

AN UPDATE ON THE DIVERSITY AND INCLUSION WORK OF THE STATE BAR OF MICHIGAN

BY GREGORY P. CONYERS



The State Bar of Michigan has focused and refocused attention on the issues of race, gender, diversity, and inclusion over time and continues to seek ways to make an impact. Although it is sometimes difficult to quantify success in this area, there are positive developments we can reference when deciding how to continue this important work. Following is a snapshot of the current state of the Bar's work in a few key areas.

In the beginning

Nearly seven years ago, the Presidential Diversity and Inclusion Advisory Group, established by then State Bar president W. Anthony Jenkins, became the Diversity and Inclusion Advisory Committee, a standing committee of the Bar. The

charge of the committee was to advise Bar leadership and members regarding ways to improve diversity and inclusion within the profession. In part, the jurisdiction statement directs the committee to:

Identify the most effective and efficient means of assuring a diverse and inclusive voice in all State Bar of Michigan work.... Review concepts and ideas and make recommendations for support, implementation or other appropriate actions to SBM leadership, committees, and other bar-associated entities about SBM initiatives and programs addressing inclusion within the profession, and approaches to measuring progress concerning diversity and inclusion.¹

The committee's work is guided by principles firmly rooted in the desire to better serve members of the profession and the

public. The committee evolved in part from the work of previous Bar entities—most notably the Open Justice Commission and the Equal Access Initiative—and is driven by a desire to facilitate these improvements. These endeavors benefited greatly from the leadership of past Bar presidents and Board of Commissioners members as well as numerous volunteer and staff hours. The history of this evolution was detailed in a May 2015 *Michigan Bar Journal* article that traced the beginnings of the focus on these issues to a 1986 report of the Michigan Supreme Court Citizen's Commission to Improve Michigan's Courts, led by former Michigan Supreme Court Justice Patricia Boyle.² The report concluded that more than one-third of Michigan citizens at that time believed the state's court system discriminated against individuals on the basis of gender, race, or ethnic origin.³ Additionally, the lack of diversity within the profession undermined trust in the system and the rule of law.⁴ Because of the report, the Bar committed to mitigating those beliefs in strategic ways by educating and engaging the profession and the public regarding issues of fairness, access, and equality.⁵

Subsequent efforts have honored this commitment, making it part of the fabric of the Bar. Included are the development of the Pledge to Improve Diversity and Inclusion in the Legal Profession in Michigan⁶ and, more recently, the statement of core values contained in the 2017–2020 State Bar of Michigan Strategic Plan.⁷ The Bar memorialized the importance of pursuing improved diversity by adopting the pledge and asking others to sign on. There is also an acknowledgment

that ongoing challenges lie within individual firms, offices, and practices—hence, the language contained in the current strategic plan references a continuation of the focus and efforts to make substantive improvements.

Ongoing challenges

The challenge of changing the attitudes of some individuals regarding these issues still looms large. Our way of giving value to the pledge has been to provide as much education and as many resources as possible to support the efforts of lawyers and legal professionals who are working to make a difference. The strategic plan includes support for diversity and inclusion because it is central to the continued improvement of the profession—not merely to memorialize an aspirational goal.

Measuring progress can be challenging, but a case can be made that, to varying degrees, the Bar's continued work has resulted in a sharpened focus, at the very least by interested parties, on the problems outlined in the 1986 report, which is ultimately a positive development because it represents the only way to instigate changes. This is not to minimize the ongoing need to make concrete improvements nor the struggles and barriers that continue to hinder efforts toward achieving them. Undoubtedly, the current state of diversity and inclusion in the legal profession in Michigan is best described as a mixed bag.

In the state of Michigan, we are still attempting to get back to and exceed the peak percentages of people of color entering the profession in the mid-'80s. This can partially be attributed to the economic decline during the early 2000s and the Great Recession later in the decade.⁸ Efforts to increase and support diversity suffered during that period.⁹ As the economy continues to recover, the number of Asian Americans and Hispanics in the profession has increased even as law school enrollments as a whole have declined. Notably, there has been a dismaying *decrease* in African Americans entering the profession over time.¹⁰ While increases in the number of individuals within particular minority groups represented in the profession in Michigan is a positive development, it continues to be important to explore the reasons for the declines in some demographic groups and stagnation in others. Looking beyond the data is a critical part of developing a deeper understanding of the barriers to improvement in the numbers.

The familiar business management axiom of “what gets measured gets changed” has been used occasionally with respect to diversity to encourage organizations to monitor numbers and analyze trends, and there certainly is value to doing that work. In fact, another tenet of the statement guiding the Diversity and Inclusion Advisory Committee's efforts states that the committee is charged to “[i]dentify tools and

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strategies to assess the current state of diversity and inclusion in the Michigan legal community that can be used to set meaningful benchmarks to measure improvements and progress.”¹¹ One of the committee’s first tasks was to develop and administer a survey of the profession in Michigan. As explained in a January 2012 *Michigan Bar Journal* article, the survey was designed to gather demographic information concerning race, ethnicity, sexual orientation, gender, and disability and to establish recruitment and retention efforts and programs.¹² The goal was not to focus on sheer numbers; rather, it was to measure organizations’ institutional commitment to diversity and inclusion.¹³

Early in the process, the committee learned there are a number of surveys conducted across the country that law firms respond to with regularity. The committee’s survey was designed to be easy to answer and similar to the others, but specific to Michigan. After the initial release, the feedback received was that many firms found it time-consuming and frustrating to participate in several similarly focused surveys. Two additional factors surfaced, solidifying the growing sentiment that collecting demographic data was not the best avenue for the committee to pursue. First, the practice in Michigan is largely populated with small-firm and solo practitioners, making the answer to the question of “number of minorities in your firm” relative and not necessarily informative. Second, in general terms, many firms and corporations who are doing well with respect to diversity share their information; those who aren’t doing as well are more reluctant to participate. Both of these factors affected the responses in such a way as to make the outcome less than optimal.

