



**DIVERSITY and GENDER EQUITY
in the LEGAL PROFESSION:**

**BEST PRACTICES
GUIDE**

Diversity Implementation Task Force
of the Minnesota State Bar Association

June 2008

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Introduction

The work of the Diversity Implementation Task Force grows out of the deep commitment of the Minnesota State Bar Association (MSBA) to foster diversity in the legal profession. This Best Practices Guide is designed to assist Minnesota legal employers in implementing and maintaining diversity initiatives in their organizations. The Guide recommends important first steps organizations should take in establishing a diversity Best Practices plan and outlines specific Best Practices to help ensure fairness, inclusiveness and equity for women, racial and ethnic minorities, individuals of all religious backgrounds, those with disabilities, and gay, lesbian, bisexual and transgender individuals.

It is the intention of the Task Force that the Guide will be a helpful resource in working toward fairness and equality within the legal profession and, in the process, will assist employers in their ability to attract and retain a diverse workforce. Including and appreciating employees with a broad range of backgrounds, experiences, cultures, and lifestyles and respecting and honoring each individual will help create a richer environment for thinking creatively and solving problems, leading to better solutions for clients.

As the United States population and its workforce grow more diverse, organizations are increasingly expected to understand the unique needs and goals of both their employees and their clients. The ability to understand, incorporate and appreciate differences is more important than ever to compete successfully in a global marketplace. Organizations are learning that recognizing, valuing, and promoting diversity enhances the bottom line by recruiting the most talented employees, benefiting from broad and diverse thinking, and succeeding with an increasingly diverse client base.

The MSBA Diversity Effort – History and Origins

The MSBA and other legal organizations in the state have a longstanding history of examining and supporting diversity in the legal profession. One of the five primary goals of the MSBA is Acceptance and Inclusion, with a commitment to “principles of equality and fairness that will clearly demonstrate the value of diversity to the legal community.”

In 2005, Susan M. Holden, then-President of the MSBA, appointed the Task Force on Diversity in the Profession. In doing so, she noted the significant work of numerous committees over the years in promoting women and minorities and in eliminating bias in the legal profession:

- The Women in the Legal Profession Committee, founded in 1988, which has engaged in numerous projects to achieve the full and equal participation of women:
 - Produced an award-winning video.
 - Created a model mentoring program.

- Created the Self-Audit for Gender Equity (SAGE) objective and attitudinal surveys, collecting and analyzing data from public and private legal employers in 1997, 1999, and 2005.
- Published SAGE Best Practices in 2003, setting forth goals to encourage the employment and retention of women.
- Developed the SAGE award, recognizing employers for significant progress in furthering gender equity.
- The Diversity Committee, founded in 1997, which sponsors the Minnesota Minority Clerkship Program for summer associates, sponsors the website www.MNLegalDiversity.org, and assists the bar in advancing a culturally diverse workplace for the practice of law.
- The Minority Bar Summit, which is sponsored by the MSBA and includes minority bar associations, area law schools, and state and county bar associations, and which meets periodically to discuss issues of concern.

The 2005 Diversity Task Force was charged with broadening the scope of the past SAGE audits to track progress on other important areas of diversity. The Task Force developed and executed a comprehensive research study of Minnesota employers and individual lawyers on gender, race and ethnicity, sexual orientation, disability, religion, and creed. The study, titled the 2005 Self-Audit for Gender and Minority Equity, surveyed law firms, corporations, courts, legal aid organizations, county attorneys, attorneys general and law schools. The University of Minnesota Center for Survey Research assisted in developing a survey of individual lawyers, and a discussion guide used by the Task Force in focus groups organized by area of diversity. The purpose of the study was to gather and provide the legal community with information about demographic and cultural aspects of legal employment and the perception and experience of Minnesota attorneys regarding bias.

The full report of the 2005 Task Force, released in September 2006, is available at <http://www2.mnbar.org/committees/DiversityTaskForce/index.htm>. The 2006 Report stated that while some progress had been made in achieving diversity, significant work remained. The Report found a consensus for striving to achieve diversity, but the data reflected a disconnection between the perception and the *reality* of whether diversity had been achieved. The study also found disparate opinions of the severity of bias between attorneys in diverse communities and those in the majority.

The 2006 Report recommended that the MSBA appoint a committee to develop specific recommendations for action based on the results, and that those recommendations provide Minnesota legal employers with practical strategies and tactics to increase the effectiveness of their diversity efforts. In response, then-MSBA President Patrick J. Kelly appointed the Diversity Implementation Task Force in 2007, and this 2008 Best Practices Guide is the product of its work.

The 2007 Diversity Implementation Task Force

The 2007 Diversity Implementation Task Force appointed four subcommittees to focus on the constituent groups identified in the 2006 Report: gender, race and ethnicity,

disability and religion, and sexual orientation. The subcommittees conducted research on six issues that track the areas of analysis in the 2003 SAGE Best Practices: equal access, workday issues, governance, evaluation and promotion, recruitment and retention, and compensation. Recognizing the important role that mentoring plays, particularly in the retention of lawyers, the Task Force devoted special attention to mentoring. A separate section of the Guide provides a step-by-step plan for setting up a formal mentoring plan. This section also summarizes empirical research and demonstrates the importance of mentoring relationships to skill development and professional success.

The 2008 Best Practices Guide

As noted earlier, the Guide highlights important first steps employers should take to establish a diversity Best Practices plan, including gathering data, securing commitment to diversity and gender equity, assembling a team responsible for the plan, establishing goals, creating and adopting strategies to accomplish those goals, tracking results, and communicating successes and concerns.

The Guide lists Best Practices for the demographic areas of each subcommittee and includes commentary. The Best Practices for a given demographic area are not meant to be exclusive or apply only to that area of diversity. Recommended Best Practices on gender may also apply to racial and ethnic minorities, those from diverse religious backgrounds, those with disabilities, and GLBT lawyers. Throughout the Guide, each subsequent section contains more detailed recommendations and analysis, allowing employers to focus as deeply as they wish. Since each organization has its own structure, culture, and workforce, the Guide is designed to allow the employer to tailor the Best Practices for their work environments.

Adoption of the Guide

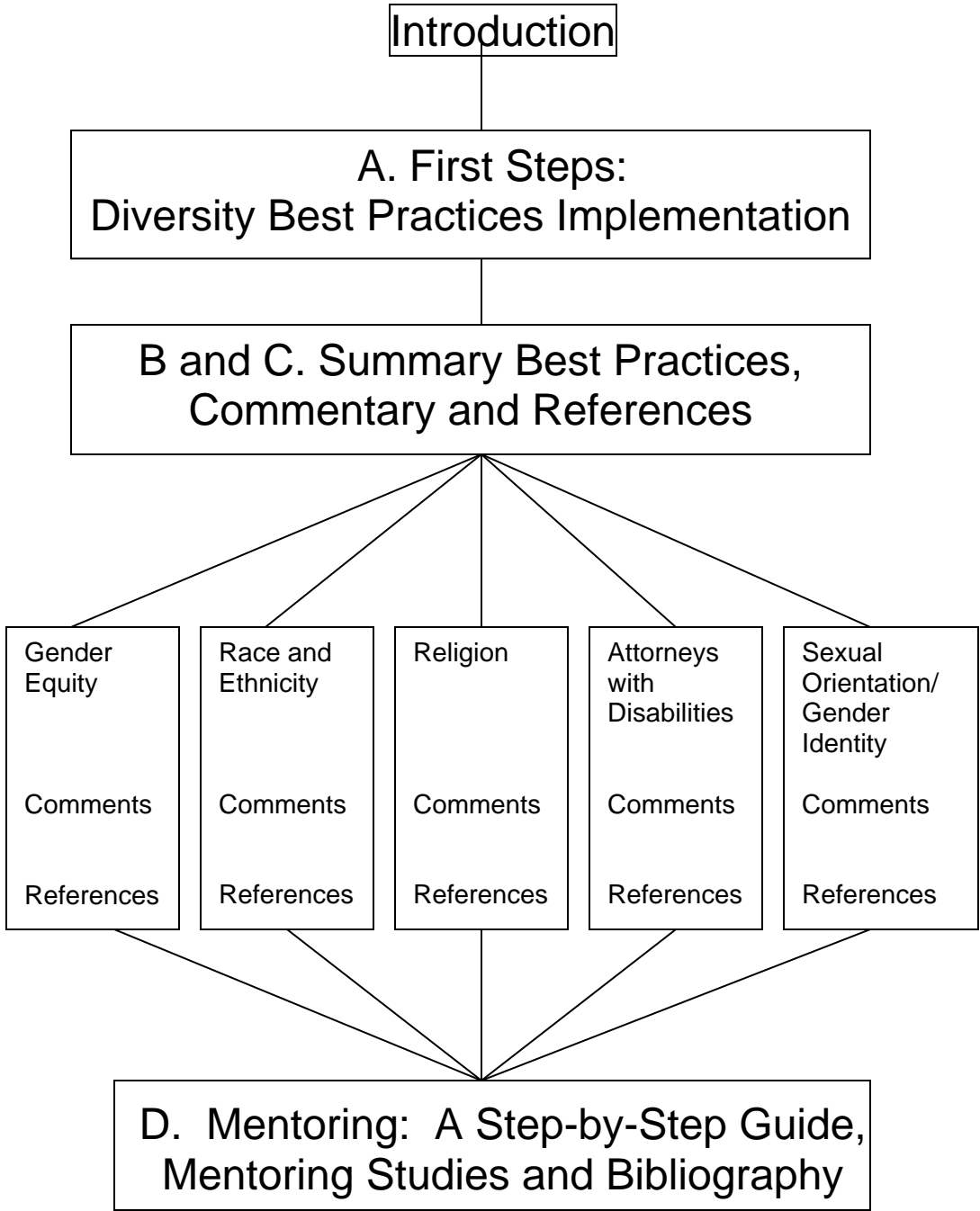
The Diversity Implementation Task Force and its outreach subcommittee obtained feedback on the Guide at the Minority Bar Summit in April 2008. Facilitators at the Summit solicited suggestions and worked with small groups to develop work plans that demonstrate the process employers might use for implementing Best Practices. After an additional period for comment, the Best Practices Guide was presented to the MSBA General Policy Committee, where the recommendations were reviewed for approval.

The Diversity Implementation Task Force encourages comments and additional resources and ideas. The Guide is not intended to be static. The Diversity Implementation Task Force hopes that the Guide will be a useful resource for Minnesota employers in increasing fairness, equality, inclusiveness, and sensitivity in the workplace. The Minnesota legal community and its clients throughout the state and country deserve no less.

How to Use this Guide: Important Notes

1. The Guide contains four main substantive sections:
 - A. First Steps for Diversity Best Practices Implementation
 - B. Summary Best Practices for five areas of diversity:
 1. Gender Equity
 2. Race and Ethnicity
 3. Religion
 4. Attorneys with Disabilities
 5. Sexual Orientation/Gender Identity
 - C. Commentary and References for the Best Practices
 - D. Mentoring: A Step-by-Step Guide and Research Studies
2. Each subsequent section contains more detailed recommendations and analysis, allowing employers to focus as deeply as they wish.
3. The Best Practices for a given demographic area are not meant to be exclusive or apply only to that area of diversity. For example, recommended Best Practices on gender may also apply to racial and ethnic minorities, those from diverse religious backgrounds, those with disabilities, and GLBT lawyers.
4. Since each organization has its own structure, culture, and workforce, the Guide is designed to allow the employer to tailor the Best Practices for their work environments. The Best Practices should be adapted as necessary to fit a particular workplace.
5. Best Practices are the most efficient and effective means to accomplish a goal. The Guide identifies some common practices that have been found successful in helping organizations embrace and achieve diversity and gender equity.
6. The Guide represents important initiatives for improving diversity and gender equity in organizations, defined to include law firms, corporations, legal departments, law schools, the government, the judiciary, and other legal employers.
7. Throughout the Guide, the terms “diversity” and “diverse groups” encompass gender, race and ethnicity, religion, disability, and sexual orientation/gender identity.
8. The Guide is not intended to be static. The Diversity Implementation Task Force encourages comments and additional resources and ideas.

Flow Chart for the Guide



Overview of the Guide

This page presents an overview of the substance of the Guide. It lists important steps from Section A for implementing a diversity plan and strategies for accomplishing diversity goals. It notes the areas addressed in the Best Practices of Section B, and includes page references for the Commentary of Section C and Mentoring in Section D.

A. First Steps for Diversity Best Practices Implementation (page 11):

1. Gather data.
2. Determine and communicate commitment from your top leaders to diversity and gender equity.
3. Assemble your diversity team; specify each person's role.
4. Establish S.M.A.R.T. diversity and gender equity goals.
5. Create and adopt strategies for accomplishing the goals.
6. Track the results; continually revise the plan.
7. Communicate successes and concerns.

Strategies for accomplishing diversity and gender equity goals (page 16):

1. Review and revise strategic plans to include diversity and gender equity goals.
2. Establish a diversity committee, with representation from all constituencies.
3. Mandate diversity training.
4. Develop specialized, tailored training to address particular problems such as leadership, networking, time management, etc.
5. Create a mentoring and coaching environment.
6. Review and revise compensation and promotion procedures.
7. Establish and encourage flexible work schedules.
8. Establish equitable work assignment systems.
9. Monitor the work environment to assess inclusiveness and sensitivity, and communicate the availability of programs, benefits, and accommodations.
10. Support and encourage participation in bar and community activities.

B. Summary Best Practices address the following topics:

Gender Equity: Equal access, workday issues, governance, evaluation and promotion, retention, compensation, mentoring - page 19

Race and Ethnicity: Steps for implementing diversity plans, recruitment and retention, mentoring - page 23

Religion: Equal access, workday issues – page 25

Attorneys with Disabilities: Equal access and workday issues, recruitment and retention - page 26

Sexual Orientation/Gender Identity: Terminology, internal policies, inclusive diversity efforts, mentoring and coaching; particular recommendations for courts, public employers, law schools – page 28

C. Commentary and References: page 33

D. Mentoring: A Step-by-Step Guide, page 65, and **Research Studies,** page 80



Diversity Best Practices Implementation: First Steps



This section of the MSBA Best Practices Guide lists **First Steps for Diversity Best Practices Implementation** in organizations:

- Gather data.
- Determine and communicate commitment from your top leaders to diversity and gender equity.
- Assemble your diversity team; specify each person's role in achieving diversity and gender equity.
- Establish S.M.A.R.T. diversity and gender equity goals.
- Create and adopt strategies for accomplishing goals.
- Track results; continually revise the plan.
- Communicate successes and concerns.

Definition of Diverse Groups: Throughout the Guide, the terms “diversity” and “diverse groups” encompass gender, race and ethnicity, religion, disability, and sexual orientation/gender identity.

Definition of Organization: Law firms, corporations, legal departments, law schools, the government, the judiciary and other legal employers.

Definition of Best Practices: Best Practices are the most efficient and effective means to accomplish a goal. The Guide identifies Best Practices that have been found successful in helping organizations achieve diversity and gender equity. Because Best Practices evolve and are irrelevant out of context, they must be tailored to each organization.



Diversity Best Practices Implementation: First Steps



The following are the steps necessary for establishing a Diversity and Gender Equity Best Practices Plan for organizations.

1. Gather Data



Basic information about the status of diverse groups is collected to determine needed action and to measure results after a diversity program is implemented.

This information will establish a baseline from which progress will be measured.

- **Collect demographic data on hiring, promotion, retention, compensation, and governance for all levels within the organization.**
See the MSBA SAGE studies for a model of data collection:

2002 survey of private law firms:

<http://www2.mnbar.org/committees/women-in-profession/sage-survey-private.pdf>

2002 survey of public employers:

<http://www2.mnbar.org/committees/women-in-profession/sage-survey-public.pdf>

- **Identify which diverse groups are underrepresented or are disproportionately represented, and identify the areas of underrepresentation or disproportional representation.**

Examples: Women may make up half of new hires but only a fourth of lawyers promoted; male lawyers may not take parenting leave at the same rate as female lawyers.

- **Review organization policies and practices and identify any that overtly discriminate against, have a disparate impact on, or discourage women or members of diverse groups from full participation within the organization.**

Examples: Holding meetings on Saturdays may negatively affect members of certain religious groups; holding meetings early in the morning or late in the day may have a disparate impact on women or men who have primary child care responsibilities; inviting spouses only may discourage GLBT lawyers with partners from participating.

- **Gather investigation data on both a qualitative and quantitative level.**

Example: Lawyers' attitudes and satisfaction levels must be surveyed.

See SAGE attitudinal study:

<http://www2.mnbar.org/committees/women-in-profession/sage.asp>

- **Measure the cost of lack of diversity, including actual costs and lost profits as well as potential business.**

Examples: The cost of training a diverse employee who leaves is determined; the potential for business from a client who seeks a diverse law firm is measured; clients' demands for diversity are measured; the cost of attrition is determined; and the cost of recruiting and training per lawyer is measured.

