# Diversity Committee Newsletter

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## An Active Fall and Winter is Ahead

*by Kenneth E. Sharperson, Diversity Committee Co-chair*

Welcome to the fall issue of the *Diversity Committee Newsletter.* It is hard to believe that another NJSBA year has passed. We have many exciting things happening in the committee this year, including an expansion in terms of outreach and metrics. We are looking forward to building on last year's foundation, which saw tremendous growth in the areas of diversity and inclusion within the NJSBA.

Our first Diversity Retreat was held on Saturday, June 18, and the committee made plans for the upcoming year. The committee is happy to sponsor what will continue to be well-attended programs related to diversity and inclusion. Our signature events will be held on the following dates:

- Nov. 30—Minority Judges Reception at the New Jersey Law Center, 6-9 p.m.
- Dec. 8—Holiday Reception at the New Jersey Law Center, 6-9 p.m.
- Feb. 15, 2017—Diversity Summit at the New Jersey Law Center, 9 a.m.-4 p.m.
- May 17-19—Annual Meeting Diversity Luncheon at the Borgata Hotel and Spa, Atlantic City

In addition, we will be taking steps to implement the NJSBA Diversity and Inclusion Plan and the Individual Diversity and Inclusion Action Plan Checklist, both available at njsba.com.

This issue of the newsletter is full of information about diversity issues as they relate to the practice of law and society in general. First, you will find an interview with Justice James H. Coleman Jr., a past Mel Narol Award recipient. Next, you will read an article by Ryan Haygood about the Voting Rights Act and New Jersey's disenfranchisement of Americans with criminal convictions. You will move on to an article about Jersey City's efforts to foster diversity and inclusion through economic incentives. Next, we have a piece by Cedric Ashley and Tonya Woodland-Ashley, originally run in the *ABA GPSolo Magazine*,

which describes how to handle a problem employee in the workplace. We also have a review of the book *Between the World and Me* through the lens of law and diversity. Finally, you will read articles providing advice to solo practitioners about starting a practice and the benefits of membership in diverse bar associations.

As the NJSBA program year ramps up, we encourage all of you to get involved with and attend all events sponsored by the Diversity Committee, and also begin to consider how diversity impacts your practice. We hope this newsletter sparks your interest and gives you a forum where you can feel free to discuss what can sometimes be sensitive topics. The Diversity Committee is about you, the members, and the issues of diversity that are important to you! We welcome any of your publication or programming ideas.

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*The opinions of the various authors contained within this issue should not be viewed as those of the New Jersey Diversity Committee or the New Jersey State Bar Association.*

# An Interview with Justice James H. Coleman Jr., a Past Mel Narol Award Recipient

*by Rosalind J. Raymond*

Justice James H. Coleman Jr. has had an illustrious career. He was born in Virginia during segregation, and throughout his career has made many contributions to the cause of racial and social justice. He began his judicial career as the first African-American workers' compensation judge. He also served as a judge in Union County court and then became a judge in the Law Division of the New Jersey Superior Court. He was the first African-American appointed to the Appellate Division, where he served as presiding judge until his elevation to the New Jersey Supreme Court, where he became the first African-American apointee. He has been a member of numerous bar associations, including the New Jersey State Bar Association (NJSBA), since the beginning of his career.

He is a past recipient of the Mel Narol Award, which is presented during the NJSBA's Annual Meeting in Atlantic City. The award commemorates Mel Narol's commitment to the work of the Task Force on Diversity. It is presented annually to a NJSBA member who has spearheaded inclusion and made strides for women and minority lawyers.

Justice Coleman was nominated to the New Jersey Hall of Fame in 2015. He was the inaugural recipient of the Governor Kean Award for Commitment to People in Poverty in 2014. He also received the Justice Thurgood Marshall Award of Excellence in 2013, and the New Jersey State Bar Association Medal of Honor in 2003.

Justice Coleman is currently of counsel to Porzio, Bromberg & Newman, P.C.

***Who were the most influential people in your life, and why?***

Outside of my family, there were teachers in grade school, high school, college, and law school. Professionally, the two most important persons were Governor Christie Whitman, who appointed me to the Supreme Court, and Chief Justice Robert Wilentz, who laid many building blocks to prepare me for the most important position in my life.

***What made you decide to pursue a career in the law?***

When I was in high school, my professional goal was to become a medical doctor so that I could help provide a better and more active life for diabetic patients, as my mother was severely diabetic. When I discovered in high school that I was allergic to many chemicals, including formaldehyde, I decided that if the Lord didn't call me to be a gospel minister I would become a lawyer, to help cure the cancer of racism associated with the legalized segregation in America. I grew up in the South, in poverty that was made so much worse for people of color based on the racism that existed. By becoming a lawyer I was hoping to help heal the cancer diagnosed as racism, since the endless mission of law is to do justice, which is similar to the healing process involved in medicine.

