

AMERICAN BAR ASSOCIATION**DIVERSITY AND INCLUSION CENTER****HEALTH LAW SECTION****COALITION ON RACIAL AND ETHNIC JUSTICE****COMMISSION ON DISABILITY RIGHTS****COMMISSION ON HISPANIC LEGAL RIGHTS AND RESPONSIBILITIES****COMMISSION ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION****COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY****COMMISSION ON WOMEN IN THE PROFESSION****COUNCIL FOR DIVERSITY IN THE EDUCATIONAL PIPELINE****GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION****HISPANIC NATIONAL BAR ASSOCIATION****NATIONAL ASIAN PACIFIC AMERICAN BAR ASSOCIATION****SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE****DIVISION FOR PUBLIC EDUCATION****REPORT TO THE HOUSE OF DELEGATES****RESOLUTION**

- 1 RESOLVED, That the American Bar Association urges lawyers, as members of the legal
- 2 profession and public citizens having special responsibility for the quality of justice, to
- 3 devote at least 20 hours each year to efforts that advance and promote diversity, equity,
- 4 and inclusion in the legal profession.

REPORT

This resolution (the “Resolution”) builds upon and advances the ABA's recognition that lawyers are public citizens with special responsibility to uphold justice. Consistent with that responsibility, this Resolution urges members of the legal profession to devote 20 hours each year to activities that advance and promote diversity, equity, and inclusion (“DEI”) in the legal profession and in society.

This Resolution is uniquely paramount because it furthers the four interrelated goals of the ABA¹:

- Goal I: Serve Our Members. Through spurring lawyers to advance and promote DEI in the legal profession, this Resolution serves *all* its members by uniting them in the common goal of remediating the deep historical and systemic forces that have divided members, as legal professionals, and as members of society generally.
- Goal II: Improve Our Profession. As noted in this report (“Report”), the legal profession fails to mirror the diversity in society. The lack of diversity in the profession and society impairs our ability to understand and address the range of legal risks, challenges, and opportunities that confront historically underrepresented groups.
- Goal III: Eliminate Bias and Enhance Diversity. This Resolution furthers Goal III by urging lawyers to work toward increasing the representation of historically underrepresented groups, fostering inclusion, and promoting advancement in the legal profession.
- Goal IV: Advance the Rule of Law. This Resolution advances the rule of law because it promotes the underlying promise of equality and justice, expressed in the Constitution and its Amendments as well as in innumerable federal, state, and local laws enacted to promote DEI in society.

In furtherance of its goals, the ABA has adopted measures to increase DEI in the legal profession. For example, in 2016 the ABA House of Delegates adopted 16AM113, which urged “all providers of legal services” to “expand and create opportunities at all levels of responsibility for diverse attorneys.” That resolution also urged clients to assist in the facilitation of opportunities for diverse attorneys, and “to direct a greater percentage of the legal services they purchase, both currently and in the future, to diverse attorneys.” The ABA and its Sections, Divisions, Forums, Commissions, Councils, and Committees, have also been active leaders in advancing America's commitment to equality by acting to eliminate institutional and historical racism and other types of bigotry.²

¹See: ABA Mission and Goals Webpage at: https://www.americanbar.org/about_the_aba/aba-mission-goals/.

²See: Racial Equity in the Justice System Webpage, available at: <https://www.americanbar.org/advocacy/justice-system/> (last viewed April 23, 2021). (“Central

Further, at the time of submission of this updated Report, the following ABA Sections, Divisions, Forums, Coalitions, Commissions, Councils, and National Affinity Bar Associations are co-sponsoring this Resolution³: the Coalition on Racial and Ethnic Justice, the Commission on Disability Rights, the Commission on Hispanic Legal Rights and Responsibilities, the Commission on Racial and Ethnic Diversity in the Profession, the Commission on Sexual Orientation and Gender Identity, the Commission on Women in the Profession, the Council for Diversity in the Educational Pipeline, the Division for Public Education, the Government and Public Sector Lawyers Division, the Section of Civil Rights and Social Justice, the Hispanic National Bar Association, and the National Asian Pacific American Bar Association. Other entities have joined as supporters of this resolution, including the National Association of Women Lawyers; the King County Bar Association; the ABA Real Property, Trust and Estate Law Section; the ABA Law Practice Division; the ABA Senior Lawyers Division; the American Immigration Lawyers Association, and the following entities within the Center for Professional Responsibility: Standing Committee on Professional Regulation, Standing Committee on Ethics and Professional Responsibility, Standing Committee on Lawyers' Professional Responsibility, Standing Committee on Professionalism, and the Commission on Lawyer Assistance Programs. .

