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Goal III Report: The State of

# Racial and Ethnic Diversity

IN THE AMERICAN BAR ASSOCIATION

Commission on Racial and Ethnic Diversity **Executive Summary 2009**

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Table of

# Contents

Executive Summary.....	2	Tactical Approaches.....	4
Relative Analysis.....	3	Strategies Toward Success.....	5
Mixed Messages.....	4	Conclusion.....	6

Executive

# Summary

To *eliminate bias and enhance diversity in the legal profession*—this is our goal; this is our objective; this is our charge. It has been our ongoing responsibility to promote the full and equal participation by all persons in the association, the profession and the justice system. The ABA Commission on Racial and Ethnic Diversity in the Profession takes this responsibility seriously and continues its efforts to actuate the tenets of Goal III. Essential to the ABA's commitment to diversity and its ability to provide *real* leadership in this area is the transparency with which it addresses its own progress in achieving its inclusion goals.

Since its inception, the Commission has played an integral role in monitoring and assessing the level of diversity within the association and the individual entities that it comprises. Since 1998-99, we have analyzed the state of racial and ethnic diversity among our member entities and have annually documented the results. The information contained in this 2008-09 report offers an assessment of the status

of racially and ethnically diverse lawyers, specifically in positions of authority and leadership, in the association and its entities.<sup>1</sup> We hope the suggestions, strategies and practices presented in the report will inspire ABA leaders at every level to identify and effectuate innovative ways to engage and promote minority participation in association work at the highest levels. Moreover, we strongly encourage current and incoming ABA entity leaders to look to the diversity-related initiatives highlighted throughout the report for guidance as they design programming that provides meaningful leadership development and opportunities for their racially and ethnically diverse members.

## Endnotes

1. In an effort to become more ecologically friendly this year's report will be published online. An electronic copy of this year's report, in addition to previous Goal IX reports and data, is available at [www.abanet.org/diversity/publications/home.html](http://www.abanet.org/diversity/publications/home.html).

## Relative Analysis

As we reviewed the raw numbers and percentages of minorities active in the leadership of each of the entities, we were struck by the notion that progress is relative—relative to:

- *The size of the entity.* Attempting to make direct comparisons between groups of varying membership size is like comparing apples to oranges—the results can be a bit skewed.
- *Where the entity started in terms of minority participation.* Several groups experienced decreases in minority leadership growth, which on its face could be cause for concern; despite the losses, the groups still maintain solid and, often, impressive levels of minority participation. Their minority numbers were large enough to absorb the loss, which enabled them to maintain their high minority percentage levels.
- *The available pool of minorities within a particular practice area.* Certain practice areas are more heavily populated with minority practitioners than others (i.e., family law versus tax law), which provides some entities with a greater pool from which to draw candidates for leadership positions.
- *The type of leadership roles held by minorities within the entity.* Not all leadership positions are created equal. There is a hierarchy among positions within every entity. Entry level positions, such as programming faculty serve as a training ground for new leaders and provide opportunities for mentoring and development; upper echelon positions, such as primary leadership and the nominating committee wield substantial decision-making and appointment authority. These high-level positions influence the look and make-up of entity leadership.
- *The availability of leadership positions within the entity.* You cannot fill positions that do not exist. The number of available leadership positions varies from entity to entity. For instance, some groups may have a publishing arm, others may not. Some may have a strong programming unit, others may not. These two particular leadership facilities often are viewed as a training ground for and developmental stepping stone to higher office.
- *The quantity and quality of the diversity-related programming and initiatives fostered by the entity.*

The purpose of entity-sponsored diversity programming is multi-fold:

1. to support and promote the diversity goals of the association;
2. to educate the membership about the value and necessity of inclusion;
3. to provide outreach to potential minority members, such as law school graduates and practitioners, for recruitment purposes;
4. to expose minority members to leadership opportunities within the entity;
5. and to identify potential future leaders and to provide leadership development to them. Those entities that fail to give inclusion the priority that it deserves limit their access to potential leaders who can contribute to the long-term and future success of the entity. Those that choose to develop programming *without* diversity in mind put themselves at a distinct disadvantage relative to the expansion of their leadership ranks. And while it is true that an entity with one top-notch initiative can produce respectable minority leadership growth, it stands to reason that an entity with several high-quality

initiatives can expand its minority leadership growth exponentially.

In our analysis, we acknowledge these factors, as applicable. However, under no circumstances should these factors be used to excuse inaction or half-hearted attempts. In order to fulfill the mandate of Goal III, our entities must commit to nurturing diverse leaders. To this end, we challenge every ABA entity to design and sponsor a variety of well-organized, substantive and sustainable diversity initiatives. We strongly encourage any entity that does not currently have a diversity committee, to establish such a committee to guide the development and implementation of these initiatives.

