

# 2014

Minnesota State Bar  
Association

Self-identification  
Subcommittee of the  
MSBA Council

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## **[MSBA REPORT & RECOMMENDATION ON DEMOGRAPHIC DATA COLLECTION]**

This report and recommendation was generated by request from the Minnesota Supreme Court for sample demographic survey questions to potentially include in the on-line attorney registration form.

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## **Why the Minnesota Supreme Court Should Collect Race, Gender, Sexual Orientation and Disability Data.**

### ***Fostering Justice is Central to Our Court System***

The foundation of our court system is based on the concept of justice for everyone who enters its doors. Fostering justice through the elimination of disparities in the judicial system has long been a priority of this Court as the leader of the entire judicial system. In 1987, it created the Gender Fairness Task Force "to examine the issues of gender bias and gender fairness, of the treatment of women and men who appear in the courts professionally and as litigants and witnesses." Similarly, in 1990, it created the Racial Fairness Committee with the mission: "To identify and eliminate barriers to racial and cultural fairness in all components of the Minnesota judicial system and create action plans to ensure public trust and confidence in the courts." While both task forces were to sunset in 2010, the Court renewed its commitment to justice by creating the Committee for Equality & Justice. This Committee expanded its commitment from gender and race to include, among other protected classes, disability and sexual orientation. Thus, the Court has and continues to expend time and resources to exact fairness for those going through the judicial system. This justice should not be limited to those served within the system, but extended to those who serve the system. The collection of attorney demographic data can assist in identifying and eliminating barriers to fairness within the profession to ensure attorney trust and confidence in our system.

### ***Data Assists in Determining the Existence or Nonexistence of a Problem***

Without data it is impossible to know whether a problem exists. With access to high quality data,

leaders within the legal community can stop making decisions about disparities based on anecdote; instead, we can rely upon valid and reliable data.

### ***Data Provides Evidence to get Leaders to Address Disparities***

In some cases, it is easy to get leaders to rectify disparities based on anecdotal evidence. Unfortunately, it is equally as easy and common for leaders to deny disparities due to unempirical data. Systematic collection of data could provide foundational support of the existence of disparities, which is harder to ignore. Gathering and studying demographic data makes for a more informed private and public policy debate.

### ***Data gives Direction as to where Resources should be Targeted***

When data is systematically gathered and scientifically analyzed, it provides a wealth of information. Specifically for purposes of the legal profession, race, gender, sexual orientation, and disability data has the potential to identify, for example, where barriers to entry into the legal profession may exist; which protected classes are advancing at a slower or faster rate than others, and in what practice areas; and whether certain protected classes are opting out of the legal profession and when. This knowledge allows Minnesota's private and public employers, and law schools to direct their human and financial capital more effectively.

### ***Systematic Collection of Demographic Data Helps the Legal Profession Measure Impact***

Foundational data collection serves as a starting point to understanding where the profession is and where disparities might exist. Continued, systematic data collection will measure the effectiveness and impact of existing and future

programs and initiatives. It will also guide the future development of these programs and initiatives.

### ***Data Allows the Legal Profession to Become More Competitive***

Demographic collection at the Supreme Court level sends a message that the profession cares about demographic representation and equality. A profession that attempts to confront and eliminate disparities has more appeal to people making career choices. Being able to attract more candidates makes the legal profession more competitive against other professions, particularly those that do not embrace diversification of its workforce. This is especially important given the recent decrease of law school enrollment, which will have an impact on the profession as a whole and the quality of services provided to the public.

### ***Collecting Data Will Have a Positive Impact on Public Confidence***

The collection of demographic data regarding representation within the legal community not only serves the legal community itself, but also serves persons who require legal services. It's projected that "our region will be majority-minority by 2040."<sup>1</sup> When attorneys are not reflective of the population served, it can create public distrust of our legal system. This adversely affects whether our system is seen as inherently just or not. The more diverse the legal workforce, the more it can learn from one another and effectively serve its clientele. Collecting data is the first step toward determining whether the profession is reflective of the population, and to developing programs to ensure that the population is effectively served.

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<sup>1</sup> Maya Rao, *Twin Cities Mayors Expand Their Networks; Denounce Racial Disparities*, Star Tribune, Apr. 12, 2014.

### ***The Minnesota Supreme Court should Join Other States in Collecting Demographic Representation Data***

Forty-eight states collect demographic representation data regularly at licensure or on dues statements.<sup>2</sup> There are at least five states that collect race and gender data in a comprehensive fashion.<sup>3</sup> Those states are: Alabama, Hawaii, New Hampshire, Ohio and West Virginia.<sup>4</sup> Likewise, two states, Oregon and Washington, collect disability information.<sup>5</sup> A total of five states collect partial/optional sexual orientation data, these include: California, New Mexico, Oregon and Washington.<sup>6</sup> The Court, like the states above, has an opportunity to once again show itself as a leader by collecting the demographic data outlined above.

