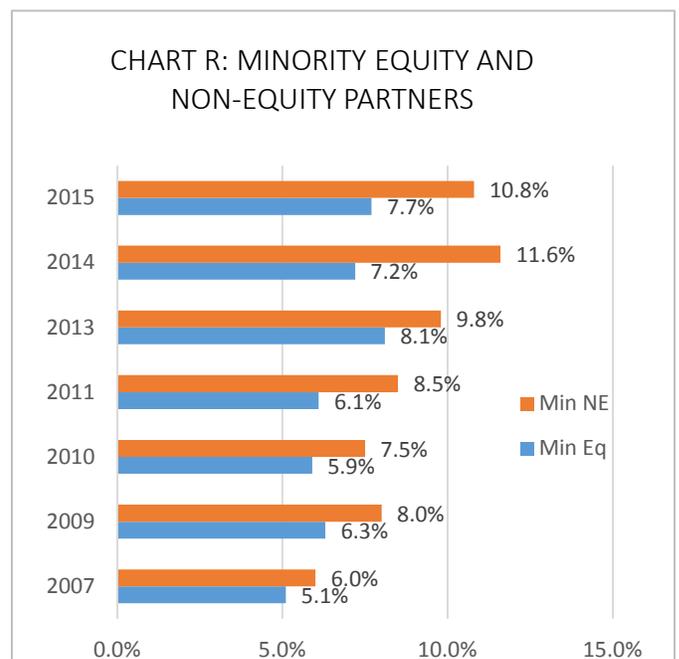


A comparison of gender, race and ethnicity in each category illustrates several noticeable trends: (i) women attorneys reflect more racial diversity than men across all categories; and (ii) along the pipeline from associate to equity partner, the percentage of white men increases steadily, in contrast to their female counterparts. (Compare Chart P with Chart Q, below)



Leadership

Over the last ten years, the City Bar has documented a pattern of disproportionate representation of minority and women partners at the income partner level, rather than at the equity partner level. As illustrated in Chart R, minority attorneys accounted for 10.8% of income partners and 7.7% of equity partners across firms at the end of 2015. While approximately 20.8% of all partners are income partners, the relative proportion of minority income partners is approximately 27.0%, compared to 29.3% of women partners and 18.3% of white men partners. The turnover rate for income partners across gender and race was more than double that of equity partners in the 2015 results, 8.6% compared to 3.2%.



RECOMMENDATIONS

In recent years, law firms have directed resources toward innovative efforts to retain and promote minority attorneys, including:

- engaging practice group leaders in monitoring work allocation protocols and quality of assignments;
- providing opportunity to expand practice area expertise;
- intentional pairing of partners and associates, where a partner is responsible for the associate's development;
- training partners to understand and interrupt implicit bias and develop objective evaluation and feedback methods;
- implementing bias neutralization trainings for minority attorneys;
- assessing client team composition and product on the firm's most significant matters;
- developing multi-year action plans for diverse associates;
- providing foundational skill-development opportunities;
- providing associates with executive coaches; and
- monitoring exit interviews of departing associates.

For specific examples, please see *Better Practices: Inclusion & Retention Efforts for Minority Attorneys*.

Additionally, our qualitative research revealed a wide array of efforts to enhance the profiles of diverse associates through external leadership opportunities, which supplement the firm's existing professional development programs. These include fellowship programs, executive leadership programs, board service opportunities, speaking/publishing opportunities, and bar association activity.

BETTER PRACTICES: INCLUSION & RETENTION EFFORTS FOR MINORITY ATTORNEYS

To cultivate an environment that embraces and promotes diversity, several firms have utilized a holistic approach to recruit, retain, and promote minority associates to advance within the firm and in their legal careers.

For examples, please visit:

[Cleary Gottlieb Substantive Mastery](#)

[Debevoise Accelerated Mentoring Program \(AMP\)](#)

[Latham Diversity Leadership Academy](#)

[Katten Sponsorship Program](#)

[Upstander@Weil Ally Program](#)

Increased Representation of LGBT Attorneys

Over the last decade, representation of self-reporting LGBT attorneys at signatory firms has more than doubled and has risen at key levels within law firms.

Overall, LGBT attorneys make up 3.4% of attorneys in signatory firms, an increase from 1.6% in 2004, and comparing favorably to the 2.34% representation of LGBT attorneys nationally.¹

LGBT associates increased from 1.7% in 2004 to 4.1% in 2015; special counsel attorneys increased slightly from 2.0% in 2004 to 2.6% in 2015; and partners increased from 1.4% in 2004 to 2.4% in 2015.²

The increased representation of LGBT attorneys may be attributed to initiatives and resources at law firms that are provided for LGBT attorneys, including robust LGBT networks and programs to educate and train straight “allies,” and greater availability of benefits for same-sex spouses. (See *Better Practices: LGBT Networks*)

BETTER PRACTICES: LGBT NETWORKS

Firms have employed LGBT networks in order to further their commitment to the LGBT community as a whole and provide a nurturing social and professional community for LGBT individuals within the firm. These networks provide support for LGBT recruiting, attorney development, and pro bono legal assistance to members of the LGBT community. Additionally, these firms host awareness-building programming for employees, clients, and law students.

For more examples, please visit:

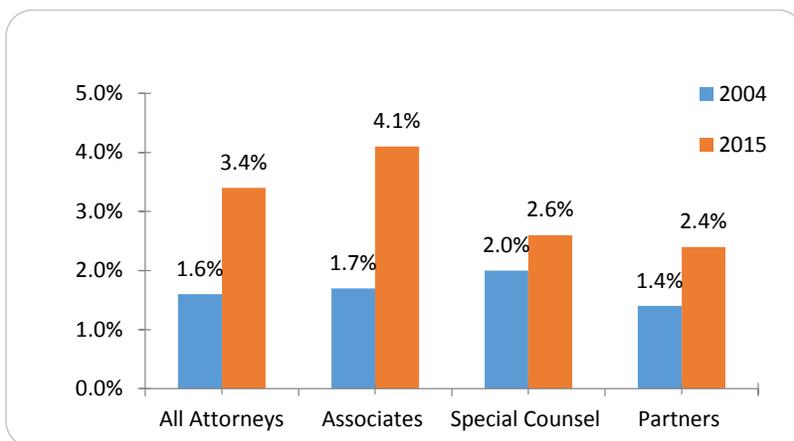
[Clifford Chance Arcus Allies Program](#)

[Shearman & Sterling “Sterling Pride Ally” Network](#)

[Sullivan & Cromwell LGBT Network](#)

[Winston & Strawn LGBT Affinity Group](#)

CHART S: LGBT ATTORNEYS BY LEVEL

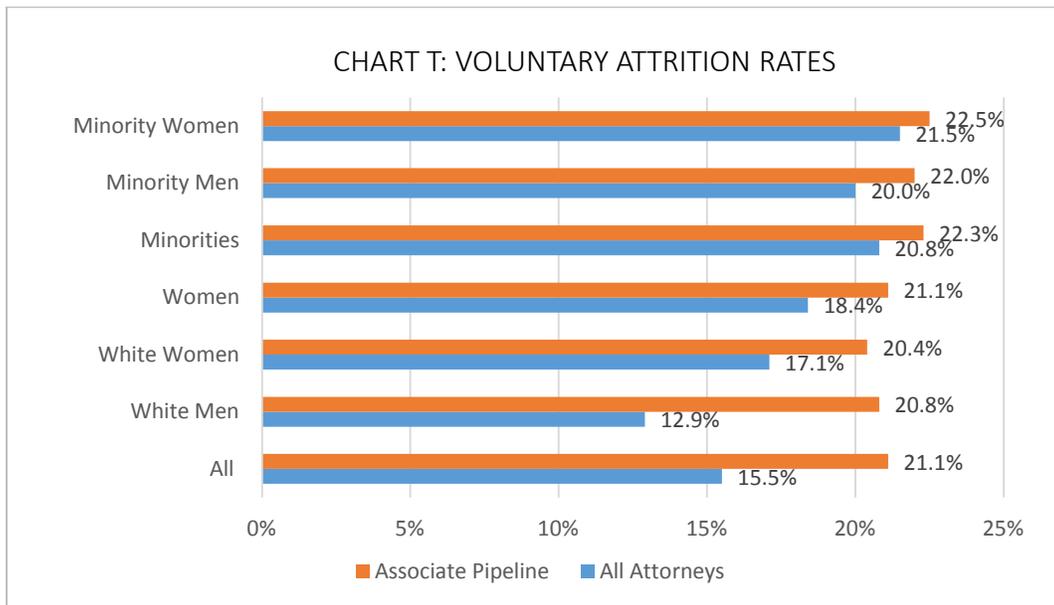


¹ *LGBT Representation Among Lawyers in 2015*, National Association of Law Placement (NALP), December 2015 <http://www.nalp.org/1215research>

² When the City Bar began collecting benchmarking data in 2004, few firms collected LGBT data, and of those that did, there was not a high percentage of self-reporting lawyers at that time.

Voluntary Attrition Rates Continue to be Disproportionately High for Women/Minority Attorneys

The voluntary attrition rates for women and minority attorneys continue to exceed those of white men. **Among all attorneys, 18.4% of women and 20.8% of minorities left signatory firms in 2015, compared to 12.9% of white men.**³ These rates decreased slightly from 2014, but attrition remains a persistent challenge. At the associate level—the future pipeline of talent to firm leadership—attrition rates for white men and women associates are almost at parity (20.8% and 20.4%) while attrition rates for minority men and women are higher (22.0% and 22.5%.)



