



# DIVERSITY & INCLUSION 360 COMMISSION

## EXECUTIVE SUMMARY

August 2016

An overview of the work of  
the presidential commission  
examining diversity and  
inclusion in the legal profession





# MESSAGE

## FROM THE PRESIDENT



Patience is a virtue that we spend years cultivating. I have relied upon patience, combined with a healthy dose of persistence, throughout my career to overcome obstacles and create opportunities for myself and others. But when it comes to diversity and inclusion, I am no longer patient. The time is now to move from dialogue to action.

I have grown weary of discussing statistics that have not changed in decades and of wondering why strategies used have not caused our profession to be fully inclusive of everyone without regard to race, national origin, ethnicity, sex, religion, age, disability, sexual orientation, gender identity, gender expression, marital status, or socioeconomic status. My impatience and the growing disenchantment among young people and people of color about the fairness of our justice system were an impetus to act.

One of the first actions I took as president of the American Bar Association was to form the Diversity and Inclusion 360 Commission. The Commission was charged with conducting a comprehensive review of where we stand as a profession in terms of diversity and inclusion and developing a comprehensive, sustainable plan to carry us into the future. I asked the Commission to pursue the difficult questions that have no easy answers, develop practical solutions, collaborate with leaders in the field, and finish by the conclusion of my term as president.

They rose to the occasion brilliantly. Under the stellar leadership of Eileen Letts and David Wolfe, the Commission produced a stunning body of work that is outlined in this executive summary and available in full at <http://www.ambar.org/360commission>. I am grateful to them, the honorary co-chairs, who were so much more, each commissioner, the special advisors, the reporter, and the dedicated ABA professionals who made these results possible. Eliminating bias and enhancing diversity is one of the ABA's four core co-equal goals. This Commission has done its job in advancing that goal, and I thank its members for their hard work and commitment.

As the Commission sunsets, the commitment lives on within the ABA as an institution and, most important, it continues within each of us. We must each do everything that we can to interrupt bias and fight against injustice wherever we find it. So I ask that in this one area of life, please join me in shedding patience and daring to act boldly, courageously, and insistently to dismantle the barriers to diversity and inclusion. As great as our profession is, it is unacceptable for it to be the least diverse of all comparable professions.

Sincerely,

**Paulette Brown**  
President, American Bar Association (2015 – 2016)



It has been an honor and a privilege to co-chair the Diversity and Inclusion 360 Commission. It has also been quite a journey.

We all took to heart President Brown's charge to think broadly, creatively, and pragmatically. We challenged our limits to get something meaningful accomplished in a short time frame. In the midst of all the meetings, conference calls, project plans, and fast pace, we never lost sight of the big picture, the provocative questions, and the goal of moving the needle in meaningful ways.



Our effectiveness was due to the outstanding group of dedicated commissioners, honorary co-chairs, advisors, reporter, and ABA professionals who stretched themselves beyond capacity over long periods of time. We thank the working groups (Diversity & Inclusion Implementation, Economic Case, Implicit Bias, and Pipeline) for pursuing each degree of our 360-degree review. We acknowledge the ABA professionals who lent their expertise and talent: Julie Brown, Katy Englehart, Malcolm Harsch, Rachel Patrick, Sharon Tindall, and Pedro Windsor, and our reporter, Karen Clanton. We also want to thank President Brown for her guidance, support, and inspiring leadership.

We present our body of work in a format that is forward looking, user friendly, and encouraging. Our report and deliverables can be found at <http://www.ambar.org/360commission>, where anyone with access to the Internet from any device can interact with it. Just as we created a report that will not sit on a shelf, we created a body of work that does not end at the close of this bar year. Many of the projects and policies created by this Commission will continue to evolve, take shape, flourish, and grow under the diligent care of the ABA Office of Diversity and Inclusion and its constituent entities.

We are pleased that the commitment that inspired this Commission carries on along with the efforts to maintain the work itself.

