

**PENNSYLVANIA BAR ASSOCIATION (“PBA”)  
DIVERSITY TEAM  
COMMISSION ON WOMEN IN THE PROFESSION COMMITTEE  
MINORITY BAR COMMITTEE  
CIVIL & EQUAL RIGHTS COMMITTEE**

**RESOLUTION  
(RE COLLECTION OF GENDER, RACE AND ETHNICITY DATA FOR PA  
LICENSED ATTORNEYS)**

WHEREAS, the American Bar Association (“ABA”) in 1986 adopted Goal IX: “To promote the full and equal participation in the legal profession by minorities, women and persons with disabilities.” This initiative is now Goal III of the four goals of the ABA: to Serve Our Members, Improve Our Profession, Eliminate Bias and Enhance Diversity, and Advance the Rule of Law; and

WHEREAS, in 1995 the PBA founded the Commission Women in the Profession Commission;

WHEREAS, in 1989, the PBA held its First Annual Minority Attorney Conference, an initiative of Michael H. Reed, Esquire, the founding chair of the PBA Minority Bar Committee, who in 2004 became the first and only minority president of the PBA among its 118 presidents; and

WHEREAS, the Minority Attorney Conference has continued each year through the 25<sup>th</sup> Conference in 2013, and the Minority Bar Committee has grown to its current 327 members and is one of the most active PBA Committees; and

WHEREAS, the Pennsylvania Supreme Court in 1999 appointed the Committee on Racial and Gender Bias in the Justice System to undertake a study of the state court system on the role of racial and gender bias in the justice system. Based on the Committee’s Report, the Court in 2005 established the Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness, which is responsible for addressing inequities, including those relating to attorneys, and securing fairness and equal justice in Pennsylvania's court system; and

WHEREAS, in 2005 the PBA Leadership Diversity Task Force was formed, with Carl G. Cooper, Esquire serving as its Chair, and produced a Report on May 25, 2006, that for the first time provided data on the gender and racial composition of the PBA Board of Governors, House of Delegates, and Committee and Section Chairs; and

WHEREAS, on April 6, 2006, the PBA amended its Bylaws to provide for the appointment to the Board of Governors of two At Large Governors, one representing women members and one representing minority members, which was later expanded to two At Large Governors representing minority members; and

WHEREAS, in 2006 the PBA Minority Bar Committee held its first Diversity Summit, which has continued through the 7<sup>th</sup> Summit in 2012 and the 8<sup>th</sup> Summit scheduled for 2014; and

WHEREAS, the PBA in 2006 adopted a Diversity Policy that includes the following language: “The PBA shall promote diversity in its activities, including the election of its officers, Board of Governors and House of Delegates, employment of its staff, composition of committees, sections and task forces, participation in meetings, seminars, publications and other educational activities it sponsors, and choosing its vendors”; and

WHEREAS, in Fall 2009 the PBA issued its first House of Delegates Diversity Report, providing data on the gender and racial composition of the PBA House of Delegates - data which was collected via an electronic survey prepared by the House Credentials and Admissions Committee - and indicating that an annual House of Delegates Diversity Report would be issued thereafter; and

WHEREAS, the PBA in 2010 formed a Diversity Task Force which made recommendations resulting in the creation of a Diversity Officer position and a Diversity Team in 2011; and

WHEREAS, the PBA in 2011 added the purpose “to promote diversity throughout the profession” to Article III of its Articles of Incorporation and to its Mission Statement; and

WHEREAS, in 2012 each Committee and Section of the PBA was asked to designate a Diversity Liaison to be a point of contact with the Diversity Officer for diversity issues; and

WHEREAS, the PBA is endeavoring to fulfill its mission in support of diversity by collecting and reporting data on the gender, racial and ethnic composition of its various governing bodies, Committees and Sections, and related entities, but has determined that there is no reliable source of data on the gender, racial and ethnic composition of the PBA or on the attorneys licensed to practice law in Pennsylvania (hereafter collectively “Data”); and

WHEREAS, in order to provide a baseline by which to measure any success or progress by the PBA in furtherance of its Diversity Policy and underlying diversity mission, the collection and reporting of such Data is essential; and

WHEREAS, collecting and reporting this Data would assist in assessing, per the PBA Diversity Policy, attorneys and PBA members participating in PBA meetings, seminars, educational and public service activities, related organizations and as publication authors; and

