Combatting COVID-19’s Threat to Diversity in the Legal Profession

ABA Diversity & Inclusion Advisory Council Meeting
May 6, 2020

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Objectives

- Combatting COVID-19’s Threat to Diversity in the Legal Profession:
  - What is the issue
  - What to do about it
What is the Issue
Unconscious Bias

• Refers to the biases (beliefs, attitudes, behaviors) over which we have no conscious control and which are not accessible through introspection.

• They occur automatically and are triggered by our brain making quick judgments and assessments of people and situations.

• They encompass both favorable and unfavorable assessments and preferences.

• These hidden biases influence our behavior towards others without us realizing it.

• Everyone is susceptible to unconscious/implicit biases.
Characteristics that Trigger Bias

- Race
- Sex
- Age
- Ethnicity
- Language
- Culture
- Socioeconomic
- Religion
- Skin Color
- Weight
- Class
- Sexuality
- Gender Identity
- National Origin
- Disability
- Political View
- Marital Status
- Physical Attractiveness
- Height
Negative Impact in the Workplace

- Recruiting and interviewing candidates;
- Making hiring and starting salary decisions;
- Giving job and training assignments;
- Giving job performance and evaluation reviews;
- Making promotion choices; and
- **Making firing and RIF choices.**
There’s a real risk law firms will make cuts that affect minorities more or let pipeline building and mentorship programs backslide due to the pressures of the Covid-19 crisis.

Between 2008 and 2009, the number of minority lawyers at the nation’s largest firms dropped by 9 percent, mostly associates.

It took an entire decade for overall black associate representation to recover. According to NALP data, it took until 2019 to again surpass the 4.66% mark this metric reached in 2009.

Even so, the percentage of black women working as associates in 2019 still remained below 2009 level.
What to do about it
Steps to Take

• Keep in mind the lessons learned from 2007-2009 recession and use it 2020 to help retain minority and women lawyers
• Results of the application of firm “Best Practices” are being critically examined for inherent bias
• New practices have been quickly created to buttress the position/progression of diverse lawyers
• Make efforts to protect a core of diverse lawyers
• Ironically, the pandemic shows the strength of the US diversity business case as clients are emphasizing that diverse attorneys must be retained and diverse attorneys are being cherry picked by recruiters
Steps to Take

- We have the power to help foster specific strategies that help underrepresented people during times of uncertainty:
  - ensure that access to hours, clients, and profile raising opportunities are being allocated equitably across backgrounds
  - make sure that capacity or workforce shift conversations do not have a disproportionate impact on underrepresented people
  - understand that neutrally intended metrics do not always have a neutral impact (e.g., metrics like billable hours, for instance, which often rely on a partner/leader keeping people in mind)
  - have bias interrupters / advocates / D&I leaders at the table to keep diversity top of mind and stand in the gap for people
Office Hours @ HL

• HL announced virtual diversity office hours:
  – Meeting the challenges posed by COVID-19 has certainly required many adjustments to our personal and work lives.
  – Opportunity to discuss ideas and tips for others or for the firm in the way we are approaching, supporting and interacting with communities.
  – Virtual office hours made available to connect with Diversity & Inclusion professional.
Focus on ABA Goal III

• The American Bar Association already knows the legal profession has a diversity issue.

• Keep promoting ABA Goal III: Eliminate Bias and Enhance Diversity

• The objectives of Goal III are:
  – 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.
Promote ABA Model Rule 8.4(g)

- Model Rule 8.4: Misconduct: It is professional misconduct for a lawyer to: ... “(g) Engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination 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. This Paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 1.16. This Paragraph does not preclude legitimate advice or advocacy consistent with these Rules.”