



Elimination of Bias in the Legal Profession

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Why Are We Here?

MCLE Rule 2.1: All members of the State Bar of California on active status shall...complete at least 25 hours of approved continuing legal education activities every 36 months.

Including 1 hour re Elimination of Bias.

Why Do We *Need* To Be Here?

- Increased incidence and effect of bias in the legal profession

ELIMINATION OF BIAS

- I. Identifying the Existence and Impact of Bias
- II. Understanding Bias and the Current Laws
- III. Strategies for Responding to and Eliminating Bias

IDENTIFY

- The problem of Bias in the legal profession:
 - Is Time the answer?

IDENTIFY - Disparity

- Persons of Protected Classifications are underrepresented in the legal workforce

IDENTIFY – Disparity

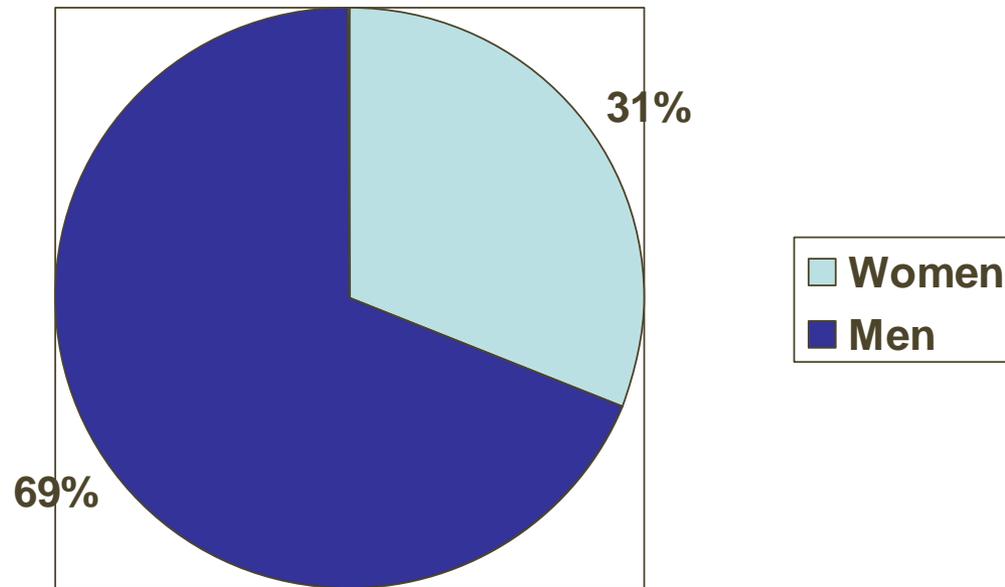
Law Students:

<u>Academic Year</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>
Total JD enrollment	145,239	147,525	146,288
Gender			
Male	52.8%	53.2%	53.3%
Female	47.2%	46.8%	46.7%
Minority enrollment	22.4%	23.8%	24.5%

Source: ABA Section of Legal Education & Admissions to the Bar
<http://www.abanet.org/legaled/statistics/stats.html>.

IDENTIFY – Disparity

Sex/Gender:

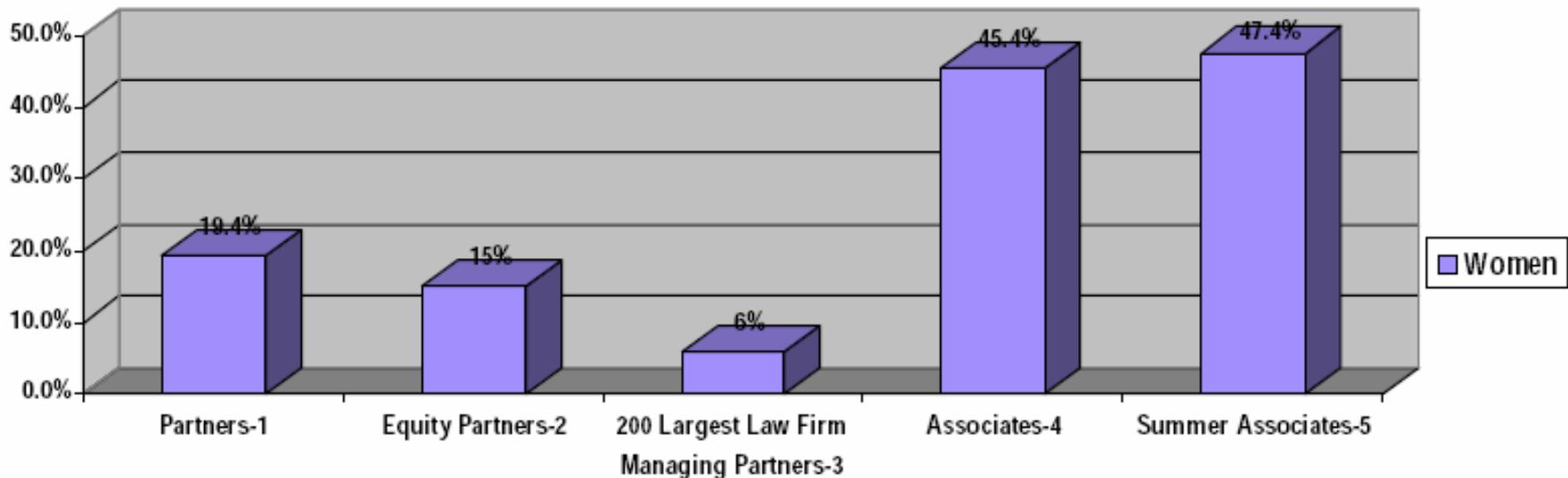


Women in the
Legal Profession

Source: www.americanbar.org, "A Current Glance at Women in the Law 2011"

IDENTIFY – Disparity

Women in Private Practice



Source: www.americanbar.org, "A Current Glance at Women in the Law 2011"

IDENTIFY – Disparity

Race/National Origin

	<u>2000*</u>	<u>2010*</u>
White, not Hispanic	88.8%	88.1%
Black, not Hispanic	4.2%	4.8%
Hispanic	3.4%	3.7%
Asian Pacific American, not Hispanic	2.2%	3.4%
American Indian, not Hispanic	0.2%	--
Native Hawaiian or Pacific Islander, not Hispanic	.04%	--

*Source: 2000, 2010 U.S Census, Bureau of the Census
NOTE: U.S. Census considers Hispanic an ethnicity, not a race.
Persons of Hispanic origin can be of any race.

ABA Lawyer Demographics 2011

http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2012_revised.authcheckdam.pdf

IDENTIFY – Disparity

Disability:

- In 2005, 19% of all Americans reported a severe disability
- In a 2009 survey,
 - Partners who reported a disability 0.25%
 - Associates who reported a disability 0.17%
- Only 6.87% of ABA Members identify as having disability
- In 2009, employment rate of graduates with disabilities was 7.6 percentage points lower than entire class of 2009

IDENTIFY – Disparity

Sexual Orientation:

3.5% of US population identifies as LGBT

Source: williamsinstitute.law.ucla.edu

	<u>2003</u>	<u>2010</u>	<u>2011</u>
Openly LGBT lawyers	Less than 1%	1.88%	1.88%
Partners	--	1.47%	1.44%
Associates	--	2.35%	2.43%

Of the approximately 1,200 offices and firms surveyed by the National Association for Law Placement, 49% reported at least one LGBT lawyer.

IDENTIFY - Bias

- What is Bias?

Defining Bias

The Experience of Bias

IDENTIFY – Biased Behavior

- Do not jump to conclusions about an attorney based on his/her protected classifications.
- Subtle bias is still bias, *e.g.*, a judge/hearing officer who addresses a male attorney as “Mr.” and a female attorney by her first name.
- Firms/companies must be careful in complying with a client or customer’s person preferences (based on personal biases).

IDENTIFY – Biased Behavior

Even where women, minorities, lawyers with disabilities and/or LGBT lawyers are well represented, bias often appears in the form of lower rates of advancement or promotion

- Less desirable assignments
- Exclusion from important meetings, committees
- Less client contact and opportunity for decision making
- Fewer perks

Case Study

Dave is an openly gay attorney who has worked at the Firm for two years. He started work at the same time as Robert. Dave has noticed that Robert has been assigned nearly double the number of trials that he has. When Dave asked a partner about this, the partner said Dave is excellent at writing motions and briefs, while juries respond well to Robert's aggressive nature.

- Bias? Actual or perceived?
- What are the concerns?
- Response and best practices?

IDENTIFY – Gender Bias

Four Main Gender Bias Patterns

PROVE IT AGAIN!

- When women have to work twice as hard to get half as far.

MATERNAL WALL

- When mothers are assumed to be incompetent and uncommitted.

DOUBLE BIND

- When women must choose between being liked and being respected.

GENDER WARS

- When gender bias turns into conflicts among women.

