# Diversity and Inclusion

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February for me had a recurring, and welcome, theme of diversity. The foundation was National African-American History Month, an occasion to remind ourselves how far we have come, how many have suffered and sacrificed, and how far we have to go in the struggle to make this country "of the people" one that values its people equally.

At the American Bar Association's Midyear Meeting on February 5, I attended a panel discussion with the provocative title "Diversity in a Post-Obama Era: Is Our Job Done?" The conclusion of the panel, not surprisingly, is that the job is not done, and that to assume otherwise is to suffer from a limiting and self-defeating "check-the-box" mentality. Black president? Check the box; move on to something else. Obviously, our culture does not change that quickly. In fact, one of the panelists, Kim M. Boyle, president of the Louisiana State Bar Association (LSBA), gave an enlightening history lesson on how advancements by persons of color often trigger periods of retreat, the old "one step forward, two steps back" phenomenon. The LSBA has approved a diversity statement for its association that expressly states that "achieving diversity in the legal profession is an evolutionary process that requires the [LSBA's] continued effort and commitment." Moreover, the diversity statement makes clear that "[t]hrough increased diversity, the LSBA and its members can bring more varied perspectives, experiences, backgrounds, talents, and interests to the practice of law and the administration of justice."

On the heels of the ABA Midyear Meeting, I attended the first-ever "Celebration of Our Diverse Bar" event in Detroit. Representatives from all of the state's ethnic bar associations and several local and specialty bars were invited. The turnout was impressive, and the liveliness and pleasure of the evening itself was testimony to the value of diversity. I was pleased to introduce at this celebration Gregory Conyers, the State Bar of Michigan's first director of diversity. Greg's portfolio includes developing and coordinating efforts designed to enhance the participation of diverse populations in legal education and in the practice of law in Michigan. This spring, the State Bar will initiate a process to develop a statement in support of the significance of increasing attorney diversity in Michigan.

To many, "diversity" has become a code word for affirmative action. In my view, and as used by the State Bar, it instead signifies the concept of inclusion that welcomes, as equal contributors, those with differences in race, ethnicity, national origin, religion, gender, sexual orientation, age, and disability. Much has been written about how diversity in race, ethnicity, national origin, and gender enhances the excellence, enrichment, effectiveness, and success of our profession. Two less publicized categories of individuals who have often been excluded from full opportunities are the disabled and aging populations.

On January 28, the U.S. Equal Employment Opportunity Commission (EEOC) sued the New York-based firm Kelley, Drye & Warren, LLP for age bias for requiring partners who turn 70 to give up their ownership interest in the firm. In filing the suit, EEOC Acting Chairman Stuart J. Ishimaru said, "This lawsuit should serve as a wake-up call for law firms to examine their own practices to ensure they comport with federal law."

Has the legal profession been sleeping since the much publicized 2005 EEOC suit against Sidley Austin, LLP on behalf of 32 former partners after they were "de-equitized," or forced out of the partnership because of their age? In 2007, the Sidley suit was settled for $28.5 million, but it spurred action by the American Bar Association to advocate for abolition of forced retirement. Studies at the time revealed that about half of the U.S. law firms with more than 50 lawyers force partners to leave or relinquish their equity status at a certain age.

We do not have statistics on how many Michigan law firms have mandatory retirement requirements. We do know, of course, that under Michigan Constitution Article 6, Section 19, lawyers who will turn 70 before taking office cannot be appointed or elected as judges, and a sitting judge who turns 70 may serve only until the end of the term to which he or she has been elected.

Both mandatory law firm and judicial retirements clearly have a positive goal in mind: to open firms and the bench to fresh talent and new ways of thinking. Just as clearly, both are forms of age discrimination—the former possibly constitutionally proscribed, the latter constitutionally prescribed.

The legality and ethics of mandatory retirement may be ageless, but the implications today are more urgent than ever. Baby boomer attorneys make up more than 50 percent of State Bar membership. As a group, older attorneys have extensive networks of contacts and a sum of learning that represents immense amounts of wisdom, knowledge, and experience. They can help younger attorneys transition into relationship roles with clients, mentor, handle public relations, develop litigation strategies, expand a firm's profile, and strategize for succession planning. If their performance falls short, they should be held accountable without regard to age. This is not to diminish the difficulty of responding to unsatisfactory performance, which is a wrenching problem no matter the context. But performance evaluation challenges should be no different or more difficult when assessing a 70-year-old or a 35-year-old.

The image, and reality, of the legal profession should be that of a profession that prides itself on diversity and inclusion as fundamental values. This concept of diversity extends to attorneys of all ages. The State Bar and its members should embrace age as one of the celebratory points of our diverse bar. Our older members who love what they do, provide services to others, and have the energy to continue should be appreciated and allowed to provide significant benefits to our profession. ■