Sincerely,

**Eileen Letts and David Wolfe**  
Co-Chairs, Diversity and Inclusion 360 Commission



# MESSAGE

## FROM THE CO-CHAIRS



## OVERVIEW

By Karen Clanton, Reporter, Diversity and Inclusion 360 Commission

The mission of the Diversity and Inclusion 360 Commission was to review and analyze the state of diversity and inclusion in the legal profession, the judicial system, and the American Bar Association (ABA) with the aim of formulating methods, policies, standards, and practices to best advance diversity and inclusion. President Brown charged the Commission with producing a tangible body of work that would move the needle.

“Move the needle” is an oft-used expression that means to make a noticeable difference in a situation or to shift a situation in some way. The expression implies a level of boldness—audacity even—that results in new levels of awareness, measurable impact, and discernible change.

Moving the needle is hard. Some might consider it an act of hubris to try moving the needle in the area of diversity and inclusion. Not because it isn’t the *right* thing to do; it is simply an extraordinarily *difficult* thing to do.

Diversity and inclusion is a broad area that includes within it many disciplines and points of focus, such as implicit bias, social justice, and the educational pipeline, to name just a few. These are well-established areas of inquiry, scholarship, and activism in which dedicated professionals have spent careers advocating and working to effectuate change. The ABA itself has dedicated resources to support entities whose core focus is to spearhead research, advocacy, and initiatives to eliminate bias and enhance diversity in the legal profession—one of the ABA’s four core goals. Despite these best efforts, however, the problems seem intractable—progress is slow, cannot be taken for granted, and must be vigilantly protected.

Thus, when a presidential commission is formed to conduct a 360-degree review across the sweeping diversity and inclusion landscape with the goal of “moving the needle” in one year, even supporters justifiably looked askance and wondered what could realistically get done. It was a legitimate concern. How can one commission assembled for one year move the needle in diversity and inclusion?

The answer: creatively.

The Commission used its needle to stitch, to probe, and to prod. In some cases, the Commission stitched together disparate bodies of information. It created a national database of pipeline programs and launched a diversity and inclusion web portal, both of which pull together important information that is empowering when assembled and placed—virtually—into the hands of its intended end users. In other cases, the Commission probed into sensitive areas such as the implicit bias that compromises our justice system but has its origins in our very own hearts and views of the world. It created a series of training videos—for judges, prosecutors, and public defenders—that examine implicit bias and what to do about it. The Commission also prodded others to act. It proposed policies that will encourage clients to use their purchasing power to increase economic opportunities for diverse attorneys and called for governing bodies to make diversity and inclusion a required area of study within mandatory continuing legal education.

In short, the Commission used its needle to craft a wide array of policies, online tools, videos, surveys, and templates that collectively have the potential to make a difference in practical ways. The Commission’s work is briefly outlined below.

1. **The National Pipeline Diversity Initiatives Directory:** Launched a searchable, online database of pipeline programs across the country.
2. **Collaboration with the Judge Advocate General’s Corps:** Initiated a conversation that explores how the ABA and the JAG Corps can raise awareness about legal career opportunities in the military and share best practices about recruiting diverse students.
3. **Model Diversity and Inclusion Plan:** Prepared a model template that ABA entities can use to create strategic diversity plans.
4. **Continuing Legal Education (CLE) Policies:** Advocated for diversity and inclusion to be a separate credit within Minimum or Mandatory CLE (Resolution 107) and recommended that CLE programs sponsored or co-sponsored by the ABA reflect minimum levels of diversity among the speakers.