For the first time, our 2015 benchmarking survey provided detailed data on the racial/ethnic makeup of attorneys who left each signatory firm (see Chart U, below.) Of all reported attorneys, 12% of attorneys who left firms were Asian/Pacific Islander, 4% Black/African American, and 5% Hispanic.

CHART U: VOLUNTARY ATTRITION BY GENDER, RACE/ETHNICITY

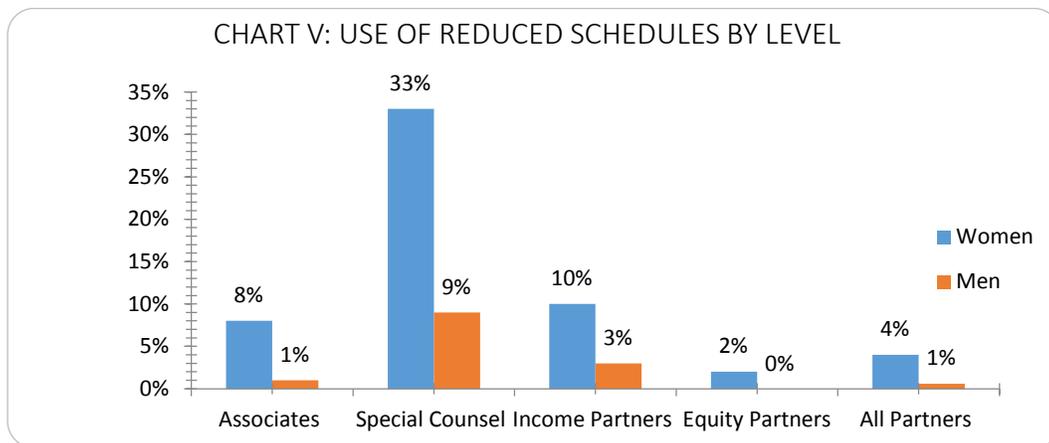


³ Attrition rates are based on analysis of a subset of 43 firms who participated in both the 2014 and 2015 surveys and provided turnover data.

Differences in overall voluntary turnover by race and gender continue to reflect the historical effect of the concentration of women and minorities at lower levels compared to Caucasian men, since attrition rates are highest at the associate level. In comparison, attrition among equity partners is 3.1% for Caucasian men, 3.8% for women and 4.4% for minorities. **Only 44% of current associates are Caucasian men compared to 75% of current partners; 44% of associates are women compared to 20% of partners and 26% of associates are racial/ethnic minorities compared to 8% of partners.**

Use of Flexible Work Practices

The 2015 survey highlights the importance of the special counsel role as a high-quality alternative to the partnership track for those seeking greater career path flexibility. Since the City Bar began tracking diversity benchmarking data, the special counsel role has been the primary way attorneys at signatory firms make use of flexible work practices.



Women have long been the primary users of flexible work schedules, but recent data suggest there may be a shift: in 2015, 33% of women special counsel attorneys and 9% of men special counsel attorneys worked on a reduced schedule. In addition, 10% of women income partners worked on reduced schedules.

Of all reported attorneys working on a formal part-time flexible arrangement, 13% were racial/ethnic minorities. (See *Better Practices: Flexible Work Programs*)

BETTER PRACTICES: FLEXIBLE WORK PROGRAMS

To help retain talent, many law firms have enhanced flexible work arrangements through which they provide a suite of options that allow attorneys to consider different work arrangements to meet their individual needs.

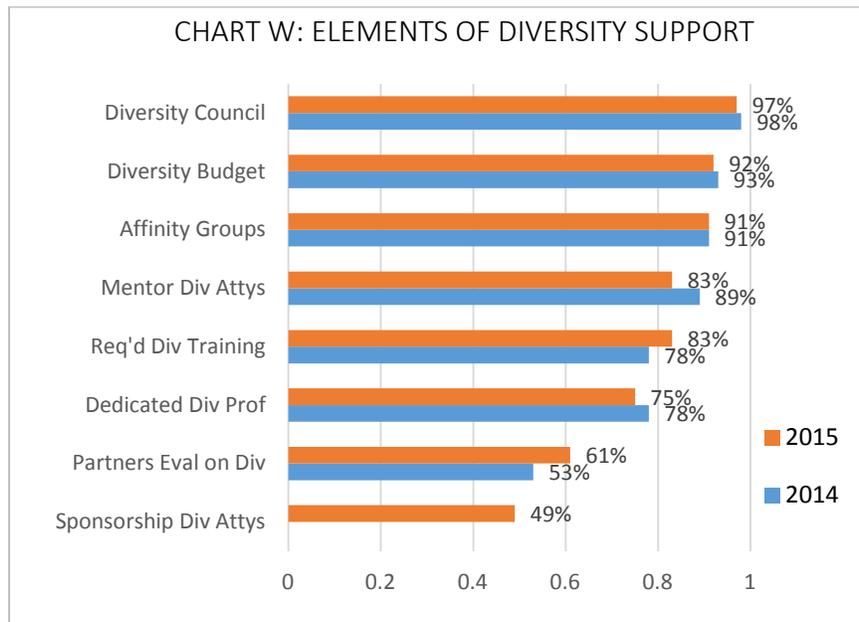
[Baker McKenzie Flex Program](#)

[Hogan Lovells Agile Working Initiative](#)

[O'Melveny & Myers CustOMMize](#)

Firms Continue to Drive Diversity Support

Several signals indicate that diversity and inclusion continue to be key priorities for signatory firms. According to data gathered in the 2015 survey, signatory firms continue to allocate resources and personnel toward their diversity efforts. More than 90% of firms indicate the presence of a diversity council, a diversity budget, and the existence of affinity groups. More than 75% of responding firms require diversity training, mentor diverse attorneys, and have a dedicated diversity professional. The majority, 61%, report that partners are evaluated on diversity results, an increase from 48% in 2013 and 53% in 2014. Approximately half of reporting firms have created a sponsorship program for diverse attorneys.



Many firms reported management committee member representation on the diversity committee, with 27% serving as Chair, which demonstrates commitment from firm leadership to diversity and inclusion efforts. Additionally, diversity budget figures have been robust, with 88% of firms reporting that diversity budgets remained steady or have increased from 2014 to 2015 and nearly 41% of firms anticipated an increase in their diversity budgets for the 2016 calendar year.

Diversity training was offered in more than 83% of signatory firms. Most of these training programs are mandatory; however, while some firms require full firm participation including non-legal personnel, others limit mandatory participation solely to partners, associates, or new hires.

Affinity groups are a foundational element for prioritizing diversity, and signatory firms reported an average of five affinity groups per firm in 2015. In addition to the most common affinity groups—women, LGBT employees, African-American, Hispanic and Asian/Pacific Islander groups, and attorneys with disabilities—signatory firms reported innovative efforts to provide support for working parents and new mothers, veterans, and those caring for a disabled relative.

Respondents were also asked to rate the importance of the diversity elements and practices in helping their firms reach their diversity goals. In 2015 dedicated diversity budgets, diversity councils, and dedicated diversity professionals ranked as the three most important elements in driving change. This year’s data reflected an increase in the number of law firms that attributed at least one element of diversity support as a matter of “extreme importance.” More than three-quarters of signatory firms reported that having a diversity council and a dedicated diversity professional were of extreme importance; affinity groups and mentorship and sponsorship of diverse attorneys were also rated as extremely important by most firms. The importance of a dedicated diversity budget increased to 85% in 2015 from 72% in 2014.

The importance of partners being evaluated on diversity metrics has increased from 33% in 2013 to 46% in the 2015 survey results.

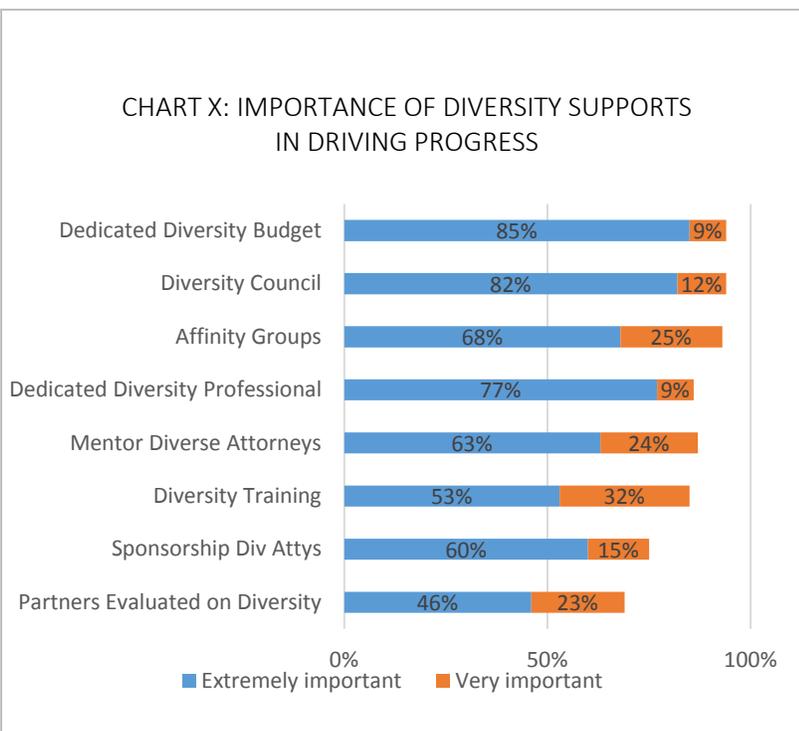
In the qualitative interviews and “better practices” data, firms emphasized the role of the diversity professional. Many firms indicated that the position has the most impact when the diversity professional has direct access to law firm leadership, and can influence decisions regarding hiring, workflow, access to clients and business development opportunities, and promotion of minority and women members of the firm. (See *Better Practices: Diversity Professional*)

TOP-DOWN COMMITMENT

“Our firm Chairman established a 15-member Inclusion Advisory Committee, which he chairs. The Committee launched a firm-wide strategic change initiative, launched an implicit bias campaign, and developed a tip sheet to interrupt biases in the performance review process that was distributed to all attorney reviewers firm-wide.”