- **Analyze and allocate time and resources needed to establish and implement a plan, and include it in your budget.**

2. Determine and Communicate Commitment from Your Top Leaders to Diversity and Gender Equity



If leaders, managers, and lawyers are not committed to diversity, the Diversity and Gender Equity Plan is unlikely to succeed.

- **Leadership Commitment: Using business data supporting the value of diversity, secure commitment from senior leadership and lawyers in all ranks to establishing and implementing diversity and gender equity.**

This may be part of the data gathering.

Example: At a large accounting firm, the CEO took the lead in communicating the rationale for a comprehensive, long-term initiative on recruitment and advancement of women, and appointed a high-level task force to head the effort.

- **Internal Communications Plan: Communicate, orally and in writing, the organization's commitment to diversity and gender equity to your lawyers and staff.**

Example: Schedule frequent internal roundtable discussions and meetings to improve communication about gender issues.

- **External Communications Plan: Communicate, orally and in writing, the organization's commitment to diversity and gender equity to clients, law students, and the legal community.**

3. Assemble Your Diversity Team: Specify Each Person's Role in Achieving Diversity and Gender Equity



Clear responsibility for the Diversity and Gender Equity Plan must be established to ensure action and follow through.

- **Determine the managers, members of diverse groups, lawyers, and staff with the interest, time, talent, and commitment necessary for *creating and establishing* a strategic plan for diversity and gender equity.**

A mix of lawyers, managers, and staff will aid in creating the Plan by getting buy-in and input from all constituents.

- **Determine the individual or individuals responsible for *implementing* the Plan.**

This may be a partner, diversity manager, or a committee, etc.

- **Identify the individual or individuals with *day-to-day responsibility* for maintaining and updating the Plan.**

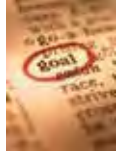
This may be a partner, committee, diversity manager, human resources personnel, etc. If the organization does not have a diversity manager, a diversity consultant may be used.

- **Identify the individual or individuals with responsibility for *promoting* the Plan.**

Again, this may be a partner, committee, diversity manager, human resources personnel, etc. Preferably, a leader would serve as spokesperson for the organization.

- **Emphasize the need for each person in the organization to understand the importance and the value of diversity and gender equity, and the need to commit to a fair, equitable and inclusive workplace.**

4. Establish S.M.A.R.T. Diversity and Gender Equity Goals



Establishing goals for a Diversity and Gender Equity Plan aids the organization in focusing its efforts. Ideally, these goals should be **Specific, Measurable, Agreed-upon, Realistic, and with a Timetable.**

- **Establish SPECIFIC rather than general goals.**

Example: A general goal is “improve retention”; a specific goal is “increase retention of women from 50% to 75%.”

- **Determine how the goals will be MEASURED.**

Example: If the organization wants to improve retention of diverse attorneys, the goal may be measured by comparing the current number of diverse attorneys and the number within a certain time period after implementation of the Plan. A large accounting firm, for example, measured the success of its initiative to retain and promote women by examining the percentage of women in the partnership before and after implementation of its plan.

- **Secure AGREEMENT upon the goals within the organization.**

Example: Elicit buy-in from all staff through organization-wide meetings to discuss gender and diversity challenges.

- **Establish goals that are REALISTIC, but are also challenging.**

A realistic yet challenging goal takes into account the availability of possible resources, knowledge, and time.

Example: If the organization has determined that women are not being promoted proportionately, then a goal of 50-50 promotions may be desirable. If there are no women eligible for promotion for two years, achieving the goal in one year might not be realistic. Deciding to bring in lateral women for promotion would be one way to meet the challenge, making the goal of 50-50 promotions realistic even in one year.

- **Establish a progressive TIMETABLE for accomplishing the goals.**

An achievable timetable provides enough but not too much time to achieve the goal. An organization may choose to set progressive goals.

Example: An organization may decide to work on hiring and retention first, compensation next, etc., and to space out its goals over the timetable.

- **Set goals for individuals as well as the entire organization and specify consequences for achieving or not achieving goals.**

5. Create and Adopt Strategies for Accomplishing Goals



Creating a Diversity and Gender Equity Plan will necessitate creative strategies for accomplishing goals.

- **Adopt strategies consistent with the organization’s own strategic plan.**
- **Suggested strategies and action items include the following:**
 - 1. Review and revise the organization’s strategic plans and policies to include diversity and gender equity goals.**
 - 2. Establish a diversity committee, with representation from the diverse constituencies in this Guide.**
 - 3. Mandate diversity training.**
 - 4. Develop specialized, tailored training to address particular problems such as leadership, networking, time management, etc.**
 - 5. Create a mentoring and coaching environment.**
 - 6. Review and revise compensation and promotion procedures.**
 - 7. Establish and encourage flexible work schedules.**
 - 8. Establish equitable work assignment systems.**
 - 9. Monitor the work environment to assess inclusiveness and sensitivity. Beginning with employment screening and continuing through all stages of employment, communicate the availability of employer programs, benefits, and accommodations that promote inclusiveness.**
 - 10. Support and encourage participation in bar and community activities.**

6. Track Results; Continually Revise Plan



- Regularly collect and review data to determine progress toward accomplishment of goals.
- As goals are accomplished, implement action on continuing goals.
- Revise the Plan and implement new strategies if goals are not being met.
- Review individuals' and committees' performance regularly. Reward accomplishments and efforts of lawyers in working towards diversity and gender equity.

7. Communicate Successes and Concerns



- Continue to gather feedback internally and communicate regularly with lawyers and staff about diversity accomplishments and ongoing efforts.
- Communicate successes externally to clients, bar associations, other organizations, etc.



Summary Best Practices



This section of the MSBA Best Practices Guide contains **Summary Best Practices**, developed by the Task Force subcommittees on gender, race and ethnicity, religion and disability, and sexual orientation.

Gender Equity	Page 19
Race and Ethnicity	Page 23
Religion	Page 25
Attorneys with Disabilities	Page 26
Sexual Orientation/Gender Identity	Page 28

Definition of Best Practices: Best Practices are the most efficient and effective means to accomplish a goal. The Guide identifies Best Practices that have been found successful in helping organizations achieve diversity and gender equity.

Notes: The Best Practices for a given demographic area are not meant to be exclusive or apply only to that area of diversity. For example, recommended Best Practices on gender may also apply to racial and ethnic minorities, those from diverse religious backgrounds, those with disabilities, and GLBT lawyers.

Because Best Practices evolve and are irrelevant out of context, they should be tailored and adapted as necessary to fit a particular workplace.

Note: The Best Practices for a given demographic area are not meant to be exclusive or apply only to that area of diversity. For additional strategies to achieve diversity and gender equity, see recommendations on page 16.



Summary Best Practices: GENDER EQUITY



Equal Access

1) Work Teams: Regularly monitor the composition of work teams to ensure that they include female and male attorneys.

2) Training and Resources: Provide women and men equal access to training, resources, and assistance for leadership, business generation, networking, and professional development. This may be done internally or by providing resources for attorneys to receive training outside the organization.

3) Practice Planning: Establish time frames, practice goals, and practice planning to enable both lawyers and their employers to evaluate progress fairly, to aid in training, and to ensure that all lawyers receive similar opportunities to make progress toward promotion.

4) Informal Events: Encourage participation by women and men in lawyers' informal gatherings and social events and periodically review all scheduled events to ensure that all lawyers have the opportunity to participate. Women are more likely to leave an organization when they are not included in informal internal networks.

Workday Issues

5) Work Assignments: Design and implement a work assignment system with benchmarks to ensure the fair distribution of quality work and access to clients.

6) Accountability: Review the assignment of work regularly to ensure that there is no hidden gender bias. Hold managers accountable for the fair distribution of work, opportunities for client development, and opportunities for leadership.

7) Work/life Balance: Regularly review caseloads, hours, or other measures of productivity to lessen or avoid burnout or excessive demands. Work/life balance is especially important to women and men with children or other family responsibilities.

8) Office Environment: Work to create an environment in which lawyers feel comfortable using parenting leave, part-time, and flexible work schedules without fear of reprisal or adverse consequences. Avoid the assumption that all women or men with children want to work on a part-time basis, or do not want to travel or take on work that would require time away from their families.

Governance

9) Management: Support gender equity at all management levels through actions and words, and communicate this support to the entire organization. Ensure that women are proportionally represented at all levels of management and decision-making.

10) Monitor Trends: Monitor internal trends in compensation, promotion, and assignment to leadership positions to ensure that these opportunities are equally available to all.

11) Anti-Discrimination Policies: Adopt, implement, and enforce anti-discrimination and harassment policies, including gender discrimination and sexual harassment, and establish procedures to investigate and resolve complaints of inequity, discrimination, or harassment.

12) Data: Regularly gather, analyze, and internally disseminate statistical information regarding gender representation in hiring, promotion, compensation, and governance to ensure that there is no gender bias, hidden or overt, in the decision-making.

13) Communication: Hold regular and frequent discussions about gender equity to allow problems to be resolved before they escalate or before a person leaves because she or he does not feel heard, and to hear what is working well.

Evaluation and Promotion

14) Feedback: Provide regular feedback, informally and formally, and allow attorneys to ask questions and address concerns.

15) Goals: Establish individual goals or benchmarks for attorneys as part of their individual evaluations.

16) Standards: Apply uniform standards for promotion of women and men.

17) Evaluation: Evaluate and compensate lawyers based on objective and explicit standards that have been communicated and explained.

Retention

18) Exit Interviews: Conduct confidential exit interviews to allow for honest feedback.

19) Flexible Programs: Provide viable flexible workday programs, including alternative work schedules, telecommuting, job sharing, and retirement phasing. Provide needed technology.

20) Flexible Schedules: Develop a viable, “non-stigmatized” flexible work schedule policy that includes effective and fair implementation, training, and education, and that eliminates “caregiver” bias and employee turnover.

21) Part-Time/Flexible Hours: Enforce gender-equitable compensation, benefits, and advancement for part-time/flexible hours worked.

22) Attorneys on Leave: Encourage attorneys on leave to participate in firm, company, or organization events (client development, in-house training, etc.) so that they can stay connected to the organization and clients.

23) Alumni: Consider including women and men who have left the organization to stay home with children in the organization's social and training activities, to encourage and support their eventual return.

Compensation

24) Compensation Systems: Establish compensation systems that are clear, equitable, well communicated, and flexible enough to adapt to changing practices, assignments, levels of performance, and market forces.

25) Communication: Explain the basis for each attorney's compensation when set and, at a minimum, on a yearly basis.

26) Objective Measures: Determine objective measures of productivity that are result-oriented, lack gender bias, and do not rely primarily on billable hours or hours spent at work.

27) Bases for Compensation: Consider measures other than billable hours as bases for compensation. Other measures may include business development, realization rates, efficiency, client satisfaction, administrative duties, mentoring inside and outside attorneys, pro bono, community or charity work, participation in bar association activities, and teaching. Avoid penalizing attorneys who engage in bar association, community, or charity work.

28) Salary Reviews: Studies show that women are viewed negatively as being "too aggressive" when they negotiate salaries, especially when negotiating with men. Women are, therefore, less likely to negotiate on compensation issues. To avoid this, salaries should be reviewed to ensure that women are not penalized for negotiation and compensation issues or for avoiding the double bind.

29) Compensation Committees: Include women on compensation committees and in compensation decisions.

30) Part-Time Attorneys: Compensate part-time attorneys on a pro rata basis.

31) Compensatory Time: Compensate part-time and contract attorneys for time or work beyond their contracted time, or allow for compensatory time.

Summary Best Practices: Gender Equity

32) Recognition: Recognize women and men for their achievements in all areas of legal practice informally or through formal recognition programs. For public employees, recognition is especially critical since merit compensation usually is not available.

Mentoring

See the Mentoring Section of this Guide on page 65.

See Commentary and References beginning on page 34.

Note: The Best Practices for a given demographic area are not meant to be exclusive or apply only to that area of diversity. For additional strategies to achieve diversity and gender equity, see recommendations on page 16.



Summary Best Practices: RACE and ETHNICITY



Initial Steps for Implementing Diversity Plans

- 1) Commitment of Leadership:** Secure the public commitment of senior leadership.
- 2) Strategic Plans:** Expressly include diversity as an objective in the organization's strategic plan with set, measurable goals.
- 3) Diversity Directors and Committees:** Place key senior leadership individuals in staff diversity positions and on committees or appoint a diversity director who has the authority to facilitate and mandate diversity training and coaching.
- 4) Diversity Assessment:** Conduct an organization-wide diversity assessment to determine particular areas for improvement. Consider how firm policies and business practices impact minority recruiting, hiring, retention, promotion, compensation, work/life balance, and other relevant areas.
- 5) Training:** Hold regular cross-cultural firm or organization training that focuses on appreciation of differences. Bring in outside consultants and facilitators regularly to conduct cultural competence training and coaching.
- 6) Implement Strategies and Review Progress:** Implement strategies for improvement on identified problem areas and periodically review progress, so that reaching diversity goals is an ongoing process.

Recruitment and Retention

- 7) Cultural Understanding:** Understand and relate to people as individuals, rather than as representatives of their entire diversity group. Every person is an individual, and no one person represents or speaks for an entire race or ethnic group.
- 8) Diversity Goals and Performance Evaluations:** Include diversity goals in senior partner and managing attorney performance evaluations.
- 9) Compensation:** Recognize time on diversity initiatives inside and outside of the organization in all compensation evaluations.

10) Work Assignments: Give attorneys of color important work assignments and client contact opportunities.

11) Firm Governance: Give attorneys of color intra-firm governance opportunities.

12) Outreach: Participate in external professional diversity efforts designed to promote recruitment and retention of attorneys of color, including projects of the MSBA and its Diversity Committee, the minority bar associations, the minority law student associations at area law schools, and others. Create or sponsor programs that encourage students of color to attend law school.

Mentoring

13) Treat mentoring as a priority. Effective cross-cultural mentoring of new and/or young attorneys of color is essential, not only to ensure their retention but also to maximize their chances of advancement to leadership positions.

14) Establish formal mentoring programs. A formal mentoring program, with a partner or managing attorney in charge, is important to ensure that mentoring is made available to all new and/or young attorneys of color, and to create a culture where it is acceptable for lawyers to seek assistance when needed.

15) Encourage informal mentoring opportunities. Build a culture where all senior partners, partners, managing attorneys and organization leaders are encouraged to look for opportunities to mentor new and/or young attorneys of color without fear that it will be perceived as paternal advice, and where new or young attorneys are encouraged to seek informal mentoring opportunities without fear that it will be perceived as a sign of inadequacy or weakness.

Also see the Mentoring Section of this Guide on page 65.

See Commentary and References beginning on page 43.

Note: The Best Practices for a given demographic area are not meant to be exclusive or apply only to that area of diversity. For additional strategies to achieve diversity and gender equity, see recommendations on page 16.



Summary Best Practices: RELIGION



Equal Access

1) Holidays: Of the standard six holidays currently recognized, (New Years Day, Memorial Day, July 4, Labor Day, Thanksgiving and Christmas Day), only Christmas is an issue. Provide all employees with one extra floating holiday that can be used for an optional holiday of the employee's choice.

2) Judicial Fairness Policy: Expand the Minnesota Judicial Branch Fairness Policy to include religion.

Workday Issues

3) Food: Provide a food selection at office events (meetings, parties, etc.) that includes a variety of options to avoid situations where attendees do not have food choices compatible with their religious beliefs. In the alternative, provide menu choices in advance so people can order food.

4) Office Scheduling: Prior to scheduling organization-wide events, check a calendar that lists major religious holidays to avoid scheduling an event on a conflicting date.

5) Prayer Space and Time: Provide a private space where members of certain faiths may honor their religious beliefs. In addition, be flexible about work breaks.

6) Religion Awareness Seminars: Provide workplace forum opportunities where employees of different religions can discuss and educate employees about religious beliefs and customs.

7) Dress Restrictions: Accommodate dress reflecting staff diversity, including face and head coverings and turbans, provided it does not present a danger.

See Commentary and References beginning on page 50.

Note: The Best Practices for a given demographic area are not meant to be exclusive or apply only to that area of diversity. For additional strategies to achieve diversity and gender equity, see recommendations on page 16.



Summary Best Practices: ATTORNEYS with DISABILITIES



Equal Access and Workday Issues

1) Laws: Become knowledgeable about statutory obligations under the Minnesota Human Rights Act (MHRA) and the Americans with Disabilities Act (ADA).

2) Policies and Requests for Accommodation: Adopt policies and procedures for how requests for accommodation will be handled and ensure that these policies are well publicized and implemented.

