



Staff Memorandum

**HOUSE OF DELEGATES
January 31, 2020**

REQUESTED ACTION: Approval of the report and recommendations of the Committee on Diversity and Inclusion for an Association Diversity Plan.

Attached is a report from the Committee on Diversity and inclusion recommending that the Association adopt a Diversity Plan to promote the full and equal participation of diverse attorneys in the Association and at every level of the legal profession. The report reviews the 2003 adoption of a diversity policy, the committee's development of a biennial Diversity Report Card since 2005 and Diversity Challenges issued and promoted by past presidents. The proposed plan includes a number of objectives and goals, including the following:

- Require wide dissemination of the Diversity Plan.
- Promote and track diversity within leadership.
- Promote and track diversity in leadership nominations and leadership development.
- Urge adoption by all NYSBA entities of diversity plans consistent with the overall Diversity Plan.
- Promote diversity in membership.
- Promote diversity in CLE and other programming.
- Promote diversity in publications.
- Promote diversity in "marquee" events.
- Enhance reporting and tracking of diversity efforts.
- Develop or enhance mentoring programs.
- Develop, encourage and participate in "pipeline" events.
- Promote diversity accomplishments.

- Create a Diverse Speakers Bureau/Database.
- Follow the Mansfield Rule with respect to leadership positions.

This report was submitted in November 2019. Attached are comments from the Committee on Disability Rights, the Committee on Membership, and the Committee on Legal Aid.

The report will be presented at the January 31 meeting by Mirna M. Santiago, Chair of the Committee on Diversity and Inclusion.

New York State Bar Association

Diversity Plan

Commitment

The New York State Bar Association continues its commitment to enhancing diversity at every level of participation. The Association strives to reflect the diversity of our profession and our society within its membership, leadership, program involvement and outreach to the community at large.

History

The Association's House of Delegates adopted a diversity policy on November 8, 2003, which reads:

The New York State Bar Association is committed to diversity in its membership, officers, staff, House of Delegates, Executive Committee, Sections and Committees and their respective leaders. Diversity is an inclusive concept, encompassing gender, race, color, ethnic origin, national origin, religion, sexual orientation, age and disability. We are a richer and more effective Association because of diversity, as it increases our Association's strengths, capabilities and adaptability. Through increased diversity, our organization can more effectively address societal and member needs with the varied perspectives experiences, knowledge, information and understanding inherent in a diverse relationship.

The Committee on Diversity and Leadership Development in 2005 conducted a seminal Section Diversity Survey. The survey was designed to evaluate the level of diversity in Section leadership, membership and activities, and to inform the Association of ongoing Section initiatives to enhance diversity. The Committee transposed the results of that survey into a Diversity Report Card, which the Executive Committee considered as an informational item at its June 23 and 24, 2005 meeting. Since that first survey and report in 2005, subsequent data-gathering efforts and resulting reports have been issued, with project oversight moved to the Committee on Diversity and Inclusion in 2011. With each report, more detailed data have allowed a more comprehensive analysis of how far the Association has come in raising the awareness of diversity issues within its own organization and the profession. After publication of the 2011 report, committee leadership agreed that that year's format would serve as a benchmark for subsequent reports, with only minimal references to earlier editions of the report as needed. This agreement was made to coincide with the start of the presidential Section Diversity Challenge in 2011 – 2012, followed by a second yearlong challenge in 2012 – 2013. We recognize the leadership of Presidents Vincent E. Doyle III and Seymour W. James Jr. in issuing the Diversity Challenges.

The summary below provides a brief history of the Diversity Report Card's development and its expanding scope – it initially covered only Sections but now includes NYSBA executive

voluntary leadership, including governance and its Nominating Committee. The report continues to highlight the need for raising the level of diversity awareness within the profession and increase opportunities for attorneys to serve in leadership positions.

2005 (First Edition) Diversity data reported gender, ethnicity/race and disability status. Nearly half of all Sections appointed a diversity chair and/or formed a diversity committee and developed a diversity plan.

2007 (Second Edition) The report was circulated at the Section Leaders Conference to foster increased diversity awareness. It was also posted on the Association's Web site and the report narrative published in the *State Bar News*. The report recommended developing a strategic plan, with the aid of the Association's Office of Bar Services, to encourage collaboration between Sections and minority bar associations as a way to enhance Section diversity; and convening a joint conference of all Section diversity committees and/or leaders for the purpose of fostering collaboration among the Sections themselves.