5. **Diversity and Inclusion Web Portal:** Created a web portal showcasing the comprehensive diversity and inclusion programs, resources, and information across the ABA.
6. **Implicit Bias Videos and Toolkit:** Developed three training videos and an accompanying toolkit to raise awareness among judges, prosecutors, and public defenders on the impact of implicit bias and to offer suggestions on combatting it.
7. **Jury Principles:** Advocated for amending the ABA Principles for Juries and Jury Trials to: (1) add marital status, gender identity, and gender expression to the list of those groups that should not be excluded from jury service and (2) recommend that jurors be educated about implicit bias and how to avoid such bias in the decision-making process.
8. **Economic Case Policy Resolution:** Proposed a resolution that urges all providers of legal services to focus on their diversity and inclusion practices in a meaningful way and urges clients to use their purchasing power to increase economic opportunities for diverse attorneys.
9. **Model Diversity Survey:** Developed a tool that allows clients to gather uniform and consistent diversity data from law firms.
10. **Model Rule 8.4:** Co-sponsored the proposed amendment to ABA Model Rule of Professional Conduct 8.4 to add 8.4(g), which makes it professional misconduct for a lawyer to harass or discriminate on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, or socioeconomic status.

This executive summary provides an overview of the work, but the work itself is available at <http://www.ambar.org/360commission> and anywhere within these pages where you see a QR code. We are proud to deliver our results in a manner befitting our mandate. The Commission's report is not intended to sit on a shelf but is instead to be viewed, searched, downloaded, shared, and linked. The work lives on in many ways; its format should be no different.

The Commission has used its needle to stitch together resources that at first blush may seem disconnected but when viewed as a whole are similar to viewing a quilt. A quilt brings together pieces of fabric from articles of clothing and a variety of other pieces that take on new form when connected together. The end result is a practical, warm blanket, yet the new pattern forged by the quilt maker's vision and needle is also a thing of beauty. It is our hope that the Commission's efforts achieve this level of practicality and elegance and in doing so advance the cause of diversity and inclusion.

## Diversity and Inclusion Working Group

Because the ABA is viewed as a leader in all things legal, this working group was tasked with holding up the proverbial mirror and allowing the ABA to take a good look at itself to assess how it was doing in fulfilling its commitment to eliminate bias and enhance diversity as embodied in Goal III.

The working group examined how entities (sections, divisions, forums, commissions, and other groups) within the ABA developed and implemented strategic diversity plans. It reviewed the diversity plans of each entity and created a Model Diversity and Inclusion Plan to serve as a template to assist ABA entities with developing new or reviewing and updating existing diversity plans tailored to their specific needs, missions, and governance structures. The working group also sought to marshal the powerful diversity information that was spread across the ABA website. It pulled all the pertinent content together in a revised, revamped and repowered web portal accessible via the Diversity tab on the ABA website. Finally, it examined diversity within continuing legal education (CLE) and encouraged bodies responsible for mandatory continuing legal education to require diversity and inclusion as a separate and distinct credit. It also proposed a policy, which has been adopted by the ABA, for achieving levels of diversity for CLE programs sponsored or co-sponsored by the ABA.

As one of the largest professional associations in the world and the national voice of the legal profession in the United States, the ways in which the ABA models diversity and inclusion affect the entire profession. This working group sought to strengthen the ABA's impact.

**Chairs: Darcee Siegel and Lelia Mooney**

**Key Projects:**

- Model Diversity and Inclusion Plan Template
- Diversity and Inclusion Web Portal
- Resolution 107 pertaining to Continuing Legal Education
- ABA Continuing Legal Education Policy to Enhance Diverse Faculties on all ABA CLE panels





## Pipeline Working Group

The legal profession is one of the least diverse professions in the nation. Eighty-eight percent of lawyers are white.<sup>1</sup> This statistic matters because lawyers play a vital role in our society and should reflect the country's diversity. This working group examined how to increase diversity in the legal profession.

The pipeline covers a considerable amount of ground. It begins in pre-kindergarten, extends through elementary and high school, stretches to college and law school, and encompasses bar examination passage. Along this continuum there are points where diverse students are diverted off the path or never find their way on to it. Well-entrenched, complex problems such as the school-to-prison complex and lack of access to financial aid are among the "leaks" in the pipeline where diverse students can get lost.