***How did your judicial career begin?***

Since I wanted to help cure the cancer of injustice in our society, I thought that becoming a judge and working within the judicial system was a great way to heal the injustice within and outside of the judicial system. In furtherance of that objective, Chief Justice Wilentz appointed me as chairman of the first Supreme Court committee in the United States to study racial and ethnic bias and diversity within the Judiciary.

***How has diversity changed since you began your legal career?***

Part of the immediate and long-term impact of that committee's report was to incrementally increase racial-ethnic minority judges in the trial courts from 2.8 percent in 1984 to 15.2 percent in 2008; to increase those judges in the Appellate Division from one to six; and to increase those justices in the Supreme Court from zero to two. At the recommendation of the Coleman committee, a task force was created to continue investi-

gating and deliberating on issues raised by the committee's report. As a result of the task force recommendation, Chief Justice Wilentz appointed a standing committee to continue to oversee diversity issues, and that committee continues to be headed by Dr. Yolande Marlow, Ph.D.

Regrettably, the number of minorities on the Supreme Court was reduced to one on May 20, 2010, because Governor Christie refused to reappoint Justice John Wallace, the only African-American member of that Court. This number was reduced to zero on Aug. 31, 2011, when the only Hispanic/Latino member of the Court, Justice Rivera-Soto, did not seek reappointment. (*However, Justice Faustino Fernandez-Vina, a Cuban-America was appointed in 2013).*

When I was appointed to the Supreme Court, Justice Marie Garibaldi was the only female on the Supreme Court bench. Justice Garibaldi was appointed in 1982, followed by Chief Justice Deborah Poritz, who was sworn in as the first female chief justice in 1996. Justice Virginia Long was appointed in 1999, followed by Justice Jaynee LaVecchia, who was appointed in 2000. Justice Helen Hoens was appointed in 2006 and Justice Anne Patterson was appointed 2011. Governor Christie also failed to reappoint Justice Hoens in 2013.

The present chief justice has continued to promote diversity with the appointment of Judge Glenn Grant who became the first African-American appointed as administrative director of the courts. During the same period noted above, the racial-ethnic law clerks increased from 2.6 to 20.3 percent. Much of that success was possible because of my work in tandem with two chief justices.

During my judicial career, I had 55 law clerks. They were chosen from virtually every racial, ethnic, religious and social background. They were about equally divided between the genders. That was one of my ways of helping to increase diversity and at the same time giving back and preparing future generations of lawyers, judges and community leaders.

***How important is diversity in the legal profession?***

Diversity is very important to the legal profession, based on both business and moral models. It is important from the moral model because it encourages people to develop high self-value and self-worth and, in the business model, it makes good modern-day business sense given the globalization that has occurred from the end of the 20th century to the beginning of the 21st century.

***What were your proudest achievements as a justice on the New Jersey Supreme Court?***

Some of my proudest achievements on the Supreme Court are reflected in some of the more than 2,000 opinions that I wrote during my entire judicial career. I used the interdisciplinary approach to examine issues such as social sciences to help shape the rule of law that dismantled racial profiling in motor vehicle stops, that required special instructions in criminal cases involving cross-racial identifications, and that prevented attorneys from excusing people of color from serving on juries solely because of race or ethnicity before the United States Supreme Court decided *Batson v. Kentucky*, and *Brill,* which adopted the federal standard for deciding summary judgment motions. That has become the most cited case in New Jersey.

***Why did you decide to join bar associations such as the NJSBA?***

I joined bar associations because it gave me the opportunity to meet people, exchange ideas and do so many important things to help improve the practice of law.

***What advice do you have for current and future attorneys?***

To begin as early as you begin thinking about going to law school to strive for excellence in whatever it is that you have been doing or hope to do. That is critically important because the outlook of the legal profession at the beginning of the 21st century is not nearly as promising as it was at the end of the 20th century. Striving for excellence in life is a great model. The approach to excellence, to model after an unknown writer who once said, "If a man is called to be a street sweeper, he should sweep the streets even as Michelangelo painted, or as Beethoven composed music, or as Shakespeare wrote plays." I translate that to mean work hard and do your very best at whatever you are doing, including law school and the practice of law.

***What do you like to do in your spare time?***

Sixty-four years after migrating to New Jersey from the family farm in Virginia, I still like the outdoors and refer to myself as a country fellow. I like gardening, and that includes the annual planting of flowers. I enjoy tennis, reading, and writing. I also enjoy theater and classical music.

***What would you like your legacy to be?***

I moved the arc of judicial history in New Jersey, serving as a secular minister for justice for all the people.