3) Full Compliance: Ensure that both employees and managers know that the organization's policies support full compliance with the MHRA/ADA and the provision of reasonable accommodation.

4) Training: Require adequate training of supervisors, managers, and human resources professionals on handling requests for accommodation and other requirements of the MHRA/ADA and other anti-discrimination statutes.

Common examples of reasonable accommodations include:

- Making existing workplaces accessible.
- Job restructuring.
- Part-time or modified work schedules.
- Unpaid leave once an employee has exhausted all employer-provided leave.
- Acquiring or modifying equipment (e.g., a TTY that would enable a deaf attorney to use a telephone relay service, or an assistive listening device that an attorney who is hard of hearing can use at a meeting).
- Modifying workplace policies.
- Providing tests or training materials in alternative format, such as Braille or large print or on audiotape.
- Providing qualified readers or sign language interpreters.

5) Requests for Accommodation: After receiving a request for a reasonable accommodation, move quickly to respond to it, seeking any additional information that is needed, and make a determination.

6) Changes to Work Environment: Consult with employees before making major changes in the work environment that affect all employees but may have a particular impact on attorneys with disabilities, such as changes to information technology or relocation of physical facilities.

7) Social Events: Ensure that non-alcoholic alternatives are available and easily accessible when planning food and beverage choices, and that employees, clients and guests are not pressured to use alcohol. Recognize that participants, including clients, spouses, and other guests, may choose not to consume alcohol for a variety of reasons.

8) Attitudes: Do not assume a person cannot perform a certain task. With the right accommodations and support, anyone can be productive.

9) Office Environment: Become educated about the advantages of hiring attorneys with disabilities and about the value of building successful partnerships between employers and attorneys with disabilities.

Recruitment and Retention

10) Clerkships and Mentoring: Establish clerkships and mentoring programs targeted at law students with disabilities.

11) Law School Outreach: Partner with law schools to recruit individuals with disabilities to attend law school and provide support to law students with disabilities, so that more individuals with disabilities enter the legal profession.

12) Recruitment Goals: Include people with disabilities in diversity recruitment goals.

13) Job Postings: Post job announcements in disability-related publications, websites and job fairs.

See Commentary and References beginning on page 51.

Note: The Best Practices for a given demographic area are not meant to be exclusive or apply only to that area of diversity. For additional strategies to achieve diversity and gender equity, see recommendations on page 16.



Summary Best Practices: SEXUAL ORIENTATION/GENDER IDENTITY



Gay, lesbian, bisexual and transgender employees and their families are valued in the American workplace now more than ever. Inclusive non-discrimination policies and benefits for GLBT employees and their families are essential for businesses as they compete for talent and customers. Many businesses do not know they have any gay, lesbian, bisexual or transgender employees. In truth, many GLBT employees spend a good deal of energy hiding their personal lives so as to avoid any negative workplace consequences. This is not helpful to the employees, the employers, or those whom they serve.

Note: The Minnesota Human Rights Act defines sexual orientation broadly, to include concepts described elsewhere separately as “sexual orientation” and “gender identity.” The use of “sexual orientation” in this Guide should be understood to reflect that breadth as well.

General recommendations regarding sexual orientation-related issues

1) Use Appropriate Terminology:

- **Sexual Orientation:** an individual's enduring physical, romantic, emotional, and/or spiritual attraction to another person. Avoid the use of “sexual preference”: sexuality and gender are not a preference. People do not “choose” their orientation or gender.
- **Gender Identity:** an individual's internal, personal sense of being a man or a woman. For transgender people, their birth-assigned sex and their internal sense of gender identity do not match. Gender identity and sexual orientation are not the same. Transgender people may be heterosexual, lesbian, gay or bisexual.

2) Maintain Inclusive Internal Policies:

- Implement a clear non-discrimination policy, covering hiring, promotions, termination, and compensation, among other possibilities, that includes “sexual orientation” and “gender identity.”

Summary Best Practices:
Sexual Orientation/Gender Identity

- Publicize these policies broadly among current, new, and prospective employees, to customers, to the public, and via National Association of Legal Professionals (NALP) forms.
- Review these policies regularly to ensure they are comprehensive and effective.
- Implement a clear anti-harassment policy that includes sexual orientation and gender identity with appropriate training.
- Ensure that all benefits, formal and informal, provided to employees' spouses are also available to employees' domestic partners to the maximum extent possible, including but not limited to: health coverage, family leave, bereavement leave, COBRA extensions, retirement plan beneficiary/rollover options, relocation assistance, and/or family discounts. Ensure that all pertinent forms reflect this inclusion, e.g., "Name of Spouse/Partner."
- Monitor internal trends in compensation, promotion, and assignment to leadership positions to ensure that these opportunities are equally available to all without regard to sexual orientation and gender identity.
- Provide coverage for a full range of services related to gender transition within employee medical plans; use dress codes to reflect an employer's desired degree of professionalism, not specific gender roles; and permit employees transitioning from one gender to another to use restrooms associated with their new gender at the earliest opportunity.

3) Employ Inclusive Diversity Efforts:

- Ensure that diversity programs, staff training, and other initiatives specifically include or apply to concerns related to sexual orientation and gender identity.
- Use broadly inclusive diversity terminology, specifically including sexual orientation and gender identity, and demonstrate commitment to a broad approach to diversity.
- Consider employees' involvement in mentoring programs and outside efforts that have the effect of promoting GLBT-related diversity within the workplace and legal profession generally.
- Support or co-sponsor events and programs related to GLBT lawyers and law students and the GLBT community broadly, including events geared toward recruiting prospective employees and pro bono activities.
- Seek the input of GLBT employees and/or consultants to maximize the effectiveness of diversity-related efforts.
- Provide support as needed or requested to those seeking to form an employee resource group focused on GLBT-related issues.

4) Create a GLBT-Supportive Mentoring and Coaching Environment (see Commentary, page 53):

- Create a workplace environment that clearly communicates to a GLBT attorney seeking a mentor that she or he can feel comfortable expressing interest in a mentor who can provide guidance regarding being a GLBT attorney in that workplace.

Summary Best Practices:
Sexual Orientation/Gender Identity

- Ask those seeking mentors open-ended questions about the sorts of topics – personal or professional – on which they would like mentor guidance, and follow their lead.
- Have a plan for responding to a request for a mentor on issues relating to being GLBT in that work environment – even if that means seeking a mentor outside the specific workplace.

Also see the Mentoring Section of this Guide on page 65.

See Commentary and References beginning on page 53.

Recommendations for Particular Workplaces

1. Courts (see Commentary, page 55)

- Amend the Minnesota Judicial Branch Fairness Policy to include sexual orientation, and ensure that internal diversity efforts include sexual orientation and other considerations beyond race and gender.
- Create or empower a committee to address sexual orientation-related and other diversity concerns beyond those of race and gender.
- Undertake an internal study of judicial branch employees' experiences and perceptions related to sexual orientation.
- Amend the Minnesota Judicial Branch Policy on Family and Medical Leave Act to include "co-habitators."
- Provide the domestic partners of judicial branch employees with benefits comparable to those offered to employees' spouses.
- Implement an elimination of bias component for continuing judicial education.

2. Public Employers (see Commentary, page 63)

- Ensure that, wherever possible, benefits provided to employees' spouses are available to employees' domestic partners.

3. Law Schools

Application Process

- Have current "out" GLBT students, faculty, or staff contact prospective students who indicate in their application essays that they are out to describe the climate and support resources. Reassure them about the presence of out students, faculty, and staff on campus.

Orientation

- Make note, explicitly and repeatedly, of sexual orientation diversity in orientation remarks to new students.

Student Organization Support

- Ensure that the GLBT student group has equal footing with all other student groups in the student organization funding process.
- Visit (unobtrusively) an early GLBT student group meeting to welcome, establish rapport, and offer visible support.
- Sponsor or co-sponsor prominent speakers and visitors in collaboration with other law school offices, and invite students to participate.

Diversity Programming and Campus Climate

- Include GLBT issues in all diversity discussions and programming, including representation on diversity committees.
- Encourage, foster, and publicize debates and discussions of major issues including gay marriage, military exclusion, etc., and encourage attendance and support by administrators and faculty.
- Support Solomon Amelioration activities to counteract the impact of military recruiting on campus.

Career Planning and Development

- Sponsor discussions among students and “out” attorneys about the career development process, and whether and how to be out.
- Encourage the Career office to track organizations with a strong record of a welcoming environment for GLBT attorneys, including strong family leave and benefits policies that include same-sex partners.
- Support student participation in national GLBT conferences by covering registration fees.
- Seek attorney-student mentor matches among GLBT attorneys and students.

Curriculum

- Encourage and foster the faculty use of GLBT-related examples in class discussions, and assign GLBT topics in Legal Writing exercises and Civil Rights Moot Court.
- Facilitate teaching and course development in areas relevant to GLBT students (e.g., seminars on assisted reproductive technologies, or health law courses that address inequities in access to health care, or family law courses that address gaps in the law for GLBT couples).

Individual Support

- Ensure the availability of counseling resources on- or off-campus and provide referrals where necessary.

See Commentary and References beginning on page 53.



Commentary and References for Best Practices



This section of the MSBA Best Practices Guide contains **Commentary and References** for the Summary Best Practices beginning on page 18, including:

Gender Equity:

Workday Issues	Page 34
Governance	Page 35
Promotion	Page 36
Compensation	Page 38
Mentoring	Page 65
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Race/Ethnicity:

Diversity Assessment	Page 43
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Religion:

Title VII, Civil Rights Act	Page 50
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Attorneys with Disabilities:

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References	Page 52

Sexual Orientation/Gender Identity:

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Comments for Best Practices

GENDER EQUITY: WORKDAY ISSUES, Page 19



It is clear that to ensure gender equity in the workplace, a fair and effective work/life program must be created, monitored and enforced.

Proactive gender-equitable procedures that legal employers must adopt include providing in-depth education, training and leadership; enforcing anti-discrimination and harassment policies; implementing viable flexible work options; supplying adequate technology resources, and requiring objective evaluations of lawyers.

Viable flexible workday programs that promote gender equality include alternative work scheduling, telecommuting, job sharing, and retirement phasing. These balanced work/life plans are approved and endorsed by the American Bar Association, and provide positive documented outcomes such as:

- Enhanced diversity and fair treatment of employees.
- Increased productivity.
- Improved employee job commitment and satisfaction that meets clients' needs.
- Reduced turnover, absence, and work-related stress and strain.
- Ability to attract desirable employees.
- High return on employee investment.
- Address the need for a family-friendly environment for employees.



Comments for Best Practices GENDER EQUITY: GOVERNANCE, Page 20



According to a recent survey conducted by the National Association of Women Lawyers, “statistics show, among other things, that women occupy lower positions within the firm’s equity partner ranks, as it is our impression that selection of the firm’s managing partners and members of the highest governing committees typically come from the top half of the equity partnership.”¹

Even when women lawyers achieve the formal status of equity partner, preliminary information indicates a gap in compensation between male and female equity partners. Moreover, women’s role in the governance of law firms is far less extensive than men’s. Women hold on average only 16% of the seats of their firm’s highest governing committee. Only about 5% of managing partners are women. To the extent that gender diversity matters for decisions that firms make about such critical firm-wide issues as long-term strategy and growth, business development, partner compensation and advancement, and policies and practices related to the retention and promotion of women lawyers, it appears that, at the highest level, these decisions are still being made in a decidedly male environment.

Diverse attorneys are gaining more visibility through leadership of practice groups. Diverse attorneys are running more law offices. The numbers for women are generally promising, as 81.1% of firms have women on governing committees. Marginal improvements are shown in the number of women or minorities who are equity partners and sitting on governance committees.

¹ The National Association of Women Lawyers, *National Survey on Retention and Promotion of Women in Law Firms*, Women Lawyers Journal (Oct. 2006), <http://www.abanet.org/naw/docs/NAWLSurveyReportRe-Print.pdf> (last visited Dec. 6, 2007).



Comments for Best Practices GENDER EQUITY: PROMOTION, Page 20



“Twenty years ago people looked ahead and thought the problem would be solved by now, and that clearly hasn’t happened . . . It’s been more than a decade since women began to constitute half of most law school graduating classes, yet they are far from reaching equality at the top of the profession. Women still account for only 17 percent of law firm partners, 20 percent of federal judges and 14 percent of Fortune 500 general counsels. And, at the current rate, the number of women partners won’t reach parity with the number of male partners until 2088.”¹

“Law firms pride themselves on being meritocracies, but studies show that most partnerships are self-replicating cultures in which those most often deemed to have what it takes to be partner look just like those already at the top: white and male.”²

“In government and the nonprofit sector, women have fared better than in private practice . . . There are more women in higher-profile, higher-powered, higher-status jobs in the nonprofit world. There’s more of an effort, more of an egalitarian spirit and more of a sensitivity to issues of diversity . . . one reason for that success may be that publicly spirited jobs have a stronger appeal to women. The percentage of women who said that ‘helping others’ was one of the most important factors to consider in picking a career was double that of men, accordingly to a 2004 study by some Harvard Law students.”³

Recent studies confirm that in law firms, women are well-entrenched at the associate and of-counsel levels, but do not occupy senior positions in the number many expected based on the large number of women law school graduates over the past 25 years.⁴ Women are not represented in large numbers as equity partners, on the highest management committee of their firms, or in the role of managing partner. More positively, however, there are a large number of women lawyers practicing in private firms at all levels. The evident commitment of women to careers in private practice combined with the desire of firms to retain and promote women lawyers provides a solid foundation for advancing women into leadership positions in greater numbers. The pipeline is filled with women lawyers capable of occupying positions as equity partners, law firm managers, and members of the highest governing committees in firms. The challenge for the profession - individual women, their firms and other interested stakeholders, such as law firm clients - is to determine what policies and practices will work best to open that pipeline and advance women quickly into roles they have earned and will occupy with distinction.

Commentary:
Gender Equity - Promotion

¹ Seth Stern, *Traffic on the Off-Ramp: Women Are Still Second-class Citizens in the Legal Profession. What Can Be Done about It?*, http://www.law.harvard.edu/alumni/2006/fall/feature_3.php (last visited Dec. 6, 2007).

² *Id.*

³ *Id.*

⁴ The National Association of Women Lawyers, *National Survey on Retention and Promotion of Women in Law Firms*, *Women Lawyers Journal* (Oct. 2006), <http://www.abanet.org/naw/docs/NAWLSurveyReportRe-Print.pdf> (last visited Dec. 6, 2007).



Comments for Best Practices **GENDER EQUITY: COMPENSATION, Page 21**



“A good compensation plan attracts, motivates, and retains skilled workers whose expertise keeps their company ahead in the marketplace. Employees want to know that when their ... [employer] says, ‘People are the key to our competitive advantage,’ that means they will be rewarded when they meet or exceed ... objectives.”¹

According to the U.S. Department of Labor, the best compensation practices for promoting equal opportunity and affirmative action are: 1) conduct a self-audit; 2) correct any problems identified by the self-audit; 3) create a set of procedures and practices for ensuring that all decisions on compensation in the future are based on job-related criteria that are consistent with business necessity and are applied uniformly and consistently to each and every pay decision.

Compensation is ranked highest in importance of seven positive influences of overall job satisfaction for all employees and those who work full time. Part-time employees rank flexible work schedules as most important, according to a 2007 Deloitte and Touche survey on ethics and the workplace.

Legal employers should routinely analyze compensation numbers to ensure that there is no gender bias in the decision-making.

Studies show that women are viewed negatively as being “too aggressive” when they negotiate salaries, especially when negotiating with men. Thus, they are less likely to negotiate. To avoid this, salaries should be reviewed to ensure that women are not penalized for negotiation and compensation issues and for avoiding the double bind.

If an employer’s compensation system is based on seniority or is lockstep, compensation for women is likely to be disproportionately low, as fewer women are senior. Care should be taken to ensure that less senior attorneys are being compensated fairly, or retention is likely to be a problem.

Compensation based on the amount of business generated and hours billed fails to recognize other ways in which attorneys add value to a firm, such as expanding work for existing clients, doing firm administrative work, training associates, and mentoring. These activities take away from an attorney’s ability to do his or her own work, but they are important to the employer. They should be compensated.

Further, employers should consider other measures other than billable hours as bases for compensation. These may include business development, realization rates, efficiency, client satisfaction, administrative duties, mentoring inside and outside

Commentary:
Gender Equity – Compensation

attorneys, pro bono, community or charity work, participation in bar association activities, and teaching.

A formal system should be implemented for compensation, detailing the bases for compensation. If some types of work, service, or activity are to be given more weight in compensation decisions, this should be expressly stated and communicated to attorneys.

The bases for each attorney's compensation should be explained to the attorney, at a minimum, on a yearly basis.

Part-time attorneys should be compensated on a pro rata basis and for time worked beyond their required time. Further, part-time attorneys should be eligible for benefits and bonuses on a pro rata basis.