### ***MSBA will work with Attorney Registration to Address the Implementation of Demographic Questions***

MSBA has begun discussions with Margaret Corneille on the feasibility and implementation of demographic questions on the on-line attorney registration form. Should the court decide to collect the data, we understand it is best to address any potential issues with Ms. Corneille and her staff upfront.

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<sup>2</sup> Minnesota Women Lawyers, *50 State Data Collection Summary, Appendix 1: Report on Demographic Data Gathered by State Bars and Licensing Entities* (2012).

<sup>3</sup> "'Comprehensive' collection signifies that the demographic category is collected on behalf of all attorneys licensed in the state by at least one entity." *Id.* at n.2.

<sup>4</sup> *Id.*

<sup>5</sup> This is discussed in further detail on page 4.

<sup>6</sup> "'Partial/Optional' collection signifies that the demographic category is collected by at least one entity, but not on behalf of all attorneys licensed in the state (either via optional category, voluntary bar statistics, or via survey)." Minnesota Women Lawyers, Appendix 1.

## Why the Minnesota Supreme Court should Specifically ask Attorneys to Identify their Race, Sexual Orientation and Disability through the Attorney Registration Form<sup>7</sup>

### Race/Ethnicity

As noted above, the Court has a long history of being concerned about issues of race throughout the courts and in the State. Since 1990, the Judicial Selection Commission has required the collection of age, sex and race demographic data on judicial applicants.<sup>8</sup> Both the Court and the Judicial Commission have been looking at race and ethnicity issues for over 20 years. The next logical step is also to collect similar demographic data of Minnesota lawyers.

The race and ethnicity data collected by the U.S. Census Bureau shows that approximately 14% of Minnesotans identify as being people of color.<sup>9</sup> From 2000 to 2010, the population of people of color has been growing exponentially.<sup>10</sup> Collecting race and ethnicity

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<sup>7</sup> The Court already requests gender data on the attorney registration form. Therefore, gender is not addressed in this section.

<sup>8</sup> Minn. Stat. § 480B.01, subd. 12.

<sup>9</sup> U.S. Census Bureau, *2012 Demographic and Housing Estimates*, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_12\\_5YR\\_DP05](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_12_5YR_DP05).

<sup>10</sup> In the last decade, the Minnesota population has increased as follows:

- White alone: 2.8%
- Black or African American alone: 59.8%
- American Indian or Alaska Native alone: 10.8%
- Asian alone: 50.9%
- Native Hawaiian or Other Pacific Islander alone: 8.9%
- Some other race alone: 56.5%
- Two or more races: 51.2%
- Hispanic or Latino: 74.5%

data in lawyer registration would help identify how representative lawyers are of Minnesotans.

This data is also being collected by law schools across the country. Collecting this data on the lawyer registration would enable valid comparison to the local law school data. Collecting race/ethnicity data from only the MSBA would not be as valid or useful. The MSBA currently has approximately 16,000 members, yet there are over 26,000 attorneys in Minnesota. If there are more attorneys of color who are not members of the MSBA, the data would be skewed. Moreover, it would be useful for the MSBA diversity recruitment and programming purposes to determine whether or not the association is representative of the state's attorney population.

### Disability

The American Bar Association (ABA) recently conducted a member survey and found 4.65% of its members identify as having a disability.<sup>11</sup> The ABA also found that only Oregon and Washington collect information on lawyers with disabilities.<sup>12</sup> “This lack of data constitutes a major barrier to measuring progress regarding disability diversity in the legal profession[.]”<sup>13</sup>

What we do know is that over 10% of Minnesotans identify as having a disability.<sup>14</sup> Some may argue that U.S. Census data can provide the information we are requesting from the Court. Unfortunately, that isn't true. While

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Minnesota State Demographic Center, *State Population by Race Minnesota: 2010*, <http://www.demography.state.mn.us/Census2010/>.

<sup>11</sup> American Bar Association Commission on Disability Rights, *Goal III Report 2013: An Annual Report on the Participation of Persons with Disabilities in ABA Leadership Positions* 12 (2013).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> William Erickson, Camille Lee & Sarah von Schrader, *2012 Disability Status Report: Minnesota* 9 (2014).

we know 14% of people with disabilities obtain a Bachelor's Degree or more (versus 36% of people without disabilities),<sup>15</sup> it is unclear how many of those individuals are attorneys.

It is important to note that self-identification would remain in the control of the attorney who discloses this information. Understanding how many lawyers with disabilities there are in Minnesota will help the legal community better serve those lawyers. Without this information, we do not know where to begin.