“The topic of the advancement of our diverse lawyers is on the agenda of every Executive Committee meeting as well as other firmwide meetings.”

“Our Management Committee sponsors understand the experiences and issues (of associates) through personal relationships that you can’t get by just looking at tables of numbers.”



BETTER PRACTICES: DIVERSITY PROFESSIONAL

Of all reporting firms in 2015, 73% reported dedicated diversity staff, with 26% reporting one diversity professional, 36% reporting a staff of 2-3 professionals, and the remaining 11% reporting a staff of 4 or more. Given the scope of data collection and survey completion alone, all signatory firms should have at least one dedicated diversity professional.

The presence of a **Director of Diversity & Inclusion** or **Chief Diversity Officer** will illustrate the firm’s commitment. This position is best utilized when he/she has access to firm leadership, can advise on the quantifiable analysis, and can influence hiring, workflow, promotion, and compensation decisions.

Diversity Managers & Coordinators and other support staff can support analytic processes, event planning, and implementation of mentor programs and other diversity-related efforts.

Observations for Driving Change at all Levels

We believe that monitoring metrics is a critical tool to advance diversity — by helping firms understand which diversity efforts are working and where the biggest challenges remain. For law firms to recruit, retain, and promote a diverse pool of talent, several elemental factors must be in place. The qualitative research revealed the roles that a host of stakeholders in the firm must play in executing impactful inclusion practices. Women and minority associates will stay and thrive in an environment that genuinely values diversity, and one in which they can see the firm’s demonstrated, long-term investment in their individual success. And while the tone must come from the top, every member of the firm has a responsibility to ensure the traction of the firm’s efforts and, ultimately, its success. We believe this study will have a lasting impact on our ability to make the profession more reflective of the increasing diversity of corporate America, and inspire the next generation to continue to aspire toward legal careers. With this goal in mind, we offer the following observations for law firm participants, and will continue this dialogue throughout the year.

Managing Partners

Diversity efforts within law firms are most impactful when law firm leaders are actively engaged in prioritizing and advocating for their success. Managing partners can incorporate diversity strategy into firm management by placing it on the agenda at Executive Committee, Compensation Committee, Elevation Committee meetings, and other firmwide gatherings. *(See City Bar Managing Partner Toolkit)*

Partners

Law firm partners, three-quarters of whom are white males, undoubtedly have the most access to clients and opportunities and, therefore, are well-positioned to take an active role in fostering the development of diverse associates. Partners can place associates in the path of a big case or deal, invest in and mentor associates, provide practical feedback, and advocate on their behalf to firm leadership. Additionally, partners can become engaged members of diversity initiatives in the firm and encourage their peers to join.

Associates

Associates can ensure their success in the profession by strengthening their awareness of the firm culture and how they fit into it, empower themselves to seek out meaningful work, professional development opportunities and constructive feedback, and cultivate an engaged network of mentors and sponsors. Associates should have individualized plans and regular assessments of their progress. *(See City Bar Associate Toolkit)*

Clients

Clients can play a key role in advancing the diversity of the law firms that serve them by providing financial incentives to law firms to reflect their commitment to diversity. To help move the needle, they can make a concentrated effort to ensure that diverse attorneys are staffed on their matters and given substantive work, increase the specificity of their RFP diversity metrics, and ultimately, drive change by reducing the volume of business directed to law firms that do not demonstrate improvement.

ACKNOWLEDGEMENTS

The 2015 Benchmarking Report was created under the leadership of New York City Bar President John S. Kiernan; Executive Director Bret I. Parker; and Director of Diversity and Inclusion Gabrielle Lyse Brown. Amy Richman of WFD Consulting led the research effort. The survey update effort was led by Joseph Drayton of Cooley LLP, Chair of the Task Force, and supported by Nate Saint-Victor, Sheila Boston, and Hon. Rosalyn Richter, Former & Current Co-Chairs of the Committee to Enhance Diversity in the Profession.

Profound thanks to Deloitte Transactions and Business Analytics LLP and Deloitte Financial Services LLP for the individual firm reports, especially Kamran Masood, Elene Karanicolas, Allison May, Stephen Palazola, and Vivian Yeh for the innovative redesign of the individual firm reports and graphics for the public report.

And special thanks to research Fellows Karla Perez, Indira Murillo, and Raabia Qasim; Monica Parks, Maria Cilenti, Mary Margulis-Ohnuma and Dr. Arin Reeves for editorial support and guidance; and to IBM for fielding the SPSS survey.

And last but certainly not least, we give our deepest thanks to the signatory law firms who participated in the survey and qualitative interviews, particularly in light of the more laborious effort this year.



Questions about the report and reprint permission can be directed to:

Gabrielle Lyse Brown, Director of Diversity & Inclusion

Office for Diversity and Inclusion | New York City Bar | 42 West 44th Street, New York, NY 10036

(212) 382-6713 | gbrown@nycbar.org | www.nycbar.org/diversity

For press inquiries, please contact Eric Friedman (212) 382-6754 | efriedman@nycbar.org.



Reproduced with permission from National Association for Law Placement (NALP) Copyright 2017 <http://www.nalp.org/diversity2>

The background of the cover is a complex, low-poly geometric pattern in various shades of blue, ranging from light sky blue to deep navy blue. The pattern consists of numerous irregular polygons of different sizes and orientations, creating a textured, crystalline effect. The pattern is divided into three horizontal bands: a top band, a middle band, and a bottom band. The middle band is a lighter, more uniform shade of blue, serving as a backdrop for the title text.

2016

Report on

Diversity

In U.S. Law Firms

© January 2017
National Association for Law Placement, Inc. (NALP)
1220 19th Street NW, Suite 401, Washington, DC 20036-2405
Phone: (202) 835-1001 | Fax: (202) 835-1112
www.nalp.org

Contents

INTRODUCTION	3
HIGHLIGHTS	4
SIGNIFICANT FINDINGS	5
TABLES	8
Table 1. Women and Minorities at Law Firms — 2009-2016	8
Table 2. Partner and Associate Demographics at Law Firms — 2009-2016	8
Table 3. Women and Minorities at Law Firms — Partners and Associates — 2016	9
Table 4. Women and Minorities at Law Firms — Total Lawyers and Summer Associates — 2016	11
Table 5. Partner Demographics at Law Firms — 2016	13
Table 6. Associate Demographics at Law Firms — 2016	15
Table 7. Lawyers with Disabilities — 2016	16
Table 8. Openly LGBT Lawyers — 2016	16

Introduction

Women and Black/African-Americans made small gains in representation at major U.S. law firms in 2016 compared with 2015, according to the latest law firm demographic findings from the **National Association for Law Placement** (NALP). However, representation of both these groups remains below 2009 levels. NALP’s recent analyses of the *2016-2017 NALP Directory of Legal Employers* (NDLE) — the annual compendium of legal employer data published by NALP — shows that although women and minorities continue to make small gains in their representation among law firm partners in 2016, the overall percentage of women associates has decreased more often than not since 2009, and the percentage of Black/African-American associates has declined every year since 2009, except for the small increase in 2016.

NALP Executive Director James Leipold commented on the new findings noting, “These national benchmark data are helpful in highlighting the overall progress, or lack thereof, in achieving greater diversity among the lawyers working in U.S. law firms, but the national figures mask many significant differences by law firm size and geography. In many ways these stories tell a narrative of difference, with the largest law firms having achieved much greater diversity than smaller law firms. And while it is encouraging to see small gains in most areas this year, the incredibly slow pace of change continues to be discouraging.”

Leipold continued, “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.”

Highlights

Women & Minorities

Associates

Representation of women, minorities, and minority women among associates saw small gains in 2016, but representation of women is still below pre-recession levels.

Partners

In 2016, representation of women, minorities, and minority women among partners in law firms across the nation all increased a small amount over 2015.

Women Lawyers Overall

Overall, representation of women lawyers as a whole was up and remains higher than in 2009, despite losses in 2010, 2011, and 2015.

Summer Associates

The representation of women and minorities in the summer associate ranks compares much more favorably to the population of recent law school graduates.

Lawyers with Disabilities

Lawyers with disabilities (of any race or gender) are scarce, both at the associate and partner levels.

Openly LGBT Lawyers

The percentage of LGBT lawyers has generally been trending upward over the period since 2002 when NALP first began compiling these figures, and small increases from 2015 to 2016 occurred across all lawyer types, though this was not necessarily the case for every firm size.