In the full report, we examine the progress made by ABA sections, divisions, forums, commissions and standing committees on the diversity leadership front. The focus of our analysis is two-pronged, exploring both minority growth statistics *and* strategies for long-term minority leadership development. We recognize the difficulty of comparing diversity statistics and progress, entity to entity, due to differences in entity size and the demographics of specific practice areas. Therefore, we are basing our analysis primarily on each entity's historical progress, to date. However, where appropriate, the report does draw general comparisons between ABA entities with regard to the effectiveness of specific diversity-related programming in order to encourage the sharing of successful strategies and practices.

## Mixed Messages

We have miles to go before we achieve full inclusion of underrepresented racial and ethnic groups in the profession. We also have miles to go before we achieve such inclusion within the ranks of ABA leadership. As covered in the full report, a few ABA entities have made notable progress; some have made incremental, yet promising, movement forward, while others have found meaningful progress to be elusive.

The news is mixed; our findings are fraught with both good news and not so good news. Though rare, a few entities, such as the Dispute Resolution, Health Law and Litigation sections, reported minority leadership growth in almost every measureable category. And there are those groups, like the Forum Committee on the Construction Industry, Family Law Section and Real Property, Trust and Estate Law Section that experienced no minority leadership growth this year.

However, the vast majority of the ABA entities analyzed reported a mix of both positive and negative growth in minority leadership participation. For instance, entities such as the General Practice, Solo and Small Firm Section saw the actual number

of minorities in leadership rise but experienced a significant drop in the percentage of minorities in leadership. Likewise, the Criminal Justice Section reported growth in the proportionate number of minority leaders but a decrease in the actual number of minorities in leadership positions; and the list goes on.

Some entities may have been hindered in their diversity efforts by a lack of focus and direction or the inability to formulate an adequate game plan. Others may need to reinvigorate once effective programming to meet current and future challenges. And yet others are in the fortunate position of building and sustaining a flourishing diversity leadership program. It is to this latter group that other ABA entities should look to for fresh ideas and new approaches.

## Tactical Approaches

This report presents a snapshot of practical, accessible and workable strategies that every ABA entity can either use or modify to meet their own unique diversity-related objectives. We want the sections, divisions, forums, commissions and standing committees to share ideas, information and innovations; forge alliances; and where appropriate and expedient, jointly develop and sponsor programming. We believe that shared strategies should be at the heart of successful diversity planning. Much can be learned and adapted from the experiences of others. Many of the entities identified in this report are engaged in endeavors that have borne fruit for their diversity initiatives. They include the:

- Hiring of a diversity officer and/or the establishment of a diversity committee.
- Development of a strong internal diversity plan with short and long-term goals.
- Collaboration with local and national minority law student and bar associations.
- Sponsorship of diversity networking receptions.

- Creation and development of clerkship, scholarship and fellowship programs for minority law students.
- Support of pipeline programs designed to interest diverse students in specific areas of the law.
- Publication of books and periodical articles on race, ethnicity and inclusion.
- Establishment of a targeted minority recruiting program.
- Development of CLE programming that utilizes diverse faculty and panels.
- Creation of an internal diversity reporting system with a built-in accountability mechanism.
- Production of a database of minority practitioners.
- Development of a mentoring program for law students and minority lawyers.

These sample strategies provide a starting point for entities looking for fresh ideas and inspiration. We have included a more exhaustive list of successful approaches in the full report.

## Strategies Toward Success

The report provides an analysis of the status of minority leadership growth for every reporting ABA entity. However, the efforts of several ABA entities are worthy of special note because of their achievements. Their experiences serve as case studies on fostering racially and ethnically diverse leadership talent. Other groups may not have seen their minority leadership ranks grow significantly this year; but they put forth a good effort to introduce or expand existing initiatives, which may yield minority leadership growth in the future.

### Antitrust Law Section

The Antitrust Law Section continues to show steady growth in minority participation in Section leadership. Between 2007-08 and 2008-09, the number of minorities increased by seven members. Section leadership's commitment to diversity is evident. The 2007-08 Chair appointed several minorities to serve as committee officers. The 2008-09 Chair-Elect included in her platform her intention to make an even greater impact on minority participation. And for the first time, two of the Section's committee chairs are minorities. The Section also works closely with the National Conference for the Minority Lawyer.

