RESOLVED, That the American Bar Association urges all providers of legal services, including law firms and corporations, to expand and create opportunities at all levels of responsibility for diverse attorneys; and

FURTHER RESOLVED, That the American Bar Association urges clients to assist in the facilitation of opportunities for diverse attorneys, and to direct a greater percentage of the legal services they purchase, both currently and in the future, to diverse attorneys; and

FURTHER RESOLVED, That for purposes of this resolution, “diverse attorneys” means attorneys who are included within the ambit of Goal III of the American Bar Association.
REPORT

I. Introduction

The American Bar Association (“ABA”) has four Goals. When the Goals were established, it was determined that no one goal is more important or carries more weight than the others. Goal III is to eliminate bias and enhance diversity,¹ and was borne as an extension of former Goal IX. As amended, Goal IX was “to promote the full and equal participation in the profession by minorities, women, persons with disabilities, and persons of differing sexual orientations and gender identities.” It is well established that when organizations are diverse and inclusive at every level, clients and the public are better served, which favorably impacts the ABA’s Goal II, to improve our profession. Moreover, the well-established business case for diversity and inclusion demonstrates that clients, the legal profession and society are best served when the makeup of lawyers reflects the community in which legal services are provided.² Against this backdrop, the ABA President created the Diversity & Inclusion 360 Commission (the “DI360 Commission”) to examine the many facets of diversity and inclusion in the profession, and to formulate methods, policy, standards and practices to best advance diversity and inclusion over the next ten years.

The underlying sense of urgency for the DI360 Commission’s work and its one-year timeframe stem from the crisis in confidence that many Americans – particularly young Americans – feel about the fairness of our justice system. The ABA has the responsibility to do what only a national association of nearly 400,000 attorneys and judges can do: help restore confidence in our justice system. The ABA strives to uphold the principles of fairness, equality and inclusion, yet the legal profession lags behind other professions in reflecting the diversity of our nation.³

¹ Goal III: Eliminate Bias and Enhance Diversity. Objectives:
1. Promote full and equal participation in the association, our profession, and the justice system by all persons.


To fulfill its mission, the DI360 Commission is developing sustainable action plans, producing practical tools, and recommending specific action items to move the needle on diversity and inclusion in an impactful way. The DI360 Commission has conducted its 360-degree review through four working groups, one of which is the Economic Case working group, which seeks to identify specific ways to expand economic opportunities for diverse attorneys.\footnote{For an explanation of the term “diverse attorneys,” see note 1, supra.}

The economic well-being and success of diverse attorneys makes a difference and is crucial to moving the needle on diversity and inclusion. Diverse attorneys need meaningful opportunities to compete for and attain the best client work. Their success would positively impact other aspects of diversity and inclusion. The economic success of diverse attorneys would attract others into the profession, thereby building the pipeline; upend the implicit bias that stifles opportunities now; and result in the full and unhindered participation of diverse attorneys in the profession, thereby making the profession more representative of the populations it serves. Undoubtedly, a win for diversity and inclusion and the realization of Goal III is a win for our entire profession and the society we serve. As explained below in Section II of this report, the resolution is consistent with Goal III and would take diversity and inclusion to the next level by calling for specific and measurable action by entities that employ lawyers and by clients.