2009 (Third Edition) Sexual orientation status was added to diversity data reporting. The report recommended collecting diversity data from Section publications editors, CLE program chairs and faculty, with plans to promote increased self-reporting from Section members. It also requested additional administrative staff support (in the form of an intern or law student).

2011 (Fourth Edition) Diversity data on House of Delegates and membership of NYSBA's Executive and Nomination Committee added. The report recommended the Association promote enhanced communications and relationship building with its members and Section leaders and governance leaders regarding the importance of accurate self-reporting for purposes of collecting diversity data.

2013 (Fifth Edition) Diversity data in NYSBA governance, broken down by Judicial District, added.

2015 (Sixth Edition) Age data of overall Association membership added.

2017 (Seventh Edition) The report spotlights eight Sections of the Association in order to highlight improvements and provide specific recommendations.

To date, some but not all, of the recommendations presented within the reports have been carried out. For example, expanding coverage of diversity data to governance groups and continued self-reporting of diversity status has taken place. However, significant resistance to diversity data collectibles continues. Fully one third of the Association's House of Delegates fails to provide their data; 54 % of all NYSBA members decline to answer all demographic questions. The survey is being updated to make it easier to answer all questions, but we need to encourage response and timely data analysis and visualization.

Purpose and Goals

Purpose

For the purposes of the Diversity Plan (the “Plan”), the term “diversity” generally represents both diversity and inclusion. Diversity often pertains to the numbers – ensuring sufficient numbers of targeted populations are represented. Inclusion addresses how well the diverse individuals are included in all aspects of the organization. Diversity is often associated with recruitment; inclusion plays a pivotal role in retention. As such, this Plan is designed to achieve not just diversity – the presence of lawyers and law students from all backgrounds – but inclusion as well – their full and equal participation in the Association.

Goals

The Plan will promote and advance the full and equal participation of attorneys of color and other diverse attorneys in the New York State Bar Association and in all sectors and at every level of the legal profession through research, education, fostering involvement and leadership development in NYSBA and other professional activities, and to promote knowledge of and respect for the profession in communities that historically have been excluded from the practice of law. The Committee shall also foster the development of, monitor progress of and report on diversity initiatives of the Association, as well as partner with the Sections to continue to pursue enhanced diversity and inclusion in the Association, including among the leadership of the Association.

The Diversity Plan sets forth numerous objectives and broad goals. In addition, certain implementation recommendations are set forth as specific actions the New York State Bar Association is urged to undertake in the immediate future.

- A. Require wide dissemination of the Diversity Plan within the New York State Bar Association, and public availability of the Diversity Plan, including:
 - 1. Membership-wide dissemination of the Diversity Plan after adoption, with a cover letter or email from the NYSBA President.
 - 2. Continuous availability of the Diversity Plan through pertinent pages on the NYSBA website.
 - 3. Distribution of the Diversity Plan, or emailing a link to the Diversity Plan, to all new NYSBA members.
 - 4. Reference to the Diversity Plan in member solicitation materials.
 - 5. Ensuring accessibility of the Diversity Plan to members with visual or other disabilities.

- B. Promote and track diversity within the NYSBA’s leadership, including:
 - 1. The Association’s Officers (President, President-Elect, etc.);
 - 2. Executive Committee;
 - 3. Standing Committees, Administrative Committees, Special Committees, Task Forces, Commissions, and other presidentially appointed positions;
 - 4. House of Delegates;
 - 5. Practice Sections, including top leaders, their executive committees and committee chairs;