Case Study

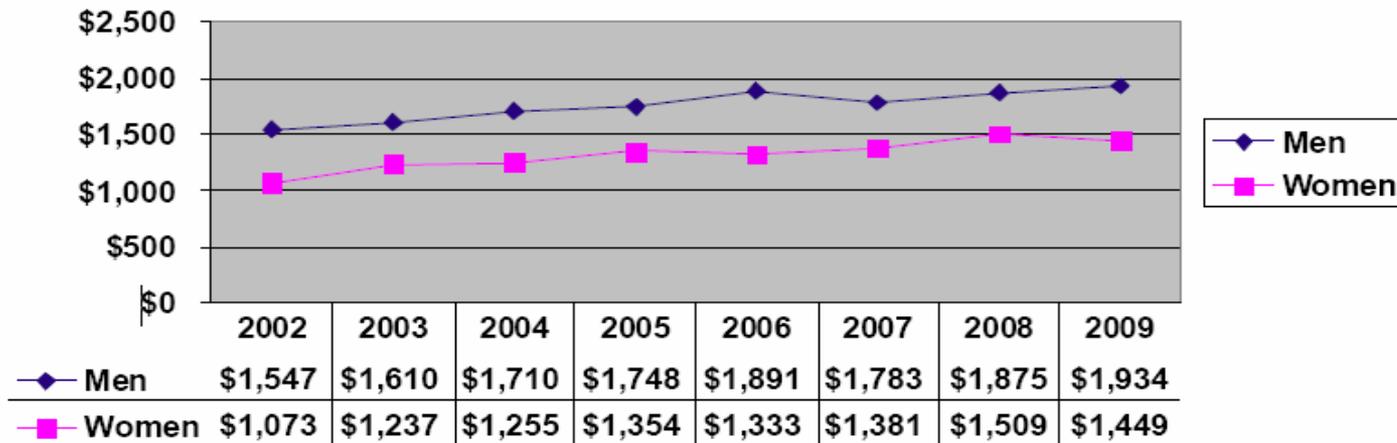
Mark, a Senior Attorney, along with a group of associates, are all out to lunch together. Edward and Brandon, two associates out with the group at lunch, begin talking about how much better men are than women at playing baseball, faster at swimming, and are typically smarter and less emotional than women. Vanessa, another attorney present at the lunch, laughs along with the group, but privately wonders if this means “the guys” view her as less equipped as an attorney.

- Bias? Actual or perceived?
- What are the concerns?
- Response and best practices?

IDENTIFY – Impact of Gender Bias

Differences in Salaries:

Weekly Salary Men vs. Women Lawyers



- In 2011, male lawyers on average earned \$1,884 per week, while women earned \$1,631

Source: 2009 Bureau of Labor Statistics, *Median weekly earnings of full-time wage and salary workers by detailed occupation and sex.*

Case Study

Megan is an attorney with severe visual impairment. She has worked as in-house counsel for the past two years. Megan is rarely given big assignments, and some weeks, she does not have enough to do. When she asks for more work, she is told that they are “working on it.”

- Bias? Actual or perceived?
- What are the concerns?
- Response and best practices?

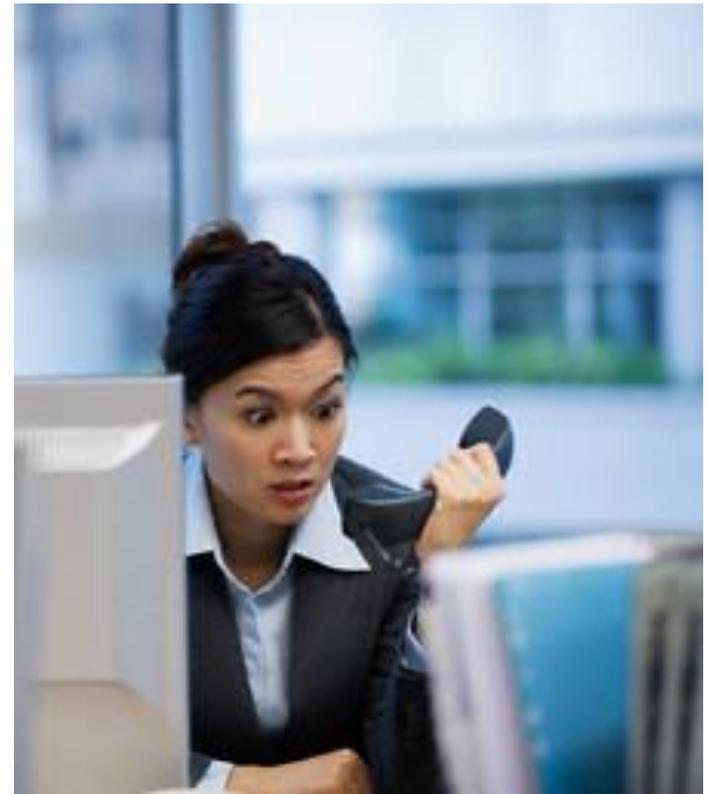
IDENTIFY – Impact of Disability Bias

Differences in Salaries:

- Mean/median salaries for 2009 law school graduates
 - \$93,454
 - \$72,000
- Mean/median salaries for graduates with disabilities
 - \$84,018
 - \$62,973

IDENTIFY - Impact of Minority Bias

- 81% of Minority Female Associates Leave their Firms within 5 years of Being Hired



Case Study

Kevin is an Asian attorney who has been practicing law for 7 years, but has only been at his current firm for nine months. He is the only Asian attorney at the firm. At first, Kevin was pleased with the amount of client contact he had, and the partner's willingness to let him help lead client meetings. However, he is realizing that he is only asked for his involvement when the client is a minority. He is also frequently asked for his "perspective" on client pitches to minority clients, and suspects that other associates are not also being asked.