¹ Global Best Practices, <http://www.GlobalBestPractices.com> (last visited Aug. 20, 2007).

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Comments for Best Practices RACE and ETHNICITY: DIVERSITY ASSESSMENT, Page 23



Much of the focus on developing Best Practices to promote diversity in the legal profession is on recruiting, hiring and retention. Simply increasing the numbers of attorneys from traditionally underrepresented groups is a meaningless gesture if the organization does not understand what its diversity issues are or how to measure whether its diversity efforts have been successful.

A thorough assessment may show that the organization has a diversity issue, opportunity or problem because:

- A policy or business practice (formal, informal, internal, or external) has a different impact on a particular group (for example, do billable hour requirements disproportionately penalize certain associates?).
- The practice happens more frequently to a particular group (for example, who gets to go to pitches and who makes them, who is present to observe and who is not, or who gets real feedback on his or her briefs and who does not).
- The potential barrier is more difficult for one group to overcome (upward mobility for a particular group within an organization, including who is represented in leadership positions and who is not – “glass or color ceilings”).

A diversity issue exists when an organization policy or business practice affects attorneys of different backgrounds differently. In other words, certain practices produce outcomes that affect members of the majority community differently from members of minority communities in the attorney ranks. Is there a trend or pattern that impacts certain groups of attorneys and staff differently? For example, look at the top 10 rainmakers in your firm. Who are they mentoring? Is the next generation of “mega-billers” different from the current “in group or dominant group” in the firm? When a firm has identified its diversity issues, it can better create an environment in which diversity initiatives can be successful.

Not only is it important for an employer to conduct an assessment before beginning diversity initiatives, it is also imperative to develop mechanisms to gauge the success of diversity efforts. For example, a firm may attend minority job fairs and target women and lawyers of color in its recruiting programs, but still fail to retain lawyers of color once they have been hired. Accordingly, organizations should periodically review their progress on the following factors and compare the findings with the results from the initial diversity assessment. The success of a diversity program can be measured through several factors, such as:

Commentary: Race and Ethnicity
Diversity Assessment

- Demographics of firm or organization as a whole
- Demographics of firm or organization leadership and management
- Retention
- Promotions
- Recruiting and hiring
- Attrition
- Compensation and benefits programs
- Relevancy and fairness of current systems, policies, and procedures
- Part-time or work/life balance
- Physical environment
- Leadership and management practices
- Career development and succession planning

Organizations should also institute strategies to sustain diversity efforts. One way in which employers can hold themselves accountable for diversity efforts is to incorporate increased diversity into the overall strategic plan. This not only provides a barometer to measure success, but also makes a statement about the organization's commitment to diversity. Another method is to tie shareholder compensation to how well individual shareholders promote diversity. This increases buy-in by giving shareholders a personal stake in a successful diversity program.

In short, assessment is critical in helping to create and implement an effective diversity initiative plan. It is critically important to understand an organization's level of development before launching a diversity initiative. Organizations must be prepared to assess their hiring practices, overall culture, interpersonal relationships, and views about diversity and promotion practices, and they must find ways to measure their progress and hold themselves accountable for achieving those goals. Organizations must also be willing to take the necessary steps to correct the disparities revealed by the assessment. For example, partners and managers must be committed to redirecting work to attorneys of color if the assessment reveals that they are consistently the low-billers because partners and managers provide them fewer billing opportunities.



Comments for Best Practices RACE and ETHNICITY: RECRUITMENT AND RETENTION, Page 23



The issues surrounding Best Practices for recruitment and retention of diverse attorneys in private law firms and corporations are very complex. Focusing on recruitment alone is not sufficient; it is simply an initial step. Focus on *retention*; building and maintaining diversity within the workplace requires an ongoing commitment and effort.

Statistics show that retention of all attorneys, not just diverse attorneys, is a difficult issue for most law firms. The reasons for low retention rates vary, but include work/life balance issues, generational issues, and differing goals and aspirations.

Frankly, diverse candidates are in demand. Most law firms are seeking qualified, talented, diverse attorneys. Corporations, especially those that do not hire directly out of law school, are constantly in the marketplace seeking diverse attorneys.

More and more, corporations are demanding that outside legal counsel increase minority representation. As they become more diverse, corporations expect the law firms with which they do business to uphold their commitment to diversity and to reflect the changing workplace. This “supplier diversity” has an impact on the recruitment and retention of minority lawyers. In addition, corporations are increasingly requiring their law departments to keep statistics on the amount of legal business that they send to minority-owned firms. While there is nothing wrong with sending legal business to minority-owned firms, corporations are reporting that they are not getting credit for legal business sent to diverse attorneys within *non*-minority-owned law firms.

Status and a feeling of being part of a law firm are significantly impacted by an attorney’s ability to bring in business. If the law departments of various corporations are only given credit for legal work sent to minority-owned law firms, there may be an unfortunate incentive for diverse attorneys to leave those law firms either to join or start a minority firm. And thus, although sending legal business to minority-owned firms is a laudable goal, it may in fact have an adverse impact on the retention of diverse candidates in law firms.

One solution is for lawyers in corporate legal departments to send work directly to diverse attorneys within the law firms with which they do business, and to make sure that the diverse attorney gets the billing credit within that firm. Law firm leaders also need to monitor the workflow constantly to minority attorneys to make sure that they are getting the same opportunities as non-minority attorneys.



Comments for Best Practices RACE and ETHNICITY: CULTURAL UNDERSTANDING, Page 23



Cultural competence requires that organizations have a defined set of values and principles and demonstrated behaviors, attitudes, policies and structures that enable them to work effectively cross-culturally. Organizations should have the demonstrated capacity to value diversity; conduct self-assessments; manage, appreciate and leverage the dynamics of difference; acquire and institutionalize cultural knowledge; and adapt to diversity and the cultural contexts of their employees and the clients and communities they represent.

Cultural understanding, knowledge, and connectedness in the legal profession are another level of diversity and race. It is not as widely written about as cultural competence and, for that reason, Best Practices are not as widely discussed. Nevertheless, it is in the economic interests of lawyers and the legal profession to have knowledge and understanding of different cultures for two main reasons: lawyers reflect the racial, ethnic, and cultural diversity of the many immigrant groups in the United States; and the United States must compete in a global economy. Being able to communicate across cultural lines is essential to maintaining successful lawyer-client relationships in an international business climate.

It is incorrect to assume that the issue of race in America can be entirely represented by the experience of any single community of color. Racial and ethnic diversity issues affect all persons who are not part of the Caucasian Eurocentric majority groups that have historically been in positions of power within organizations as well as in society at large. Moreover, the issue of race will affect each community of color in a variety of often-unique ways. Effective diversity efforts include the need and willingness to acquire some knowledge and understanding of the different cultural and ethnic experiences of the attorneys or clients of color that an organization seeks to recruit or retain.

No one correct and immediate way exists to gain cross-cultural knowledge and understanding, although any number of nonexclusive efforts may be pursued as such an important and ultimately enriching endeavor is undertaken.

While one can learn about and attempt to gain an understanding of the culture of a minority or other ethnic group, it is important to remain aware of one's limits about the depth of that knowledge or understanding. One's perceptions and reactions to a statement, event, or set of circumstances will not always be shared by someone with a different cultural and ethnic experience. For example, body language or nonverbal

communication techniques for people of color may differ based upon cultural and ethnic backgrounds and can often be misinterpreted by members of the majority.

Do not assume that even within a single minority or ethnic group, all cultural experiences and practices are the same. Always be aware that cultural practices and ethnic experiences and backgrounds will have a great deal of difference and complexity in their depth.

Attempt to learn more about the historical context for the racial experience of a minority or ethnic group of the attorneys and clients you seek to recruit or retain. Gaining some knowledge about the historical context of the racial experience for a minority or ethnic group may help provide understanding about how members of that group view themselves within the larger issue of race within America today.

Finally, when interacting or working with anyone from any community of color, be vigilant and engage in an ongoing self-assessment to guard against using or applying racial stereotypes. Stereotyping is detrimental to race relations because it involves inaccurate assessments and judgments of entire racial or ethnic groups and perpetuates a lack of understanding about and among diverse communities. More directly, by engaging in stereotyping, people prevent themselves from gaining an accurate and deeper knowledge and understanding of the cultural practices and experiences of attorneys from communities of color with whom they work and clients whose business they seek, thus damaging and inevitably undermining the long-term survival and continuation of the very relationships they seek to cultivate. Communicating honestly but without stereotypes helps ensure better understanding, which helps cultivate mutually beneficial relationships.



Comments for Best Practices

RACE and ETHNICITY: MENTORING, Page 24



Good mentoring of new and/or young attorneys of color is essential to retention efforts and, perhaps more importantly, to efforts to ensure that diversity exists throughout all levels of the legal profession – in the ranks of senior partners, judges, and general counsels, not just young associates.

Mentoring should be more than just a formal program that provides assigned mentors to new attorneys of color. The reality is that in all employment settings, a great deal of important informal mentoring goes on between experienced lawyers and “up-and-coming” young lawyers who have been recognized as having special talent. This informal mentoring can be far more valuable to the recipients than formal mentoring that often is either too structured or too artificial, leaving both the mentor and mentee frustrated.

This means that mentoring programs for new attorneys of color must arise from an organizational culture shift in which it becomes second nature for senior lawyers to look for opportunities to mentor young associates of color informally. Formal mentoring programs, alone, will not bring about that culture shift.

One roadblock to this culture shift is that senior white attorneys may fear that their informal mentoring efforts with young attorneys of color will be misinterpreted as lack of confidence that without the mentoring, the young attorney will fail. Some of this fear may stem from the simple fact that race issues are sensitive. Some of it may stem from the fact that the senior attorney may not have the same level of confidence in the young attorney of color he or she is attempting to mentor informally as with other mentees, not because of skin color, but rather because of perceptions of talent level.

It is also important for young attorneys of color to understand the importance to their careers of seeking out advice and counsel from more experienced colleagues. Too often, young attorneys of color may feel that they cannot be fully successful unless they “make it” on their own. Seeking help and advice may be perceived as a sign of weakness. But this creates a “chicken and egg” problem. The young attorney of color may not seek out the mentoring needed because of a lack of understanding of its importance. But to gain that understanding, the young associate needs good mentoring. Again, this is partly a question of creating a culture shift in the organization, one in which young associates of color are not as likely to reach the conclusion intuitively that seeking help is an unacceptable sign of weakness.

Also see the Mentoring Section of this Guide on page 65.

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Comments for Best Practices: RELIGION, Page 25



Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. The Act also requires employers to make reasonable accommodations for the religious practices of an employee or prospective employee, unless to do so would create an undue hardship upon the employer. Flexible scheduling, voluntary substitutions or swaps, job reassignments, and lateral transfers are examples of accommodating an employee's religious beliefs.

An employer can claim undue hardship when accommodating an employee's religious practices if allowing such practices requires more than ordinary administrative costs. Undue hardship also may be shown if changing a bona fide seniority system to accommodate one employee's religious practices denies another employee the job or shift preference guaranteed by the seniority system.

It is illegal to discriminate in any aspect of employment, including:

- Hiring and firing
- Compensation, assignment, or classification of employees
- Transfer, promotion, layoff, or recall
- Recruitment
- Testing
- Fringe benefits
- Pay
- Retirement plans
- Disability leave
- Training and apprentice programs
- Terms and conditions of employment.



Comments for Best Practices: ATTORNEYS with DISABILITIES, Page 26



The Equal Employment Opportunity Commission has observed that individuals with disabilities generally have not been a part of the discussion about diversity in the legal profession. Yet, it is important that attorneys with disabilities have access and are integrated into the legal field.

While there is little data on the barriers that attorneys with disabilities face in the legal profession, the MSBA 2006 Self-Audit for Gender and Minority Equity found that bias against attorneys with disabilities is a problem within the legal profession in Minnesota. According to the Self-Audit, 66% of disabled attorneys surveyed found that bias against attorneys with disabilities in legal workplaces was a major or moderate problem.¹

A disabled attorney who participated in the study reported, “In firms, any disability is viewed as creating vulnerability for the firm as a whole. At least that’s been my experience.”²

Another disabled attorney reported, “Changing jobs (when one needs accommodation) is very, very difficult, unless you know the people personally that you’re going to be working with and they, on an individual basis, can see some advantage to themselves by accepting your limitations.”³

As a result of the problems found in the Self-Audit, the disability subcommittee recommends that employers in the legal profession adopt the Best Practices on pages 26 and 27 to reduce the barriers attorneys with disabilities face and to increase their access to the legal field.

The subcommittee applied the Minnesota Human Rights Act (MHRA) definition of disability to their analysis. The MHRA definition is substantially similar to the definition used by the Americans with Disability Act (ADA). Under the MHRA, a disability is “any condition or characteristic that renders a person a disabled person. A disabled person is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.”⁴

¹ Minnesota State Bar Association, *2006 Self-Audit for Gender and Minority Equity*, p. 32.

² *Id.*

³ *Id.*

⁴ Minn. Stat. § 363A.03, subd. 12.

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Comments for Best Practices SEXUAL ORIENTATION/GENDER IDENTITY: MENTORING, Page 29



Whether or not to enter into a mentor-mentee relationship is, as with so much else, an individual decision based on considerations that will vary from person to person. Individual GLBT attorneys are as likely as anyone else to conclude that they would benefit from the ability to have access to a mentor. That said, sometimes the “invisible” nature of sexual orientation can create challenging issues in fostering such a relationship. In the MSBA 2006 Self-Audit for Gender and Minority Equity, one participant in this study, identified as a GLBT woman with 10-14 years of experience currently in a firm, observed:

(I)dentifying others within ... my employment setting that were either lesbian or gay when I began my employment (was difficult) because we’re invisible ... (I)t’s hard to even know who your peer group is and how to be able to identify within a large organization who a support group of individuals might be ... (T)o this day I’m still not sure.¹

Some GLBT attorneys conclude that it is better for them, professionally, to remain quiet regarding their sexual orientation.² Eventually, however, most do decide to be open in the workplace regarding their sexual orientation. Revealing one’s sexual orientation (or having others reveal it) even after establishing oneself successfully in a workplace nonetheless can have ramifications for mentor-mentee relationships:

I had a very high-level partner say, “I’m going to make you the best associate this firm has ever seen,” and he did because they have the power to. The second I was outed I was dropped, and then I became a pariah.³

And even when someone who is open regarding their sexual orientation participates successfully in a mentor-mentee relationship, as one GLBT woman with 0-4 years of experience currently in the public sector, reported:

(T)here was just this automatic expectation from people (in the firm) setting up mentoring relationships or people talking informally about who I should ally myself with ... that I should become one of these gay poster children, regardless of my interests or needs (regarding mentorship).⁴

Fostering effective mentor-mentee relationships involving GLBT attorneys, then, can boil down to answering one fundamental question: to what extent is the mentor intended to focus on guidance with respect to one’s practice area, versus guidance with

regard to questions like “how open should I be in this workplace regarding my sexual orientation?” There may not be an easy answer.

First, employers need to create a workplace environment that clearly communicates to the GLBT attorney seeking a mentor that she or he can feel comfortable expressing interest in a mentor who can provide guidance regarding being a GLBT attorney in that workplace. The attorney may not express such an interest, because she or he simply feels this is not necessary – but the key is to foster an environment where an attorney who *does* have such an interest does not fear professional repercussions from expressing it. As with any other sort of attorney, GLBT attorneys want to succeed in their careers – and may prefer mentorships focusing solely on their practice areas, and may have little or no interest in an employer’s GLBT-related projects. Ask those seeking mentors open-ended questions about the sorts of topics – personal or professional – on which they would like mentor guidance, and follow their lead.

Second, employers need to be prepared to respond to a request for a mentor on issues relating to being GLBT in that workplace. This may involve letting others in the workplace know that the firm is interested in identifying those who would be interested in mentoring a GLBT attorney, to see if people with relevant insights step forward. It would also be important to make sure that those who do are, in fact, conversant in the possible topics that might arise in such a mentor-mentee relationship to maximize the usefulness of the guidance they might offer. If no internal candidates appear, employers should be prepared to work with the Minnesota Lavender Bar Association, GLBT employee groups at similar employers, or personal networks to identify other resources where potential mentors might be found.

¹ Minnesota State Bar Association, *2006 Self-Audit for Gender and Minority Equity*, at 28.

² *Id.* at 27.

³ *Id.* at 30 (Source: GLBT woman with 20 or more years of experience, currently in firm.)

⁴ *Id.* at 61.