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# Commentary:
# Freeing the Vote on the 51st Anniversary of the Voting Rights Act

*by Ryan P. Haygood*

Sunday, Aug. 6 marked the 51st anniversary of the passage of the Voting Rights Act, which was enacted following the Bloody Sunday march a few months earlier in Selma, Alabama. Widely recognized as the greatest piece of the civil rights legislation ever passed, the Voting Rights Act ultimately freed the vote for millions of voters of color, and led, in just a generation, to the election of the first Black president of the United States.

New Jersey has a unique role in this story, as Atlantic City served as the site of the 1964 Democratic National Convention at which Fannie Lou Hamer famously delivered her powerful speech in support of Black voting rights on behalf of the Mississippi Freedom Democrat Party.

But more than 50 years later, despite the promise of increased political participation by people of color created by the Voting Rights Act, its full potential has not been realized by one of the last excluded segments of our society: Americans with criminal convictions.

Black voter registration in Selma in 1965 was made virtually impossible by Alabama's relentless efforts to block the Black vote, which included requiring Black people to interpret entire sections of the Alabama Constitution, an impossible feat for even the most learned. On one occasion, even a Black man who had earned a Ph.D. was unable to pass Alabama's "literacy" test.

On Bloody Sunday, John Lewis and Reverend Hosea Williams led almost 600 men, women and children in a peaceful march across the Edmund Pettus Bridge from Selma to Montgomery to dramatize to the nation their desire as Black people to participate in the political process.

As they crossed the highest part of the bridge, the marchers were viciously attacked by Alabama state troopers, who ridiculed, tear-gassed, clubbed, spat on, whipped and trampled them with their horses. In the end, Lewis's skull was fractured by a state trooper's nightstick, and 17 other defenseless marchers were hospitalized.

Five months later, in direct response to Bloody Sunday, President Lyndon B. Johnson signed the Voting Rights Act of 1965 into law. Considered by many to be the greatest victory of the civil rights movement, the Voting Rights Act removed barriers, such as literacy tests, poll taxes and the 'grandfather clause' that had long kept Black people from voting.

Today, nearly 6 million Americans, including two million Black people, are locked out of the political process by state laws that disqualify people with criminal convictions from voting.

Here in New Jersey, more than 100,000 people have lost their voting rights following a criminal conviction. And though Black people comprise just 14 percent of New Jersey's overall population, they represent, incredibly, more than half of those who have lost their voting rights as a result of a criminal conviction.

The historical record reveals that to prevent newly freed Black people from voting after the Civil War, many state legislatures in the North and South tailored their felon disfranchisement laws to require the loss of voting rights only for those offenses committed mostly by Black people.

For example, the 1890 Mississippi constitutional convention required disfranchisement for such crimes as theft, burglary and receiving money under false pretenses, but not for robbery or murder. These intentionally discriminatory laws were guided by the belief that Black people engaged in crime were more likely to commit furtive offenses than the more robust crimes committed by Whites. Through the convoluted 'reasoning' of this provision, one would be disfranchised for stealing a chicken but not for killing the chicken's owner.

Many other states, from New York to Alabama, have also intentionally and effectively utilized felon disfranchisement laws to prevent Black people and other voters of color from voting.

New Jersey's law disqualifies people from voting when they are in prison, on probation and on parole.

Suffrage for people with criminal convictions was initially restricted in 1844, when New Jersey adopted a new constitution, the same year that it, for the first time, explicitly restricted the vote to White men over age 21.

As intended, modern-day felon disfranchisement laws disproportionately weaken the voting strength of communities of color. New Jersey's felon disfranchisement law is most destructive in these communities, which are affected disproportionately by numerous socioeconomic ills, including concentrated poverty, and unequal access to quality education, housing and healthcare.

The further disfranchisement of people of color results largely from the disproportionate enforcement of drug laws in Black and Latino communities, which has expanded exponentially the number of people of color subjected to felon disfranchisement. And to add insult to injury, although they cannot vote, people with criminal convictions are counted by the U.S. Census as residents of the often rural communities where prisons are housed for purposes of drawing legislative districts, rather than as residents of often urban communities from which they actually come and to which they will return.

As a result, New Jersey residents in these communities have even less of an opportunity to affect positive change through the political process.

Moreover, these laws also discourage eligible and future voters from exercising the learned behavior of voting. In doing so, these laws create a culture of political nonparticipation that erodes civic engagement and marginalizes the votes and voices of community members who remain engaged, but who are deprived of the collective power of the votes of disfranchised relatives and neighbors.

Although common in the United States, felon disfranchisement statutes are not a necessary feature of our participatory democracy. Indeed, Maine, Vermont and most western democracies have no such statutes, and permit all people with felony convictions—including those both currently incarcerated and formerly incarcerated—to vote. Some states restore voting rights to formerly incarcerated persons once they have served their entire prison sentence. But too many formerly incarcerated persons are not informed that their voting rights have been restored, and although technically free to vote, remain voteless.

