

## Commentary to the Michigan Pledge to Achieve Diversity and Inclusion

The following commentary is to provide colleagues with a detailed rationale and to provide education and background regarding the Michigan Pledge to Achieve Diversity and Inclusion.

### The Rationales for Diversity

The ABA April 2010 Next Steps Report outlines four rationales that support creating greater diversity in the profession:

- ▶ The *Democracy Rationale*: Lawyers and judges have a unique responsibility for sustaining our -political system with broad participation by all our citizens. A diverse bench and bar create greater trust in the mechanisms of government and the rule of law.
- ▶ The *Business Rationale*: Business entities are rapidly responding to the needs of global customers, suppliers, and competitors by creating workforces from many different backgrounds, perspectives, and skill sets. Ever more frequently, clients now expect and sometimes demand lawyers who are culturally diverse.
- ▶ The *Leadership Rationale*: Individuals with law degrees often possess the communication and interpersonal skills and the social networks to rise into civic leadership positions, both in and out of politics.
- ▶ The *Demographic Rationale*: Our country is becoming diverse along many dimensions and it is expected that the profile of LGBT lawyers and lawyers with disabilities will increase more rapidly. With regard to America's racial and ethnic populations, the Census Bureau projects that by 2042, a majority of America's citizens will be citizens of color.

If we as a profession fail to diversify our own ranks, so that our profession reflects the diversity of the clients we serve, we face the real prospect of a crisis in confidence in our democracy, our businesses, our leadership, and the fairness of our civil and criminal justice systems. For us as lawyers, it is not an overstatement to say that this is the civil rights issue of our generation.

### Where We Stand as a Profession and the Lack of Progress We Have Made

- Nationally, we lag far behind many other professions in this area. The last time the ABA studied the racial and ethnic diversity of the profession, it found that about 25% of all medical doctors, 21% of all accountants, and 18% of all college professors were people of color; the figure for lawyers was about 10%.
- In fact, of the 16 professions studied, the legal profession was third from the bottom, behind only CEOs and psychologists. For a profession that prides itself as the guardian of equal justice under law, that is a legitimate indictment of our commitment to that ideal.

- In Michigan, despite the rich diversity of our state's population, the numbers are no better. The State Bar of Michigan Member Demographics Report for 2009-10 shows that among all active Michigan resident members who reported their race and ethnicity, African Americans, Asian Americans, American Indians, Arab Americans, and Hispanic Latino Americans together made up just 10% of Michigan's lawyers.
- Women comprised only 31% of active Michigan resident members, even though they comprise about half of the population and half of our law school entering classes.
- Racially and ethnically, things actually appear to be getting worse, not better. In 2008, the last full year that the State Bar's Member Demographic Report profiles, a total of 596 active Michigan residents joined the State Bar as new members, of which only 21 or 3.5% were African American and just 9 or 1.5% were Hispanic Latino Americans.
- In 1985, nearly a quarter century ago, we were actually doing much better with respect to African Americans. Of the 627 active Michigan residents who joined the bar as new members that year, 49 or 7.8% were African American, more than double the number and percentage in 2008.
- And as if this was not bad enough, it also appears that the recent downturn in the economy, not surprisingly, has hit lawyers of color harder than others. In statistics just released in April by the ABA Commission on Racial and Ethnic Diversity in the Profession, from Sept 2008 to Sept 2009, the nation's 200 largest law firms lost about 13% of their African American attorneys and 9% of their Asian American and Hispanic attorneys, compared to just 5% of their Caucasian attorneys.

### **Evolution of the Proposed Commitment to Diversity**

- The roots of the commitment to diversity can be traced at least as far back as the 1986 report of the Michigan Supreme Court's Citizen's Commission to Improve Michigan's Courts, led by former Michigan Supreme Court Justice Patricia Boyle.
- That report was based on surveys of our citizens that found significant perceptions of disparate treatment in our courts, with 37% of all those responding believing that Blacks were treated less well than Whites, and 34% believing that women were treated less well than men.
- Based on these and other findings, that Commission recommended that the Supreme Court direct that court employment and court-assigned duties be available to all, and that the racial/ethnic composition of courts' staffs reflect as soon as possible the composition of the community.
- The next significant step came in 1989, with the Final Reports of the Michigan Supreme Court's dual Task Forces on Gender Issues in the Courts and Racial and Ethnic Issues in the Courts. The latter report concluded that a substantial number of citizens and lawyers believe that bias affects justice and that this perception of bias is based in reality. The reports contained 167 recommendations to improve the quality of justice and to eliminate bias and discrimination.