II. Justification for Expanding Economic Opportunities for Diverse Attorneys

A. Survey Data

Despite significant efforts, the legal profession lags behind other professions when it comes to diversity and inclusion. Members of racial and ethnic groups, women, members of LGBT groups and lawyers with disabilities continue to be vastly underrepresented in the legal profession.\footnote{For example, 88 percent of lawyers are white – women (although 47 percent of law students and more than one-third of the profession) account for only about one-fifth of law firm partners, general counsels of Fortune 500 corporations and law school deans, and people of color make up fewer than 7 percent of law partners and 9 percent of general counsels of large corporations. See \url{http://www.nalp.org/lawfirmdiversity_feb2015} for statistics on under-representation of lawyers with disabilities (based on lawyers with disabilities in 740 law offices, covering 73,081 lawyers). See \url{http://www.nalp.org/1215research} for statistics on LGBT representation among lawyers (for openly LGBT lawyers based in 943 offices/firms reporting counts.)} According to the Report of the Ninth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms,\footnote{Rikleen, Lauren Stiller. \textit{Report of the Ninth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms}. Chicago: National Association of Women Lawyers, 2015. Accessed April 14, 2016. \url{http://www.nawl.org/2015nawlsurvey}.} the nation’s largest law firms have made virtually no progress since the first survey conducted by the National Association of Women Lawyers (NAWL) in 2006 in promoting women into the highest ranks, whether measured by the percentage of equity partners, compensation, representation on the firm’s highest governance committees, or rainmaking credit. While focusing its attention on the status of women lawyers in law firms, the NAWL survey reveals that the data are just as challenging for other diverse groups, including lawyers of color and LGBT lawyers.
The demographics of large law firms have not kept pace with an increasingly diverse pool of talent. The percentage of law school graduates of color has almost doubled in the past two decades to just over 25 percent.\(^7\) And the percentage of associates who are of color increased to 21.63 in 2014 from 8.36 percent in 1993.\(^8\) Yet, lawyers of color accounted for only 7.33 percent of partners in the nation’s top 200 law firms in 2014.\(^9\) According to the latest Vault/MCCA Law Firm Diversity Survey Report, “[a] higher proportion of minority partners are salaried than hold equity in their firms. Attorneys of color represent 10.21% of non-equity partners, compared to 7.53% of equity partners. Among women of color specifically, the contrast between equity and non-equity status is even greater: just 2.27% of equity partners are minority women, compared to 4.35% of non-equity partners.”\(^10\)

**B. The Role of Law Firms**

Many law firms have diversity and inclusion programs. Despite valiant and commendable efforts, however, our profession has been unable to move the needle in a meaningful way. This resolution urges law firms to expand and increase opportunities at all levels of responsibility for diverse attorneys.\(^11\) Due to the increasing numbers of diverse law school graduates, the partnership pipeline is richer today more than ever. Yet women comprise just 18 percent of the equity partners in firms responding to the Ninth Annual NAWL Survey.\(^12\) Attorneys of color comprise a mere 8 percent of equity partners, of whom few are women, and at firms reporting data for partners who identify as LGBT, only 2 percent of female and 1 percent of male equity partners are LGBT.\(^13\) Information about lawyers with disabilities is difficult to come by in reported surveys. According to a press release issued in February 2015 by the National Association for Law Placement, “the information that is available suggests that partners with disabilities (of any race or gender) are scarce, with about one-third of 1 percent of partners reported as having a disability in the three most recent years.”\(^14\)

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\(^9\) Id.


\(^11\) While the resolution focuses on the ability of clients to impact economic opportunities for diverse attorneys in the law firms with which they do business, it also urges all providers of legal services to increase opportunities at all levels of responsibility for diverse attorneys. This could include entities that employ attorneys in both the public and private sectors.


\(^13\) Id.

Equity partnership is but one measure of economic success for diverse attorneys in law firms. The ABA must urge law firms to provide opportunities for diverse attorneys to develop and advance to meaningful levels and positions of responsibility within their firms, including:

- Firm chair, managing partner, or co-managing partner
- Senior leadership (Executive/Management Committee or equivalent)
- Regional office managing partner
- Practice group or department leader
- Committee chair
- Partner Review Committee (or equivalent) member
- Compensation Committee member
- Hiring partner or equivalent
- Relationship partner receiving origination credit
- Lead partner for significant matters
- Equity partner

C. The Role of Clients

Corporate clients are frustrated. Despite the business imperative for diversity, law firm demographics have not kept pace with the demand by clients for meaningfully diverse teams to handle their matters. In order for clients to understand and properly demand results, clients must collect specific data on the diversity and inclusion practices of firms they engage or are considering engaging; set clear expectations with law firms; and include diversity and inclusion performance as a criterion in their decisions on which firms they retain. To assist in these efforts and to provide efficiency and uniformity in the collection of data, the DI360 Commission has developed a Model Diversity Survey, as described and explained below in Section II.D of this report.