### Section of Business Law

The Section of Business Law is a model for other ABA entities in its ongoing commitment to inclusion at all levels of leadership. The Sec-

tion has 222 minority leaders and continues its broad support of several successful diversity-related initiatives and events, which include an annual diversity networking reception; a Business Law Diversity Clerkship Program; the Business Law Fellows; and the Ambassadors and Diplomat programs, which involve diverse lawyers and others in the substantive work of the Section. The Section also continues to serve as primary coordinator of the National Conference for the Minority Lawyer, an annual collaborative event that brings together diverse lawyers from around the country.

### Section of Dispute Resolution

The Dispute Resolution Section recorded gains in every measurable area. These gains were fueled by the Section's ongoing diversity efforts, which include its annual Forum on Expanding Opportunities for Minorities and Women in Dispute Resolution; publication of the spring 2009 issue of Dispute Resolution Magazine on the topic of race and diversity; targeted recruitment of diverse faculty for Section programming; and a scholarship program benefiting underrepresented groups. The Section also has strong diversity presence in its leadership, with an African-American Chair-Elect and minorities making up 26.92% of its Council.

### Section of Litigation

This year the Section of Litigation boasts the highest level of minorities

in leadership in the Section's history. They have 209 minority leaders, an increase from 180 in 2007-08. The percentage of minorities in Section leadership is an impressive 22.28%. The Section dedicated 3.82% of its 2007-08 budget to the support of its diversity initiatives. The Section's efforts are paying off in dividends.

Its chair-elect is a woman of color. There are two minority women on the Section's Executive Committee and one minority woman delegate to the ABA House of Delegates. Diverse attorneys make up 21.05% of the Section's governing Council. More than 22% of the Section's appointed leaders are minorities and two women of color serve on the nominating committee. The foundation of the Section's success is its 90-step diversity plan, which emphasizes accountability on the part of all Section leaders and staff. A full-time Committees and Diversity Initiatives Director oversees the implementation of the plan. The Section sponsors a Minority Trial Lawyer Committee that publishes *Minority Trial Lawyer* magazine, which covers issues of interest to minority litigators; a Judicial Intern Opportunity Program that offers a full-time, six week summer internship to first and second year minority law students interested in legal research and writing for federal and state judges; CLE programming in which 20% of the presenters are diverse attorneys; and outreach to diverse local and national bar associations. In addition, the Section has renewed its longstanding support to the ABA Legal Opportunity Scholarship, with a new five-year financial commitment

to support the scholarship, which was created in 2000 to encourage minority students to attend law school.

### Law Student Division

The percentage of minorities participating in leadership activities in the Law Student Division grew from 23.15% in 2007-08 to 25.33% in 2008-09. The Division sponsors a variety of diversity initiatives, which include a Diversity Dialogue Series; a diversity grant and scholarship program; a diversity reception; and outreach to affiliate diverse bar organizations.

### Forum Committee on Franchising

The Forum Committee on Franchising experienced modest growth in minority leadership this year. The Committee engages in a number of strong diversity-related initiatives, including a program to identify current diverse members who exhibit immediate and/or long-term leadership potential. Members of the Committee's Governing Council act as "leadership liaisons" to these diverse candidates and mentor them in publication, program faculty, networking and committee appointment opportunities. Council members also partner with the Young Lawyers Division to coordinate the selection of a diverse candidate to act as YLD liaison to the Committee. The Committee hosts a networking reception to which all diverse Committee members are invited. In addition, it has partnered with the Women's Caucus to recruit diversity committee members and authors to write articles for its publication *The Franchise Lawyer*.

## Conclusion

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It is our hope and expectation that the information and strategies identified in this report will spur the continued creation of sustainable diversity programming that will generate continual growth in minority leadership for years to come. In collaboration with the ABA Center for Racial and Ethnic Diversity, the other Goal III entities, and diversity groups throughout the ABA, we stand firm in our commitment to further the goals of the association in this regard.

## Commission on Racial and Ethnic Diversity in the Profession 2008-2009

The ABA Commission on Racial and Ethnic Diversity in the Profession is a diverse group of committed lawyers that, through its work and programs, is the catalyst for creating leadership and economic opportunities for racially and ethnically diverse lawyers within the ABA and the legal profession. We provide a voice to surface and tackle issues of discrimination, racism and bigotry, and to inspire the ABA and the profession to value differences, to be sensitive to prejudice, and to reflect the society they serve. The Commission on Racial and Ethnic Diversity in the Profession is a part of the ABA Center for Racial and Ethnic Diversity, which coordinates and enhances the ABA's diversity efforts.

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Fred W. Alvarez

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**Commission on Racial and Ethnic Diversity in the Profession**

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