The report further stated as follows:

“The legal and judicial systems in Michigan can be judged, to a large extent, by the ability of all attorneys, regardless of their race or ethnic background, to attain positions of status, authority and economic benefit. The inclusion and success of minority attorneys in every facet of the legal profession is essential to the appearance of fairness in the administration of justice, and is an indication of the treatment that other minority participants may expect to receive from that same system.”

- In 1996 the State Bar of Michigan created the State Bar of Michigan Task Force on Race/Ethnic and Gender Issues in the Courts and the Legal Profession. Its mission was to report on the status of the recommendations made by the Supreme Court Task Forces and to develop a strategy for implementing those recommendations and identifying new areas of concern.
- In 1997 the State Bar of Michigan unanimously adopted the report of the Task Force on Racial/Ethnic and Gender Issues in the Courts and the Legal Profession. A special emphasis was placed on the creation of an implementation commission.
- In 1998 the State Bar of Michigan Board of Commissioners unanimously approved the creation of the State Bar of Michigan Open Justice Commission. The Commission was inaugurated at the September Annual Meeting of the State Bar of Michigan.
- Also in 1998, the final report of the State Bar of Michigan Task Force on Racial/Ethnic and Gender Issues in the Courts and the Legal Profession Michigan was published. That voluminous and well-researched 287-page report contained dozens of concrete recommendations about how to improve both the racial and ethnic and gender diversity of the courts and the legal profession here in Michigan, and provided a blueprint for the future.
- The Open Justice Commission sunset in 2003, and also in that year the State Bar of Michigan created the Committee on Justice Initiatives and formed the Equal Access Initiative to continue to address these issues.

#### **Other Significant National Developments:**

- The Corporate Call to Action, promulgated in 2004 by then corporate counsel of Sara Lee, Rick Palmore, in which major corporations have pledged to require that the law firms they do business with diversify their ranks, or else risk losing their business. The Leadership Council on Legal Diversity is continuing this work with business and law firm leaders from around the country. Michigan has a number of corporations that are signatories.
- The commitments to diversity adopted by the Nebraska and Louisiana state bar associations, both of which are mandatory bars like Michigan. Currently several statewide bar associations have similar statements in place.
- The strategic plan adopted by the ABA Presidential Advisory Council on Diversity in the Profession, which has proposed drafting a resolution for presentation to the ABA House of

Delegates calling for the adoption of a commitment to diversity for adoption by the ABA, other bar associations, law firms, corporate law departments, and law schools.

- The proposal by the ABA Law Practice Management Section for the creation of an ABA Diversity Certification Program that would recognize law firms and others that meet certain criteria as leaders in diversity.

### **Going Forward in Michigan**

- Our basic working concept going forward is to draft a pledge for consideration by the State Bar that would be a voluntary sign-on by those entities who wish to commit themselves to diversity, with follow-up assessment and positive recognition for those who demonstrate concrete progress in diversifying the profession.
- Last year, the bar held two major diversity symposiums, one in metropolitan Detroit and one in Grand Rapids, both of which were very well-attended. One of the ideas proposed by the participants in those symposiums was the idea of a call to action or commitment to diversity that would rekindle the momentum towards this goal. This is the initiation of that idea.
- In October of 200- the State Bar named its first ever Director of Diversity. It is integral to the success of efforts in Michigan to have a point person on staff to focus the resources of the bar on accomplishing the stated goals. This will be achieved by working with partners from around the state and across the country. Building synergy among those already working in this area and the momentum to continue despite formidable obstacles is key to moving forward in substantive and sustainable ways. The leadership of the State Bar recognizes the importance of making progress in this area to the profession as a whole.
- The legal profession includes a calling to higher principles that includes achieving justice for all. This provides a compelling basis for diversity and inclusion as core values. A lack of diversity and inclusion in the profession will raise questions about the fairness of our justice system as our society becomes increasingly more diverse.
- Diversity is about assuring that there is equal opportunity for all qualified individuals to participate fully in the legal profession, including the judiciary and all other leadership positions.
- We can, we will, and we must educate, hire, retain, and promote individuals based on their unique characteristics, while simultaneously maintaining our commitment to diversity.
- The State Bar will obtain signatories in support of the Statement to secure diversity and inclusion in the legal profession, will identify best practices, will develop an action plan to assist members of the State Bar in achieving and maintaining diversity and inclusion, and will evaluate its progress after one year