Specifically, this resolution urges clients to assist in the facilitation of opportunities for diverse attorneys and to direct a greater percentage of the legal services they purchase to diverse attorneys (whether practicing as solo practitioners, in firms whose majority ownership is by diverse attorneys, or in majority-owned firms).

Many corporations have supported diversity within their approved law firms for years, if not over a decade, and more companies join this quest each year. These corporations have collectively spent hundreds of millions of dollars in support of legal diversity through sponsorship, legal spend, and otherwise. Yet, data reveal that little has changed in our nation’s law firms and, for some, it is getting worse.

Corporations want to see a return on their investment and they want to know that they are using law firms that reflect the diversity of their employees, customers, other stakeholders, and society as a whole. Corporations as clients need a resource to help ensure that they are engaging law
firms that embrace these laudable goals. Law firms that are truly reflective of our diverse society at all levels need a uniform way to demonstrate their dedication. More importantly, corporations that are new to, but interested in, this effort need guidance and uniform information on the metrics that are most important to fulfilling our shared goals. Law firms that are not currently part of these efforts need inspiration and a uniform tool to help them move forward.

The business case for diversity applies equally to other clients, including municipal corporations, state and federal agencies, and other governmental entities. In their procurement of legal services, they, too, would benefit from the ability to understand the diversity and inclusion practices of law firms with which they do business.

D. The Role of the ABA

To serve these needs, the DI360 Commission is creating a means for all stakeholders to understand and improve diversity and inclusion through use of a model survey and accompanying guidance on best practices for its effective use. No organization but the ABA has the breadth and diversity of membership to take on this task and fulfill our collective goal of increasing diversity and inclusion in our profession.

Specifically, the DI360 Commission has developed a Model Diversity Survey (“ABA Model Survey”)\(^\text{15}\) that will enable clients to measure the effectiveness of diversity and inclusion in the legal teams that they engage. The ABA Model Survey will allow clients to gather diversity data from law firms that are uniform and consistent, and not based just on anecdotal brochures. Uniformity of data will allow for: (1) uniform measurement and comparison; (2) better business decisions by clients and law firms; and (3) reduction in the time, cost and burden for legal professionals to respond to myriad and voluminous requests for diversity data.\(^\text{16}\)

Although other organizations conduct surveys on law firm diversity, these surveys have significant limitations. Many are directed to large law firms only, to the exclusion of mid-to-small firms and, significantly, to women-owned and minority-owned firms, which often fall in the small-firm category. Some surveys focus on only a subset of Goal III attorneys, so they fail to capture comprehensive data on all diverse attorneys. The results of some surveys are available only for a fee, and yet another survey charges a fee to law firms in order to complete the survey.

The ABA Model Survey will overcome these limitations by capturing key data from law firms of all sizes on their diversity and inclusion practices as they apply to all attorneys considered diverse under Goal III. The ABA Model Survey will be available at no cost and its accompanying toolkit will provide guidance to corporate clients on how best to use the tool in

\(^\text{15}\) The current version of the ABA Model Survey is available by clicking on this hyperlink: [http://www.americanbar.org/content/dam/aba/images/office_president/presidents_diversity_inclusion_model_survey.pdf](http://www.americanbar.org/content/dam/aba/images/office_president/presidents_diversity_inclusion_model_survey.pdf).

\(^\text{16}\) According to a law firm diversity professional who is a member of the DI360 Commission, a firm typically receives more than 50 diversity surveys per year from existing or prospective clients.
making decisions about which law firms to retain and in evaluating their performance and progress in the diversity and inclusion arena. In addition, the ABA Model Survey will relieve law firms of the burden of completing many different, well-intentioned surveys, developed by various clients and groups. It will become the “gold standard” and will continue to evolve and improve over time.