Most unfortunately, New Jersey law deprives people with criminal convictions of the right to vote even as studies convincingly show that voting is an important reintegration tool that helps to facilitate re-entry into society and reduce recidivism.

Regrettably, 51 years after 600 people risked their lives on Bloody Sunday to expand democracy for people of color, and with the 2016 presidential election fast approaching, too many voters of color here in New Jersey, rather than experiencing increased political participation, are losing their voting rights daily.

It is time to erase felon disfranchisement laws from New Jersey's books. The integrity and legitimacy of our democracy, and the fulfillment of the promise of the Voting Rights Act and the human sacrifice that led to its passage, depends on it. ■

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# A City's Fight for Inclusion: Using Economic Incentives to Foster Diversity

*by Jeremy Farrell*

Jersey City is putting diversity and inclusion front and center, and not just in words but through action and investment. While various Jersey City stakeholders have engaged in an ongoing discussion about diversity and inclusion for many years, this discussion seems to have focused primarily on increasing diversity in construction jobs. One reason for this is the historic underemployment of many of the city's diverse residents who are especially underrepresented in the ranks of well-paid skilled and unskilled construction jobs. Another is that the city has experienced a protracted construction boom that has benefited many but not all its constituencies. The rationale for this focus on construction projects is simple: If the city provides a developer with loans or other incentives to build, the return on this investment to the city should be more than just the usual economic benefits and the project itself. The project should be an economic stimulus for all of the city's residents, especially those who have been historically economically disadvantaged.

Despite all the discussion and efforts expended, little progress has been made. The lack of substantial progress has resulted from many legal and societal roadblocks, changes in political will over the years, and the complexities involved in developing a program to redress decades of disparate treatment.

The current Jersey City administration has concluded that having a more diverse workforce on construction sites will only happen if the city takes a more holistic approach to diversity and inclusion. Progress will only be achieved if diversity and inclusion is made a priority in all aspects of the city's functions. In short, the mayor and city council have made it clear that fostering diversity and inclusion is a top priority for Jersey City. To accomplish this, they have implemented a three-pronged approach: 1) the creation of a program to ensure that when the city provides incentives for projects, jobs are created for those who have been historically underrepresented in the area of construction and development; 2) the revamping of the office charged with enforcing agreements with developers receiving incentives to ensure that the conditions and obligations contained in the agreement turn into results; and 3) legislation to incorporate an office focused solely on diversity and inclusion within the fabric of city government.

The current administration did not arrive at such a bold plan easily. Indeed, this plan is the result of many prior attempts at fostering substantial and sustained diversity.

The city's path to its current approach to diversity and inclusion essentially began in 1991, after a groundswell of community activism when the then-council adopted Ordinance McC 2260, which required recipients of financial incentives to enter into a memorandum of understanding (MOU) and a first-source and affirmative action agreement with the city. The MOU provided that the developer was to encourage its future tenants to fill all of the new jobs created with Jersey City residents. The MOU further provided that the developer in connection with the operation, management, maintenance of, and provision of security to the development agrees to pursue the goal of employing city residents in 25 percent of the positions available at the project site. The agreement further required participation in specific programs, dissemination of specific information to its tenants, and an annual meeting to review the efforts being made to achieve the goals set forth in the agreement. The first-source agreement focused on economically disadvantaged residents and required a developer who received an incentive to provide the city with notice of its employment needs and to use the city as a first source for recruitment and referral of new employees. The developer had to use its "best efforts" to hire from among the referred candidates, but was not required to actually hire any candidates referred.

Over time, a sentiment developed that the first-source program did not have teeth. Consequently, in 1996, the then-council adopted a second ordinance, Ordinance

96-022, based on the first-source structure but with a requirement to hire people falling into specific demographic categories. This revised first-source program required developers to undertake measurable good faith efforts to maintain a workforce composed of at least 51 percent Jersey City residents. Furthermore, 51 percent of those Jersey City residents had to be minorities and 6.9 percent had to be women. A good faith effort was also required for awarding contracts connected with the project. Specifically, 20 percent of these contracts had to go to residents, 51 percent of which had to go to minority- or women-owned local businesses. The ordinance defined what was required to satisfy the "good faith" standard. It imposed reporting requirements on all the contractors and subcontractors to ensure compliance. Lastly, the ordinance provided an equation for calculating liquidated damages to be imposed if the requirements were not met.

The ordinance was immediately challenged as unconstitutional by the Hudson County Building and Construction Trades Council.