Significant Findings

ASSOCIATES:

Representation of women, minorities, and minority women among associates saw small gains in 2016, but representation of women is still below pre-recession levels.

NALP's analysis found that representation of minority associates has continued to increase since 2010 (from 19.53% to 22.72%) following widespread layoffs in 2009. Over the same period of time, however, representation of women has seen a net decrease, despite small upticks in 2014 and again in 2016. The representation of women increased steadily from 38.99% in 1993 to its peak of 45.66% in 2009. In 2016, the percentage of representation sits at 45%, compared with 44.68% in 2015.

In contrast to the pattern for women as a whole, representation of minority women among associates has increased from about 11% (2009-2012) to 12.48% in 2016. (See Table 1.)

Much of the increase in minority representation since 2011 can be attributed to increased representation of Asians among associates. While overall minority representation fell in 2010, this was not the case for Asian associates in particular. Asian associates now make up over 11% of all associates, with representation having risen almost two percentage points from 9.28% in 2009 to 11.25% in 2016. Hispanic associate representation has also risen. After fluctuating between 3.81% and 3.95% of associates between 2009 and 2014, Hispanics have slightly outnumbered Black/African-Americans among associates since then. In 2016, Hispanics accounted for 4.42% of associates. In contrast to trends among Asian associates and even Hispanic associates, representation of Black/African-Americans among associates has fallen every year from 2010 to 2015. **Despite a small**

increase in 2016 to 4.11%, representation of Black/African-American associates remains below its 2009 level of 4.66%. (See Table 2.)

PARTNERS:

In 2016, representation of women, minorities, and minority women among partners in law firms across the nation all increased a small amount over 2015.

During the 24 years that NALP has been compiling this information, law firms have made steady, though very slow, incremental progress in increasing the presence of women and minorities in the partner ranks. In 2016, that slow upward trend continued, with minorities accounting for 8.05% of partners in the nation's major firms, and women accounting for 22.13% of the partners in these firms, up from 7.52% and 21.46%, respectively, in 2015.

Nonetheless, over this period, the total change has been marginal at best. In 1993 minorities accounted for 2.55% of partners and women accounted for 12.27% of partners. At just 2.76% of partners in 2016, **minority women continue to be the most dramatically under-represented group at the partnership level**, a pattern that holds across all firm sizes and most jurisdictions. The representation of minority women partners is somewhat higher (3.22%) at the largest firms with more than 700 lawyers. Minority men, meanwhile, account for just 5.29% of partners this year, compared with 4.97% in 2015. This means that the increase in minorities among partners was about two-tenths of one percent for women and about three-tenths of one percent for men. (See Table 1.)

But, as is the case with associates, most of the increase in minority representation among partners since 2009 can be attributed to an increase of Asian and Hispanic male partners in particular. **Representation of Black/African-Americans among partners has barely budged over the period** and was 1.81% in 2016, compared with 1.71% in 2009. (See Table 2.)

WOMEN LAWYERS OVERALL:

Overall, representation of women lawyers as a whole was up and remains higher than in 2009, despite losses in 2010, 2011, and 2015.

This increase reflects both the increase among partners and associates noted above and also among lawyers other than partners and associates such as “of counsel” and staff attorneys who, in 2016, accounted for 14% of attorneys at these firms. For example, women accounted for 39.7% of these other attorneys in 2016, compared with 39.5% in 2015. Although the overall figure for women fell in 2010 and 2011, and again in 2015, the overall percentage for women (33.89%) remains higher than in 2009, when the figure was 32.97%.

The representation of minorities among lawyers as a whole rose some in 2016, to 14.62%. Consistent with findings for minority women among partners and associates, representation of minority women as a whole also increased slightly from 6.81% in 2015 and minority women now make up 7.23% of lawyers at these law firms. (See Table 1.)

SUMMER ASSOCIATES:

The representation of women and minorities in the summer associate ranks compares much more favorably to the population of recent law school graduates.

According to the American Bar Association (ABA), since 2000, the percentage of minority law school

graduates has ranged from 20% to 28%, while women have accounted for 46% to 49% of graduates with the high point coming in the mid-2000s. In 2016, women comprised 48.71% of summer associates, minorities accounted for 32.33%, and 18.05% of summer associates were minority women. All of these measures have improved steadily since 2013, when representation of women edged down and minority presence was virtually flat. However, these percentages are in the context of far fewer summer associates overall, with the number of summer associates off by about 25% compared with 2009, despite increases in the numbers after they bottomed out in 2010 and 2011.

LAWYERS WITH DISABILITIES:

Lawyers with disabilities (of any race or gender) are scarce, both at the associate and partner levels.

The NALP Directory of Legal Employers also collects information about lawyers with disabilities, though this information is much less widely reported than information on race/ethnicity and gender, making it much harder to conclude anything definitive about the representation of lawyers with disabilities. About one-third of 1 percent of partners self-reported as having a disability in 2016, similar to findings from 2012-2015; however these figures are higher than the less than one-quarter of one percent figures for the two years prior to that (2010 and 2011). Similarly, representation of associates with disabilities has nearly doubled from 0.17% in 2011 to 0.33% of associates in law firms in 2016 — still just a tiny fraction. Although the presence of individuals with disabilities among law school graduates is not precisely known, other NALP research suggests that between 1 and 2% of graduates self-identify as having a disability. Disability figures for partners, associates, and all attorneys with disabilities are reported in Table 7.

LGBT LAWYERS:

The percentage of LGBT lawyers has generally been trending upward over the period since 2002 when NALP first began compiling these figures, and small increases from 2015 to 2016 occurred across all lawyer types, though this was not necessarily the case for every firm size.

The overall percentage of openly lesbian, gay, bisexual, and transgender (LGBT) lawyers reported in 2016 increased by a small amount to 2.48% compared with 2.34% in 2015. Increases were seen across all lawyer types and ranged from not quite 0.1 percentage point for partners to almost 0.2 percentage points for counsel and non-traditional track attorneys. About 40% of offices reported at least one LGBT lawyer among partners and associates. The percentage of offices reporting LGBT counts has been relatively stable at about 88-89% of offices since 2008.

The overall count in 2016 of 2,431 LGBT lawyers is up by almost 6% from 2015, and because the total number of lawyers was relatively flat, overall representation of LGBT lawyers increased somewhat. **Over a longer span of time, the numbers have more than doubled.** In the 2002-2003 NDLE, the number of openly LGBT lawyers reported was just over 1,100 — less than 1% of the total lawyers represented. It took until 2012 for the overall percentage to exceed 2%.

The presence of LGBT lawyers continues to be highest among associates, at 3.24% (see Table 8), and is up from the figure of 3.08% reported in 2015. Openly LGBT associates are also better represented at large law firms — with firms of 701+ lawyers reporting 3.81% openly LGBT associates. However, LGBT representation among associates at firms of 101-250 lawyers and 251-500 lawyers declined compared with 2015. Similarly, in the U.S. openly LGBT partners are best represented at the largest firms — with firms of 701+ lawyers reporting 2.15% openly LGBT partners, compared with 1.89%

among partners overall. The 2016 level at the largest firms is the highest recorded, after hovering at about 2% for the previous five years. After steady increases in openly LGBT partners in firms of 100 or fewer lawyers from 0.63% in 2009 to just over 2% in 2015, the figure dropped back to 1.88% in 2016.

There are wide geographic disparities in these numbers, and in fact about 56% of the reported openly LGBT lawyers are accounted for by just four cities: New York City, Washington, DC, Los Angeles, and San Francisco. These same four cities accounted for about 38% of the just over 98,000 lawyers included in these analyses. Thus the percentage of openly LGBT lawyers in these cities is correspondingly higher — about 3.6% overall (and highest in San Francisco specifically at 5.7%) compared with the 2.48% nationwide figure. In these same four cities, the percentage of openly LGBT summer associates is also higher — about 6.1% compared with 4.86% nationwide.

However, figures for summer associates suggest that there is still potential for some growth in the presence of LGBT associates at these firms. The overall figure for summer associates was 4.86%, compared with 4.43% in 2015. In firms of more than 700 lawyers, it has exceeded 5% in the three most recent years. In firms of 251+ lawyers as a whole, the figure was about 5.3% compared with just over 2% at the smaller firms.

BREADTH OF LAWYER REPRESENTATION IN THE NALP DIRECTORY

The 2016-2017 NALP Directory of Legal Employers (NDLE), which provides the individual firm listings on which these aggregate analyses are based, includes attorney race/ethnicity and gender information for over 112,000 partners, associates, and other lawyers in 1,082 offices, and for over 7,000 summer associates in 804 offices nationwide. The NDLE is available online at www.nalpdirectory.com.