Comments for Best Practices SEXUAL ORIENTATION/GENDER IDENTITY: COURTS, Page 31



Perhaps more than any other sort of employer analyzed in the 2006 MSBA Diversity Report, the Minnesota judiciary is perceived as having a duty to articulate, implement, and affirm practices that reflect a deep commitment to fairness for all. A perception that the judiciary is not committed to basic fairness, or is oblivious to the increasingly diverse Minnesota population and to its correspondingly diverse needs, undermines the confidence Minnesotans place in our state's judicial system as a forum in which all persons may be effectively heard and in which all persons have an expectation of fair and impartial review. A judicial system perceived, even partially, to be closed to those on the "margins" of society undermines society itself.

Equal Access

The Minnesota Judicial Branch's Judicial Council Policy 10.02 (Racial, Ethnic and Gender Fairness Policy) states that it is their policy to "identify and eliminate barriers to racial, ethnic, and gender fairness within the judicial system, in support of the fundamental principle of fair and equitable treatment under law." This is unquestionably a worthy and appropriate goal.

However, the Minnesota State Bar Association's diversity work has acknowledged that "diversity" extends well beyond the legitimate issues relating to race and gender and, in fact, encompasses various other categories, such as sexual orientation/gender identity, disability, and religion. With the increased visibility of Minnesotans who identify themselves in accord with these characteristics, it seems that at a minimum, the Minnesota judicial policy in this regard must adequately reflect these aspects of our diverse community.

Existing Canons of Judicial Conduct as well as the Rules of Professional Conduct demand that our judicial process be open to all, and specify that discrimination and other negative conduct related to sexual orientation (including gender identity), disability, and religion be proscribed. When the Minnesota judicial branch undertakes to articulate a "Fairness Policy" but excludes from its scope various significant communities within the Minnesota population, it sends a message that "fairness" extends only so far.

In its 2006 report, the MSBA Task Force on Diversity in the Legal Profession noted that only 28 % of GLBT participants in its survey felt that employer "diversity efforts" included sexual orientation,¹ and nearly 70% of GLBT participants felt that bias against GLBT attorneys in courtrooms was a "major" or "moderate" problem.² Participants across the board indicated that leadership of key players in any employment setting was critical

to the success of the employer's diversity efforts. Here, the Minnesota judicial branch's limited Fairness Policy represents a limited commitment to the goal of successfully pursuing the "fundamental principle of fair and equitable treatment under law," a shortcoming that could negatively affect many operations of the judicial branch as a whole.

Recommendation: that the Minnesota judicial branch specifically amend its Fairness Policy to include, at a minimum, those populations identified within the scope of the 2006 MSBA Self-Audit for Gender and Minority Equity. Further, the Minnesota judicial branch should direct that all judicial branch "diversity committees," including District Equal Justice Committees and diversity staff within the State Court Administrator's office, address within the scope of their work, at a minimum, the populations identified in that MSBA report.

Minnesotans often view their state as a progressive community and may be reluctant to imagine that their neighbors, particularly public employees, would be biased. However, the judiciary in at least two other states that might also be considered progressive – California and New Jersey – has conducted broad studies of judicial operations that have produced startling results. Like Minnesota, both states have broad civil-rights laws prohibiting discrimination on the basis of sexual orientation.

In 2001, a report titled *Sexual Orientation Fairness in the California Courts*, issued by the Sexual Orientation Fairness Subcommittee of the Judicial Council's Access and Fairness Advisory Committee, contained one section examining "The Court as a Workplace" (the other examined courts from a users' standpoint). Among the findings of the report: lesbian and gay employees were at least four times more likely to experience negative actions or comments based on sexual orientation than were heterosexual employees; 49% of those employees who took some action in response to such an incident reported that their intervention had little or no effect; 20% of lesbian and gay court employees reported experiencing discrimination in the workplace based on their sexual orientation (2% of heterosexual employees reported this); 56% of those who took some sort of action in response to discrimination reported that nothing happened as a result; 23% of those taking no action indicated they did not act for fear of triggering retaliation.³ The report noted that the very act of surveying court personnel on such matters "itself generated a number of negative responses [which] underscore some of the findings from the survey, which indicate that some court employees are unconcerned or hostile with respect to sexual orientation issues in the courts."⁴

Also in 2001, the New Jersey Supreme Court Task Force on Gay and Lesbian Issues produced a similar report, also examining the judicial system from the standpoint of employees and public consumers. Among other things, the report concluded that "approximately one-third of the court employees who responded reported observing or experiencing derogatory statements or inappropriate jokes about gays and lesbians. . . .

Most of these comments were attributed to co-workers, although judges and supervisors were also identified as the source of objectionable remarks.”⁵ Further, the report found that numerous participants had witnessed sexual-orientation discrimination in pay, work evaluations, promotions and advancement, work assignments, in exclusion from social functions, and in the form of verbal abuse or harassment.⁶ As with the California experience, “a great deal of hostility was expressed against the survey, much of it emanating from court employees who, receiving it with their paychecks, felt forced to complete it. . . . Many expressed anger that state funding was being used for this study and felt that completing it was a waste of time. . . . Others were more explicit in their disdain for gays/lesbians.”⁷ The report concluded:

The possibility that bias may create a hostile work environment, affect case disposition, hinder professional opportunities, dissuade individuals from using the court system and undermine public confidence in judicial neutrality is a serious concern which warrants heightened awareness by the bench and bar of the importance of education as recommended by the Task Force.⁸

The fact that progressive states on both coasts have conducted similar surveys and found such similar, pervasive concerns within their judicial systems raises the concern that if Minnesota were to do the same thing, it may also uncover bias within the Minnesota judicial branch. This dispiriting possibility, however, should not be used as the basis for deciding that such a study would not be helpful for Minnesota. If such a study were to reveal bias affecting both employees of the judicial branch and court users among the general population, this would be a wake-up call highlighting the need for remedial action. Such action would, in fact, advance the judiciary’s commitment and obligation to fairness and openness to all.

Recommendation: that the Minnesota judicial branch undertake a comprehensive internal study of court employees’ experiences and perceptions with respect to, at least, sexual orientation issues along the lines of the studies completed by the court systems in California and New Jersey. Judicially created committee and task forces focusing on sexual orientation matters conducted these studies; creating such a committee is reflected in the Governance recommendation below. Findings could illuminate other areas of helpful reform.

Workday Issues

In some ways, the Minnesota judiciary’s employee policies reflect the reality that it employs people in unmarried relationships, including those in same-sex relationships. For example, Minnesota Judicial Council Policy 3.13 (Employment of Relatives) provides that “no appointing authority appoint, transfer, or promote to any position a member of his or her immediate family.” In a footnote, the policy defines “immediate family” to include “co-habitors,” which presumably would include domestic partners. In addition, various policies specifically include references to “sexual orientation,” including Policy 3.00 (Human Resources General Policy), Policy 3.04 (Discrimination and

Harassment), and Policy 3.02 (Equal Employment Opportunity). To this extent, the Minnesota judicial branch does at least as well as most private employers, which include “sexual orientation” within the relevant non-discrimination or non-harassment policies.⁹

However, one glaring area in which the judicial employee policies are inadequate is in its Policy on Family and Medical Leave Act (no policy number; it is categorized as a “personnel” policy). This policy is the basis for providing employees with up to twelve weeks’ unpaid leave consistent with the Family Medical Leave Act (FMLA). The policy mirrors the FMLA language that it is available for an employee if needed “to care for a child, spouse or parent who has a serious health problem.”¹⁰ However, the policy goes out of its way to note that “The [FMLA] specifically defines a spouse as a husband or wife and does not address other ‘alternative lifestyle’ relationships.”¹¹ The policy cross-refers to other judicial personnel policies, including chapter 13 (Sick Leave).¹²

In Chapter 13 of the Minnesota Judicial Branch’s Human Resources Rules, Rule 13.4 states that an employee may use sick leave “to the extent of his/her accumulation for the following: ... (f) illness or disability of an employee’s spouse or co-habitor” Additionally, Rule 13.4(h) permits an employee to use sick leave time “to attend the funeral” upon “the death of the employee’s spouse [or] co-habitor”

While the judicial policy regarding FMLA is correct that FMLA does not, by its own terms, extend its protections to employees needing time to care for sick “co-habitors,” it is equally true that nothing *bars* the judicial branch from extending this protection on its own initiative. (Certainly, nothing requires the judicial branch to describe these relationships dismissively as “alternative lifestyle relationships.”) The judicial branch’s failure to exercise its authority, not remotely diminished by FMLA or any other law, to provide employees with the ability to seek FMLA-type leave to address the serious health problems of their domestic partners is mystifying in light of its willingness to permit employees to use accumulated sick time to care for partners or to attend a partner’s funeral. The fact that the judicial branch does have these policies in place is commendable, but its failure to apply this principle of fairness to all areas within the scope of its discretion sends a message that some employees’ families are worthy of consideration, and others are not.

Recommendation: that the Minnesota judicial branch amend its Family and Medical Leave Policy to make it consistent with its Sick Leave Policy by making its protections available to employees and their “co-habitors.”

Governance

The Judicial Council of the Minnesota Supreme Court has established a number of committees designed to improve judicial policies and operations, as well as to advise the judiciary on matters of law or proposed policy. Reflecting the Fairness Policy (see above), the Court has established two particularly relevant committees: the Racial

Fairness Committee and the Gender Fairness Implementation Committee. The existence of committees dealing with matters relating to race and gender mirrors the scope of the Fairness Policy itself, which also focuses on these same critical areas.

However, inasmuch as this report recommends that the judicial branch expand the scope of its Fairness Policy to reflect that Minnesota experiences diversity in ways beyond race and gender, the scope of these committees is similarly inadequate to address the judicial branch's need to examine critical issues related to, among other possible categories, sexual orientation/gender identity, disability, and religion.

Further, since this report makes other recommendations regarding sexual orientation-related matters, the judicial branch would strongly benefit from expanding its available resources to review these or other recommendations that emerge now or at some later point.

Recommendation: that the Minnesota judicial branch expand the scope of its Fairness Committees to include at least one committee focused on other "fairness" issues beyond those of race and gender. The judicial branch could create committees to address each subject-matter area (e.g., a committee regarding sexual orientation, a committee regarding disability, etc.) or could create one broad committee designed to address all subject matter areas beyond race and gender.

Evaluation and Promotion

With respect to one significant group of court employees – namely, judges – the concepts of “evaluation” and “promotion” are not quite the same as attorneys in other settings would experience. “Promotion” may come about as the result of an election, not because of the decision of an individual serving as their immediate supervisor. But regardless of whether the judge is “promoted” by the people, or by a recommendation for a higher appointment, it is likely that such a promotion (the result of evaluation, in one form or another) will be based in part on the judge's performance of his or her duties. That performance, in turn, is influenced by the educational and other opportunities available.

According to the Minnesota State Court Administrator's Office's Professional Development Opportunities Guidebook for January 2006 – June 2007, the judicial branch offered three courses under the heading of “diversity.” These courses were: “He Says, She Says: How to Communicate Effectively with the Other Gender,” “Appreciating Differences” (a course based on the Myers-Briggs test), and “Intercultural “Conflict Style Inventory” (an analysis of participants' own conflict-resolution styles).¹³ It is not immediately apparent how, with the exception of the first course, these sessions would naturally lend themselves to the sort of “diversity”-related concepts that are embodied in the Court's own rules regarding the elimination of bias requirements

imposed on attorneys throughout Minnesota, or how they would prepare judges to identify and eliminate the sorts of discrimination that could appear in their courtrooms and which the Code of Judicial Conduct obligates them to prohibit. Indeed, judges are not required to undergo an equivalent of elimination of bias training as part of the continuing judicial education requirements. Providing at least one course that is designed with an eye toward the Code's obligations (as well as those in the Code of Professional Conduct, governing the lawyers that appear before the judges) could be an improvement that would strengthen the professional development opportunities on offer while also reaffirming the judicial branch's commitment to the anti-discrimination principles it has implemented in the Codes of Judicial and Professional Conduct.

Additionally, the Guidebook indicates that a course in "Family Law for the Minnesota Judiciary" was offered to participants.¹⁴ One participant noted that part of the session focused on "non-traditional families," and indicated a hope that this would involve same-sex couples and their families. Instead, the focus was on unmarried heterosexual couples with children. It would be important to encourage in this or similar courses on substantive legal issues, where relevant, the inclusion of material relating to the diverse communities within Minnesota, including the GLBT community. It would also be helpful to encourage other groups, such as the District Judges' Association, to include similar content.

Recommendation: that the Minnesota judicial branch encourage the expansion of existing professional education course offerings to court personnel to include relevant substantive-law matters pertaining to diverse Minnesota communities. Further, the Minnesota judicial branch should implement an elimination of bias requirement as part of continuing judicial education, and provide educational sessions regarding discrimination within the court system and strategies for identifying and eliminating it.

Recruitment, Retention, and Compensation

Between 2001 and 2003, Minnesota state employees in same-sex relationships had the ability to provide for their families in essentially the same way that employees with spouses could: by providing health insurance coverage to their partners that was equivalent in most respects to that available to spouses. This opportunity arose because then-Governor Jesse Ventura saw the fundamental fairness involved in providing equivalent compensation to all state workers. Under the Governor's plan, negotiated with employee unions, an employee with a different-sex partner could provide for them through marriage, while an employee with a same-sex partner could provide for them through this domestic partner plan. This possibility arose because of executive branch commitment to fairness for all state employees.

In 2003, however, the domestic partner benefit possibility was closed when the Legislature, at the behest of the new Governor, Tim Pawlenty, removed relevant provisions from employee contracts before approving them. In 2007, the Legislature

changed course and approved legislation that would have reinstated the domestic partner benefit provisions for state workers. Governor Pawlenty vetoed that legislation, for this among other reasons. In 2007, the Legislature demonstrated its own commitment to fairness for all state employees.

According to Minnesota Judicial Policy 3.00 (Human Resource General Policy), the judicial branch is committed to, among other things, “provid[ing] comprehensive insurance and other benefits comparable to the other branches of state government.” While it is helpful to be consistent with the other branches of state government where it is in the judiciary’s interest to do so, consistency at the expense of fairness is never in the interest of the judicial branch.

Under Minn. Stat. 179A.101, the Legislature recognized the independence of the judicial branch in its dealing with its own employees, authorizing it to negotiate collective-bargaining contracts to cover its employees. Under subdivision 1(g) of this statute, the Legislature required only that “copies of collective bargaining agreements entered into under this section must be submitted to the Legislative Coordinating Commission for the commission’s information.” This is quite distinct from contracts negotiated by the executive branch, where the Legislature required that “the negotiated agreements and arbitration decision must be submitted to the legislature to be accepted or rejected in accordance with this section and section 3.855.” See Minn. Stat. 179A.22, subd. 4. While the Legislature retained the power to “accept or reject” collective-bargaining agreements involving executive branch employees, the Legislature requires nothing more than to be “informed” of agreements for judicial branch employees. The judicial branch, therefore, is free to negotiate the provision of domestic partner benefits for its employees irrespective of whether executive branch employees enjoy those benefits.

The judicial branch’s extension of these domestic partner benefits would fulfill its unique, nonpartisan role, and ensure that this critical part of our government not only *be* but *be perceived* as fair and impartial. The judicial branch already recognizes non-marital relationships. Current human resources policies covering “co-habitators” are discussed elsewhere in this summary. Additionally, the Code of Judicial Conduct recognizes this reality. In Canon 3D(1)(c), for example, the Code provides: “A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where ... the judge knows that he or she, individually or as a fiduciary, or the judge’s spouse [or] significant other ... has an economic interest in the subject matter in controversy... .”

Likewise, Canon 4 regulates the financial dealings of judges and applies to dealings of family members. The comment to Canon 4 (emphasis added) provides:

"Family" denotes a spouse, *significant other*, child, grandchild, parent, grandparent, or other relative or person with whom the specified individual maintains a close familial relationship. See Sections 4D(2), 4E, 4G and 5A(3)(a).

... "Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, *or a person treated by a judge as a member of the judge's family*, who resides in the judge's household. See Sections 3D(1) and 4D(5).

Under these provisions, the Minnesota judicial branch recognizes that a domestic partner is a member of a judge's family. Thus, while imposing burdens on a judge's actions when a judge has a domestic partner, the judiciary should likewise provide equal benefits based on that status.

Finally, Minnesota Judicial Council Policy 3.00 (Human Resources General Policy) provides that "at least each biennium, the Judicial Council shall approve a compensation plan for employees who are not covered by a collective bargaining agreement." Accordingly, the Judicial Council has the authority to confer upon non-union employees the same domestic partner benefit provisions it could make available under collective-bargaining procedures.

Recommendation: that the Minnesota judicial branch exercise its statutorily-recognized independent authority and negotiate for domestic partner benefits for its employees covered by collective-bargaining agreements, and provide similar benefits to its employees not covered by such agreements.

¹ Minnesota State Bar Association, *2006 Self-Audit for Gender and Minority Equity*, at 28.

² *Id.* at 29.

³ *Id.* at 9-10.

⁴ *Id.* at 13 (includes sample derisive comments).