In the resulting lawsuit, the trades council sought a declaratory judgment. Ultimately, a published opinion arising out of the trades council's motion for summary judgment was issued, wherein the court denied the motion. In its motion, the trades council argued that the ordinance violated the privileges and immunities clause of the United States Constitution because it impeded the fundamental right of out-of-state residents to seek private employment in New Jersey.[1] The council further claimed that the ordinance violated the equal protection clause of the 14th Amendment of the Constitution because it granted a preference to Jersey City workers over residents of other New Jersey municipalities.[2] The trades council also asserted two preemption arguments, one under the National Labor Relations Act[3] and the other under Section 301 of the Labor Management Relations Act.[4]

The court found that the ordinance unduly impacted the opportunity of out-of-state residents to seek employment with private employers, a privilege protected by the privileges and immunities clause.[5] Since a protected privilege was found, the court turned to the next inquiry: "whether the ordinance bears a close relation to a substantial reason for the difference in treatment and whether the actions of nonresidents are a source of the evil which the ordinance combats."[6] While the court determined that summary judgment was not appropriate on this claim, it concluded that the city had not demonstrated that non-residents were the cause of the evil identified, namely unemployment, and that the city was unlikely to be able to make such a showing.[7]

With regard to the 14th Amendment argument, the court noted that the standard for identifying a fundamental right under the privileges and immunities clause is different than the equal protection clause, and that the Supreme Court has never recognized a fundamental right to pursue a specific line of employment.[8] The court further found that non-residents were not a suspect class.[9] Finding no protected class or any impact to a fundamental right, the court applied the rational basis test and asked whether the program rationally furthered the city's identified goal of reducing unemployment.[10] The court held that questions of fact were present and denied summary judgment.[11]

With regard to the trades council's first preemption argument, the court again found that questions of fact precluded summary judgment.[12] Regarding the council's second preemption argument, based on Section 301 of the Labor Management Relations Act, the court held that the examination of collective bargaining agreements is unnecessary for the enforcement of the ordinance, the ordinance does not attempt to interpret any collective bargaining agreements, and the ordinance has no impact on arbitration of the terms of any collective bargaining agreements.[13] The court, therefore, found no preemption based on this argument because the necessary elements for preemption were missing.[14]

Even though the court denied the trades council's motion for summary judgment, it was made clear in both the opinion and throughout the proceedings that the program would not survive judicial review should the ordinance remain in effect as it was. As a result, the city changed its approach and no longer relied on the revised first-source ordinance, but rather started utilizing a less stringent method of pursuing diversity, project employment and contracting agreements (PECA), beginning in 1997.

Put simply, Jersey City's PECAs now require developers to make a "good faith effort" to hire diverse contractors and labor for both construction and post construction permanent jobs. While the agreements require a developer to file reports, hold job fairs and demonstrate that it had at least considered diversity in hiring, there is no hiring requirement or target percentage for how much of the workforce should be diverse. So while the agreements appear to set general goals, they are largely aspirational. This lack of mandates provides the benefit of not trigger-

ing litigation but the negative of not adequately incentivizing developers to actually do much to foster diversity.

In 2007, the unions organized and successfully lobbied the then-council to adopt Ordinance 07-123, which established the requirement that developers who receive tax abatements for projects with estimated total project construction costs of $25 million or more enter into a project labor agreement (PLA) with the trade unions. PLAs generally require the use of union labor and mandate an apprenticeship program in which all apprentices are Jersey City residents and work hours equal to 10 percent of the total hours worked on the project. The city currently utilizes PECAs and PLAs as instruments of its diversity efforts, but given that there are no hard targets and good faith effort leaves developers free to hire without justifying when hiring doesn't reflect diversity, it can be no surprise that many years of this strategy has changed very little.

The community, unsatisfied with the results of the past strategies, again organized, but this time demanded a more stringent program that would take race and gender into consideration. The community outcry proved successful, and it became evident that a rigorous program was necessary. But, before anything could be enacted implementing such a program, a foundation had to be laid. The legal framework for determining if a municipal government race-conscious program is valid was established by the Supreme Court in *City of Richmond v. J.A. Croson Co.*[15]

This case and its progeny established that a remedial race-conscious program implicates the equal protection clause of the 14th Amendment of the Constitution and, therefore, must satisfy the strict scrutiny standard.[16]

Clearly, correcting decades of bias, discrimination, and exclusion is a compelling governmental interest. The harder part of the standard to meet is creating a program that is narrowly tailored to remediate the obvious compelling interest. In *Croso*n, the Court explained that, for a municipality, narrow tailoring requires there to be a determination based on direct evidence demonstrating that the under-utilization of minorities is a product of past discrimination.[17] Race-based preferences are allowed only when those preferences are established to remedy identified present or past discrimination in which the municipality engaged or was a "passive participant."[18] Race-based preferences cannot be justified by reference to past 'societal' discrimination in which the municipality played no material role.[19] *Croson* and subsequent cases hold that a local government entity wishing to establish a race-conscious program must engage in a specific fact-finding process to compile a thorough, accurate and specific evidentiary foundation to determine whether there is, in fact, discrimination sufficient to justify a remedial plan. This inquiry is colloquially referred to as a *Croson* study.