The ABA is uniquely qualified to take the lead in spearheading a much-needed model tool in the diversity arena. The ABA will provide law firms and clients the means to accomplish the objective of the resolution by introducing the ABA Model Survey and providing instruction and guidance to corporate clients on its most effective use. Further, the work of the DI360 Commission lays the foundation for the collection and aggregation of law firm data gathered by the uniform survey. Through publication of the aggregate data on the ABA website, the profession and the public we serve will be able to assess annual changes in diversity metrics and gain an understanding of the legal providers that are making the most progress on diversity. In addition, a buyer of legal services will be able to compare responses from the firms they use to the aggregated data. This will enable clients to determine how focused – or not – their providers are on improving diversity.

The DI360 Commission anticipates that the ABA Model Survey will be the most utilized survey of its kind due to the fact that it will be made available, unlike similar surveys, for free and to the widest selection of law firms and corporations in the legal world. The survey and resulting data should become the standard-bearer for measuring our profession’s progress in this imperative, yet slow-moving, charge. While we create uniformity, simplicity, and education in this space, we also believe that collection and aggregation of this data will facilitate the addition of newcomers to this effort.

III. Why the ABA Should Take Action Now

A. Why is the House of Delegates Being Asked to Adopt this Resolution?

The ABA serves as the national representative of the legal profession, and also is the world’s largest organization of lawyers and judges. Leadership by the ABA can stir the conscience of the legal profession and inspire individual and collective commitments and, most importantly, action and results. Consistent with its status as the world’s leading organization of lawyers and judges, the Association must take a leadership position. Adoption of this resolution would provide an example for other organizations and the profession to follow. By urging action, this resolution would increase economic opportunities for diverse lawyers and thereby help realize the objective of Goal III.

B. The ABA Plays a Unique Role in the Legal Profession

No segment of society is so strategically positioned to address the issues of diversity as the legal profession. No other profession has a higher duty to do so. That duty arises out of the unique
offices that lawyers hold as ministers of the law and guardians of its conscience. The legal profession has a long and proud heritage as champions of individual rights and freedoms. The Association is uniquely qualified for the task. If adopted by the House of Delegates, this resolution would allow the ABA to play a crucial role in leading the legal profession to embrace and promote diversity at a higher level in law firms and corporations. Adoption of this Resolution would proclaim the Association’s unwavering commitment to equality for all lawyers.

C. The ABA’s Historical Stances on Diversity in the Legal Profession

The ABA has a long and proud history of demanding equality for lawyers of color and women. With the passage of Goal IX, “to achieve the full and equal participation of minorities and women within the profession,” and the creation of the Commission on Opportunities For Minorities in the Profession (currently known as the Commission on Racial & Ethnic Diversity in the Profession) in 1986, the ABA took bold steps to create its first and now the oldest entity to deal with facilitating racial and ethnic change in the ABA and the legal profession. The ABA’s creation of the Commission demonstrates one of the most successful, decisive and comprehensive actions taken by the legal profession to achieve the goal of equal opportunities for diverse lawyers.

Among the recommendations from the 1986 Report that created the Commission on Racial & Ethnic Diversity, Recommendation 3.4 directed the ABA to “take concrete actions with regard to the hiring, recruitment, promotion and advancement of minority lawyers.” In fact, the 1986 Report laid the foundation for the issues that this resolution addresses. Then, in 2008, the ABA adopted Goal III to eliminate bias and enhance diversity. Goal III replaced original Goal IX and demonstrated to the legal profession and the greater public that the ABA embraced diversity and inclusion as a core value. As a testament to the ABA’s leadership and influence, we witnessed an increase in the adoption of goals similar to Goal III by bar associations, law firms, corporations, and other legal entities throughout the country.

This resolution provides continuity with the 1986 Report and fulfills its mandate for “concrete actions.” This resolution also goes beyond the mandate of the 1986 Report by applying to all Goal III attorneys.