The working group sought to empower students and to explore new avenues into the profession. It created a searchable database of pipeline programs so that students, teachers, guidance counselors, parents, and mentors can directly access information about pipeline programs across the country. The working group also forged a new collaboration with the Judge Advocate General's Corps to explore ways that the ABA and the U.S. military can educate students about legal careers and how the two institutions can share and learn from one another about their respective recruiting and diversity efforts.

**Chairs: Martha Minow and Erika Robinson**

**Key Projects:**

- The National Pipeline Diversity Initiatives Directory
- Collaboration with the Judge Advocate General's Corps

1. Deborah L. Rhode, "Law Is the Least Diverse Profession in the Nation. And Lawyers Aren't Doing Enough to Change That," *Washington Post*, May 27, 2015, <https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/>.

## 1. The National Pipeline Diversity Initiatives Directory (NPDID)

The NPDID is a searchable, online database of pipeline programs across the country. Users can search for a program based on its geographic region, educational level, targeted demographic of students served, intended age range of the participants, and core skills focused on. The core skills are drawn from the competencies identified by the ABA Section of Legal Education and Admissions to the Bar and include problem solving, critical reading, writing and editing, oral communication, listening, research, organization and management, public service and promotion of justice, relationship building and collaboration, background knowledge, and exposure to the law. Further, the database highlights important programmatic features, such as whether the program is free or fee-based; whether it is offered after school, on weekends, or in the summer; and the program's duration. The profile of each program includes a listing of its board of directors, staff, number of participants, and whether it has any partners.



The NPDID fills an information gap. There were few ways for people to know about resources beyond those in their immediate community. Students and their teachers, guidance counselors, parents, mentors, and advocates can use meaningful data to conduct a more comprehensive search, compare programs, and find one that best meets their needs.

The Commission partnered with the ABA Council on Racial and Ethnic Diversity in the Educational Pipeline and the Law School Admission Council (LSAC) to revitalize the database. The LSAC is a nonprofit corporation that provides products and services to ease the admission process for law schools and their applicants and is best known for administering the Law School Admission Test.

*Want to search the NPDID or submit a program for consideration? Scan the QR code.*



## 2. Collaboration with the Judge Advocate General's Corps



As the Commission pursued its inquiry into how to help diverse students successfully navigate the pipeline into the profession, it explored possibilities for other entry points into the pipeline and whether there were potential partners in educating students about the legal profession and encouraging them to consider a career in law. The inquiry sparked a conversation with senior military leaders about the practice of law in the armed forces.

On January 5, 2016, the conversation officially began with a meeting at the Pentagon between the ABA and the senior leaders of the legal programs for each service (the Judge Advocate General for each of the Services) about diversity and inclusion in the legal profession. Attendees were: ABA President Paulette Brown; Lieutenant General Flora D. Darpino, U.S. Army; Vice Admiral James W. Crawford III, U.S. Navy; Lieutenant General Christopher F. Burne, U.S. Air Force; Cal Lederer (SES), Deputy TJAG, U.S. Coast Guard; Commissioner Martha Minow, Dean, Harvard Law School; Commissioner Captain Benes Aldana, U.S. Coast Guard; and Pedro Windsor, Managing Director, ABA Office of Diversity and Inclusion.

In the meeting, each organization shared an overview of its diversity and inclusion strategies pertaining to the pipeline and then discussed potential areas of collaboration. Ideas included how the ABA can participate in diversity week at the service academies, how veterans can access legal education, and how existing ABA resources can be linked to diversity recruitment efforts supporting military JAGs.

The conversation has continued beyond that meeting. President Brown and senior military leaders continue the dialogue in a short video addressed to students in which they discuss the practice of law in the military and how pursuing a career in the law helps ensure that the legal community continues to serve, represent, and reflect the changing face of our nation.