In evaluating gender-based classifications, the applicable standard is intermediate scrutiny, which is a lesser standard than the strict scrutiny standard applied to race-based programs. This standard requires that the gender-based classification serve important governmental objectives and that the means used are substantially related to the achievement of those objectives.[20]

In July 2007, the city contracted with MGT of America, Inc. to conduct a purchasing disparity study to determine if the city could satisfy the *Croson* requirement and pursue a remedial program sensitive to race and gender. The study was designed to determine whether existing Jersey City efforts had eliminated active and passive discrimination, to analyze city procurement and construction contracting trends and practices from fiscal year 2002 through fiscal year 2008, and to evaluate various options for future program development. MGT submitted its final report to the city on May 31, 2011. The report is titled, "A Purchasing Disparity Study of the City of Jersey City, New Jersey."

The MGT report found, in part:

- In most business categories, the city significantly underutilized minority- and women-owned business enterprises relative to their availability.
- The city rarely awarded construction contracts or subcontracts to minority- or women-owned business enterprises.
- Private sector commercial construction showed little utilization of minority- and women-owned business enterprises as prime contractors and subcontractors—almost zero percent for prime contracting and less than 0.5 percent for subcontracts.
- While there are state statutes and local ordinances that enable minority- and women-owned enterprise programs, the city has undertaken minimal efforts to implement such programs in the years covered in the report. Indeed, Jersey City Ordinance C-829 established a 20 percent goal for procurement of minority- and women-owned business enterprises as part of the city's bid documents and the specifications in Jersey City's bid documents reference non-discrimination in contracting. However, the 20

percent goal identified in Ordinance C-829 is merely a "good faith effort provision" and is not actually mandated.[21]

The findings in the MGT report provide sufficient evidence to justify a narrowly tailored minority- and women-owned business enterprise program to broaden and improve the effectiveness of the city's current programs.

After the study was completed, the mayor and council in office at the time did little to nothing to address the disparities set forth in the report. When the current administration took office, the report was pulled out of the proverbial drawer and a review process was initiated, culminating in the report's adoption on Sept. 23, 2014, as Council Resolution 14.640. Due to the lack of action on the city's part before the current administration took office, Mayor Steven M. Fulop, his administration, and the city council collectively decided that leadership and deliberate action based on a strategic plan was necessary to prevent further ineffectual programs and the slippage of time. As a result, on Jan. 9, 2015, Mayor Fulop issued Executive Order 2015-001, forming a strategic planning committee made up of members of the municipal council, community representatives, and city staff. The committee was charged with reviewing the final report prepared by MGT and providing Mayor Fulop with a proposed strategic plan detailing the steps the city should take to establish a minority- and women-owned business enterprise remedial procurement, construction contracting, and employment program, as called for in the MGT report.

The strategic planning process made clear that it would not be enough to merely set a number and require developers to meet it. Rather, the more meaningful way to foster inclusion in the allocation of construction jobs and to ensure that all city residents are able to avail themselves equally of the opportunities existing in the city is to establish a high-level office in city government tasked with diversity and inclusion in general, and not just the creation and allocation of construction jobs. For this reason, one of the principal objectives established in the strategic plan was to create an Office of Diversity and Inclusion (ODI) and to have the head of this office be a senior official acting as the city's chief diversity officer (CDO). Shortly after the council adopted the strategic plan, Mayor Fulop hired a CDO and initiated the process of drafting the legislation needed to create the ODI. On Feb. 24, 2016, the council adopted Ordinance 16-026 and formally established the ODI.

While the initial objective was extremely specific and simple to articulate—construction jobs for city residents, especially those who are economically disadvantaged—the hurdles to achieving that initial objective have been great. As a result of continually trying to surpass those hurdles, the city ultimately ended up tackling a much larger problem, necessitating an equally large solution. In establishing the ODI, the mayor and council will ensure there is a senior member of this administration, and every administration to follow, ensuring the implementation of the goals and strategies established in the strategic plan, and eventually creating a new plan as its primary function. Importantly, this office will have so much more than construction jobs as its mandate. It will address issues of gender, sexual orientation, religion, ethnicity, race, and age.