6. Special emphasis on diversity among the Nominating Committee membership (see item “C” below).
- C. Promote and track diversity in the NYSBA’s leadership nominations and leadership development processes.
1. Require diversity as an emphasis in all leadership nominations processes, including diversity among the decision-makers on the Nominating Committee.
 2. Require diversity as an emphasis in the Presidential appointments process, including diversity among the appointments committee members (such diversity to be measured, at least in part, by consideration of data that indicates the diversity of Association membership).
 3. Urge Sections to emphasize diversity in leadership training and development programs.
 4. Build diversity-related sessions into the annual Section Leaders Conference and all leadership training efforts.
- D. Urge adoption by all entities within the NYSBA of entity-specific diversity plans that are consistent with the objectives of this Diversity Plan, or their review and appropriate modification of existing diversity plans.
1. Strongly encourage periodic review and updating of entity diversity plans.
 2. Recommend designation of an officer or other entity leader with responsibility for ensuring implementation of diversity plans.
 3. Advocate wide dissemination of entity diversity plans, as with the NYSBA Diversity Plan.
 4. Urge the compiling of uniform statistics and information on diversity participation by each entity and member. Association leadership shall encourage each leader and member to update their demographics here:
<https://members.nysba.org/MyNYSBA/Profile/Profile.aspx?ProfileCCO=6#/ProfileeCCO>.
- E. Promote diversity in NYSBA membership. Marketing and membership solicitation materials should be welcoming to diverse populations, including showing adequate representation of diverse populations in such materials
1. The NYSBA should compile and disseminate uniform statistics and other information on lawyers and law students – both NYSBA members and non-members – for each of the major diversity categories and target non-NYSBA members for membership solicitations. The membership committee shall consider introductory joint memberships with diverse specialty associations.
 2. With assistance from the Association’s Office of Bar Services, NYSBA entities are urged to engage in active marketing, recruitment and outreach efforts to affinity bars and other professional organizations, legal communities, and law schools to promote diversity.
 3. NYSBA entities shall have liaison relationships with the diversity-focused entities of the Association (such as the Standing Committee on Diversity and Inclusion) and appoint persons who will be active liaisons.

- F. Promote diversity in CLE and other programming, both live and virtual.
1. Implement strategic actions to improve diversity among speakers, moderators, and attendees.
 2. Ensure program content appeals to diverse communities, consistent with the sponsoring entities' subject matter specialties, if any.
 3. Urge NYSBA entities to explore partnering or co-sponsoring opportunities with affinity bars and other organizations that can contribute to diversity.
 4. Ensure program venues and materials are accessible to participants with disabilities.
 5. Urge NYSBA entities to use program locations and venues, as well as social media, to enhance opportunities for participation by diverse lawyers and law students (e.g., locations that may minimize cost barriers; venues that may increase diverse community participation, like law schools with a diverse student body, affinity bar association locations; and social networking sites that may increase marketing efforts to diverse communities).
- G. Promote diversity in NYSBA publications (hard copy and electronic).
1. Implement strategic actions to increase diversity in NYSBA members responsible for editorial policy and content of publications.
 2. Ensure content of publications appeals to diverse communities, consistent with the sponsoring entities' subject matter specialties, if any.
 3. Ensure content of publications is accessible to persons with disabilities.
- H. Promote diversity in NYSBA entities' "marquee" events (e.g., annual awards dinners, luncheons, receptions), including diversity of:
1. Speakers,
 2. Award recipients,
 3. Planning and award nominations committees.
 4. Report in Section and Committee success in diversity of speakers annually to the Executive Committee.
- I. Enhance the current tracking and reporting of progress in diversity efforts, including:
1. Enhanced and accurate reporting of NYSBA diversity members in leadership roles in the biennial Diversity Report Card, which will urge more robust participation and tracking by NYSBA entities; encourage greater promotion of the reporting process by NYSBA leadership and accountability for entities that require significant improvement in their diversity efforts.
 2. Ensure widespread dissemination of the biennial Diversity Report Card among NYSBA leadership and throughout NYSBA entities, providing accessible formats for persons with disabilities and through posting on the NYSBA website.
- J. Urge NYSBA entities to develop or enhance mentoring programs that target young lawyers and law students and are designed to advance diversity within the Association.

- K. Urge NYSBA entities to develop, encourage and participate in “pipeline” events and organizations, designed to introduce young and/or diverse students (other than law students) to the law and increase diversity within the profession.

- L. Promote NYSBA’s diversity accomplishments, including the following:
 - 1. Develop and prominently post on the NYSBA website information about successful diversity programs and activities of the Association and its entities.
 - 2. Invest in a regular presence in pertinent legal and diversity publications to showcase NYSBA diversity accomplishments.
 - 3. Urge NYSBA members and staff with an expertise in diversity areas to regularly write and speak on behalf of the NYSBA.

- M. Create a Diverse Speakers Bureau/Database, in conjunction with the standing Committee on Diversity and Inclusion.

- N. Follow the Mansfield Rule (see <https://www.diversitylab.com/pilot-projects/mansfield-rule/>) with respect to leadership positions in all NYSBA entities, e.g. consider at least 30% diversity candidates for all positions, with the goal of ultimately reaching 30% diversity in leadership across the board.