These efforts are just the beginning of a potentially rewarding collaboration that will extend far beyond this Commission.

## 3. Model Diversity and Inclusion Plan

The Model Diversity and Inclusion Plan (Model Template) is a template to help ABA entities prepare or update their own diversity and inclusion plans.

The ABA itself has a Member Diversity Plan in furtherance of its core goal to eliminate bias and enhance diversity (Goal III).<sup>1</sup> The plan contemplates that each entity within the ABA would have its own diversity plan as well. The plans are intended to increase participation by ABA members who are racial and ethnic minorities, women, disabled, and lesbian, gay, bisexual, and transgendered.

The Model Template begins with guidance on how to prepare a strategy. It suggests that the process begin with a critical self-assessment in which the entity evaluates its data in terms of programming, membership, and governance. The self-assessment is followed by identifying resources, staffing, and funding to help carry out the goals that will be developed. The Model Template then sets forth a clearly stated mission followed by the assignment of responsibilities for implementation and oversight, and a detailed focus on goals, objectives, implementation methods, milestones, and timeframes.

The Commission's goal is for all ABA entities to update their current diversity and inclusion plans pursuant to best practices set forth in the Model Template by the end of the ABA fiscal year 2016–2017.

1. The ABA Diversity Plan is at [http://www.americanbar.org/content/dam/aba/global/ABA\\_Diversity\\_Plan\\_May\\_2011.pdf](http://www.americanbar.org/content/dam/aba/global/ABA_Diversity_Plan_May_2011.pdf).

## 4. Continuing Legal Education (CLE) Policies

The Commission concluded that all attorneys should receive education regarding diversity and inclusion and the elimination of bias. It therefore drafted and advocated for Resolution 107, which encourages all state, local, territorial, and tribal courts, bar associations, and other licensing or regulatory authorities that currently require mandatory continuing legal education (MCLE) to modify their rules to include, as a separate required credit, programs regarding diversity and inclusion in the legal profession. The resolution does not specify the number of hours for diversity and inclusion CLE or increase the total number of MCLE hours required. The ABA House of Delegates passed Resolution 107 at the 2016 ABA Midyear Meeting.

The Commission also concluded that the ABA, as a leading provider of CLE programming, should itself strive to present diverse viewpoints. The Commission, working closely with the Standing Committee on CLE, advocated for a new policy that requires individual CLE programs sponsored or co-sponsored by the ABA with three or more panel participants (including the moderator) to reflect a minimum level of speaker diversity as detailed in the policy itself.

Both measures will raise awareness through education. Attorneys can learn more about diversity and inclusion through MCLE and will benefit from diverse viewpoints presented during CLE on any topic.

*Want to view Resolution 107? Scan the QR code.*



*Want to view the Model Diversity and Inclusion Plan for ABA entities? Scan the QR code.*





## Implicit Bias Working Group

The working group addressed how corrosive implicit bias is to our system of justice. Its focus was on helping key players in our justice system—prosecutors, public defenders, judges, and juries—become more aware of their own biases and appreciate how they affect their roles in administering justice.

“Implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual’s awareness or intentional control,” according to Professor Jerry Kang, a UCLA law professor who specializes in implicit bias training for the legal profession.<sup>1</sup>

The working group produced a series of videos and an accompanying toolkit that can be used in training programs for judges, prosecutors, and public defenders to help those professionals identify their biases and explore what to do about them. The working group addressed juries by advocating for amendments to the ABA Principles for Juries and Jury Trials that would raise jurors’ awareness about implicit bias and how to avoid it in decision making and that would ensure that juries themselves are fully diverse by adding marital status, gender identity, and gender expression to the list of groups that should not be excluded from jury service.

Studies show that implicit bias is something that can be controlled if individuals are equipped with the tools necessary to address it. This group contributed valuable tools.