The vision is that this office through policy, programs, coordination of resources, notification of opportunities, training, communication, and leadership, will redesign the very fabric of the city so that diversity and inclusion are intermeshed in it. This office will require considerable resources, and will, by design, dismantle the historical processes that lead to inequities. Most importantly, making this investment will ensure that going forward diversity and inclusion are top priorities in Jersey City to the benefit of all the city's residents. ■

*Jeremy Farrell is corporation counsel of Jersey City and a member of the NJSBA Diversity Committee.*

## Endnotes

1. *See Hudson County Bldg. & Constr. Trades Council v. City of Jersey City*, 960 F. Supp. 823, 829 and 834 (D.N.J. 1996).
2. *See id.*
3. 29 U.S.C. § 151, *et seq.*
4. 29 U.S.C. § 185(a). *See id.*
5. *See id.* at 830.
6. *Id.*

7. *See id.*
8. *See id.* at 831.
9. *See id.* at 832.
10. *See id.*
11. *See id.*
12. *See id.* at 834.
13. *See id.* at 835.
14. *See id.*
15. 488 U.S. 469 (1989).
16. *See id.; Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507 (2015); *Contractors Ass'n of E. Pa., Inc. v. City of Phila.*, 91 F.3d 586 (3d Cir. 1996).
17. *See id.*
18. *See id.*
19. *See id.*
20. *See id.*
21. *See* A Purchasing Disparity Study for the City of Jersey City, New Jersey, MGT of America, Inc,. Executive Summary i-iii (2011).

# How to Handle a Problem Employee

*by Cedric Ashley and Tonya Woodland-Ashley*

The 'problem employee' can run the gamut from under-performers to performers who have personal problems to employees who sow seeds of discord among staff, to name a few. The most effective way to deal with a problem employee is to not hire them in the first place. However, not all problem employees are hiring mistakes. Many are good employees who for some reason or another run into problems later. Working with a problem employee can be one of the most difficult and stressful challenges a leader can face.

## No. 1—Communicate Clearly to Identify the Problem

Communication, or the lack thereof, is the root of many problems and conflicts, both in and out of the workplace. Whenever two or more human beings are interacting with one another you have the makings of a relationship. Whether marital, business, neighbor, or employee relationships exist, and they must be managed and navigated.

A key to managing and navigating these relationships is communication. Lack of communication can be a contributor to the reason an employee has become a problem, or can be a barrier to determining the actual problem. Conversely, timely transparent communication can assist in finding the root cause of the problem and in developing solutions for success. It is far too easy to put one's head in the ground and avoid addressing the issue. However, avoidance does not serve the interests of your firm or your employee.

In trying to discover what is causing the employee's problem, a coach-focused approach to questioning that addresses *why*, *what*, and *when* can go a long way to help. Here is an example conversation:

**Jim (*Firm owner*):** *Paul, lately you have not been producing detailed and timely deposition analyses like you usually do.* Why *do you think that is the case?*

**Paul (*Employee*):** *Yes, I realized that I was really not performing the way I usually do. Lately I have just not been able to get my work done. It seems like there are more deposition transcripts coming in and all of the partners want their analyses right away. I just can't get ahead. And with those two cases coming up for trial, that's an entirely different story.*

**Jim:** *Paul, I appreciate your candor. Let me say that we value all of the work you do and we want to make sure that you continue to excel at the firm.* What *can we do to help you continue to be a top performer?*

**Paul:** *Thanks, Jim. That offer is really helpful. I think if I complied a list of deposition analyses that I'm working on and a list of those that I have not started, the partners will see what I'm facing and maybe they can let me know which depositions are a priority.*

**Jim:** *That sounds like the start of a great plan. I knew that if we talked this through we could come up with a solution.* When *can you get the list to me so I can it share with the partners?*

Clearly all situations will not be resolved as easily or quickly. However, regardless of the complexity of the problem, an interventional coach-centric conversation based on *why* (the cause); *what* (the proposed solution); and *when* (a concrete agreed upon deliverable date), can begin the process of turning a problem around.

## No. 2—Create an Employee Success Plan

Once you have clearly identified the issue that is causing the employee to become a problem (and assuming that you have determined not to terminate), the employer and employee should mutually develop a written plan that will provide a path to improved employee success. The following components should be considered for inclusion in the success plan. Performance indicators—clear objective criteria should be given to the employee so he or she can understand the 'how.' The 'what' involves the employee's job description; the 'how' involves clear direction on the manner in which the performance is carried out. Continuing with the example discussed above, Paul should understand the expected delivery timeframe of the analysis reports; what issues should be covered; how the reports should be structured; who should receive the reports; how many reports are expected to be written and over what period of time; etc.

Most importantly, the plan should ensure that the employee can do the job, will do the job, will enjoy

doing the job, and has the opportunity to do the job. The absence of any of these factors can keep the employee travelling down the 'problem path.'

Another way of understanding the importance of this concept is expressed in the formula: $p=(a*m*o)$. Performance equals ability times motivation times opportunity.

The employee success plan should include timely and substantive feedback to the employee. This includes supportive praise where appropriate. When an employee is doing a good job, it should be acknowledged. Finally, document, document, and document. It is essential to document everything throughout the process. As a standard practice, performance reviews of *all* employees should be completed regularly, and should be as detailed as possible to fairly and accurately capture their performance.

