

# Progress Report

## ON THE SBM PLEDGE TO ACHIEVE DIVERSITY AND INCLUSION

By Hon. Victoria A. Roberts and John R. Nussbaumer

Judge Victoria Roberts joined the legal profession in 1976 and immediately became active in the Wolverine Bar Association and the Women Lawyers Association of Michigan because she recognized there was a clear underrepresentation of both blacks and women in the legal profession. There was work to be done, and both organizations were on the front line. The State Bar of Michigan was involved in the fray as well. Young, committed women and minorities who would go on to become leaders in the profession were involved in the work of the SBM Underrepresentation Committee in the 1980s.

Thirty years later, gains have been made but much remains to be done. This article is designed to explain why diversity and inclusion still matter, inform you of the work of those who have pledged to increase diversity and inclusion, and set forth a road map for the future.

### Why Diversity and Inclusion Matter

There are compelling rationales for diversity and inclusion in the legal profession. In April 2010, the American Bar Association released its “Next Steps” report, which focused on the following four rationales:<sup>1</sup>

- (1) **Democracy.** Lawyers play a unique role in all spheres of life, including all branches of the United States government—a government of the people, by the people, and for the people. This democracy was designed as a representative government, though it has not always lived up to that high ideal. A broader base of citizen participation in governing and developing the rule of law is needed. Because lawyers contribute mightily to governance and development of the law, a legal profession that is diverse and inclusive is necessary to achieve the goals of a representative democracy.
- (2) **Business.** We live in a global world. The trend toward globalization will not reverse. Given the globalization of economies, business, customers, and cultures, we must increase the diversity of the American legal profession to mirror the global population it serves.
- (3) **Leadership.** This country has a love-hate relationship with lawyers. However, lawyers play a major role in politics on national, state, and local levels. Lawyers also have a great deal of power in private industry and elsewhere. These facts make it clear that lawyers are and will continue to be influential decision makers in this country.
- (4) **Demographics.** The United States Census reports that by 2042, the majority of citizens in this country will be people of color, as opposed to white Caucasians.<sup>2</sup> Hispanics were reported as the largest minority group in the latest census, and their population exceeds that of black Americans by a few percentage points.<sup>3</sup>





There is no doubt that the legal profession must reflect our democracy, businesses, leadership, and demographics.

The State Bar of Michigan Member Demographics Report for 2010–2011 shows that just 10 percent of Michigan's lawyers are African Americans, Asian Americans, American Indians, Arab Americans, and Hispanic Latino Americans, and that only 11 African Americans and 4 Hispanic Latino Americans joined the State Bar out of a total of 1,089 new members.<sup>4</sup> If we fail to meet the challenge of diversifying our ranks to reflect our increasingly diverse clients, we will face a crisis of confidence in our civil and criminal justice systems of historic proportions. This is *the* civil rights issue for our generation of lawyers.

### History of How the SBM Pledge Evolved; Efforts to Secure Additional Signatories

The genesis of the State Bar Pledge to Achieve Diversity and Inclusion came from participants in two conferences held at Thomas M. Cooley Law School's Auburn Hills and Grand Rapids campuses in the spring of 2009 during the bar year of SBM Past President Ed Pappas. The idea came from the 2004 Corporate Call to Action in which major corporations pledged to require that the law firms they do business with diversify their ranks or risk losing their business. Commitments to diversity adopted by the Nebraska and Louisiana state bar associations provided a template for the Michigan pledge.

The original draft of the pledge was the work product of the State Bar Equal Access Initiative during the bar year of SBM Past President Charles Toy. This draft was reviewed in the summer of 2010 by participants in conferences held at Wayne State University Law School, Michigan State University School of Law, and Thomas M. Cooley Law School. The feedback from these conferences resulted in substantial changes to the pledge, which was then unanimously adopted by the State Bar Board of Commissioners.

Since the pledge's unveiling at the 2010 State Bar Annual Meeting, the number of signatories has grown from 192 to 721, including 21 SBM sections and committees, 35 bar associations, 26 of the state's 50 largest firms, and all 5 of the state's law schools. Altogether, these organizations and institutions represent more than 54,000 individuals.<sup>5</sup> These figures are as of November 16, 2011.

### Creation of SBM Director of Diversity and the Presidential Diversity and Inclusion Advisory Group Executive Council

In October 2010, the SBM named Gregory Conyers its first director of diversity. Establishing this position was long overdue, and it has played an important role in focusing the efforts of our organization. The director's duties include identifying opportunities for the bar to promote diversity within the profession; collaborating with groups currently involved in diversity efforts; continuing the SBM's commitment to diversity efforts at the local, state, and national levels; and facilitating the flow of information among various parties engaged in supporting diversity in the profession.