**Chairs: Phoebe Haddon and Kimberly Norwood**

**Key Projects:**

- *Hidden Injustice: Bias on the Bench*, an implicit bias training video for judges
- *Hidden Injustice: Toward a Better Defense*, an implicit bias training video for public defenders
- *Hidden Injustice: The Prosecutor’s Paradox*, an implicit bias training video for prosecutors
- *Toolkit*
- *Proposed amendments to ABA Principles for Juries and Jury Trials*

1. See Jerry Kang, “Implicit Bias: A Primer for Courts,” August 2009.

## 5. Diversity and Inclusion Web Portal

The Commission reenergized the diversity and inclusion web presence on the ABA’s website.

As originally organized, the web page dedicated much of its real estate to narrative descriptions of entities, resources, and reports. It now highlights and aggregates critical diversity and inclusion information across the ABA, including the diversity pages for the ABA’s sections, divisions, forums, and other entities; available fellowships and scholarships; toolkits and reports; and upcoming events and products. By reorganizing the content and using graphic elements, the new portal conveys information in a much more concise and user friendly fashion. An example is the ease in accessing the Speaker Directory, a national clearinghouse of experts with an interest in speaking and moderating opportunities. Users can now simply click on an icon (that also has a short label beneath it), whereas before they had to scroll through the entire page. Graphical icons displayed on a grid on the top half of the page allow for more information to be conveyed instantly.

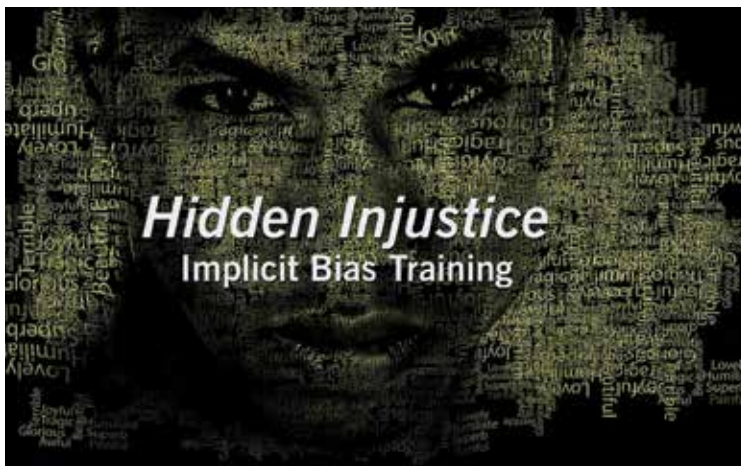
The new layout allows access to more than three times the diversity and inclusion information in less than half the space. These design improvements pave the way for new dynamic elements to be introduced, such as a diversity Twitter feed providing real-time information on trending topics, resources, and discussions.

As one of the ABA’s four core goals, diversity and inclusion holds a prominent position on the website. The transformation of this space from a page with lots of narrative information to a web portal that uses elements to make it more user friendly and inviting allows the ABA to better promote its diversity strategies, accomplishments, and priorities.

*Want to visit the new Diversity and Inclusion Web Portal? Scan the QR code.*







## 6. Implicit Bias Videos and Toolkit

Eliminating bias in the justice system was a top priority for the Commission. This priority was advanced by focusing its attention on the key players in the justice system—judges, prosecutors, and public defenders. Short training videos were created for each group featuring the nation’s top law professors as well as other experts and individuals who have served in those roles reflecting on the topic of implicit bias and what to do about it. The video focusing on judges received the second-place honor in

the 37th annual Telly Awards, the premier awards program recognizing the finest film and video productions. Honored in the category of social responsibility, the video was singled out for a bronze Telly Award out of more than 13,000 entries.

The videos are supported by a toolkit that offers assessment tools, web-based resources, an extensive bibliography of the latest research, and a PowerPoint presentation to guide discussions about implicit bias.