WHEREAS, collecting and reporting this Data would specifically assist the stated missions of the PBA Commission on Women in the Profession (“WIP”) Committee’s Diversity Committee, formerly the WIP Diversity Task Force and established in the 1990s, to monitor the status of

women of all backgrounds within the WIP, the PBA and the legal profession to actively promote their inclusion, advancement and achievement, and accordingly the Commission on Women in the Profession Committee co-sponsors this Resolution; and

WHEREAS, collecting and reporting this Data would specifically assist the stated missions of the PBA Minority Bar Committee including monitoring of the current status of minorities in the legal profession, increasing minority membership in the PBA, and making recommendations to the PBA Board of Governors and House of Delegates for action on issues affecting minorities within the legal profession, and accordingly the Minority Bar Committee co-sponsors this Resolution; and

WHEREAS, the Pennsylvania Supreme Court's Interbranch Commission for Gender, Racial, and Ethnic Fairness is engaged in pilot programs for collecting such data on jurors, and supports and joins in this Resolution; and

WHEREAS, in 2011 the PBA began limited collection of data on the gender, race and ethnicity of its members, through voluntary self-identification, as part of the Member Demographics Update Data website form, used to update contact information and presented as a pop-up to members who have not visited the website recently; and

WHEREAS, notwithstanding the limited collection of gender, race and ethnicity data that can occur through the Member Demographics Update Data website form, the PBA has no way to collect this data for those members who do not complete this web-based form or for attorneys who are licensed to practice law in Pennsylvania, but who are not members of the PBA (about 44% of attorneys licensed to practice in Pennsylvania who are active and residents are not members of the PBA); and

WHEREAS, the PBA Diversity Team recommends that this Data be collected and maintained in the aggregate by the Pennsylvania Supreme Court through a process of voluntary, self-identification on attorney license applications and renewals starting in [month and year], and that the Pennsylvania Supreme Court make this Data available in the aggregate, including the number of applicants who declined to self-identify, to the PBA; and

WHEREAS, the PBA further recommends that the Pennsylvania Supreme Court adopt the race and ethnicity categories used by federal agencies in reporting racial and ethnic identity, including but not limited to the U.S. Census Bureau, the U.S. Equal Employment Opportunity Commission, the U.S. Department of Education, and the U.S. Department of Labor, which include the following ethnicity categories: Hispanic or Latino and non-Hispanic or Latino; as well as the following racial categories: White, Black or African American, Native Hawaiian or Other Pacific Islander, Asian, American Indian or Alaska Native, and Two or More Races.

WHEREAS, the registration of attorneys admitted to practice in Pennsylvania is the responsibility of the Disciplinary Board of the Supreme Court of Pennsylvania through its Executive Director and the Disciplinary Board has historically demonstrated its ability to preserve the confidentiality of information provided to it which it designates as confidential.

THEREFORE BE IT RESOLVED, that the PBA recommend to the Pennsylvania Supreme Court that the Disciplinary Board of the Supreme Court of Pennsylvania collect data on the gender, racial and ethnic composition of the legal profession in Pennsylvania, by including a question requesting voluntary, self-identification of gender, race and ethnicity on attorney license applications and renewals starting in [month and year], using those racial and ethnic categories in use by the various federal agencies set forth above,

BE IT FURTHER RESOLVED, that individual attorney responses to the questions as to identification of gender, race and ethnicity on attorney license applications and renewals shall at all times be kept confidential by the Disciplinary Board and shall be publicly disclosed only in the form of aggregated data which will not result in the identification of individual attorneys.

BE IT FURTHER RESOLVED, that the above publicly disclosable data shall be made available to any bar association requesting it.

Respectfully Submitted:

Jacqueline B. Martinez, Chair, PBA Diversity Team

Melinda C. Ghilardi, Vice-Chair, PBA Diversity Team

Lisa M. Benzie, Co-Chair, Commission on Women in the Profession Committee

Roberta Jacobs Meadway, Co-Chair, Commission on Women in the Profession Committee

Marsha Hughes Grayson, Chair, Minority Bar Committee

Mary Beth Lyon, Chair, Civil & Equal Rights Committee

Approved 10/10/2013

*\*Approved, as amended, by the Board of Governors on November 20, 2013.*

*\*\*Approved, as amended, by the House of Delegates on November 22, 2013.*

## PENNSYLVANIA BAR ASSOCIATION

### DIVERSITY TEAM

#### MEMORANDUM IN SUPPORT OF RESOLUTION RE COLLECTION OF GENDER, RACE AND ETHNICITY DATA FOR PA LICENSED ATTORNEYS

It is apparent that the Diversity Team sought to incorporate detail on both the historical and practical basis for this Resolution in the resolution itself. This Memorandum serves to address the need for the development of baseline data on the gender, racial and ethnic composition of the PBA and the Pennsylvania legal profession, and the issues that were considered and resolved in formulating the specifics of the resolution.