⁵ *Id.* at 2.

⁶ *Id.* at 46.

⁷ *Id.* at 59.

⁸ *Id.* at 64.

⁹ *Id.* at 56.

¹⁰ Minnesota Judicial Branch Policy on Family and Medical Leave Act, at 1.

¹¹ *Id.* at 2.

¹² *Id.* at 3.

¹³ Minnesota State Court Administrator's Office, *Professional Development Opportunities Guidebook for January 2006 – June 2007*, at 15-16.

¹⁴ *Id.* at 5.



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Recruitment, Retention, and Compensation

Under Minnesota law, local government employers may not provide domestic partner benefits to their employees. See *Lilly v. City of Minneapolis*, 527 N.W.2d 107 (Minn. App. 1995). However, the statute at issue in *Lilly* applies to premium-based insurance; it does not bar local governments from providing, for example, family leave policies that permit employees to take time off to care for a sick domestic partner. Local government employers should also critically review their policies and practices to ensure that opportunities not governed by *Lilly* that are made available to employees' spouses, from beneficiary designations to relocation allowances to inclusion in the staff picnic, are made available as well to employees' domestic partners.

State boards and agencies may provide domestic partner benefits only with the approval of the Legislature and Governor, which is not forthcoming at this time. However, state boards and agencies should conduct a comprehensive review of policies not governed by *Lilly* to ensure that domestic partners are treated the same way as spouses.

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Mentoring



This section of the MSBA Diversity Best Practices Guide addresses the important role that mentoring plays, particularly in the retention of lawyers. It contains the following:

An article written by Task Force member Lisa Montpetit Brabbit, **Achieving Excellence through Mentoring: A Step-by-Step Guide**, on page 66.

A summary of research studies about mentoring, **Research on the Impact of Mentoring in a Professional Environment**, on page 80.

A **Bibliography**, identifying the source for each study, on page 85.



Achieving Excellence through Mentoring: A Step-by-Step Guide



Lisa Montpetit Brabbit*

The Best Practices in this Guide can be advanced through a formal, organizationally supported mentor program. A growing body of empirical research shows positive professional development and improved culture as a return on organizational investment.¹ Practitioners and scholars are uncovering new ideas and ways to advance relational structures and mentoring outcomes.² Fine nuances in relational structures are now giving insight to the variations of mentoring quality.³ Smart investors appreciate that each program should be specifically tailored to organizational and participant goals, and developed in union with the mission of the organization. While one size does not fit all, several key elements can be identified as consistent factors in successful formal programs.

This mentoring guide outlines the necessary underpinnings of a formal program through a practical step-by-step plan. Section I, Feasibility Study, gives decision makers both information and factors to consider before an investment of time and money is made in a program. Section II, Program Preparation, outlines the foundation for the program and identifies the tasks to be accomplished before participants are engaged in mentoring relationships. Section III, Program Implementation, provides tips for maximizing the mentoring process through the lens of the program director. Section IV, Assessment, addresses the need to create systems to evaluate mentoring outcomes for both quality control and opportunity for improvement.

I. Feasibility Study: Evaluate a Formal Program's Viability

Each legal employer should carefully discern whether it is positioned to support a successful program. Not all environments are ready-made for mentoring success. For legal employers that have previously experienced either failure or mediocre outcomes with a formal program, the evaluation should also identify missteps and reasons why the program did not meet expectations. This section gives guidance to the pre-program conversations and decisions in which key stakeholders should engage about trained staff (the program director), financial resources, and culture.

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¹ A summary of mentoring studies and a bibliography are found on pages 80-86 of this Guide.

² See Belle Rose Ragins and Kathy E. Kram (editors), *The Handbook of Mentoring at Work: Theory, Research and Practice* (2007).

³ *Id.*

A. Program Director

Most legal employers underestimate the importance of a trained program director - a point person for every mentor relationship who is strategically involved from preparation to assessment.⁴ Law firms, government entities and law schools typically employ or assign an individual to pair mentors and protégés, but a formal program requires more. Without a director who supports the mentoring relationship throughout the entire program, mentoring outcomes fail to achieve maximum potential.

The active participation of a program director in a formal program is a key distinction between formal and informal mentoring. The foundation for informal mentoring is often a spontaneous dyadic relationship between mentor and protégé. Formal mentoring, however, is a planned tertiary relationship between a mentor, a protégé and a director. While mentoring relationships under both rubrics can fail, when a formal program understands and engages the mechanics of a tertiary relationship, successful mentoring outcomes will more likely follow. Legal entities that seek to build a formal program should consider the engineering of a three-legged stool.

In selecting a program director, the organization should look for the following:

- Familiarity with the practical application of mentor programs and the core concepts of mentoring.
- Strong interpersonal skills.
- The ability to navigate complex social and interpersonal challenges.
- Strong administrative and organizational skills.

The director should have or develop (early on) a working knowledge and appreciation of the following:

- Basic mentoring concepts and an understanding of mentoring theory.
- The mission and values of the organization.
- The services of the organization, how they are delivered, and the client base.
- The required skill sets of the lawyers (i.e., client relations, negotiations, problem solving, drafting).

The director is a valuable asset to the relational structure and process of a formal program. A director can infuse accountability, purpose, and quality into the mentoring process in ways not possible in informal mentoring. The director, as outlined in Sections II, III and IV, is responsible for:

- Developing program goals and objectives.
- Identifying and gathering relevant information from mentors and protégés.

⁴ A failure to appreciate the unique role of the director typically stems from a common belief about formal programs; namely, that participants are assumed to be self-sufficient as soon as a match is made. Such an assumption can only be made for successful informal mentoring.

- Developing or acquiring helpful written materials for program participants.
- Pairing mentors and protégés.
- Training participants.
- Supporting and empowering mentoring relationships in the program.
- Troubleshooting and problem solving.
- Data collection and analysis.
- Overall quality control.

The organization will need to determine whether the director is full-time, part-time, or whether the role is integrated into an existing position. Common missteps include assigning the director role to a competent, but already busy, employee and underestimating the amount of administrative time a successful program requires. Try to make fair comparisons when evaluating the amount of time a mentor program will require. For larger environments, does the organization have a full-time recruiter? Does the organization have a full-time pro bono coordinator? For smaller environments, how much time is spent on human resources issues? How much time is spent on management and administrative issues? Evaluating all options with an honest assessment of the time and energy required will lead to viable solutions. Understanding the critical role of the director throughout the entire mentoring process, and the director's opportunity to advance each relationship on a continuum of quality, will position a program for success.

B. Financial Support

The single most important financial commitment for a formal mentor program is the investment in the program director, primarily in the form of salary and benefits. Other important financial considerations include:

- Financial rewards for successful program participants or participants who achieve stated goals.
- Expenditures for program activities such as a kick-off event, monthly luncheons, small group meetings, or year-end receptions.
- Reimbursements for mentor-protégé activities (lunch, coffee, mileage, travel).
- Professional consultants to assist with training directors, conducting orientation programs, and developing program requirements and materials.
- Marketing costs associated with a successful program.

C. Cultural Assessment

While more research is necessary to better understand how organizational systems and attitudes impact the acceptance and effectiveness of mentoring, anecdotal evidence implicates a strong connection between organizational culture and the way participants approach and engage the mentoring process. Best Practices for a mentor program require all stakeholders to see mentoring as a valuable endeavor, especially the highest levels of leadership and management. Mentoring activities should be accepted and encouraged in tangible, visible ways and should model both the values of the

organization and the core values of the profession. For example, organizations that value diversity should integrate discussion items or events related to underrepresented groups into the activities of the mentor program. Organizations that value excellence, service, or professionalism should undertake the same effort to integrate these concepts.

Senior lawyers influence culture and shape the personality of the organization, either intentionally or by default. Protégés in the program will focus on the *actions* of leaders and mentors, not just their words, and respond to the program accordingly. If protégés perceive that the culture is unsupportive of the program, they will disengage, morale will decline, and the risk of failed relationships will increase. Organizations should consider the following when trying to create a strong connection between organizational culture, individual objectives, and the various ways in which the two can support each other:

- Allow time spent on mentoring activities to count toward overall hourly requirements.
- Consider and evaluate whether each mentor and protégé obtained mentor program goals as a part of his or her performance reviews (see Section III on developing personal and professional goals).
- Consider financial incentives for both mentors and protégés who achieve identified mentor program goals.
- Create organizationally supported opportunities for mentors and protégés (i.e., luncheon roundtables, small group debriefings).
- Encourage mentors and protégés to suggest ways to improve organizational culture.
- Allow protégés to offer reviews of their mentors.
- Do not allow senior leaders a “free pass” from participating in or showing support for the program. At a minimum, each person should be able to identify the ways in which he or she will support the program. Alternatives to a formal relationship include hosting a small group discussion on a topic important to the organization, delivering discussion suggestions to mentors and protégés, or organizing a group activity.
- Disseminate a newsletter or other communication designed to impart useful information, mentoring tips, or offer readings of interest related to mentoring and diversity.
- Provide recognition and non-financial rewards for mentors and protégés.

Mentoring and organizational culture both grow from our relationships with other people, and in an intra-organizational program, the two are inextricably linked. A community that demonstrates care and concern for one another and honors a lawyer’s unique gifts and contributions to organizational and professional goals will advance a healthy culture and positive mentoring outcomes.

II. Program Preparation

Design features of formal programs vary greatly from organization to organization.

Empirical research is virtually non-existent in the area of design and structure of a formal program. As a result, the literature is flush with tips and techniques flowing from large doses of anecdotal evidence. A summary of positive anecdotal evidence is outlined in this section on Best Practices for program preparation.⁵

A. Program Objectives

Successful mentor programs have clearly articulated, achievable objectives. Objectives communicate to participants both an understanding of what the program seeks to accomplish within the organization and how the organization sees its priorities for participants. Program objectives should capture an organization's values and norms and parallel the aspirations of the profession. Examples of program objectives include:

- Creating opportunities for lawyers to develop specific professional skills for the benefit of clients and the community.
- Generating opportunities for lawyers to engage in conversations about professionalism, diversity, the practice of law, and other issues important to the organization.
- Growing and developing authentic, ethical leaders.
- Expanding professional knowledge.
- Fostering professionalism and the highest ideals of the profession.
- Establishing developmental networks⁶
- Creating professional opportunities for and providing meaningful work assignments to new associates.
- Building a community of respect and acceptance for all individuals.
- Designing opportunities for all lawyers to participate in pro bono activities.
- Maximizing the benefits of a diverse work environment.
- Building social capital.

As identified later in part IV, program objectives serve as a critical foundational building block for assessment, feedback, and evaluation of how the mentor program is working.

B. Program Requirements

Program requirements define the expectations of the participants and give guidance about the amount of time and types of activities for both mentors and protégés. Program requirements should incorporate the necessary structure to capture

⁵ See also Katherine Giscombe, *Advancing Women through the Glass Ceiling with Formal Mentoring*, Handbook of Mentoring at Work, *supra* note 2, at 549-571 (author reviews 11 formal programs specifically developed to advance women business leaders to identify key elements of mentor programs judged to be effective).

⁶ Ragins et.al, Handbook of Mentoring at Work, *supra* note 2. The term “developmental networks” has recently been introduced to the mentoring literature. The term is used to describe multiple sources of mentoring support and the resulting cumulative impact on outcomes such as satisfaction, skill development, career advancement, and increased self-confidence.

accountability (i.e., stating a minimum number of times mentor pairs should connect) and allow for enough flexibility to maximize individual goals (i.e., program participants determine the nature of the engagement at each connection point). In formal programs, a spectrum - and often a tension - exists between formality and flexibility in program requirements. In finding a balance, understand that managing the expectations of the participants is critical to the success of the program and the satisfaction of the participants. Questions to consider include:

- Is participation voluntary or required?
- How long is the commitment to the formal relationship (six months, one year, three years)?
- What is the minimum amount of time the mentor and protégé should commit to the program?
- Are a minimum number of interactions required for the mentoring relationships? ⁷
- Will time spent on mentoring activities count towards minimum hour requirements for lawyers?
- Will program requirements give guidance on mentor activities? What are the various ways in which mentors and protégés can spend their time (lunches, shadowing, conversations, problem solving, small group sessions, assigned projects with feedback)?
- Does the program require discussion items or specific mentor-protégé activities?
- How will participants record time and activity in the program?
- How will participation be evaluated and/or rewarded?
- Who will evaluate and/or reward participation?
- Will other mentoring models be utilized, such as mentoring circles and peer mentoring?

Each question must be answered in the specific context of the organization and should seek to advance the program objectives. The answers to these questions will form the basis for communications with the program participants and will guide expectations relative to program activities.

C. Selecting and Gathering Information from Mentors and Protégés

Depending on the size of the program, participants are selected either because they volunteer, they are invited, or they are required to participate. Mentors who volunteer are often intrinsically motivated individuals who derive personal and professional satisfaction from assisting another lawyer on his or her professional journey. While this is most often the case for a volunteer, the director should still converse with the volunteer about expectations to rule out motivations that are contrary to the objectives of the program. For example, a lawyer might volunteer to mentor a law student with the

⁷ S. Gayle Baugh and Ellen A. Fagenson-Eland, *Formal Mentoring Programs: A "Poor Cousin" in Informal Relationships?*, Handbook of Mentoring at Work, *supra* note 2 at 261 ("Available research suggests that setting guidelines for frequency of meetings leads to more positive responses to the program.") (citations omitted).

hopes of obtaining a “free law clerk.” Similar conversations should be engaged with a volunteer protégé. Left unchecked, misplaced motives and expectations will lead to failed relationships.

Invited mentors are generally identified using an aspirational benchmark of experience or expertise. Invited protégés are generally identified using some threshold for professional skill or other need for professional improvement. Conversations with mentors and protégés invited to participate in a program should give specific attention to mutuality and reciprocity.⁸ The concepts of mutuality and reciprocity emphasize that the participant was invited to both give and receive in the relationship. If the mentor views his or her role as limited to “giving,” and the protégé to “receiving,” that expectation will also limit possible opportunities and outcomes.

If lawyers are required to participate, evaluate their specific needs and strengths and make the appropriate investment in the pairing process. In short, not all lawyers have the interpersonal skills necessary to be an effective mentor in the tertiary relationship of mentor, protégé, and director. As mentioned earlier in this guide, alternatives to a “paired” relationship exist.

When considering mentors for the program, note the degree to which the lawyer demonstrates:

- Interpersonal skills
- Professional skills
- Listening skills
- Problem solving skills
- Expertise and knowledge
- Self-reflection
- Professionalism.

Once a participant has been identified, the program coordinator should:

- Provide education about program objectives
- Provide education about program requirements
- Gather all necessary information for the pairing process
- Provide written program materials
- Answer questions.

D. Written Materials

Written materials serve as a road map for participants in a formal mentor program. Written materials range from short, concise checklists, to longer, more informative creations. Consider including the following in the written materials:

⁸ Ragins et al, Handbook of Mentoring at Work, *supra* note 2 at 661 (citations omitted.)

- Program overview
- Program objectives
- Program requirements.
- Responsibilities/role of the mentor
- Responsibilities/role of the protégé
- Responsibilities/role of the director
- Suggested activities that advance the program objectives
- Suggested discussion items that advance the program objectives
- Helpful tips for successful participation
- How and where program activities are recorded
- Year-end evaluations or other evaluation forms
- List of participants and contact information.

III. Program Implementation

A. Pairing Mentors and Protégés

Investing the necessary time, thought, and energy into the pairing process will maximize the opportunity for a high quality, reciprocal relationship. While programs are beginning to report more useful information in the last decade about the process, pairing mentors and protégés remains a challenge for most programs.

For intra-organizational programs, the director will have some baseline knowledge of the participants. Personal knowledge can be very helpful in considering work habits, work style, delivery and receipt of feedback, personality, and a wide variety of interpersonal skills. On some level, the coordinator is trying to predict “chemistry.” While the “chemistry” question is worth asking, formal programs are not designed to advance on chemistry. Like all relationships, there is no substitute for effort, time, emotional energy, and self-reflection.

Mentor relationships in a formal program arise in four primary ways, or a combination thereof: director assignment, protégé selection, mentor selection, or mutual selection. Regardless of the method, the director has several important roles to play.

First, the director should ensure that relationships center around the articulated professional goals of the protégé, and that the mentor can (at least in theory) advance those goals.

Second, the coordinator should consider needs and goals related to members of underrepresented groups. Scholars conclude:

We can postulate that when these relationships are of high quality, they will not only have the potential to enhance the careers of individuals from non-dominant

groups but can also prompt the personal learning of both mentors and protégés. While same-gender and same-race relationships have been found to be a critical source of psychosocial support in individuals' developmental networks and mentoring relationships, cross-race and cross-gender relationships are opportunities for individuals from all backgrounds to acquire emotional competencies and relational skills essential to leading and thriving in a diverse workforce.⁹

Third, the coordinator should consider other stated factors from either the perspective of the protégé or the mentor. If a new lawyer identifies a desire to improve her writing skills, who can assist in that goal? If a new lawyer identifies marketing as a goal, who can role model those relationship skills for her? If a protégé seeks more meaningful work assignments, what potential mentor falls in that sphere of influence and decision-making?