Tables

Table 1. Women and Minorities at Law Firms — 2009-2016

	Partners			Associates			Total Lawyers			Summer Associates		
	% Women	% Minority	% Minority Women	% Women	% Minority	% Minority Women	% Women	% Minority	% Minority Women	% Women	% Minority	% Minority Women
2009	19.21%	6.05%	1.88%	45.66%	19.67%	11.02%	32.97%	12.59%	6.33%	46.62%	24.04%	12.90%
2010	19.43	6.16	1.95	45.41	19.53	10.90	32.69	12.40	6.20	47.35	26.99	14.92
2011	19.54	6.56	2.04	45.35	19.90	10.96	32.61	12.70	6.23	47.71	27.11	15.19
2012	19.91	6.71	2.16	45.05	20.32	11.08	32.67	12.91	6.32	46.26	29.55	16.26
2013	20.22	7.10	2.26	44.79	20.93	11.29	32.78	13.36	6.49	45.32	29.51	15.78
2014	21.05	7.33	2.45	44.94	21.63	11.51	33.48	13.83	6.74	46.33	30.27	16.63
2015	21.46	7.52	2.55	44.68	22.00	11.78	33.38	13.97	6.81	47.78	31.16	16.99
2016	22.13	8.05	2.76	45.00	22.72	12.42	33.89	14.62	7.23	48.71	32.33	18.05

Source: *The NALP Directory of Legal Employers.*

Table 2. Partner and Associate Demographics at Law Firms — 2009-2016

	Partners						Associates					
	Asian		Black/African-American		Hispanic		Asian		Black/African-American		Hispanic	
	Total %	% Women	Total %	% Women	Total %	% Women	Total %	% Women	Total %	% Women	Total %	% Women
2009	2.20%	0.76%	1.71%	0.57%	1.65%	0.41%	9.28%	5.12%	4.66%	2.93%	3.89%	2.00%
2010	2.30	0.81	1.70	0.56	1.70	0.44	9.39	5.15	4.36	2.75	3.81	1.94
2011	2.36	0.82	1.71	0.58	1.92	0.48	9.65	5.31	4.29	2.61	3.83	1.92
2012	2.48	0.89	1.73	0.60	1.91	0.48	10.01	5.40	4.19	2.55	3.90	1.95
2013	2.67	0.91	1.78	0.60	1.99	0.54	10.48	5.64	4.10	2.43	3.82	1.89
2014	2.74	0.99	1.72	0.63	2.16	0.60	10.80	5.81	4.01	2.31	3.95	1.89
2015	2.89	1.07	1.77	0.64	2.19	0.63	10.93	6.00	3.95	2.25	4.28	2.03
2016	3.13	1.17	1.81	0.64	2.31	0.68	11.25	6.35	4.11	2.32	4.42	2.15

Source: *The NALP Directory of Legal Employers.*

For purposes of the figures in Tables 1-6, minority attorneys include those whose race or ethnicity is Black, Hispanic, American Indian/Alaskan Native, Asian, Native Hawaiian or other Pacific Islander, and those of multi-racial heritage, as reported by the law firms in the NDLE. The partner numbers include both equity and non-equity partners.

Table 3. Women and Minorities at Law Firms — Partners and Associates — 2016

	Partners				Associates				# of Offices
	Total #	% Women	% Minority	% Minority Women	Total #	% Women	% Minority	% Minority Women	
Total	50,909	22.13%	8.05%	2.76%	45,398	45.00%	22.72%	12.42%	1,082
By # of Lawyers Firm-wide:									
100 or fewer	3,471	22.01%	6.68%	2.42%	1,818	42.08%	17.05%	8.80%	114
101-250	9,516	22.04	6.20	2.04	5,446	44.45	16.43	9.02	145
251-500	11,162	22.22	7.40	2.65	7,672	44.59	21.64	11.78	214
501-700	6,283	21.82	8.21	2.75	5,657	44.46	22.22	11.51	121
701+	20,477	22.23	9.44	3.22	24,805	45.59	24.96	13.84	488
Offices in:									
Atlanta	1,149	20.45	8.01	2.35	852	47.07	19.48	10.92	24
Austin	331	24.17	11.48	4.83	219	42.01	21.92	10.96	18
Boston area	1,610	22.61	4.53	1.68	1,814	46.69	16.76	10.53	33
Charlotte	455	16.26	6.15	1.54	302	37.75	13.91	4.97	14
Chicago	3,413	21.95	7.00	2.34	2,533	44.69	20.37	11.21	55
Cincinnati	336	22.62	3.27	1.19	147	34.69	16.33	7.48	9
Cleveland	496	19.96	3.83	0.81	322	37.89	6.83	4.04	8
Columbus	419	21.24	5.97	1.67	229	44.54	12.66	6.11	12
Dallas	1,024	20.12	8.30	2.83	957	36.47	21.00	7.94	32
Denver	638	27.27	5.49	1.88	468	46.37	13.89	7.91	24
Detroit area	553	25.14	5.79	2.35	230	44.78	16.96	8.70	9
Ft. Lauderdale/W. Palm Beach	186	23.12	4.84	2.69	109	44.95	15.60	9.17	9
Grand Rapids	263	19.77	2.28	0.76	74	37.84	12.16	6.76	6
Houston	1,040	18.46	10.87	3.46	1,110	40.54	21.53	10.99	39
Indianapolis	343	23.03	2.92	1.17	140	48.57	10.00	5.00	7
Kansas City, MO	439	23.46	4.10	1.14	244	42.21	17.21	9.43	6
Los Angeles area	2,042	23.46	15.18	5.53	2,282	46.41	31.33	17.57	77
Miami	576	25.69	31.08	9.03	342	45.32	44.15	23.10	17
Milwaukee	632	24.05	3.48	1.58	313	43.77	8.95	4.47	7
Minneapolis	1,132	27.39	3.53	1.59	566	42.93	12.37	6.18	19
New York City	6,340	18.86	8.45	2.73	11,387	45.20	26.74	15.19	102
Northern NJ/Newark area	505	18.61	4.75	1.78	410	42.93	18.29	10.00	10
Northern Virginia	193	11.40	8.29	1.55	187	35.29	25.13	9.09	9
Orange Co., CA	524	17.18	13.74	4.39	520	40.38	28.85	12.88	20
Philadelphia	722	20.36	3.88	1.66	646	46.59	12.85	6.19	12
Phoenix	560	23.04	6.25	1.61	255	38.04	14.12	6.27	13

Table continues on next page

	Partners				Associates				# of Offices
	Total #	% Women	% Minority	% Minority Women	Total #	% Women	% Minority	% Minority Women	
Pittsburgh	564	20.74	3.72	1.60	369	45.26	14.09	7.86	7
Salt Lake City	180	12.78	5.00	1.11	123	29.27	8.13	3.25	8
San Diego	272	20.59	12.50	2.94	321	43.93	26.79	13.08	16
San Francisco	1,362	26.58	13.44	4.63	1,531	51.86	30.57	17.18	51
San Jose area	792	20.33	17.30	5.56	1,388	44.09	40.63	20.46	40
Seattle area	895	27.37	9.27	3.35	511	45.60	22.11	12.72	23
St. Louis	766	23.11	4.31	1.57	400	43.25	12.25	6.00	11
Washington, D.C.	4,809	21.94	9.07	3.39	5,006	45.61	22.31	12.37	100
Wilmington	263	22.81	4.18	1.52	257	42.02	12.06	6.23	12
States:									
Other areas in California	238	28.57	11.76	5.04	148	47.30	20.27	8.78	9
Other areas in Connecticut	357	24.93	2.80	2.24	199	50.75	17.09	11.56	8
Other areas in Florida	699	23.18	8.87	3.58	309	42.39	14.89	6.47	22
Kentucky	358	24.86	2.23	0.56	130	46.15	12.31	6.92	6
Other areas in New Jersey	221	20.81	7.69	2.71	120	41.67	17.50	7.50	7
Other areas in New York State	744	21.64	3.63	0.67	420	44.52	11.19	5.48	10
Other areas in Texas	152	15.79	9.21	1.32	137	45.26	13.87	5.11	7

Source: The 2016-2017 NALP Directory of Legal Employers. Some city information includes one or more offices in adjacent suburbs. Orange County includes offices in Costa Mesa, Irvine, and Newport Beach. The San Jose area includes offices in Menlo Park, Mountain View, Palo Alto and E. Palo Alto, Redwood Shores/Redwood City, and San Jose. The Los Angeles area includes offices in Santa Monica and Long Beach. The Northern New Jersey/Newark area includes offices in Newark, Roseland, Florham Park, Hackensack, Morristown, and Westfield. Northern Virginia includes offices in Alexandria, McLean/Tyson's Corner, and Reston. State figures exclude cities reported separately. For multi-office firms that reported only firmwide figures, the information was attributed to the reporting city if at least 60% of the firms lawyers are in that city.