Nevertheless, the data reveal the need for more action. According to the National Association for Law Placement's ("NALP") 2020 report, "over the period of time that NALP have been reporting these data, the gains for women and partners of color have been minimal at best."⁴ The NALP report shows that women, persons of color, the LGBTQ+ community, and persons with disabilities are underrepresented in law firms at all levels, and agonizingly so at the equity and non-equity partner level. These groups are similarly underrepresented, particularly in leadership roles, within legal departments, government, non-profits, solo and small firms, academia, and the judiciary. This widespread

clearinghouse of ABA-related information and resources for attorneys, the legal profession and the public on a wealth of issues addressing bias, racism and prejudice in the justice system and society."); ABA Section of Litigation Implicit Bias Initiative, available at: <https://www.americanbar.org/groups/litigation/initiatives/task-force-implicit-bias/> (last viewed April 23, 2021); ABA Labor and Employment Section 21-Day Racial Equity Habit-Building Challenge, available at: https://www.americanbar.org/groups/labor_law/membership/equal_opportunity/ (last viewed April 23, 2021); ABA 21-Day Racial Equity Habit-Building Challenge commemorating Black History Month: https://www.americanbar.org/groups/diversity/resources/equal_opportunity/ (last viewed July 22, 2021); ABA 21 Day Racial Equity Habit-Building Challenge commemorating Asian American and Pacific Islander Heritage Month: https://www.americanbar.org/groups/diversity/resources/equal_opportunity1/ (last viewed July 22, 2021); ABA 21-Day LGBTQ+ Equity Habit-Building Challenge: https://www.americanbar.org/groups/diversity/resources/celebrating-heritage-months/celebrating_pride_month/equal_opportunity11/ (last viewed July 22, 2021); Commission on Racial and Ethnic Diversity in the Profession's first annual Model Diversity Survey Report at: https://www.americanbar.org/content/dam/aba/administrative/racial_ethnic_diversity/aba/credp_2020_mds_report.pdf.

³For co-sponsors, ABA entities are listed first in alphabetical order, followed by national affinity bar associations having a seat in the House of Delegates.

⁴See: 2020 NALP Report on Diversity at: https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf; see also: 2020 ABA Profile of the Legal Profession's Demographics Section at: <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>.

underrepresentation, especially in management, is dire because these are the positions that command significant power and influence in the profession and in society.

Beyond the legal profession, this country is awakening to the enduring consequences of our legacy of *de jure* and *de facto* inequality and renewing action to overcome that legacy. Private citizens, elected officials, clergy, the military, corporations, and other organizations are not merely condemning current and historical racism and bigotry but undertaking to eliminate individual and institutional racism and bigotry in policing, voting rights, housing, lending, education, health policy, and many other areas. In short, there is currently a national movement to address and rectify the impact of inequality in society to achieve the vision at the core of our country's unique social compact, as expressed in our founding documents, the Declaration of Independence and the Constitution and its Amendments.

The ABA's commitment to advancing the constitutional promise of equality falls within the legal profession's long-recognized role as guardian of America's founding principles and policies. The American lawyer's original role was as a member of America's governing class. "[L]awyers--in contrast to businesspeople--were viewed as above self-interest."⁵ They were entrusted to "discern and pursue the common good."⁶ They were viewed as obligated to "manage society in the interests of promoting the rule of law."⁷ As the profession evolved to include representation of private individuals for remuneration, the need arose for rules to declare the boundaries between the lawyer's obligations as public guardian and their obligations as advocates on behalf of private interests. Codified rules of professional responsibility arose to establish and articulate the limits on the lawyer's ability to advocate on the client's behalf to ensure that zealous advocacy did not overwhelm the lawyer's overriding obligation to serve the public interest. Thus, while codified rules of professional responsibility (such as the ABA's Model Rules of Professional Conduct) focused on regulating the private practice of law, they have evolved toward recognizing and regulating lawyers' public responsibilities as well.⁸

This Resolution represents a call upon lawyers to fulfill their first obligation to society: to promote and advance America's promise of equality for all its people. This Resolution recognizes there is no advancement without action and calls upon lawyers to answer the call for action to eliminate bias and promote DEI being issued nationwide by individuals and organizations reflecting diverse segments of society. It is in the spirit of the ABA's call for lawyers to serve the public interest.⁹

⁵See: Russell G. Pearce, *The Lawyer and Public Service*, 9 Am. U. J. Gender Soc. Pol'y & L. at 171, 171 (2001).