Last, the director may need to re-match mentors and protégés during the program. A lawyer may leave for other employment. Another lawyer may change goals that render the initial pairing obsolete. And in some instances, the personalities of the mentor and the protégé prevent any forward progress. Under a variety of circumstances, mentors and protégés will need to be re-matched or the relationship will need to be "amended" in some way. To accomplish this goal efficiently, a formal program should always identify more mentors than protégés. After the initial pairing process, some identified mentors will be called to participate in the program in ways other than a one-to-one relationship. However, an initially unpaired mentor may need to step in during the course of the year.

The director, and others involved in the process, should allocate roughly 20 to 30 minutes of time per relationship for the pairing process in a small program. This estimate of time per relationship will grow with the size of the program. If a program has 25 to 50 pairs, the time allocation can fall between three to five days to complete the pairing process after all the appropriate information has been collected. For a program with 450 pairs, the time allocation can reach up to three to four weeks.¹⁰ In a large program (over 450 pairs), it may not be possible to interview each participant; however, basic information needs to be gathered. Written questionnaires are an appropriate substitute for personal conversations.

Legal environments often debate whether a lawyer's supervisor should serve as a mentor. Perhaps that question is the exclusive decision of the protégé. The benefits of a mentor-supervisor include the possibility that the relationship is already formed on trust, and the supervisor has a clear understanding of the strengths and weakness of the protégé. Under this construct, the mentor must be intentional about providing objective, non-evaluative feedback in addition to the regular evaluative feedback generally given on assignments. The risks of a

⁹ Ragins et.al, *Handbook of Mentoring at Work*, *supra* note 2 at 667 (citations omitted).

¹⁰ Lynn P-Sontag, Kimberly Vappie, and Connie R. Wanberg, *The Practice of Mentoring*, *Handbook of Mentoring at Work*, *supra* note 2 at 595 (MENTIUM 100®, a formal mentor program, identifies that it "takes a team of four approximately six weeks to match 250 partnerships.")

supervisor-mentor include the possibility that the protégé will feel uncomfortable communicating issues to the mentor or identifying areas of self-improvement, particularly if the mentor's role includes performance evaluations.

When organizational objectives and individual goals serve as the fulcrum for the pairing process, directors will increase the likelihood of highly successful relationships.

B. Training Sessions

Scholars leave room for the possibility that “excellent training can enhance or even replace a detailed matching process....”¹¹ Whether this is true, both scholars and practitioners agree that quality training is a must.¹² Training sessions (similar to the written materials) can address or reinforce:

- Program overview
- Program objectives
- Program requirement.
- Participant expectations
- Suggested activities
- Suggested discussion items
- Helpful tips for successful participation
- Options for conflict resolution within the relationship
- Data collection.

A thorough training session will also include information about mentoring functions and outcomes. Knowledge about mentoring functions and outcomes can expand views on the utility of mentoring and increase the level of engagement for participants. The literature suggests four mentoring functions:

a. Career Mentoring Function

The career mentoring function directly aids the protégé's career advancement and should assist with:

- Favorable and challenging work assignments
- An understanding of unwritten rules
- Networking and marketing
- Leadership development¹³

¹¹ Baugh and Fagenson-Eland, Formal Mentoring Programs, *supra* note 7 at 264.

¹² *Id.*

¹³ Veronica M. Godshalk and John J. Sosik, *Mentoring and Leadership: Standing at the Crossroads of Theory, Research, and Practice*, Handbook of Mentoring at Work, *supra* note 2, 149-178 (authors discuss the current intersection of mentoring and leadership, pose theoretical similarities and empirical distinctions between mentoring and leadership, and offer ideas about how to advance research into practice for organizations).

- Self-organization and time management
- Sponsorship and career planning
- Feedback on work.

a. Psychosocial Mentoring Function

The psychosocial mentoring function enhances the protégé's sense of competence, self-esteem, self-image, and identity in a professional role and should assist with:

- Self-confidence in a professional role
- Sense of self-worth
- Interpersonal relationship skills.

Mentors often overlook and undervalue opportunities within the psychosocial mentoring function. Are you in a position to honestly transfer credibility to a protégé? Does your feedback tear down or build self-confidence? Are you providing challenging work assignments to send the message that you have faith in the intelligence and competence of your protégé?

b. Role Modeling Mentoring Function

Role modeling focuses on learning through observation. A role model in a professional context sets an example of excellence and demonstrates applied knowledge necessary for professional competence. The mentor models the core values of the organization and assists with:

- Client relationship skills
- Technical skills (negotiations, drafting, writing)
- Problem solving skills
- General practice management.

c. Professionalism Mentoring Function

The professionalism mentoring function is new to the literature.¹⁴ The professionalism mentoring function helps the protégé realize key principles of professionalism,¹⁵ meaning that each lawyer:

- Continues to grow in personal conscience over his or her career.
- Agrees to comply with the ethics of duty - the minimum standards for the lawyer's

¹⁴ Neil Hamilton and Lisa Montpetit Brabbit, *Fostering Professionalism through Mentoring*, 57 J. Legal Educ. 102, 109 (2007).

¹⁵ Neil Hamilton, *Professionalism Clearly Defined*, 18(4) Prof. Law. 4-20 (2008) (Hamilton's principles of professionalism are a synthesis of the major ABA reports, the Conference of Chief Justices National Action Plan and the Preamble to the Model Rules of Professional Conduct).

- professional skills and ethical conduct set by the Rules.
- Strives to realize, over the course of a career, the ethics of aspiration - the core values and ideals of the profession including internalizing the highest standards for the lawyer's professional skills and ethical conduct.
 - Agrees both to hold other lawyers accountable for meeting the minimum standards set forth in the Rules and to encourage them to realize core values and ideals of the profession.
 - Agrees to act as a fiduciary where his or her self-interest is overbalanced by devotion to serving the client and the public good in the profession's area of responsibility: justice.
 - Devotes professional time to serving the public good, particularly by representing pro bono clients.
 - Undertakes a continuing reflective engagement, over a career, on the relative importance of income and wealth in light of the other principles of professionalism.

A strong focus on professionalism and ethics in a mentor program will also permeate the organizational culture. The organization will realize positive collateral benefits by intentionally incorporating the professionalism mentoring function into a formal program.

C. Developing Personal and Professional Goals

At the first meeting of the protégé and the mentor, personal and professional goals should be discussed, outlined, and shared with the program director. Mentor-protégé goal setting accomplishes several important facets of the learning-focused relationship. First, goal setting encourages a protégé to be self-reflective about strengths, weaknesses, and professional passion, purpose, and aspiration. Through this exercise, the mentor relationship can begin from a platform of self-awareness. Each protégé articulates what he or she hopes to obtain from the relationship. Second, articulated goals from a protégé allow the mentor to better understand his or her role and the various ways to assist the protégé. Third, the director uses the mentor-protégé plan to support the relationship. All participants have the same road map of mentor program activities throughout the year. Last, the process allows both mentor and protégé to evaluate the various ways in which the relationship can advance the organizational mission, program objectives, and the mentoring functions.

A quick Google search reveals that many formal programs do not require written goals, let alone goals that are discussed, evaluated, and utilized between mentor, protégé and director. Rather, a "let's see what comes up" approach is adopted, or "call me if you need anything." Falling back on the misplaced assumption that organizationally supported mentor relationships are self-sufficient and process-oriented, these programs are at risk for experiencing high levels of unsatisfactory outcomes.¹⁶ The risk is one that program developers should reasonably foresee when neither the protégé nor the mentor understands why they are working together.

¹⁶ In most instances, the mentor and protégé meet on one or two occasions for lunch during the tenure of the program.

D. The Role of the Director: Supporting the Relationship

Whether the director is external or in-house, the roles remain largely the same. A director will identify and utilize professional tools to guide the supervision and administration of the mentor program with a focus on the highest level of quality control. In addition to the aspects of program preparation and program implementation identified in sections II and III, a director should consider the following as part of his or her unique leverage capabilities:

- Review each goal plan and provide feedback.
- Ensure that each relationship demonstrates progress consistent with the plan in the first 30 days.
- Solicit feedback and reflection following randomly selected mentoring activities.
- Connect with each relationship every 60 days.
- Engage and inform senior leadership in the process.
- Assist either mentor or protégé with challenges to progress.
- Manage “amended” or “re-matched” relationships when necessary; not all organizationally supported mentor relationship will be successful despite the best intentions. In this situation, a mentor or a protégé may need to be re-matched.
- Organize individual, small, or large group activities consistent with program objectives.
- Ensure that each participant is recording (as directed) all mentor program activities.

IV. Program Assessment

Assessment tools designed to measure mentoring outcomes and provide feedback for evaluation and improvement should be a staple in any formal program. Most formal programs rely on pre-evaluation and post-evaluation tools in the form of a questionnaire. While participant-reported conclusions are helpful, assessment tools should also capture the activities of the participants. Without a complete and thorough understanding of what the participants are doing, or did, program administrators cannot evaluate the substance of the mentoring relationship. How did the mentor and the protégé spend time together? What activities did they participate in? What did they discuss? When pre- and post-evaluations can be viewed in light of the activities of the participants, the information has increased value. When shared externally, the information has value to other programs, researchers, and scholars.

A complete collection of data, including an evaluation and summary of participant activities, brings to light several key questions:

- Is the mentoring process advancing the organizational mission?
- Are program objectives being met?
- Are individual goals being met?
- Do mentors and protégés self-report positive outcomes and progress?
- Which mentoring functions were advanced?
- What aspects of the program require changes and how can the program improve?

Other assessment tools - primarily focused on quality control - flow from many of the interactions the director has with both the protégés and the mentors. The primary opportunities include:

- Review of individual goal plans
- Individual contact with each relationship
- Anecdotal reports from students and mentors
- Review of recorded program activity on a periodic basis.

Conclusions about formal mentoring are currently based, in large part, on inference, anecdotal evidence, and educated guess. While the number of formal programs has grown tremendously in the last two decades, very few programs report or publish outcomes. Given the amount of time, energy and resources that go into a successful program, assessment models should be designed and integrated into each program.

V. Conclusion

Mentoring is no stranger to the professional workplace and should be readily available to all who seek to grow professional skills, expand self-confidence, gain knowledge, and find meaning and purpose over a lifelong legal journey. Concepts of mutuality and reciprocity ensure that all participants have the opportunity to experience directed, accelerated professional growth. While each mentoring fingerprint is unique, successful programs integrate key concepts outlined in this guide into the fabric of formal mentoring relationships and an array of developmental networks. Mentoring is a process legal organizations can no longer afford to pass up. The next generation expects it; the health of the profession demands it.



Mentoring Studies: Research on the Impact of Mentoring in a Professional Environment



This section of the MSBA Diversity Best Practices Guide contains **Research on the Impact of Mentoring in a Professional Environment.***

Empirical research on mentoring relationships and outcomes remains sparse, especially for the legal profession.¹ Anecdotal evidence however, is powerful on the importance of mentoring relationships for a successful work environment, specifically for women.

Mentoring can have a significant impact on professional development and skill development for women. Two large-scale studies (although not specifically on mentoring) provide evidence that newer lawyers learn some of the key professional skills through observation of, and discussion with, senior lawyers.²

The studies are organized as follows:

- Mentoring Studies about Women in Law Firms and Other Legal Settings
- Mentoring Studies about Women in Law Schools
- Mentoring Studies about Race and Ethnicity
- General Mentoring Studies

A bibliography follows on page 85, identifying the source for each study.

*The author wishes to thank Jenna Tschida for her research assistance.

MENTORING STUDIES:

Research on the Impact of Mentoring in a Professional Environment

Summary of Mentoring Studies Relating to WOMEN in LAW FIRMS and OTHER LEGAL SETTINGS

Equal Access: Study indicates that female protégés feel more socially integrated than non-protégés and this finding holds regardless of their mentor's gender. ³

Workday Issues: Journal article notes the benefits that a mentoring relationship provides, such as listening to an associate's concerns and questions about assignments and work/life balance, and ensuring that the associate is exposed to a wide range of work experiences. ⁴

Journal article notes that formal mentoring programs help promote cross-gender relationships, especially in environments where there are few women senior enough to act as mentors. ⁵

Women and minority lawyers are capable of finding one or more mentors if they are strategic and proactive in seeking them. ⁶

Governance: Journal article examining the issue of gender and mentoring in law firms notes that "the fewer women who are mentored, the fewer of them there are to rise to the top to act as mentors to new women associates." ⁷

Article notes that one law firm's approach to promoting women into leadership positions in the firm centered on "mentoring circles" for female lawyers, which provided opportunities for women to connect and develop mentoring relationships with women across practice groups and at different levels of seniority. ⁸

Evaluation and Promotion: In general, mentoring helps women advance in the law firm hierarchy. ⁹

Recruitment and Retention: "A good mentor can also acquaint a new associate with firm culture and client relations, and can help groom the associate for partnership." ¹⁰

Study examining the benefits of mentoring for female lawyers notes that female professionals appear to benefit from having been mentored; protégés are more satisfied with their careers, and their professional expectations have been met to a greater degree when compared to non-protégés. ¹¹

Mentoring Studies

Study examining how lawyers build and maintain successful mentoring relationships found that 90% of those in formal mentoring programs were satisfied with those relationships and the majority of participants expressed a preference for informal mentoring relationships.¹²

Article notes that “it is incumbent on law firms to figure out how to mentor young lawyers, and especially women of color, because the firms will lose business if they do not have truly diverse ranks of attorneys at all levels” and otherwise these same associates will likely leave the law firm.¹³

Compensation: Study examining the benefits of mentoring for female lawyers noted that female protégés report significantly higher earnings and perceive more opportunities for promotions than female non-protégés.¹⁴

Summary of Mentoring Studies Relating to WOMEN in LAW SCHOOLS

Mentoring helps women faculty experience increase job and career satisfaction.¹⁵

Summary of Mentoring Studies Relating to RACE and ETHNICITY

Workday Issues: Race clearly influences overall access in two ways: access to any type of mentoring relationship and who has access to a mentor.¹⁶

People of color have a more difficult time gaining access to a mentor.¹⁷

A Catalyst study focused on women of color correlates mentoring and positive career outcomes.¹⁸

Gaining access to mentors of color may be problematic because of the lack of diversity within higher levels of the organization.¹⁹

In a 2004 study, mentors of color have been found to have somewhat different experiences than their white counterparts. “Mentors of color reported a number of outcomes at higher levels than did their white counterparts. Mentors of color reported increased self-confidence, improved supervisory skills, improved skills for recruiting new talent, better networking skills and renewed commitment to their fields.²⁰

Evaluation and Promotion: Mentoring has helped people of color achieve senior levels within an organization.²¹

Summary of GENERAL MENTORING STUDIES

Equal Access: Study examining mentoring experiences and gender determined that mentoring systems provide a special form of entry into important social networks.²²

Workday Issues: One study indicates that mentored individuals were more satisfied with their career, more likely to believe that they would advance in their career, and more likely to be committed to their career than were their non-mentored counterparts.²³

Separate study recommends that protégés develop a network of mentoring relationships and consider the importance of accessibility of a mentor, as well as a mentor's status position.²⁴

Study examining mentoring relationships in retail protégés found that 75% of "same-sex and cross-sex participants identified their mentoring relationship as having been 'very valuable' to their career success."²⁵

Meta-analyses also indicate that protégés experience increased job and career satisfaction as a result of mentoring.²⁶

Evaluation and Promotion: Allen study shows that greater career mentoring related to more promotions.²⁷

Underhill study concludes that mentoring has a positive impact on promotion and compensation.²⁸

Two studies involving law firms provide evidence that mentored associates were more likely to make partner.²⁹

Recruitment and Retention: Allen study indicated that mentored individuals had greater intentions to stay with their current organization than did non-mentored individuals.³⁰

Separate study noted the possible link between mentoring and career success that includes modeling and vicarious reinforcement.³¹

Two studies provide evidence that mentored lawyers are less likely to leave the firm when given a viable option.³²

Study examining the different types of protégés and mentor relationships noted that protégés with traditional mentors (i.e., a more senior member of profession) indicated "significantly greater job satisfaction . . ."³³

Mentoring Studies

Compensation: Allen study indicated that greater career mentoring was related to greater compensation and greater career growth.³⁴

Underhill study concludes that mentoring has a positive impact on promotion and compensation.³⁵

Bibliography for Mentoring Studies

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- ³ Jean E. Wallace, *The Benefits of Mentoring for Female Lawyers*, 58 J. Voc. Behav. 366, 384 (2001).
- ⁴ Elizabeth K. McManus, *Intimidation and the Culture of Avoidance: Gender Issues and Mentoring in Law Firm Practice*, 33 Fordham Urb. L.J. 217, 219.
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- ¹⁰ McManus, *supra* note 4, at 219.
- ¹¹ Wallace, *supra* note 3, at 377.
- ¹² Abbot and Boags, *supra* note 6.
- ¹³ Jill Schachner Chanen, *Early Exits*, A.B.A. J., Aug. 2006.
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- ¹⁷ Id. (citations omitted).
- ¹⁸ Id. (citations omitted).
- ¹⁹ Id.
- ²⁰ Id at 232 (citing MentorNet, E-mentoring for women of color in engineering and science: Final report to the engineering information foundation (2004) available at <http://www.menotrnet.net/documents/files/WomenofColorFinalReportMay2004.pdf>).
- ²¹ Id. at 225 (citations omitted).
- ²² George F. Dreher, et al., *A Comparative Study of Mentoring among Men and Women in Managerial, Professional, and Technical Positions*, 75 J. Applied Psychol. 539, 540 (1990).
- ²³ Tammy D. Allen, et al., *Career Benefits Associated with Mentoring for Proteges: A Meta- Analysis*, 89 J. Applied Psychol. 127, 130 (2004).