Table 4. Women and Minorities at Law Firms – Total Lawyers and Summer Associates – 2016

	Total Lawyers					Summer Associates			
	Total #	% Women	% Minority	% Minority Women	# of Offices	Total #	% Women	% Minority	% Minority Women
Total	112,475	33.89%	14.62%	7.23%	1,082	7,040	48.71%	32.33%	18.05%
By # of Lawyers Firm-wide:									
100 or fewer	6,094	29.23%	9.94%	4.41%	114	272	46.32%	23.16%	11.40%
101-250	17,067	30.85	9.73	4.61	145	669	50.52	30.64	18.54
251-500	22,173	32.54	12.87	6.25	214	1,173	47.14	30.43	16.71
501-700	14,215	33.75	14.33	6.82	121	753	50.07	30.28	16.60
701+	52,926	36.01	17.55	8.91	488	4,173	48.77	34.10	19.05
Offices in:									
Atlanta	2,443	33.69	12.85	6.26	24	116	52.59	31.03	20.69
Austin	645	32.56	15.04	6.98	18	56	44.64	21.43	8.93
Boston area	3,888	36.32	10.96	6.15	33	242	45.04	26.03	12.81
Charlotte	897	27.09	9.59	3.23	14	51	49.02	23.53	7.84
Chicago	6,747	32.56	12.42	6.05	55	413	50.85	31.23	16.95
Cincinnati	538	28.07	7.06	3.16	9
Cleveland	989	29.73	5.26	2.33	8	53	52.83	15.09	7.55
Columbus	798	30.20	7.64	3.13	12	39	56.41	33.33	28.21
Dallas	2,296	29.44	14.59	5.49	32	193	49.74	27.46	13.47
Denver	1,386	36.15	8.87	4.62	24	48	54.17	35.42	25.00
Detroit area	904	31.08	8.74	4.31	9	42	50.00	28.57	19.05
Ft. Lauderdale/W. Palm Beach	335	33.73	9.55	5.97	9	—	—	—	—
Grand Rapids	417	23.50	4.08	2.16	6	—	—	—	—
Houston	2,412	31.67	16.33	7.26	39	311	42.77	30.87	14.47
Indianapolis	555	31.53	5.77	2.52	7	30	50.00	30.00	23.33
Kansas City, MO	837	33.21	8.00	3.94	6	36	63.89	19.44	13.89
Los Angeles area	4,935	36.58	23.55	11.98	77	363	52.62	39.67	21.76
Miami	1,030	34.08	36.21	14.56	17	44	43.18	40.91	15.91
Milwaukee	1,067	30.74	5.15	2.34	7	49	48.98	16.33	8.16
Minneapolis	1,912	32.90	6.54	3.29	19	90	47.78	34.44	15.56
New York City	20,485	36.14	19.65	10.48	102	2,239	47.97	36.67	21.08
Northern NJ/Newark area	1,104	31.88	10.78	5.43	10	50	48.00	42.00	24.00
Northern Virginia	431	24.36	15.78	4.87	9	15	66.67	13.33	13.33
Orange Co., CA	1,140	29.56	21.14	8.86	20	91	40.66	32.97	16.48
Philadelphia	1,612	34.24	7.94	3.78	12	68	39.71	30.88	11.76
Phoenix	915	27.98	8.63	3.17	13	38	55.26	23.68	10.53

Table continues on next page

	Total Lawyers					Summer Associates			
	Total #	% Women	% Minority	% Minority Women	# of Offices	Total #	% Women	% Minority	% Minority Women
Pittsburgh	1,134	31.39	7.94	3.97	7	33	60.61	33.33	21.21
Portland, OR area	715	32.31	8.53	4.34	11	18	55.56	44.44	22.22
Salt Lake City	351	22.22	5.98	1.71	8	17	29.41	17.65	11.76
San Diego	689	35.85	19.30	8.56	16	38	34.21	36.84	15.79
San Francisco	3,314	40.25	21.82	11.13	51	195	50.26	37.95	21.03
San Jose area	2,409	36.49	31.67	14.82	40	236	42.37	45.76	24.15
Seattle area	1,592	34.42	13.63	6.78	23	44	47.73	50.00	20.45
St. Louis	1,360	31.62	6.84	3.01	11	42	52.38	23.81	11.90
Washington, D.C.	12,056	34.78	15.51	7.90	100	808	48.14	27.85	15.97
Wilmington	572	32.87	8.04	3.50	12	65	35.38	16.92	3.08
States:									
Other areas in California	496	37.10	15.32	7.06	9	10	40.00	50.00	20.00
Other areas in Connecticut	638	35.89	7.99	5.33	8	26	46.15	30.77	19.23
Other areas in Florida	1,154	30.42	10.14	4.42	22	38	50.00	10.53	7.89
Kentucky	591	31.64	4.57	2.03	6	32	59.38	21.88	18.75
Other areas in New Jersey	386	29.27	10.10	4.15	7	—	—	—	—
Other areas in New York State	1,371	29.76	5.98	2.33	10	38	60.53	28.95	15.79
Other areas in Texas	334	30.84	10.78	2.99	7	12	41.67	25.00	16.67

Source: The 2016-2017 NALP Directory of Legal Employers. Some city information includes one or more offices in adjacent suburbs. Orange County includes offices in Costa Mesa, Irvine, and Newport Beach. The San Jose area includes offices in Menlo Park, Mountain View, Palo Alto and E. Palo Alto, Redwood Shores/Redwood City, and San Jose. The Los Angeles area includes offices in Santa Monica and Long Beach. The Northern New Jersey/Newark area includes offices in Newark, Roseland, Florham Park, Hackensack, Morristown, and Westfield. Northern Virginia includes offices in Alexandria, McLean/Tyson’s Corner, and Reston. State figures exclude cities reported separately. For multi-office firms that reported only firmwide figures, the information was attributed to the reporting city if at least 60% of the firms lawyers are in that city.

Note: The number of offices reporting one or more summer associates, including demographic information, was 804. Dashes in the summer associates columns indicate that fewer than five offices in that city reported summer associates, or the total number of summer associates reported was less than 10.

Table 5. Partner Demographics at Law Firms — 2016

	Partners by Race or Ethnicity									
	All Partners			Asian		Black/African-American		Hispanic		# of Offices
	Total #	% Minority	% Minority Women	Total %	% Women	Total %	% Women	Total %	% Women	
Total	50,909	8.05%	2.76%	3.13%	1.17%	1.81%	0.64%	2.31%	0.68%	1,082
By # of Lawyers Firm-wide:										
100 or fewer lawyers	3,471	6.68%	2.42%	3.28%	1.35%	1.04%	0.26%	1.09%	0.46%	114
101-250 lawyers	9,516	6.20	2.04	2.22	0.81	1.41	0.47	1.87	0.54	145
251-500 lawyers	11,162	7.40	2.65	2.53	1.03	1.88	0.74	2.17	0.63	214
501-700 lawyers	6,283	8.21	2.75	2.82	0.99	2.02	0.67	2.66	0.78	121
701+ lawyers	20,477	9.44	3.22	3.96	1.45	2.03	0.71	2.69	0.79	488
Offices in:										
Atlanta	1,149	8.01	2.35	1.83	0.26	4.26	1.31	1.22	0.44	24
Austin	331	11.48	4.83	1.21	0.30	3.93	1.81	6.04	2.72	18
Boston area	1,610	4.53	1.68	2.30	1.12	0.99	0.25	1.12	0.31	33
Charlotte	455	6.15	1.54	1.10	0.22	3.30	1.10	1.32	0.22	14
Chicago	3,413	7.00	2.34	3.08	1.14	1.96	0.73	1.58	0.29	55
Cincinnati	336	3.27	1.19	1.19	0.30	0.60	0.00	0.89	0.89	9
Cleveland	496	3.83	0.81	1.21	0.20	1.41	0.40	1.01	0.20	8
Columbus	419	5.97	1.67	0.95	0.48	3.10	0.72	0.72	0.24	12
Dallas	1,024	8.30	2.83	1.46	0.49	1.66	0.68	3.52	1.07	32
Denver	638	5.49	1.88	1.72	0.63	0.16	0.00	2.35	0.31	24
Detroit area	553	5.79	2.35	1.63	0.72	2.89	1.45	0.90	0.00	9
Ft. Lauderdale/W. Palm Beach	186	4.84	2.69	0.00	0.00	2.15	1.61	2.69	1.08	9
Grand Rapids	263	2.28	0.76	0.76	0.38	0.00	0.00	1.52	0.38	6
Houston	1,040	10.87	3.46	2.69	1.06	2.60	1.06	4.62	1.06	39
Indianapolis	343	2.92	1.17	0.58	0.29	0.87	0.00	1.17	0.58	7
Kansas City	439	4.10	1.14	0.91	0.46	2.05	0.00	0.68	0.23	6
Los Angeles area	2,042	15.18	5.53	8.23	3.48	1.91	0.59	3.53	1.18	77
Miami	576	31.08	9.03	0.52	0.35	2.78	0.87	27.26	7.47	17
Milwaukee	632	3.48	1.58	0.79	0.47	0.47	0.00	1.42	0.79	7
Minneapolis	1,132	3.53	1.59	1.06	0.80	0.35	0.18	0.97	0.09	19
New York City	6,340	8.45	2.73	3.96	1.34	1.47	0.50	2.41	0.63	102
Northern NJ/Newark area	505	4.75	1.78	1.78	0.79	0.99	0.40	0.99	0.20	10
Northern Virginia	193	8.29	1.55	5.18	1.04	1.04	0.00	1.55	0.52	9
Orange Co., CA	524	13.74	4.39	8.02	2.86	0.76	0.19	3.63	0.95	20

Table continues on next page

	Partners by Race or Ethnicity									
	All Partners			Asian		Black/African-American		Hispanic		# of Offices
	Total #	% Minority	% Minority Women	Total %	% Women	Total %	% Women	Total %	% Women	
Philadelphia	722	3.88	1.66	1.25	0.55	1.39	0.69	0.28	0.00	12
Phoenix	560	6.25	1.61	1.25	0.54	0.36	0.00	2.14	0.54	13
Pittsburgh	564	3.72	1.60	1.60	0.71	0.35	0.00	1.06	0.53	7
Portland, OR area	437	5.95	2.97	1.60	0.92	1.14	0.69	1.83	0.92	11
Salt Lake City	180	5.00	1.11	1.11	0.00	0.00	0.00	2.78	1.11	8
San Diego	272	12.50	2.94	5.15	1.84	0.37	0.00	4.78	0.74	16
San Francisco	1,362	13.44	4.63	7.86	2.64	2.28	0.51	2.35	1.10	51
San Jose area	792	17.30	5.56	12.37	4.04	1.01	0.25	3.16	1.14	40
Seattle area	895	9.27	3.35	5.47	2.12	1.34	0.45	1.45	0.45	23
St. Louis	766	4.31	1.57	0.52	0.13	2.09	0.65	1.17	0.65	11
Washington, D.C.	4,809	9.07	3.39	3.85	1.31	2.56	1.04	1.89	0.71	100
Wilmington	263	4.18	1.52	1.52	0.76	1.52	0.76	0.76	0.00	12

Source: The 2016-2017 NALP Directory of Legal Employers. 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. Orange County includes offices in Costa Mesa, Irvine, and Newport Beach. The San Jose area includes offices in Menlo Park, Mountain View, Palo Alto and E. Palo Alto, Redwood Shores/Redwood City, and San Jose. The Los Angeles area includes offices in Santa Monica and Long Beach. The Northern New Jersey/Newark area includes offices in Newark, Roseland, Florham Park, Hackensack, Morristown, and Westfield. Northern Virginia includes offices in Alexandria, McLean/Tyson's Corner, and Reston.