⁶*Id.* at 171.

⁷*Id.* at 171. This concept is echoed in Alexis De Tocqueville's description of lawyers as the American aristocracy, as well as George Sharswood's "republican understanding" of lawyers as "providing the enlightened political leadership that protected 'life, liberty, and property....'" *Id.* at 172.

⁸*Id.*, at 175.

⁹See: ABA Model Rules, Preamble at: https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/; ABA Goal III Eliminate Bias and

This Resolution's call to action is aspirational. There is no enforcement mechanism and no sanction for non-compliance. Numerous law firms, in-house legal departments, government attorneys, academics, and individuals have already accepted the challenge and committed to meeting the aspirational goal of 20 hours or more to advance and promote DEI.¹⁰

The range of activities that would qualify under this Resolution is wide, consistent with the breadth and complexity of the task of eliminating the barriers that prevent society from realizing the goal of equal justice by promoting DEI. Examples of qualifying activities include, but are not limited to:

- Creating, adopting, and implementing programs, initiatives, or policies within a firm, company, association, academic institution, public entity, governmental agency, or organization to promote the identification, hiring, and advancement of diverse lawyers and legal professionals.
- Actively participating in organizations and associations in efforts to eliminate bias and promote DEI in the legal profession.
- Mentoring individuals from historically underrepresented backgrounds who are interested in entering the legal profession, e.g., students in early education, community college, four-year colleges and universities, and law school.
- Mentoring and coaching lawyers and legal professionals from historically underrepresented backgrounds to ensure DEI in the work setting.
- Providing media commentary, outreach, and education regarding issues impacting DEI.
- Presenting or attending CLE and non-CLE programs on topics specific to advancing DEI within one's practice, community, or the legal profession.

The listed activities are provided as examples only. Many other actions may also satisfy the goals of this Resolution. This Resolution recognizes the wide variety of actions that can promote DEI and relies on the judgment of each lawyer as to whether their activities fall within this Resolution's scope. The purpose and intent underlying this Resolution is neither to dictate nor constrain the range of activities that would satisfy the aspirational

Enhance Diversity, and Goal IV Advance the Rule of Law at: https://www.americanbar.org/about_the_aba/aba-mission-goals/.

¹⁰See: Leader Pledges at: <https://www.lclldnet.org/leaders-at-the-front/leader-pledges/>, noting that some law firms and in-house legal departments have committed to 50 hours towards DEI work per year. See also: *Biglaw Firm Offers Associates Unlimited Billable Hours for Diversity & Inclusion Work*, Above the Law at: <https://abovethelaw.com/2021/04/biglaw-firm-offers-associates-unlimited-billable-hours-for-diversity-inclusion-work/>.

goal. Rather, it is to inspire a broad commitment from lawyers reflecting a diverse range of practices, settings, and contributions.¹¹

For those concerned about limitations on freedom of speech, this Resolution does not require a lawyer to advance equality, nor does it force a lawyer to advocate any specific vision, form, or manifestation of equality. This Resolution recognizes there can be divergent views as to how America's promise of equality can best be fulfilled. This Resolution calls for action to promote DEI not as an end in itself, independent of shared constitutional values, but as a means to an end: equality in America. Underlying this Resolution is the view that equality is a core national value and that advocacy or actions in opposition to or denigration of that value would not satisfy this Resolution, as they would be anathema to our social compact.

This Resolution's objective is to encourage lawyers to engage and lead the country in understanding and addressing the history and causes of bias and inequality and advance realization of the goal of equal justice for all. It is intended to be a modest step forward in the ABA's long-standing yet continuously evolving commitment to advancing and promoting DEI.

As noted in this Report, the ABA's commitment to advancing the constitutional promise of equality falls squarely within the legal profession's long-recognized role as guardian of America's founding principles and policies. Across America, there is an emerging chorus of voices proclaiming that the constitutional promise of equality is not equally enjoyed and there is work to do in order to form a more perfect Union. The ABA has undertaken to eliminate bias and enhance DEI in the profession. But as our understanding of the barriers to meaningful equality evolves, so should the tools we use to eliminate those barriers.