Ultimately, the committee determined that the burden of conducting follow-up, traditional surveys outweighed the benefit. Additionally, it became clear that enough information could be gathered from other sources to evaluate Michigan’s performance, and looking at trends nationwide was determined to be a better barometer of the overall direction of the profession in relation to improving diversity. The most comprehensive survey of demographics in the profession comes from the National Association of Law Placement, which uses information from hundreds of law offices nationwide to determine numbers of individual categories of lawyers employed in the marketplace. Michigan data contained in these periodic reports include information from a number of the largest firms in the state, and the narrative generally tracks the national experience in terms of the progress of minorities and women in the profession. The data is analyzed in terms of variables like

positions within the firm (e.g., associate or partner) and number of particular groups within firm offices—all of which creates a dynamic snapshot of the profession.¹⁴

What the future holds

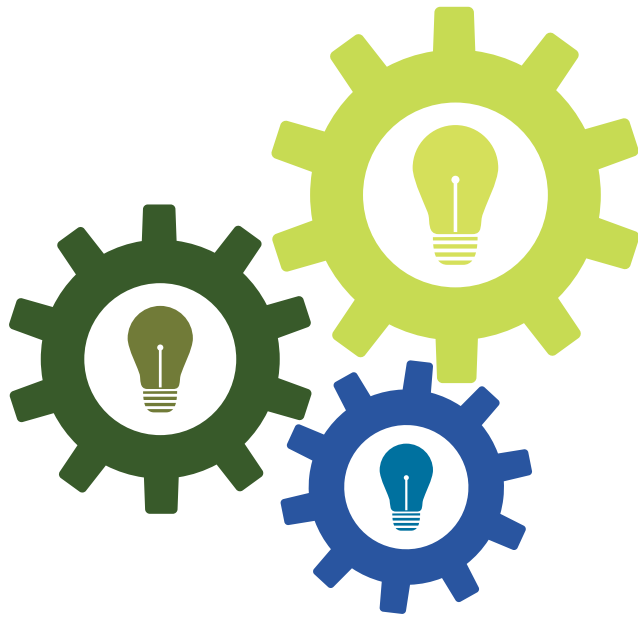
The initial survey did, however, show firms and corporations that the Bar had sharpened its focus on improving diversity in the profession in Michigan and aligned us with what was a growing national movement. We are currently considering polling on particular issues in collaboration with local and affinity bars, including using social media to get snapshot reactions and engage people on certain topics. We continue to track the overall demographic picture in Michigan with our

annual publication of Statewide and County Demographics for which members self-report gender and ethnicity among other characteristics.¹⁵

The number of racially and ethnically diverse individuals coming into the profession is just one of many measures with which we are concerned. In fact, the importance of inclusion is in some ways overshadowing the significance of the raw numbers of particular demographic groups. For example, the impact of having five different generations in the workplace reaches well beyond the question of numbers of a particular race or gender to encompass a wide array of issues.¹⁶ We also strive to understand and remove barriers for persons with disabilities and for the LGBTQ community. Our effort is not concentrated entirely on admission to the Bar, but the entire continuum from pipeline into the profession through retention. Ultimately, we strive to understand and address the ways in which all non-majority lawyers encounter barriers to advancement and professional success. It is worth noting that this is not meant to exclude those in the majority; rather, it is an acknowledgment that inclusion must be embraced by the profession as a whole. The statistics on attorney drop-out rates within the profession are particularly concerning.¹⁷

Another positive development has been focusing on the way our brains operate, which has helped identify the ongoing challenges associated with improving diversity and inclusion. We are all hard-wired to surround ourselves with people who are like us. Overcoming this tendency requires intentional thoughts and actions.¹⁸ Recognizing this helps put into perspective the existing barriers to substantive change. Inclusion does not occur organically; believing in or supporting the concept of diversity without doing the many things necessary to make it work in the firm or office culture is insufficient. It

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requires conscious, ongoing effort at both the individual and group levels. We've focused some attention on helping members understand the basics of implicit bias awareness through training. Our goal is to give people the tools to understand how the subconscious affects decisions and can lead to unintended consequences.

Considering diverse perspectives is fundamental to a core foundation of practicing law: problem-solving. We are improving the profession in Michigan by continuing to raise awareness about the importance of diversity and meaningful inclusion and working toward a profession that looks more like the public it serves. We believe this promotes more respect for the rule of law and leads to increased opportunities for success and leadership for people of diverse backgrounds. The survival of the profession in a future where the population as a whole is more diverse¹⁹ requires improvement in these areas.

The Bar continues to seek ways to build on the foundation laid in 1986. The Diversity and Inclusion Advisory Committee is moving away from holding numerous meetings and "preaching to the choir," and is asking Bar-related entities how we can work together to meet their particular diversity and inclusion goals. Progress occurs through targeting other groups, bringing them to events, and working to promote diversity in all aspects of the Bar. The challenge is maintaining focus and momentum when changes are incremental instead of quick and dramatic. The alternative is a profession that does not meet the expectations of its members or the needs of the public. The committee is charged by its jurisdiction to "provide public support to the SBM leadership and staff regarding communications with members of the profession and others about the goals and outcomes of diversity and inclusion activities."²⁰ Together we must continue to act as a catalyst for change. ■

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ENDNOTES

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