Given the globalization of economies, business, customers, and cultures, we must increase the diversity of the American legal profession to mirror the global population it serves.

Shortly after beginning his term as SBM president, W. Anthony Jenkins established the Presidential Diversity and Inclusion Advisory Group (PDIAG) and asked Judge Roberts and Cooley Auburn Hills Campus Dean John Nussbaumer to serve as co-chairs. The PDIAG was comprised of attorneys, judges, academicians, community leaders, and members of the business community. The PDIAG has engaged in much of the follow-up work on the pledge, including surveying law firms and corporate counsel offices to get baseline measurements of their diversity and inclusion and determining the strategies and programs they have in place to achieve the pledge's goal of increasing diversity and inclusion in the profession.

The survey was designed to obtain demographic information concerning race, ethnicity, sexual orientation, gender, and disability and to ascertain recruitment and retention efforts and programs. The survey was also intended to measure the institutional commitment of the organizations to diversity and inclusion. The goal was not to focus on sheer numbers, but to try to determine if the culture in these organizations was such that there was a commitment to mentor, train, develop, elevate, and truly include everyone—not just white Caucasians.

With these survey results in hand, the SBM will be able to measure the progress made within these organizations and make recommendations that will hopefully result in advancement toward our goal. The SBM will continue monitoring the progress of these organizations through regular benchmarking surveys, and in the coming year will survey law schools and governmental units to establish baselines for them.

Through the efforts of Past President Jenkins, the SBM Board of Commissioners approved the transition of the PDIAG to a permanent standing committee, now known as the Diversity and Inclusion Advisory Committee. The committee's goal is to help the SBM become a clearinghouse for best practices on diversity and inclusion for Michigan government, lawyers, law schools, and the judiciary so that, in all ways, the legal profession resembles the communities and clients we serve.

## Next Steps

To help organizations make progress toward diversifying the profession, we plan to publish survey results, identify best practices around the state that have proven successful, and share those practices with organizations committed to this goal. We also will offer our help to organizations in developing action plans if they are experiencing difficulty achieving measurable improvement. In addition, we plan to develop an appropriate recognition

mechanism, similar to the State Bar Pro Bono Circle of Excellence, for organizations that demonstrate measurable growth over time.

## Conclusion

Sometimes the sports world can provide a useful metaphor for our lives. For decades, black coaches were exceedingly rare in the National Football League. In 2002, 70 percent of NFL players were black compared to only 6 percent of head coaches. This abysmal statistic was defended on grounds such as the paucity of good black candidates or the lack of a “pipeline” of black college head coaches to place in the NFL.

To encourage greater diversity among NFL coaches, the Rooney family, longtime owners of the Pittsburgh Steelers, conceptualized the “Rooney Rule” and got the NFL to buy in. Under the Rooney Rule, any team searching for a head coach faced a huge fine if it did not interview at least one minority candidate for an open position.<sup>6</sup>

The results of the Rooney Rule are astounding. Since 2003, 22 percent of head coach positions in the NFL have been occupied by minorities, and since 2006, two of seven Super Bowls have been won by teams with black head coaches.

This progress occurred because there was commitment from the top and buy-in by all stakeholders. In this day, lack of commitment and buy-in to diversity and inclusion are inexcusable and unacceptable, particularly in the legal profession.

With all our efforts over past decades and the momentum built by successive SBM presidents over the last three years, the legal profession in Michigan is poised to say proudly that we have, in fact, taken important steps toward achieving what is prominently engraved in the facade of the United States Supreme Court Building: “Equal Justice Under Law.” Diversity and inclusion matter to the future of our democracy. ■



*In 1998, Victoria A. Roberts was commissioned by President Clinton to serve as a United States district judge for the Eastern District of Michigan. She was the 62nd president of the State Bar of Michigan and has received its two highest awards, the Roberts P. Hudson and Champion of Justice awards. Judge Roberts also teaches “Federal Sentencing: Its Evolution and Dynamics” at the University of Michigan Law School.*



*John R. Nussbaumer is the associate dean in charge of Thomas M. Cooley Law School's Auburn Hills campus. He is co-chair of the State Bar's Diversity and Inclusion Advisory Committee and a former member of the ABA Council on Racial and Ethnic Diversity in the Educational Pipeline. He is the recipient of the ABA Council of Legal Education Opportunity 2008 Legacy Justice Achievement Award and the 2010 State Bar of Michigan Champion of Justice Award.*