*Want to view the videos and toolkit? Scan the QR code.*



## 7. Jury Principles

The ABA Principles for Juries and Jury Trials is a set of nineteen principles that define our fundamental aspirations for the management of the jury system. Originally approved by the House of Delegates in 2005, the principles were anticipated to evolve over time in order to keep pace with the ideals to which we aspire. The Commission partnered with the Commission on the American Jury to propose changes that reflect the ideals of inclusiveness and awareness of implicit bias.

The first proposed revision will amend Jury Principle 2, which states that “Citizens have the right to participate in jury service and their service should be facilitated.”<sup>1</sup> The principle recommends that jury service should not be denied or limited on the basis of race, national origin, gender, age, religious belief, income, occupation, disability, sexual orientation, or any other factor that discriminates against a cognizable group in the jurisdiction. The Commissions proposed adding marital status, gender identity, and gender expression to that list.

The second proposed revision will amend Jury Principle 6, which states that “Courts should educate jurors regarding the essential aspects of a jury trial.”<sup>2</sup> The Commissions proposed adding a new section that educates jurors on the impact of implicit bias on the decision-making process. Specifically, it says that courts should instruct the jury on implicit bias and how these biases may affect the decision-making process without the jury being aware of it and encourage the jurors to resist making decisions based on personal likes or dislikes, gut feelings, or intuition. Because there are so few opportunities to educate jurors in the courtroom setting, the Commissions believe this is a practical way to make jurors aware of implicit bias.

Juries play a vital role in our system of justice and their decisions have significant impact. The Commission sought to assure public confidence in the justice system by ensuring that everyone is able to fully participate as a juror and does so with a heightened awareness of his or her own biases.

1. [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/american\\_jury/principles.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/american_jury/principles.authcheckdam.pdf), page 4.

2. [http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/american\\_jury/principles.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/american_jury/principles.authcheckdam.pdf), page 7.



*Want to view the full report and proposed amendments to the ABA Principles for Juries and Jury Trials (Resolution 116)? Scan the QR code.*





## 8. Economic Case Policy Resolution

In its exploration of ways that the profession can expand economic opportunities for diverse attorneys, the Economic Case working group arrived at the conclusion that meaningful change could take place only when clients and entities that employ lawyers come together in a concerted effort. Thus, the Commission drafted a resolution that requires action by both groups. The resolution urges all providers of legal services to expand and create opportunities for diverse attorneys and urges clients to direct a greater percentage of the legal services they purchase (or their legal spend) to diverse attorneys.

*Want to learn  
more about  
Resolution 113?  
Scan the QR code.*



## 9. Model Diversity Survey

Clients—whether they are Fortune 500 companies, municipal corporations, or governmental entities—wish to know whether their law firms reflect the diversity of their employees, customers, other stakeholders, and society as a whole. The business case for diversity asserts that everyone is better served when the makeup of lawyers reflects the community in which legal services are provided.<sup>1</sup> Yet clients need a uniform and consistent tool to collect data that will help them assess the diversity and inclusion practices of the firms they engage or are considering engaging. To address this need, the ABA created the Model Diversity Survey. The Model Diversity Survey is available at no cost, applies to law firms of all sizes, tracks data pertaining to all attorneys considered diverse under Goal III, and offers guidance through an accompanying toolkit on how best to evaluate the data. This survey has great potential to become the standard-bearer for measuring the profession's progress and will thus help facilitate opportunities for diverse attorneys.

*Want to view the  
Model Diversity Survey?  
Scan the QR code.*



1. Luis Diaz and Richard Meade, "What Gets Measured Gets Done: The Case for Uniform D&I Metrics in the Legal Procurement Process." *New Jersey State Bar Association Diversity Committee Newsletter*, September 2015.

Mark Roellig, James DeGraffenreidt Jr., and Cathy Minehan. "Fixing What's Broken: Strategies for Increasing Diversity in Law Firms." *ACC Docket*, March 2015.

Mark Roellig, "'WHY' Diversity and Inclusion Are Critical to the Success of Your Law Department" (paper presented at the PLI Corporate Counsel Institute, New York, NY, October 2012).