This Resolution reflects the growing recognition that advancing and promoting DEI is the means to the shared constitutional promise of and the societal demand for meaningful equality. This Resolution encourages our members to answer the call to act, each in the way they determine most appropriate. By explicitly endorsing a wide range of suggested DEI contributions, it allows its members to contribute in the form and manner they believe is most appropriate for them. In so doing, it also unites the profession in a common constitutional cause.

This Resolution harkens back to the original account of lawyers in the profession as guardians of the public interest. It recognizes the undeniable reality that the constitutional promise of equality has yet to be fully realized and the legal profession's responsibility to work to fulfill that promise. The aspirational goal of devoting 20 hours each year to advancing and promoting DEI in the legal profession is a measured and reasonable yet potentially transformative step forward in this country's continuing efforts to build a more perfect Union.

¹¹See: additional examples of initiatives and policies to advance and promote DEI at: <https://www.lclinet.org/leaders-at-the-front/leader-pledges/>. (Clicking on a leader's headshot allows the reader to see each leader's specific pledge.)

Respectfully submitted,

Hon. Adrienne Nelson, Chair
ABA Diversity and Inclusion Center and ABA
Diversity and Inclusion Advisory Council

Hal Katz, Chair
ABA Health Law Section

August 2021

GENERAL INFORMATION FORM

Submitting Entities: ABA Diversity and Inclusion Center and ABA Health Law Section

Submitted By: Hon. Adrienne Nelson, Chair, ABA Diversity and Inclusion Center and Diversity and Inclusion Advisory Council; and Hal Katz, Chair, ABA Health Law Section

1. Summary of the resolution(s).

The resolution urges members of the legal profession to devote at least twenty hours each year to advance and promote DEI in the legal profession.

2. Indicate which of the ABA's Four goals the resolution seeks to advance (1-Serve our Members; 2-Improve our Profession; 3-Eliminate Bias and Enhance Diversity; 4-Advance the Rule of Law) and provide an explanation on how it accomplishes this.

This resolution seeks to advance all four goals of the ABA:

- Goal I: Through spurring lawyers to advance and promote DEI in the legal profession, this resolution serves *all* its members by uniting them in the common goal of remediating the deep historical and systemic forces that have divided members, as legal professionals, and as members of society generally.
- Goal II: The legal profession fails to mirror the diversity in society. The lack of diversity in the profession and society impairs our ability to understand and address the range of legal risks, challenges, and opportunities that confront historically underrepresented groups.
- Goal III: This resolution urges lawyers to work toward increasing the representation of historically underrepresented groups, fostering inclusion, and promoting advancement in the legal profession.
- Goal IV: This resolution promotes the underlying promise of equality and justice, expressed in the Constitution and its Amendments as well as in innumerable federal, state, and local laws enacted to promote DEI in society.

3. Approval by Submitting Entity.

The Diversity and Inclusion Center approved in April 2021 the filing of this resolution, and the Health Law Section approved on May 3, 2021, the filing of this resolution.

All the Goal III entities, Coalition on Racial and Ethnic Justice, Commission on Disability Rights, Commission on Hispanic Legal Rights and Responsibilities, Commission on Racial and Ethnic Diversity in the Profession, Commission on Sexual Orientation and Gender Identity, Commission on Women in the Profession, and

Council for Diversity in the Educational Pipeline, are co-sponsors and signed on in April 2021. In addition, the Government and Public Sector Lawyers Division signed on as a co-sponsor in April 2021. The Section of Civil Rights and Social Justice signed on as a co-sponsor in May 2021. The Hispanic National Bar Association signed on as a co-sponsor in May 2021. The National Asian Pacific American Bar Association signed on as a co-sponsor in May 2021. The ABA Division of Public Education signed on as a co-sponsor in June 2021.

The National Association of Women Lawyers voted to support this resolution in April 2021. The King County Bar Association voted to support this resolution in May 2021. The ABA Real Property, Trust and Estate Law Section voted to support this resolution in May 2021. The ABA Law Practice Division voted to support this resolution in May 2021. The ABA Senior Lawyers Division voted to support this resolution in May 2021. The American Immigration Lawyers Association voted to support this resolution in June 2021. ABA Center for Professional Responsibility entities: Standing Committee on Professional Regulation, Standing Committee on Ethics and Professional Responsibility, Standing Committee on Lawyers' Professional Responsibility, Standing Committee on Professionalism, and the Commission on Lawyer Assistance Programs voted to support this resolution in July 2021.