IV. Conclusion

The ABA represents the earliest coalescence of the legal profession. It is the seminal foundation for myriad legal organizations around the world and is, without question, the most diverse and influential of all voluntary legal organizations. The stated mission of the ABA includes serving equally its members, our profession, and the public, by defending liberty and delivering justice as the national representative of the legal profession. In order to achieve that mission, our

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profession must be truly diverse at all levels, in all areas, and in all occupations. We must relentlessly pursue Goal III by promoting full and equal participation in the ABA, the profession, and the justice system. In order to do so, all areas of the profession must be wholly reflective of the diversity we find in our society. While we have work to do in all areas of the profession, we have great work to do in law firms.

As the buyers of legal services, corporations and other types of clients may have the greatest impact in increasing diversity in the legal profession. They can use their power to drive change through the buying choices they make in their retention of legal services and their decisions regarding the continued use of certain legal providers, all based on the diversity of the firms and their progress toward improvement. Corporate America is well aware of the value of embracing diversity and inclusion and the correlation between its support and corporate results, employee engagement, and the need to focus on the broad customer base. With more consistent data available, corporates boards, chief executive officers, and general counsels can rationally and consistently measure and be held accountable for how they are doing.

This resolution calls for a two-pronged approach by urging law firms to focus on their diversity and inclusion practices in a meaningful way, and clients to use their purchasing power to increase economic opportunities for diverse attorneys. Working together, law firms and clients can have tangible impact in moving the needle on diversity and inclusion in the legal profession.

The Diversity and Inclusion 360 Commission respectfully urges the House of Delegates to adopt this resolution.

Respectfully submitted,

Eileen M. Letts, Co-Chair David B. Wolfe, Co-Chair
Diversity & Inclusion 360 Commission
GENERAL INFORMATION FORM

Submitting Entity: Diversity & Inclusion 360 Commission Submitted

By: Eileen Letts and David Wolfe,

Co-Chairpersons, ABA Presidential 360 Commission

1. **Summary of Resolution(s).** The resolution is not proposed to exclude any demographic, but to be more inclusive of those covered within the ambit of Goal III. To that end, the resolution urges (a) all providers of legal services, including corporations and law firms, to expand and create opportunities at all levels of responsibilities for diverse attorneys; and (b) clients to assist in the facilitation of opportunities for diverse attorneys, and to direct a greater percentage of the legal services they purchase, both currently and in the future, to diverse attorneys.

2. **Approval by Submitting Entity.** This Resolution and Report was formally approved by a vote of the Diversity & Inclusion 360 Commission during its meeting in Short Hills, New Jersey, on April 18, 2016. (Commission member Paul Fishman abstained due to conflict of interest issues related to his employment.)

3. **Has this or a similar resolution been submitted to the House or Board previously?** This specific resolution has not been previously submitted. In 1986, however, the HOD adopted a resolution for the ABA to “take concrete actions with regard to the hiring, recruitment, promotion and advancement of minority lawyers.” The instant resolution is the logical progression of the 1986 resolution passed by the HOD and is necessary to further advance diversity and inclusion in the legal profession.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?** The relevant policies are referenced in the Introduction of this Report: specifically, Goal II, “improving our profession,” and Goal III, “eliminate bias and enhance diversity.” Adopted in 2008, Goal III objectives are to “1. Promote full and equal participation in the association, our profession and the justice system by all persons. 2. Eliminate bias in the legal profession and the justice system.” The 360 Commission’s proposed policy resolution supports ABA Goals II and III.