## 10. Sponsorship of the Proposed Amendment to Model Rule 8.4

The Commission recommended that the ABA incorporate an anti-discrimination and anti-harassment provision into the Black Letter of the ABA Model Rules of Professional Conduct for the first time since the ABA adopted the Model Rules in 1983. The Model Rules of Professional Conduct are promulgated by the ABA as an archetype for jurisdictions to consider as they establish ethics codes.

The proposed provision creates new paragraph (g) in Rule 8.4 making it misconduct for a lawyer to “harass or discriminate on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, or socioeconomic status in conduct related to the practice of law.” In the Commission’s view, the new paragraph (g) and accompanying comments forthrightly address harassment and discrimination and offer a clear definition of both.

The Commission joined the Standing Committee on Ethics and Professional Responsibility, the Section of Civil Rights & Social Justice, the Commission on Disability Rights, the Commission on Racial and Ethnic Diversity in the Profession, the Commission on Sexual Orientation and Gender Identity, and the Commission on Women in the Profession in making the recommendation.

*Want to learn more about the proposed Rule 8.4(g)? Scan the QR code.*



## Economic Case Working Group

The working group sought to identify ways to expand economic opportunities for diverse attorneys. How diverse attorneys fare in the marketplace makes a difference in their ability to thrive and participate fully in the profession. The group specifically examined the roles that law firms and clients play in driving the economic success of diverse attorneys and what could be done differently. Although the group focused its examination on diverse attorneys in private practice settings that range from AmLaw 100 firms, mid-sized firms, and boutique firms to minority- and women-owned firms and solo practices, it recognized that many of the principles could be applied to diverse attorneys working in the public sector.

The working group found that law firms should ensure that the diverse attorneys within their ranks receive meaningful opportunities to develop their skills, grow their client base, contribute to the management and leadership of their firms, and ultimately reap the rewards that flow from that investment of time and talent. It found that clients (both corporations and other types of clients) should use their buying power to incentivize firms to improve in the area of diversity and inclusion. The well-established business case for diversity posits that diverse teams produce better results.<sup>1</sup> Many clients want these results and want their legal providers to reflect the diversity of their employees, customers, other stakeholders, and society as a whole.

To inform its work, the working group conducted outreach with key organizations, including the national diverse bar associations and organizations that are dedicated to diversity and inclusion in the legal profession. The group served as the lead author for a resolution and report being presented by the Commission to the House of Delegates. The resolution urges law firms to focus on their diversity and inclusion practices in a meaningful way and urges clients to use their purchasing power to increase economic opportunities for diverse attorneys. To support implementation of the resolution, the working group developed a Model Diversity Survey that will help clients measure the effectiveness of diversity and inclusion in the legal teams they engage and promote efficiency, uniformity, and consistency in the gathering of clear, objective data. Finally, the working group has developed and organized a presidential showcase program for the 2016 ABA Annual Meeting that features some of the nation’s leading general counsel. The program explores how corporations can allocate their legal spend in a way that benefits more diverse attorneys and what tools will help both corporate law departments and law firms consistently and transparently benchmark diversity demographics and initiatives. The program concludes with a town hall discussion during which diverse attorneys from various sectors of the profession engage in dialogue with the general counsel.

**Chairs: Wendy Shiba and Alan Bryan**

**Key Projects:**

- Economic Case House of Delegates Resolution
- ABA Model Diversity Survey
- Presidential Showcase Program: “Fortune 500 General Counsel Share the 3Cs of Diversity and Inclusion: Commitment, Candor, and Collaboration”

1. Mark Roellig, “WHY” Diversity and Inclusion Are Critical to the Success of Your Law Department” (paper presented at the PLI Corporate Counsel Institute, New York, NY, October 2012).





# ABA Diversity & Inclusion 360 Commission

## **ABA President**

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