4. Has this or a similar resolution been submitted to the House or Board previously?

This resolution has not been previously submitted to the House of Delegates or Board of Governors. Earlier resolutions and policies have focused on promoting DEI in the legal profession, however. For example, 16AM113, which was passed in August 2016, urges all providers of legal services, including law firms and corporations, to expand and create opportunities at all levels of responsibility for diverse attorneys and urges clients to assist in the facilitation of opportunities for diverse attorneys, and to direct a greater percentage of the legal services they purchase, both currently and in the future, to diverse attorneys.

5. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

As mentioned in response to Question #4, existing ABA policies such as 16AM113 are relevant to this resolution and would be reinforced by its adoption.

6. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A

7. Status of Legislation. (If applicable) N/A

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

The plan for implementation would be to encourage ABA entities and members to take

steps to encourage and facilitate lawyers to devote at least 20 hours each year to advancing and promoting DEI in the profession. These steps would include articles and seminars explaining this resolution and providing guidance concerning how to promote DEI and track DEI promotion initiatives.

9. Cost to the Association. (Both direct and indirect costs)

As this is an aspirational goal/resolution, there is no anticipated cost to the ABA.

10. Disclosure of Interest. (If applicable) N/A

11. Referrals.

- Center for Diversity and Inclusion
 - Diversity and Inclusion Center
 - Coalition on Racial and Ethnic Justice
 - Commission on Disability Rights
 - Commission on Hispanic Legal Rights and Responsibilities
 - Commission on Racial and Ethnic Diversity in the Profession
 - Commission on Sexual Orientation and Gender Identity
 - Commission on Women in the Profession
 - Council for Diversity in the Educational Pipeline
- Health Law Section
- Center for Professional Responsibility
 - Standing Committee on Professionalism
 - Standing Committee on Public Protection in the Provision of Legal Services
 - Standing Committee on Professional Regulation
 - Diversity, Equity, and Inclusion Committee
 - Commission on Interest on Lawyers' Trust Accounts (IOLTA)
 - Lawyer Referral and Information Service
 - Standing Committee on Ethics and Professional Responsibility
 - Standing Committee on Lawyers' Professional Liability
 - Commission on Lawyer Assistance Programs
- Diversity and Inclusion Advisory Council, which includes member representatives from the following entities:

ABA Sections:

- Antitrust Law
- Business Law
- Civil Rights and Social Justice
- Criminal Justice
- Dispute Resolution
- Energy, Environment, and Resources

- Infrastructure and Regulated Industries
- Intellectual Property Law
- International Law
- Labor and Employment Law
- Litigation
- Public Contract Law
- Real Property, Trust, and Estate Law

Divisions:

- Bar Services
- Government and Public Sector Lawyers
- Judicial
- Law Practice
- Law Student
- Public Education
- Senior Lawyers
- Solo, Small Firm, and General Practice
- Young Lawyers

Forums:

- Affordable Housing and Community Development Law
- Air & Space Law
- Franchising

Commissions and Other Entities:

- Standing Committee on Gun Violence
- Center for Professional Responsibility (specific groups listed above)
- Commission on Homelessness and Poverty
- Commission on Immigration
- Section Officers Conference

National Affinity Bar Associations:

- American Immigration Lawyers Association
- Federal Bar Association
- Hispanic National Bar Association
- National Asian Pacific American Bar Association
- National Association of Women Lawyers
- National Association of Women Judges
- National Bar Association
- National LGBTQ+ Bar Association
- National Native American Bar Association

- King County Bar Association

12. Name and Contact Information.

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13. Name and Contact Information. (Who will present the Resolution with Report to the House?) Please include best contact information to use when on-site at the meeting.

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EXECUTIVE SUMMARY1. Summary of the Resolution.

The resolution urges members of the legal profession to devote at least twenty hours each year to advance and promote DEI in the legal profession.

2. Summary of the issue that the resolution addresses.

This resolution addresses both the lack of DEI in the legal profession and lack of understanding or reluctance that prevents some members of the profession from engaging actively in efforts to promote DEI in the profession.

3. Please explain how the proposed policy position will address the issue.

By urging all lawyers to engage in efforts to promote and advance DEI in the legal profession, this resolution unites the profession's members in a common cause to achieve a shared but unrealized value and promise, meaningful equality for all members of the profession and society.

4. Summary of any minority views or opposition internal and/or external to the ABA which have been identified.

We have not received or identified official opposition to this resolution.