December 6, 2019

President Hank Greenberg
New York State Bar Association
One Elk Street
Albany, New York 12207

Re: NYSBA Diversity Plan

Dear President Greenberg:

The mission of the Committee on Disability Rights includes consideration of all matters affecting people with disabilities. The 14-point plan articulated by the Committee on Diversity to promote diversity and inclusion within the organization is commendable. From our unique perspective as a Committee advocating for people with disabilities through a membership including attorneys with disabilities, we aspire to making every portal of entry to the NYSBA accessible; whether the entry point is a building, website, marquee event or CLE program. Once barriers are eliminated lawyers with disabilities should assume greater leadership within the organization and the profession. We ask the Committee on Diversity to recognize the contributions of lawyers with disabilities to the NYSBA and define programs and priorities with this particular constituency in mind.

We appreciate your efforts and endorse your report.

Sincerely,

Alyssa M. Barreiro
Co-Chairperson

Sheila E. Shea
Co-Chairperson

Statement in Support of the Diversity Plan 2020
Submitted on behalf of the Committee on Membership

The Membership Committee wholeheartedly endorses the Diversity Plan submitted by the Committee on Diversity and Inclusion.

The Membership Committee also acknowledges its role in implementing the Diversity Plan, and will work with the Committee on Diversity and Inclusion to develop actionable plans and programs to advance the Association's commitment to diversity and inclusion.

Respectfully submitted,
The Committee on Membership
By: its Chairs

Mitch Katz
Hyun Suk Choi
December 6, 2019

COMMITTEE ON LEGAL AID

December 23, 2019

TO: NYSBA Committee on Diversity and Inclusion

RE: Diversity Plan

The NYSBA Committee on Legal Aid submits this comment with regard to the Diversity Plan proposed by the NYSBA Committee on Diversity and Inclusion. COLA supports NYSBA's attention to issues related to Diversity and Inclusion and in spirit supports the Diversity Plan. Nevertheless, the Committee finds that the Diversity Plan as drafted lacks important components that are necessary to address Diversity and Inclusion in our Association.

First, COLA believes that the House of Delegates urgently needs to update the Diversity Policy to include "gender identity" and "gender expression". Both gender identity and gender expression are now recognized protected classes under New York Human Rights Law, as codified by the Gender Expression Non-Discrimination Act and NY Unified Court Rules include gender identity and gender expression in all non-discrimination rules. Transgender individuals continue to face heightened levels of discrimination and harassment in society and are underrepresented in the legal profession.

Second, in paragraph N, a goal is established to follow the Mansfield Rule of considering at least 30% diversity candidates for leadership positions. We feel that this goal is not ambitious enough, especially given how broad NYSBA's definition of diversity is. By NYSBA's definition of diversity, it is likely that over 70% of the population would be considered "diverse." Even in the legal community, nearly 40% of the profession are women and 12% are people of color, with over 50% of recent law graduates being women and 40% being people of color. We believe that the goal for the diversity plan should be 50% diversity candidates for leadership positions, with no less than 20% people of color considered.

Third, with regard to demographics, we agree that collecting and tracking demographics is very important. There is impressive work being done nationally in this regard, and we suggest that NYSBA retain an outside consultant to establish best practices in gathering demographics so that the response rate is much higher.

Fourth, COLA recognizes the importance of supporting and mentoring law students and young lawyers from diverse backgrounds as a critical component of not only recruitment but retention in the legal profession for years to come. To that end, NYSBA should take a more proactive role in mentoring law students from diverse backgrounds and rather than "urge" NYSBA entities to partner with minority study groups, NYSBA should require all entities to do so. Moreover, both sub-sections J and K should include a provision for the creation of diversity fellowships to help fund paid opportunities for mentorship and experience for diverse law students and young lawyers.

Finally, in the history section at the beginning, we believe that it is important to name and acknowledge the history of systemic oppression that have kept people who fall under the broad concept of diversity in this plan from joining the legal profession and becoming leaders. At the time that the New York State

Bar Association was formed in 1876, women and people of color were not permitted to attend most law schools in New York. In some instances, they were not permitted to attend for another 50 years. See <https://www.nywba.org/history2/>. Even when able to obtain Juris Doctorates, some, like William Herbert Johnson in Syracuse in 1903, were not permitted to join the New York Bar and practice law, solely because of their race. This systemic exclusion was perpetuated in NYSBA, where NYSBA began accepting women in 1901 but only had its first woman President in 1987. NYSBA had its first African American President in 1993 and its first Asian American President in 20145. It should explicitly be stated that active steps such as those outlined in this plan are critical to address a longstanding history of systemic oppression and exclusion in the legal profession and in NYSBA.