5. **What urgency exists which requires action at this meeting of the House?** Since the HOD adopted the resolution in 1986 to “take concrete actions with regard to the hiring, recruitment, promotion and advancement of minority lawyers,” unfortunately, very little has changed. Additionally, based upon available research from NALP, Catalyst and other reputable organizations, including the American Bar Association, over the past few decades, little progress has been made. Thus, this resolution not only addresses those concerns, but, expands the covered group to include all attorneys who are within the ambit of Goal III, including women, racially and ethnically diverse attorneys, attorneys with disabilities and attorneys who are members of LGBT groups.
There is further urgency because without regard to how noble our profession is, it remains the least diverse profession of all comparable professions. It is submitted that more diversity will occur if those attorneys covered by Goal III believe economic and promotional opportunities will be available to them on an equal basis. The fact that the legal profession is the least diverse in many ways contributes to 50% of all young people believing the justice system is not fair (according to a recent Harvard study). Despite noble efforts, our apparent inability to adequately address such serious deficiencies in our own profession causes this resolution to be extremely urgent.

6. **Status of Legislation.** (If applicable) N/A

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

A newly formed Corporate Counsel Subcommittee of the Commission on Racial and Ethnic Diversity will be responsible for implementation of the policy resolution and the ABA Model Diversity Survey. It is reasonably certain that a research organization (to collect and codify data relating to the survey) will assist in the implementation of the Resolution.

This Resolution will allow the ABA to be a leader in diversity and inclusion, playing a crucial and unique role, as the national voice of the legal profession in the U.S. The ABA will lead the profession to embrace and promote diversity at higher levels in law firms and corporations.

8. **Cost to the Association.** (Both direct and indirect costs) Modest funding ($20,000) has been requested for FY2017 for costs associated with the implementation of this policy resolution and the ABA Model Diversity Survey.

9. **Disclosure of Interest.** (If applicable) N/A

10. **Referrals.**

Judicial Division
Section of Litigation
Section of Tort Trial and Insurance Practice
Business Law Section
Family Law Section
Section of Civil Rights and Social Justice
Section of Intellectual Property Law
International Law Section
Labor and Employment Law Section
Law Practice Management Section
Law Student Division
Section of Real Property, Trust and Estate Law
Senior lawyers Division
Solo, Small Firm and General Practice Division
Section of State and Local Government Law
Taxation Section
Young Lawyers Division
Council for Racial and Ethnic Diversity in the Educational Pipeline
Commission on Disability Rights
Coalition on Racial and Ethnic Justice
Center for Racial and Ethnic Diversity
Commission on Racial and Ethnic Diversity in the Profession
Commission on Sexual Orientation and Gender Identity
Commission on Hispanic Legal Rights
National Bar Association
National Hispanic Bar Association
National Asian Pacific American Bar
National Native American Bar Association

11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

The resolution is not proposed to exclude any demographic, but to be more inclusive of those covered within the ambit of Goal III. To that end, the resolution urges (a) all providers of legal services, including corporations and law firms, to expand and create opportunities at all levels of responsibilities for diverse attorneys; and (b) clients to assist in the facilitation of opportunities for diverse attorneys, and direct a greater percentage of legal services they purchase, both currently and in the future, to diverse attorneys.

2. Summary of the Issue the Resolution Addresses

For years organizations have worked to achieve greater diversity and inclusion in the legal profession. Unfortunately, the legal profession remains the least diverse profession of all comparable professions (e.g. physicians, engineers, accountants, et al.). Well-recognized studies report very little or no progress has been made to increase diversity and inclusion in our profession. We are a proud and noble profession that can do better. It is well settled that the public, the legal profession and clients are best served when lawyers reflect the demographics of the community in which legal services are provided. Increasing economic opportunities for diverse attorneys will be highly impactful in changing the trajectory of diversity and inclusiveness in the legal profession. The economic success of diverse attorneys is an effective means by which legal service providers can attract and retain more diverse attorneys to the profession.

3. Please Explain How the Proposed Policy Position Will Address This Issue

The policy, through the use of various recommended tools, including a uniform survey for use by both clients and lawyers who represent them, will assist law firms, lawyers and clients in achieving greater diversity and inclusiveness in the profession, consistent with Goal III, enhancing diversity and by application, also Goal II, improving our profession.

4. Summary of Minority Views

N/A