Table 6. Associate Demographics at Law Firms – 2016

	Associates by Race or Ethnicity									
	All Associates			Asian		Black/African-American		Hispanic		# of Offices
	Total #	% Minority	% Minority Women	Total %	% Women	Total %	% Women	Total %	% Women	
Total	45,398	22.72%	12.42%	11.25%	6.35%	4.11%	2.32%	4.42%	2.15%	1,082
By # of Lawyers Firm-wide:										
100 or fewer lawyers	1,818	17.05%	8.80%	9.90%	5.45%	2.75%	1.21%	2.31%	1.27%	114
101-250 lawyers	5,446	16.43	9.02	7.33	4.30	3.53	1.98	3.65	1.67	145
251-500 lawyers	7,672	21.64	11.78	9.80	5.70	4.50	2.54	4.35	2.10	214
501-700 lawyers	5,657	22.22	11.51	9.93	5.14	4.47	2.53	4.76	2.26	121
701+ lawyers	24,805	24.96	13.84	12.95	7.34	4.13	2.36	4.68	2.32	488
Offices in:										
Atlanta	852	19.48	10.92	7.28	3.40	7.98	5.16	2.00	1.17	24
Austin	219	21.92	10.96	7.31	3.20	2.28	1.37	5.48	2.28	18
Boston area	1,814	16.76	10.53	9.10	5.68	2.54	1.54	3.47	2.04	33
Charlotte	302	13.91	4.97	3.31	1.32	4.97	2.32	2.32	0.33	14
Chicago	2,533	20.37	11.21	9.44	5.33	4.54	2.21	3.67	2.13	55
Cincinnati	147	16.33	7.48	4.76	2.04	6.12	2.72	2.72	1.36	9
Cleveland	322	6.83	4.04	2.48	1.86	3.42	1.55	0.93	0.62	8
Columbus	229	12.66	6.11	3.49	1.31	4.80	2.18	2.18	0.87	12
Dallas	957	21.00	7.94	7.52	1.88	3.45	1.88	5.96	2.30	32
Denver	468	13.89	7.91	4.27	2.99	1.50	1.07	4.49	1.92	24
Northern NJ/Newark area	410	18.29	10.00	8.78	5.37	2.44	1.22	5.12	2.20	10
Northern Virginia	187	25.13	9.09	15.51	4.81	2.67	1.07	4.28	2.14	9
Orange Co., CA	520	28.85	12.88	19.81	9.81	0.77	0.58	4.23	0.96	20
Philadelphia	646	12.85	6.19	4.49	2.32	4.33	2.32	2.01	0.46	12
Phoenix	255	14.12	6.27	4.31	2.35	1.57	0.39	5.10	2.35	13
Pittsburgh	369	14.09	7.86	6.23	3.52	4.88	2.44	2.17	1.08	7
Portland, OR area	203	14.29	7.39	4.43	2.46	0.99	0.49	2.46	0.99	11
Salt Lake City	123	8.13	3.25	1.63	1.63	0.81	0.81	2.44	0.81	8
San Diego	321	26.79	13.08	14.95	7.17	1.56	1.25	4.67	1.87	16
San Francisco	1,531	30.57	17.18	18.62	11.23	2.48	1.18	5.81	2.48	51
San Jose area	1,388	40.63	20.46	30.40	15.92	2.67	0.94	3.89	1.95	40
Seattle area	511	22.11	12.72	11.74	8.02	2.74	1.17	3.33	1.37	23
St. Louis	400	12.25	6.00	3.00	1.50	5.00	3.00	2.25	0.75	11
Washington, D.C.	5,006	22.31	12.37	10.45	5.65	5.69	3.58	3.54	1.72	100
Wilmington	257	12.06	6.23	4.67	3.50	2.33	0.78	3.11	1.56	12

Source: The 2016-2017 NALP Directory of Legal Employers. 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. Orange County includes offices in Costa Mesa, Irvine, and Newport Beach. The San Jose area includes offices in Menlo Park, Mountain View, Palo Alto and E. Palo Alto, Redwood Shores/Redwood City, and San Jose. The Los Angeles area includes offices in Santa Monica and Long Beach. The Northern New Jersey/Newark area includes offices in Newark, Roseland, Florham Park, Hackensack, Morristown, and Westfield. Northern Virginia includes offices in Alexandria, McLean/Tyson's Corner, and Reston.

Table 7. Lawyers with Disabilities — 2016

	All Firms		Firms of 250 or Fewer Lawyers		Firms of 251-500 Lawyers		Firms of 501-700 Lawyers		Firms of 701+ Lawyers	
	# Reported	% of Total	# Reported	% of Total	# Reported	% of Total	# Reported	% of Reported	# Reported	% of Total
Partners	128	0.36%	27	0.24%	24	0.30%	17	0.38%	60	0.51%
Associates	96	0.33	7	0.11	15	0.27	13	0.36	61	0.45
All lawyers	283	0.38	45	0.22	53	0.34	41	0.42	144	0.48

Note: Figures for lawyers with disabilities are based on 736 offices/firms reporting counts, including zero, in all lawyer categories. Counts of individuals with disabilities, including zero, cover 75,079 lawyers. Because so few summer associates with disabilities were reported (18 total), they are not included in the table.

Table 8. Openly LGBT Lawyers — 2016

	All Firms		Firms of 100 or Fewer Lawyers		Firms of 101-250 Lawyers		Firms of 251-500 Lawyers		Firms of 501-700 Lawyers		Firms of 701 + Lawyers	
	# Reported	% of Total	# Reported	% of Total	# Reported	% of Total	# Reported	% of Reported	# Reported	% of Total	# Reported	% of Total
Partners	825	1.89%	53	1.88%	135	1.72%	141	1.59%	100	1.76%	396	2.15%
Associates	1,304	3.24	34	3.56	89	1.98	149	2.33	158	3.21	874	3.81
Other lawyers	302	2.13	12	1.75	38	2.14	45	1.71	29	1.41	178	2.54
All lawyers	2,431	2.48	99	1.98	262	1.86	335	1.87	287	2.27	1,448	2.99
Summer Associates	291	4.86	6	2.50	11	1.91	45	4.67	39	6.15	190	5.31

Note: Figures for openly LGBT lawyers are based on 936 offices/firms reporting counts, including zero, in all lawyer categories; figures for openly LGBT summer associates are based on 662 offices/firms with a summer program and reporting counts, including zero. Overall, LGBT counts, including zero, cover 98,093 lawyers and 5,990 summer associates.

Press inquiries can be directed to Sarah Ramirez (sramirez@nalp.org). For additional information about NALP research, contact Judith Collins (jcollins@nalp.org), Director of Research, or James G. Leipold (jleipold@nalp.org), Executive Director, at (202) 835-1001. Mailing address: National Association for Law Placement, 1220 19th Street NW, Suite 401, Washington, DC 20036-2405.

Additional Resource Materials

ARTICLES

[How U.S. Immigration Judges Battle Their Own Prejudices](#)

Caitlin Dickerson

New York Times | October 4, 2016

[Listening from the Bench Fosters Civility and Promotes Justice](#)

Paula Lustbader

Seattle Journal for Social Justice | Volume 13 | Issue 3 | Article 13 | 2015

Biographies

Paula T. Edgar, Esq.

Paula T. Edgar Esq. is Principal of PGE, LLC – a boutique speaking, coaching and consulting firm. The firm provides innovative and strategic solutions on career management, executive/leadership development, diversity efforts, higher educational outreach and retention programs, intercultural competence initiatives, networking and social media strategy.

She is a well sought after speaker in the areas of networking, branding, social media, leadership and diversity. Paula moves audiences with her motivational and inspirational speeches, workshops and seminars. Gatherings, both large and small, of attendees from a variety of industries including the legal profession, higher education and corporate diversity settings, have all benefited from her directive to “engage your hustle!”

For more than a decade, Paula has demonstrated leadership in the areas of diversity and inclusion, issues related to students of color and the legal diversity pipeline. Currently active with a number of organizations and social justice initiatives, she serves as the President-Elect of the Metropolitan Black Bar Association, the immediate past Chair of the Diversity Pipeline Initiatives Committee and member of the Enhance Diversity in the Profession Committee at the New York City Bar Association and she is an active member of the New York State Bar Association. Paula is also a 2015 Council of Urban Professionals (CUP) Fellow.