Sadly, the Pennsylvania Bar Association's (PBA's) first Diversity Officer, the late Janis Leftridge, can no longer make the compelling case she made to the Diversity Team on the need for this data collection effort. Janis's corporate and social services background led her immediately to sources of general demographic information for Pennsylvania. She found no reliable and/or comprehensive data on the gender, racial and ethnic composition of attorneys either within the PBA or the Pennsylvania legal profession. Her efforts to assess diversity for PBA Committees & Sections became by necessity anecdotal. This proved inefficient and imprecise. It is also a diversity best practice that persons be given the opportunity to self-identify their gender, race and ethnicity (*see below*), rather than having others attempt visual or other crude forms of demographic identification on their behalf.

The only available data for non-members of the PBA is that about 44% of licensed, active, resident attorneys in Pennsylvania – roughly 22,000 out of 50,000 - are not PBA members (with PBA membership being about 28,000).

The Team considered the choice of mandatory versus voluntary collection of this data. The best option from the perspective of a Diversity Officer seeking baseline demographic data would have been to require every licensed attorney to self-report their gender, race and ethnicity, to allow for the development of complete and accurate statistics. However, diversity best practice counsels against mandatory reporting and instead promotes voluntary, self-identification of gender, race and ethnicity data. Team members discussed this point with Lisette M. McCormick, the Executive Director of the Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness, who observed that Allegheny County's voluntary race ethnicity identification form given to jurors at the completion of their jury duty has achieved a 90% compliance rate. Similar pilots in other counties have also had a majority compliance rate. Stacy L. Hawkins, a member of the PBA Diversity Team whose career has included more than a decade in diversity practice in several settings, also indicated the advantages of voluntary self-identification. Since there are no statistics available now, statistics obtained on the basis of

voluntary, self-identification, especially given the high rate of compliance in existing pilot programs, would be a huge step forward.

The Team did research whether there would be any legal barrier to imposing a mandatory reporting requirement, and concluded that there would be none. In fact, the highest courts of New York and Nebraska have both opted for mandatory reporting of gender, race and ethnicity data as a part of their attorney licensing and renewal process. New York has developed a disclaimer indicating why the information is needed and how it will be used (baseline statistics, research, an accurate assessment of diversity in the legal profession). This is a resource available to the Pennsylvania Supreme Court if it chooses to go forward with the Team's recommendation, notwithstanding the recommendation for voluntary, self-identification.

This Data is already being collected by private law firms with more than 100 employees via the Employer Information Report (EEO-1), and by governmental agencies including Pennsylvania's Unified Judicial System via the State and Local Government Report (EEO-4). Both are compliance survey reports mandated by federal statute and regulations since the 1970s that require company and government employment data (as well as union and school district data) to be categorized by race/ethnicity, gender and job category; and

Finally, the Team considered whether or not this information should be maintained by the Pennsylvania Supreme Court and/or reported to the PBA on an aggregated or individual basis after the point of collection. The best option from the perspective of the PBA's diversity and inclusion initiatives would have been to maintain and report gender, race and ethnicity information for attorneys on an individual basis, rather than aggregating the data after the point of collection. This would allow the PBA to identify the gender, race, and ethnicity of individual attorneys for purposes of targeting solicitation for PBA membership and/or participation, and fostering greater diversity and inclusion within the PBA membership. Also, activities could be actively promoted to attorneys who would support the PBA's mission of diversity and inclusion, and the number of diverse attorneys who then joined or participated in the PBA could be documented. However, diversity best practice again counsels that this information be maintained by the Pennsylvania Supreme Court and reported to the PBA only in the aggregate. Confidentiality and privacy concerns, as well as the concern from a civil and equal rights perspective that these persons would be identified to the PBA without their specific consent, led the team to recommend that the data obtained by the Court be maintained by the Court and reported to the PBA only in the aggregate. The alternative to contacting individual non-member attorneys is for Team members and other PBA members and staff to attend outreach events, and present this initiative to audiences that include non-member diverse attorneys. This would be done with the goal of learning more about these attorneys, and encouraging them to voluntarily make contact so that they can be individually included in the PBA's diversity and inclusion efforts.