### **Lesbian, Gay, Bisexual, and Transgender**

Finding comprehensive data on lesbian, gay, bisexual, and transgendered (LGBT) attorneys is just as difficult as finding comprehensive data on attorneys with disabilities (discussed above). NALP has been collecting data on LGBT attorneys since 1996.<sup>16</sup> Since that time, firms who allow their LGBT attorneys to self-identify is up to 90%.<sup>17</sup> NALP reported gains of LGBT attorneys, at the associate level, at the end of 2013.<sup>18</sup> Regardless of the former and latter, these numbers are far from comprehensive in determining LGBT representation. Firstly, NALP's statistical information is based only on responding law firms in major metropolitan cities, Minneapolis included. Secondly, the persistent problem that NALP recognizes with its data collection, is that the majority (60%) of its law firm respondents come from four major cities; New York, Washington D.C., Los Angeles, and San Francisco.<sup>19</sup> The remaining 40% of the respondents are spread among the remaining 46 states. This is the time for Minnesota to begin collecting data on LGBT demographic data in the hopes of attributing resources to the legal community as a whole, based on empirical data instead of conjecture and anecdote.

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<sup>15</sup> *Id.* at 49.

<sup>16</sup> *LGBT Representation Up Again in 2013*, NALP Bulletin (Jan. 2014).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

## MSBA's Recommendation for Self-Identification Survey Questions

### Recommendation

On the following page is the recommendation of the MSBA.

### Process

MSBA drafted three potential options encompassing questions, answers, and on-line design, as to how the Supreme Court should present the self-identification survey to be placed in its on-line attorney registration application.

The three options were presented to the Minnesota Center for Survey Research at the University of Minnesota. The Center was requested to look at the questions, answers and design of the three options and provide a recommendation on:

1. Which option would elicit the most survey responses, and
2. Which would provide the least amount of potential data error?

MSBA also requested that the Center alert us to anything we may not have considered when constructing the questions, their answers, and on-line survey design. We also left the door open for the Center to recommend and craft its own option(s), if need be, which would address our above concerns.

As a result, the Center came back with its own recommendations as to: the explanation for the data collection, questions, answers, and on-line design based on their expertise in this area.

MSBA has adopted the recommendation of the Minnesota Center for Survey Research. We urge the Supreme Court based on the information contained in this report to present the self-identification survey as suggested in the *recommendation* portion below.

***This data will be used to prepare aggregate statistics about diversity in the legal profession. It will not be used to identify you in any way.***

***What is your gender? (select one answer)***

- Male \_\_\_\_\_
- Female \_\_\_\_\_
- Transgender/Gender Non-Conforming \_\_\_\_\_

***What is your sexual orientation? (select one answer)***

- Heterosexual or straight \_\_\_\_\_
- Gay or Lesbian \_\_\_\_\_
- Bisexual \_\_\_\_\_

***Do you identify as an individual with a disability? (select one answer)***

- Yes \_\_\_\_\_
- No \_\_\_\_\_

***Race/Ethnicity: How do you identify yourself? (select all that apply)<sup>20</sup>***

- Asian/Pacific Islander \_\_\_\_\_
- Black/African American \_\_\_\_\_
- Hispanic/Latino (Latina) \_\_\_\_\_
- Native American/Alaska native \_\_\_\_\_
- White/Caucasian \_\_\_\_\_

Each question's choice of response should be made available in a radio button format (as opposed to a drop-down format) to make it more obvious to respondents on how to record their answers. This recommendation takes into consideration respondents who have limited experience with on-line surveys.

The term “Voluntary” **should not** precede the list of questions **and should be eliminated in its entirety**. It will decrease the response rate as explained by the Center.

The MSBA advocates for making this data mandatory.

However, based on the Center’s advice, if voluntariness is a prerequisite for inclusion of the self-identification questions, MSBA recommends that the response “Choose not to answer” be inserted at the end of every question, but a response be required. This option would allow those who were not comfortable with the questions to opt out, but would still account for every lawyer registrant in the state.

All the following MSBA recommendations are based on the Center’s instruction.

The on-line survey questions and responses should be asked precisely as indicated, in the exact order indicated above.

<sup>20</sup> In order to comport with federal standards when requesting race/ethnicity data, and still keep the question as compact as possible, “select all that apply” is warranted. This is because, for example, an individual could identify ethnically as Hispanic, and racially as black or white.



## Acknowledgements

The MSBA would like to acknowledge:

The 2013-14 members of the MSBA Council who have been extremely supportive of the systematic collection of diversity data for historically underrepresented attorneys, and who began the discussion with the Minnesota Supreme Court about expansion of the collection of diverse attorney data;

The 2014 Minnesota Supreme Court for providing the MSBA an opportunity to provide this report and recommendation, and their consideration of it;

Margaret Corneille for discussing the logistical considerations of implementing demographic questions on the on-line Attorney Registration form, and collecting the aggregate data;

The Minnesota Asian Pacific American Bar Association; Minnesota Lavender Bar Association; Minnesota Association of Black Lawyers; Minnesota Hispanic Bar Association; Minnesota American Indian Bar Association; Hmong American Bar Association; Minnesota Women Lawyers; and Twin Cities Diversity in Practice for their letter of support for MSBA's request to the Supreme Court; and

The Self-identification Subcommittee of the MSBA Council comprising Council members Irene Kao and Anne Johnson, and MSBA Director of Diversity and Inclusion, Danielle Shelton Walczak. Their hard work made this Report and Recommendation possible.