Her professional experiences include serving as the inaugural Chief Diversity Officer at New York Law School, the Associate Director of Career Services and member of the Diversity Council at Seton Hall University School of Law, and as the Executive Director of Practicing Attorneys for Law Students Program, Inc. (PALS), a non-profit organization dedicated to increasing diversity in the legal profession and providing mentoring, academic support, and networking opportunities to law students and junior attorneys of color. Prior to working at PALS, Paula practiced in the Law Enforcement Division of the New York City Commission on Human Rights.

Paula received her B.A. in Anthropology from the California State University (Fullerton) and her J.D. from the City University of New York School of Law.

Paula has been recognized by The Network Journal Magazine as a “40 Under Forty” Achievement Awardee, as Ms. JD’s “Woman of Inspiration” and as was honored by Lawyers of Color Inc. in the first annual “2013 Lawyers of Color Hot List.” She also received the Distinguished Alumni award from the Black Law Students Association at CUNY Law School and the Ruth Whitehead Whaley Service Award by the Association of Black Women Attorneys (ABWA).

WAYNE MCKENZIE, ESQ.

Wayne S. McKenzie is General Counsel for the NYC Department of Probation (DOP). He is the primary advisor to the Commissioner on all legal, legislative and compliance matters; ensures that the DOP is operating within the law at all times; is a member of the governing cabinet and Labor-Management Committee; and manages all agency attorneys and legal staff. He is also actively involved in key reform efforts and special projects in DOP's Adult and Juvenile Operations.

Prior to joining DOP, Wayne was the founding Director of the Prosecution & Racial Justice Program at the Vera Institute of Justice. The program, the first of its kind and national in scope, has partnered with district attorneys around the nation to pilot an internal assessment and management procedure that is helping supervisors identify evidence of possible racial or ethnic bias in their staff's aggregate decision making and respond appropriately when it is found. Before joining Vera, he was a prosecutor in the Kings County District Attorney's Office in Brooklyn, NY where he held several supervisory positions and prosecuted high profile cases in several specialized bureaus. He is nationally viewed as an expert in prosecutorial discretion and racial justice issues and has been a presenter and panelist at numerous legal and other professional conferences, community events and in Congress and state commissions.

Mr. McKenzie is a Vice-President-At-Large on the American Bar Association Criminal Justice Section Council, which is the governing body of the CJS. He is a past chair of the CJS Committee on Racial & Ethnic Justice & Diversity; and is a former member of the ABA Council on Racial & Ethnic Justice and the Standing Committee on Gun Violence. He also serves on the advisory boards of two CJS projects geared towards improving the fair delivery of justice in the courts and legal community and was a key participant in the development of a cultural competency curriculum designed for criminal justice practitioners. Wayne is also a commissioner on the ABA Center for Racial & Ethnic Diversity, the "umbrella" entity for the primary entities within the ABA that address racial and ethnic diversity and inclusion. He is past Chair and current Board member of the Metropolitan Black Bar Association and the 2012 recipient of MBBA's Public Servant of the Year Award. Wayne is also a Past President of the National Black Prosecutors Association and a two time recipient of the Association's Presidential Award of Excellence. Other recognitions include the National Organization of Black Law Enforcement Executives' Lloyd Sealy Award for Service in the Area of Criminal Justice and the FEDCAP 2014 Community Impact Award.

Wayne is an active participant in community outreach programs and has a special interest in criminal justice reform and public safety, and in programs that focus on youth. He serves on the Board of Directors of GreenHope Services for Women, a not-for-profit treatment, rehabilitation and alternative to incarceration program for women with narcotics-related criminal histories; the Caribbean American Center of New York, a non-profit that focuses on services for youth of immigrant communities in New York City; and the NYC Criminal Justice Agency, a not-for-profit with the mission to assist the courts and the City in reducing unnecessary pretrial detention.

His media involvement includes appearances as a legal analyst on Court TV and Fox TV cable news and as a featured prosecutor in an A&E TV series on the Criminal Justice System. Mr. McKenzie received his Juris Doctorate degree from the George Washington University School of Law, Washington, D.C. where he served as chairperson of the Black Law Students Association; was a member of the Moot Court Board; and a member of the Admissions Diversity Recruitment Committee. He is a graduate of the City College of New York where he received a B.S. in Biology and majored in Microbiology in the M.S. program.

Justice Karen K. Peters

Presiding Justice Karen K. Peters received her BS from George Washington University (cum laude) and her JD from New York University (cum laude, Order of the Coif). From 1972 to 1979, she was engaged in private practice, served as an Assistant District Attorney in Dutchess County and worked as an assistant professor at the State University at New Paltz, where she taught courses on criminal law, gender discrimination and the law, and civil rights and civil liberties. In 1979, Justice Peters was selected as the first counsel for the newly created New York State Division of Alcoholism and Alcohol Abuse and served in that capacity under Governors Hugh Carey and Mario M. Cuomo. In 1983, she became the director of the State Assembly Government Operations Committee.

Justice Peters' judicial career began in 1983 when she was elected to serve as an Ulster County Family Court Judge. She remained on the Family Court bench until 1992, when she was elected as the first woman Supreme Court Justice in the Third Department. Subsequently, on February 3, 1994, Justice Peters was appointed to the Appellate Division, Third Department by Governor Mario M. Cuomo and was appointed Presiding Justice of that Court by Governor Andrew M. Cuomo on April 5, 2012. She was the first woman to have been appointed as the Presiding Justice of the Appellate Division, Third Department.

Justice Peters currently serves on the New York State Permanent Judicial Commission on Justice for Children, the New York State Task Force for Wrongful Convictions and the New York State Bar Association Committee on the New York State Constitution. She has also served on the Commission on Judicial Conduct from 2000 to 2012. Justice Peters is the Chair of the New York State Bar Association Committee on Judicial Wellness and has also served on the New York State Bar Association Special Committee on Alcoholism and Drug Abuse, the New York State Bar Association Special Committee on Procedures for Judicial Discipline, and the President's Committee on Access to Justice. She is also a member of the American Bar Association, the Ulster County Bar Association, the Albany County Bar Association, both the Mid-Hudson and Capital District Women's Bar Associations and the Association of Supreme Court Justices of the State of New York.

Justice Peters has received numerous awards including, among many others, the New York State Association of Criminal Defense Lawyers' Hon. William J. Brennan Award for Outstanding Jurist, the Albany County Bar Association's President's Award, New York State Bar Association's Judicial Section Inaugural Award for Advancement of Judicial Diversity, the Center for Women in Government and Civil Society's Public Service Leadership Award, the Capital District Women's Bar Association Judge Kaye Distinguished Membership Attorney Award, and Albany Law School's Kate Stoneman Award.

An avid supporter of the arts, Justice Peters serves on the Board of Directors of the Woodstock Byrdcliffe Guild. She is also a member of the Mohonk Preserve and the NAACP.

Valerie E. Radwaner, Esq.

Valerie Radwaner is Deputy Chair of the firm Paul, Weiss, Rifkind, Wharton & Garrison LLP, a member of the firm's Management Committee and a partner in the Finance Practice Group of the Corporate Department.

Ms. Radwaner has extensive experience advising a diverse range of clients, including corporate borrowers, financial institutions, sponsors and lenders in connection with acquisitions, divestitures and various financing transactions. She has lead representations in connection with syndicated senior credit facilities, second lien financings, mezzanine financings, bridge loans, asset-based loans, investment grade bank facilities, private placements, distressed debt situations, exit financings and restructurings.

A *magna cum laude* graduate of Brandeis University, Ms. Radwaner received her J.D. from the New York University School of Law. She is a member of the Advisory Board of the Fashion, Arts, Media & Entertainment Law Center of Benjamin N. Cardozo School of Law. She is a member of the National Advisory Board of Women in Law Empowerment Forum, a premier organization dedicated to the advancement of women in law firms and corporate legal departments. In addition, Valerie also serves on the Advisory Committee of Thomson Reuters' Transforming Women's Leadership in the Law.

Professor Joan C. Williams

Professor Williams is a Distinguished Professor of Law, UC Hastings Foundation Chair, and the Founding Director of the Center for WorkLife Law at UC Hastings College of the Law. She is a graduate of Harvard Law School/Massachusetts Institute of Technology, J.D., and Master's Degree in City Planning (1980); Yale University, B.A., History (1974); and Princeton Day School (1970).

Described as having “something approaching rock star status” by The New York Times, Williams was awarded the Families and Work Institute Work Life Legacy Award (2014), Hastings Visionary Award (2013), American Bar Foundation's Outstanding Scholar Award (2012), the Elizabeth Hurlock Beckman Award (2012), the ABA's Margaret Brent Award for Women Lawyers of Achievement (2006), the Distinguished Publication Award of the Association for Women in Psychology (2003), and the Gustavus Myers Outstanding Book Award for *Unbending Gender: Why Family and Work Conflict and What to Do About It* (Oxford University Press, 2000). In recognition of her interdisciplinary work, Williams gave the 2008 Massey Lectures in American Civilization at Harvard University, delivered in prior years by (among others) Eudora Welty, Gore Vidal and Toni Morrison. She is the author or co-author of over ninety academic articles and book chapters, along with eight books, most recently *What Works for Women at Work: Four Patterns Every Woman Should Know* (NYU Press, 2014) with her daughter, Rachel Dempsey.