²⁴ Ellen A. Ensher et al., *Comparison of Traditional, Step-Ahead, and Peer Mentoring on Protégés' Support, Satisfaction, and Perceptions of Career Success: A Social Exchange Perspective*, 15 J. Bus. & Psychol. 434.

²⁵ Luann Ricketts Gaskill, *Same-Sex and Cross-Sex Mentoring of Female Protégés: A Comparative Study*, 40 Career Dev. Q. (1991).

²⁶ Christina M. Underfull, *The Effectiveness of Mentoring Programs in Corporate Settings: A Meta-Analytical Review of the Literature*, 68 J. Voc. Behav. 92, 302 (2006) (“[T]hose receiving mentoring have a slight advantage in their careers over those not mentored.”)

²⁷ Allen, *supra* note 23, at 130.

²⁸ Underfull, *supra* note 26.

²⁹ David N. Laband & Bernard F. Lentz, *The Impact of Having a Mentor on Earnings and Promotion: Evidence from a Panel Study of Lawyers*, 6 Applied Econ. Letters 785-787 (1999) (those who reported having a mentor in 1984 were more likely in 1990 to have achieved partner status); Monica C. Higgins and David A. Thomas, *Constellations and Careers: Toward Understanding the Effects of Multiple Developmental Relationships*, 22 J. Organiz. Behav. 223, 240 (2001).

³⁰ Allen, *supra* note 23.

³¹ Dreher, *supra* note 22, at 540.

³² Laband & Lentz, *supra* note 29 (examining data from the 1984 AVA National Survey of Career Satisfaction); Higgins & Thomas, *supra* note 29 at 223, 236 (assessed in 1991 and 1997 whether the respondents were still at their original firm and whether they had been promoted).

³³ Ensher, *supra* note 24, at 419, 434.

³⁴ Allen, *supra* note 23, at 130.

³⁵ Underfull, *supra* note 26.

Acknowledgements

Minority Bar Summit:

The Diversity Implementation Task Force is grateful for the contributions of the participants in the Minority Bar Summit held on April 17, 2008 and its facilitators, James C. Burroughs and Janice Downing of Fredrikson Human Resources Consulting, Ltd.

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Sample Work Plans

On April 17, 2008, the MSBA Diversity Implementation Task Force hosted the Minority Bar Summit. Participants included representatives from state and county bar associations, area law schools, law firms, legal assistance organizations, and other groups representing legal employers. The purpose of the Summit was to: 1) gather feedback on the Best Practices Guide; 2) discuss strategies that have been used at places of employment; and 3) incorporate action strategies into sample work plans that could be used by employers with the Best Practices Guide to meet the diversity goals of their organizations.

During the Summit, participants, working in groups, were assigned to review selected Best Practices for each of the diversity areas set forth in the Guide. Each group discussed the following areas: Value and Definition of Diversity, Return on Investment (Business Case); Goals, Strategies and Action Steps; and Metrics to Measure Success.

The Sample Work Plans in this Appendix are the result of these group discussions. These sample plans may assist employers, in conjunction with other sections of the Guide, in developing specific action plans to accomplish the diversity goals unique to their organizations.

Note: The Minority Bar Summit included both Task Force and non-Task Force participants, and the Task Force did not formally adopt the Sample Work Plans. As a result, they may not coincide completely with the recommendations in this Guide.

Minority Bar Summit: Work Group Instructions

Note: These instructions were distributed to the small working groups at the Minority Bar Summit for assistance in developing Work Plans to implement their assigned Best Practices.

The Area of Diversity for Our Group is _____.

Area of Diversity (10 minutes)

- How is this area of diversity defined in the workplace?
- Does the definition encompass all areas for this type of diversity?
- Why should this area of diversity be valued?

Best Practice (10 minutes)

- Define each Best Practice with a one or two sentence definition.

Return on Investment (20 minutes)

- What is the impact on each of the following areas if diversity is achieved?

Financial (revenues)

Employees (satisfaction, engagement, loyalty, retention)

Clients (satisfaction, engagement, loyalty, retention)

Community (image, media, networks)

Goals (15 minutes)

- Identify one measurable goal for each Best Practice.

Action Steps (20 minutes)

- Identify specific action steps necessary to accomplish each goal.
- For each action step, identify potential challenges/barriers.
- For each challenge/barrier, identify potential solutions.

Metrics to Measure Success (15 minutes)

- Identify a method to measure the success of the goals and action steps.
- Identify a proposed time line for achieving the goals and action steps.
- Answer this question: How will you know when success is achieved?

Sample Work Plan: Gender Equity

Area of Diversity: Gender Equity

Value/Definition of Gender Diversity:

- How are females and males defined and are policies and practices applied in a gender-neutral manner?
- 50% of law school graduates are women so there is value in creating an environment inclusive of women.
- Changes that make the environment inclusive to women also benefit men (e.g., work/life balance).
- Healthy balance promotes more satisfied attorneys and better service to clients.
- Job sharing - the culture being supportive of change.

Return on Investment:

Huge monetary impact when associates leave; clients and customers view that there are problems and expense for clients; positive image in the community if diversity is genuine; employees are loyal to company/good output to firm and clients.

Best Practice 1: Work/Life Balance

Goal 1: Increase the number of women and men taking advantage of programs that support work/life balance.

Strategy/Action Steps: Identify and communicate the need for and use of work/life balance programs and policies:

- (a) Create a list of statistics that support the current use of work/life programs.
- (b) Create a list of facts/data that identify the need for work/life balance programs and policies.
- (c) Document the ROI/business case of work/life balance programs/policies.

Metrics to Measure Success: Measure whether the percentage of women/men represented at all levels of the organization increased.

Goal 2: Increase the percentage of women represented at all levels of the organization to reflect gender diversity as reported by 2000 census data.

Strategy/Action Steps: Decrease turnover of all employees with a strong focus on associates or entry-level employees.

Metrics to Measure Success: (1) Measure whether gender diversity is reflected among all levels of employees; (2) whether there is decreased turnover of associates and employees.

Best Practice 2: Client Development

Goal 1: Diversify client development strategies.

Strategy/Action Steps: Use a lottery system as a method for client development and mentoring. The lottery system will ensure that associates get equal amounts of work and that partners cannot self-select who receives their work (a change in paradigm).

Metrics to Measure Success: (1) Measure the amount and quality of assignments given to women; (2) measure the effectiveness of client development statistics of women.

Best Practice 3: Monitor Trends

Goal 1: Create and track trends.

Strategy/Action Steps:

- (a) Make gender equity part of the bonus plan.
- (b) Keep metrics on everything.
- (c) Survey partners about gender diversity versus current reality.
- (d) Conduct a tiered survey (sent to each employee at all levels) to identify the current reality about gender diversity.

Goal 2: Embrace flexibility.

Strategy/Action Steps:

- (a) Create support groups that encourage employees to get to know one another.
- (b) Create opportunities for interactions among colleagues.
- (c) Survey partners about gender diversity versus current reality.
- (d) Conduct a tiered survey (sent to each employee at all levels) to identify the current reality about gender diversity.

Sample Work Plan: Race and Ethnicity

Area of Diversity: Race and Ethnicity

Value/Definition of Racial/Ethnic Diversity:

Racial and ethnic diversity are typically viewed as non-Anglo Saxon diversity. This area of diversity is valued because it promotes diverse perspectives, increases success with diverse jury pools, increases cultural competence, prevents the loss of diverse brainpower, and serves as a recruiting tool.

Best Practice 1: Diversity Plan

Goal 1: Create an inclusive work environment where diverse perspectives are valued and cultural competence is lived.

Strategy/Action Steps: Develop and publish a diversity plan that is part of the firm's strategic plan and that will use the environment as a recruitment and retention tool.

Metrics to Measure Success: Measure whether the diversity plan is: (1) achieved; (2) understood; (3) implemented in conjunction with the organization's strategic plan.

Best Practice 2: Diversity Training

Goal 1: Establish a training system that supports an inclusive environment.

Strategy/Action Steps:

- (a) Identify the business case for racial and ethnic diversity (e.g., juries and new client markets); diverse attorneys can connect with individuals who look like them; financial savings (retention).
- (b) Include metrics to evaluate the effectiveness of training.
- (c) Tie diversity leadership plan initiatives and expected results to compensation and leadership's actions.
- (d) Promote client development training for racial and ethnic minority attorneys.

Metrics to Measure Success: (1) Measure retention of diverse attorneys and establish accountability of the reasons for possible attrition; (2) quantify the cost of new hires based upon attrition.

Best Practice 3: Mentoring

Goal 1: Develop a mentoring program.

Strategy/Action Steps:

- (a) Include external and internal resources (social, professional and community mentors may be needed).
- (b) Visibly support mentor program by leadership (including revenue-producing leaders).
- (c) Hold individuals accountable to leadership (who are role models through their behavior).
- (d) Create subcommittees that give input and feedback to leadership on the effectiveness of the program.
- (e) Train mentors, leadership, and mentees.
- (f) Include practical advice in formal programs.
- (g) Develop cross-cultural dialogue training to improve mentor/mentee communication.

Metrics to Measure Success: (1) Mentor/mentee satisfaction survey; (2) evaluations completed by mentor and mentee; (3) expectations identified and achieved.

Sample Work Plan: Religion

Area of Diversity: Religion

Value/Definition of Religious Diversity:

A set of beliefs that can include everyone (including atheists). These beliefs are respected and not discriminated against in the workplace.

Best Practice 1: Prayer and Dress Restriction Accommodation; Holiday Scheduling and Food Selection Accommodation

Goal 1: Accommodate religious needs and practices without promoting one group over another.

Strategy/Action Steps:

- (a) Floating holiday schedule (i.e., allow employees to work on Christmas but use time off [eight hours] to celebrate a different religious holiday).
- (b) Provide everyone with one to two floating holidays.
- (c) Divide break time (i.e., one-hour lunch break can be divided into four 25-minute breaks).

Metrics to Measure Success: Employee survey.

Best Practice 2: Religion Awareness Seminar

Goal 1: Increase understanding of the unique religious needs of employees.

Strategy/Action Steps: Open-door policy that ensures that the employees' needs are met (especially since religious needs change) and that the policy is always neutral and accepting.

Metrics to Measure Success: Assessment model where outside consultant conducts individual interviews. This would provide for employee confidentiality and promote open-end honest feedback. This can be done annually or during the exit interview process.

Best Practice 3: Religious/Cultural Awareness

Goal 1: Create a culture of acceptance.

Strategy/Action Steps:

- (a) Provide education for understanding of various religious beliefs and practices.

Sample Work Plan:
Religion

- (b) Create a zero tolerance policy for judgment against someone based on his or her religious needs or practices (if an employee makes offensive comments against another because of their practices, it will not be tolerated).
- (c) Leaders need to lead by example (i.e., if a manager or partner hears negative comments, he or she needs to put a stop to it).
- (d) Provide seminars about different religions and accompanying needs and practices and encourage attendance.

Metrics to Measure Success: Leader “evaluation” model: during evaluations, if someone in a management role did not follow policies, his or her behavior is addressed (e.g., they are reprimanded).

Sample Work Plan: Attorneys with Disabilities

Area of Diversity: Attorneys with Disabilities

Value/Definition of Diversity for Attorneys with Disabilities:

Disabilities include physical and mental disabilities. These include disabilities caused by chronic illness, mental illness, and substance abuse or addictions. The Diversity Task Force must provide a clear definition to include these types of disabilities.

Best Practice 1: MHRA and ADA Training

Goal 1: Remove the stigma and build awareness of disabilities.

Strategy/Action Steps:

- (a) Design and implement a model policy to address disabilities.
- (b) Build awareness to change attitudes through training.
- (c) Provide workplace accommodation:
 - Understand appropriate accommodations.
 - Consider a continuum of employees' ongoing situations and cooperation.
 - Work with employees to achieve optimum accommodation.

Metrics to Measure Success: Measure productivity of employees.

Goal 2: Provide an environment that allows employees to do their best work.

Strategy/Action Steps:

- (a) Provide a flexible work environment and telecommuting tools.
- (b) Understand the requirements and merits of the job.
- (c) Work with appropriate accommodations and trust the employee to figure out the best work environment.
- (d) Allow the use of personal leave for health appointments.

Goal 3: Adopt a training policy to approach employees to discuss possible impairment.

Strategy/Action Steps:

- (a) Establish a protocol so employees know how to report the possible impairment and who to contact with concerns.
- (b) Provide rehabilitation and counseling, not discipline.
- (c) Design and implement a policy for impaired attorneys to meet with clients.
- (d) Provide non-alcoholic drinks at social events and make it okay not to drink alcohol

Goal 4: Facilitate a successful return to work or a career transition after a leave caused by disability.

Sample Work Plan:
Attorneys with Disabilities

Strategy/Action Steps:

- (a) Communicate the organization's commitment through return-to-work policies.
- (b) Develop "outplacement" counseling resources.
- (c) Develop job coach resources.

Goal 5: Define the business case for recruiting and retaining disabled employees.

Strategy/Action Steps: Invest in seminars or training to discuss the employment availability of those with disabilities and how this can address a shortage of workers.

Best Practice 2: Law School Outreach

Goal 1: Demonstrate a commitment to diversity through recruitment efforts.

Strategy/Action Steps:

- (a) Post openings with law schools and professional networking organizations.
- (b) Broaden the EEOC statement in recruiting materials.
- (c) Establish a model policy for recruitment.
- (d) Don't use canned photos in recruitment materials

Metrics to Measure Success: Measure the recruitment and retention of students with disabilities.

Sample Work Plan: Sexual Orientation/Gender Identity

Area of Diversity: Sexual Orientation/Gender Identity

Value/Definition of Diversity in Sexual Orientation/Gender Identity:

Employees feel valued and respected and can bring their full selves to work. Policies and procedures are defined and applied to all employees including GLBT employees (e.g., domestic partner benefits).

Overall Goals:

- Every individual feels valued and included; no one is made to feel like the “other.”
- Numerical increase in “out” GLBT attorneys.
- Increase outreach efforts to GLBT employees, making sure behaviors and policies are inclusive; GLBT employees make the choice as to how far it goes; provide a list to each GLBT lawyer of mentors and coaches.

Best Practice 1: GLBT Mentoring and Coaching

Organizations will invest in GLBT attorney education and will make outside coaches available if a GLBT employee wants a coach or mentor.

Goal 1: Inclusive policies; employees feel valued and respected; everyone feels like a full contributor.

Strategy/Action Steps:

- a) Facilitate social mixers; host events at GLBT venues.
- b) Have attorneys participate in networking activities.
- c) Sponsor GLBT events within the community (i.e., Gay Pride, booths for legal services to GLBT community).
- d) Incorporate GLBT resources into the “on-boarding” process (the process of interviewing, hiring, orienting, and successfully integrating new hires into an organization’s culture).

Metrics to Measure Success: Employee surveys that measure inclusiveness, value and respect.

Best Practice 2: Diversity Committees

Goal 1: Establish diversity committees that have the power and authority to hold people accountable.

Strategy/Action Steps:

- (a) Establish a GLBT subcommittee or workgroup and diversity committee.
- (b) Recruit through the GLBT legal community and law school groups.

Best Practice 3: Inclusive Policies

Goal 1: Have GLBT attorneys feel valued and respected.

Strategy/Action Steps: Incorporate sexual orientation-specific language into policies, social invitations, and work situations.

Metrics to Measure Success: (1) Employee surveys; (2) ongoing evaluations; (3) onboarding process evaluation.