- Bias? Actual or perceived?
- What are the concerns?
- Response and best practices?

IDENTIFY - Bias

Do you have any biases?

- Implicit Association Test (IAT)
 - *implicit.harvard.edu/implicit*

IDENTIFY - Bias

The truth:

Everyone has some type of bias.

The issue is not whether we have bias, but whether we

- 1) act on the bias, and
- 2) are willing to change our opinions.

THE LAW

- The laws which prohibit Discrimination/Bias in the legal profession:
 - Title VII of the 1964 Civil Rights Act
 - California Fair Employment and Housing Act
 - Your Employer's Policy against Discrimination

THE LAW

- Rules of Court and Professional Conduct:
 - Rules of Professional Conduct, Rule 2-400
 - California Rules of Court, Rules 10.611, 10.612

THE LAW

- Standards for Judicial Administration and Conduct:
 - Standards for Judicial Administration, Standards 10.20, 10.21
 - ABA Model Code of Judicial Conduct, Rules 2.3, 3.6

ELIMINATE BIAS

- The Primary Tool for Eliminating Bias...
 - Education and Training

ELIMINATE BIAS

- Cultural Competence
 - Communication
 - Individual Cognition
 - Individual and Family Resources
 - Cultural Reference
 - Relationships

ELIMINATE BIAS

- Nourish a Diverse Workplace:
 - Create a workplace in which individuals are unencumbered by traditional barriers, stereotypes, expectations and restrictions.
 - Mentoring Programs

ELIMINATE BIAS

Embrace Diversity

Eager acceptance of a
wide variety of ideas...

behaviors, experiences, values, beliefs

ELIMINATE BIAS

**Diversity thinking means
viewing differences
as positives**

**We are talking about
changing attitudes**

ELIMINATE BIAS

The Diversity Challenge

To create a workplace in which individuals are unencumbered by traditional barriers, stereotypes, expectations and restrictions.

To focus the full richness of people's experience on fulfilling the employer's mission.

ELIMINATE BIAS

Why is Diversity a Necessity?

- Successful Recruiting & Retention
- Marketing Advantage
- Creative Thinking
- Problem Solving
- Flexibility
- Quality of Service

ELIMINATE BIAS

Beyond Diversity, the goal is inclusion

- Diversity stops at differences
- Inclusion utilizes differences to benefit employees, accomplish organizational goals, and to better serve the public

ELIMINATE BIAS

Inclusion helps an organization achieve its goals by drawing on many perspectives, ideas, talents and solutions.

ELIMINATE BIAS

What happens if managers do NOT work toward inclusiveness?

- People feel unwelcome
- Ideas and solutions go unexpressed
- Morale suffers
 - Disgruntled feelings set in
- Quality people leave
 - Turnover costs are enormous

ELIMINATE BIAS

- Marketplace Pressure:
 - Public statistics on firm diversity
 - Customers/clients who demand diversity among their lawyers
 - EEO Surveys

ELIMINATE BIAS

- Assess your organization
 - Collect information, anecdotally and statistically, regarding the experiences of women, minorities and other protected groups
 - Conduct exit interviews, preferably with a third party, to learn if bias is factoring into decisions to leave

ELIMINATE BIAS

- Assess your organization
 - Assess your company's leadership: does it reflect the community? Employees?
 - Evaluate the path to advancement:
 - How are associates chosen for projects?
 - How are mentors matched up with mentees?
 - How are partners chosen?

ELIMINATE BIAS

- Establish/Update Your Company Policies
 - Harassment/Discrimination Policy
 - Scheduling/Leave Policies
 - Promotion/Seniority
 - Salary Guidelines
 - Benefits

ELIMINATE BIAS

- Rise Above Stereotypes
- Equal Treatment
- Follow your employer's policies and procedures
- Take all complaints seriously, and report all complaints ASAP
- Be a good role model, aka, follow the Golden Rule

ELIMINATE BIAS

- Remedies
 - Employer's complaint and investigation procedure
 - Counseling for victim
 - Report to the EEOC/DFEH
 - Lawsuits

A woman with blonde hair and glasses, wearing a dark blue blazer, is shaking hands with a man in a grey suit and red tie. They are seated at a long, light-colored conference table. The background shows a large window with multiple panes, letting in bright light. The overall scene is professional and positive.

AWARENESS

RESPECT

DIVERSITY

THANK YOU

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