## State Bar of Michigan Diversity and Inclusion Pledge Signatories As of November 16, 2011

### Bar Associations

Armenian American Bar Association  
Barry County Bar Association  
Black Women Lawyers Association of Michigan  
Chaldean American Bar Association  
D. Augustus Straker Bar Association  
Detroit Metropolitan Bar Association  
Federal Bar Association, Eastern District of Michigan Chapter  
Federal Bar Association, Western District of Michigan Chapter  
Floyd Skinner Bar Association  
Genesee County Bar Association  
Grand Rapids Bar Association  
Hispanic Bar Association of Michigan  
Incorporated Society of Irish/American Lawyers, The  
Ingham County Bar Association  
Ionia/Montcalm Bar Association  
Kalamazoo County Bar Association  
Lansing Black Lawyers Association  
Macomb County Bar Association  
Michigan Asian Pacific American Bar Association  
Michigan Association for Justice  
Michigan Association of Bar Executives  
Michigan Defense Trial Counsel  
Oakland County Bar Association  
Referees Association of Michigan  
Rochester Bar Association  
Saginaw County Bar Association  
South Asian Bar Association  
Stonewall Bar Association of Michigan  
Washtenaw County Bar Association  
Wayne County Criminal Defense Bar Association  
Wolverine Bar Association  
Women Lawyers Association of Michigan—Macomb Region

Women Lawyers Association of Michigan—Mid-Michigan Region  
Women Lawyers Association of Michigan—Oakland County Region  
Women Lawyers Association of Michigan—Western Region

### Law Schools

Michigan State University College of Law  
Thomas M. Cooley Law School  
University of Detroit Mercy School of Law  
University of Michigan Law School  
Wayne State University Law School

### SBM Sections and Committees

Administrative and Regulatory Law Section  
American Indian Law Committee  
American Indian Law Section  
Awards Committee  
Bar Leadership Liaison Advisory Committee  
Committee on Justice Initiatives  
Consumer Law Section  
Criminal Jurisprudence & Practice Committee  
Criminal Law Section  
Diversity and Inclusion Advisory Committee  
Health Care Law Section  
International Law Section  
Labor and Employment Law Section  
Law Related Education and Public Outreach Committee  
Libraries, Legal Research, and Legal Publications Committee  
Litigation Section  
Master Lawyers Section

Public Corporation Law Section  
Publications and Website Advisory Committee  
Real Property Law Section  
Young Lawyers Section

### \*Law Firms from List of 50 Largest in Michigan

Barris Sott Denn & Driker PLLC  
Berry Moorman PC  
Bodman PLC  
Butzel Long  
Clark Hill PLC  
Collins Einhorn Farrell & Ulanoff, PC  
Dickinson Wright PLLC  
Dykema Gossett PLLC  
Foley & Lardner LLP  
Foster Swift Collins & Smith, PC  
Fraser Trebilcock Davis & Dunlap PC  
Harvey Kruse PC  
Honigman Miller Schwartz and Cohn LLP  
Jaffe Raitt Heuer & Weiss, PC  
Kitch Drutchas Wagner Valitutti & Sherbrook  
Law Weathers  
Miller Canfield  
Miller Johnson  
Miller Law Firm, The  
Pepper Hamilton LLP  
Plunkett Cooney  
Rhoades McKee PC  
Sachs Waldman PC  
Smith Haughey Rice & Roegge  
Varnum LLP  
Warner Norcross & Judd LLP

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\*There are 26 Michigan law firm signatories from the list of the 50 largest; a total of 129 Michigan law firms have become pledge signatories.

### FOOTNOTES

1. ABA Presidential Initiative Comm on Diversity, *Diversity in the Legal Profession: the Next Steps: Report and Recommendations* 9 (2010), available at <<http://cdm15029.contentdm.oclc.org/cdm/singleitem/collection/p266901coll4/id/2894/rec/17>>. All websites cited in this article were accessed December 12, 2011.
2. Press Release, U.S. Census Bureau, An Older and More Diverse Nation by Midcentury (August 14, 2008) <<http://www.census.gov/newsroom/releases/archives/population/cb08-123.html>>.
3. Press Release, U.S. Census Bureau 2010 Census Shows America's Diversity (March 24, 2011) <<http://2010.census.gov/news/releases/operations/cb11-cn125.html>>.
4. See State Bar of Michigan, *Statewide and County Demographics [2010–2011]* <<http://www.michbar.org/opinions/statewidedemographics.pdf>>.
5. This figure was determined by adding together all attorneys in the various signatory entities, which includes law firms, corporate counsel offices, law schools, legal aid organizations, bar associations, committees, and sections. In some cases, an individual attorney is counted multiple times depending on the number of entities to which he or she belongs.
6. Garber, *Thanks to Rooney Rule, Doors Opened*, ESPN.com, February 9, 2007 <<http://sports.espn.go.com/nfl/playoffs06/news/story?id=2750645>>.