## No. 3—Provide Resources for the Employee to Ensure Success

To further assist the employee in succeeding, the employer should provide professional resources to assist in the development of the employee. This can include providing a coach to assist the employee in improving his or her performance. Although hired for the purpose of improving performance, a good coach may discover other obstacles, barriers, or blocks that are preventing the employee from performing at expected levels. So if it turns out the coaching sessions are focusing on a personal relationship the employee is struggling with, it should not matter to you. First, you will never know because the coach (yes, that you are paying for) should not reveal any information to you from the coaching session. More importantly, if assisting the client to find a solution to their personal problem improves the employee's performance, then the coaching engagement has been successful.

Training should also be a part of the employee success plan. When you invest in your employees, you invest in your business. Of course, lawyers have all of the answers and believe that 'if you just do it this way' everything will be fine. Sounds good, but that's about it. Although lawyers must be knowledgeable about many topics to serve the needs of their clients, lawyers are not experts at everything. For an employee to properly develop, they will need training. Depending on the employee's position, courses may be available at a county or community college; the Society for Human Resource Management (SHRM) may offer workshops; or your bar association may offer continuing legal education courses relating to law office management.

Another plan component to consider is the use of assessments. Employee assessments run the gamut, including personality type assessments such as Myers-Briggs Type Indicator, behavior type indicators such as DISC, and instruments that assess emotional intelligence (EQ) such as the Emotional & Social Competency Inventory (ESCI). All of these instruments can be extremely useful for employees to gain greater self-awareness of their mental function preferences, hard-wired strengths and weakness, blind spots, areas for self-development, and triggers of stress. The various assessments and instruments measure different things, and may be used separately or in tandem. Most importantly, you should engage a qualified professional to: 1) assist you in determining which instrument is the best fit and most appropriate use; 2) administer the assessment; and 3) debrief the employee on the results. Avoid 'free' assessments found on the Internet. The lack of value in these instruments is demonstrated by their cost.

## No. 4—Pull the Plug: Terminate When Necessary

Unfortunately, there will be some occasions where termination will be necessary. No one relishes having to do to this. However, when the employer-employee relationship is no longer viable, termination is the best option. Prolonging the relationship only works to further stunt the employee's development, and causes the employer to remain focused on a distraction unrelated to the business priorities of the law firm. When deciding to terminate, take the high road. Your firm's reputation is of utmost importance. Make every effort to conduct a proper and thorough exit interview. Short of very unusual circumstances, do not contest the employee's claim for unemployment insurance benefits. Be fair in providing the employee with whatever vacation time or paid time off is available, even if you are not required to offer that benefit. Avoid the 'SEAL Team Six' type of security escort off the premises. Afford the departing employee some level of dignity and respect. Why? Because it is all about your firm's reputation. Your reputation is extremely important to maintaining good client relationships and to attracting and retaining high-performing staff.

## No. 5—Learn from the Experience and Move Forward

Finally, *you* should learn from the experience. To what degree did your leadership style, or your need for leadership development, contribute to the performance

problem of the employee? This post-termination period is a great opportunity for some self-reflection. Attorneys can be, well: know-it-all-bossy-super-in-control-arrogant-do-it-my-way professionals. Additionally, most attorneys do not have any formal training in managing or leading people in the workplace. So take a moment to ascertain what you could have done better to develop the performance of that employee. If your answer is nothing, keep asking. If you still don't have an answer, go to lunch with the best trial attorney you know and let that attorney explore the issue though cross-examination.

You should also avail yourself to the assessments and instruments discussed above (*e.g.*, Myers-Briggs, DISC, SEIP, ESCI). If you are leading people, you surely need to become more self-aware of who you are and how you present yourself in the workplace. Likewise, sometimes we cannot see what we 'are,' which prevents us from seeing what we can 'become.' You *can* become a better, more inspired leader of people. To get there, consider engaging a coach to help you unleash the dynamic leader that is within you.

The post-termination period will also be an ideal time to re-assess the vacant position. How critical is the position? Does the position need to be filled? Does the position need restructuring or re-defining? Can re-assigning the responsibilities among existing staffers achieve the objectives of the position? If you choose re-assignment as a solution, make sure you provide proper training, an updated job description, and appropriate compensation for the employee(s) taking on the new responsibilities.

When it comes to hiring a replacement, you should be extremely deliberate and thoughtful about the process. Take the appropriate time to find the right candidate, don't simply select the first candidate. Do not rush the process. If you are uncertain whether you can be dispassionate and objective in the candidate search process, consider turning the responsibilities over to a human resources (HR) professional. There are plenty of HR consultants and HR graduate students who can fulfill this task.

## Summary

In conclusion, the best way to deal with a problem employee is to avoid hiring them. Once you have hired an employee, make every effort to communicate clearly and frequently regarding performance expectations. When a problem does arise, intervene quickly to discover the root cause. After discovering the cause, develop a plan to assist the employee in achieving success. Be sure to provide the resources the employee needs to succeed. When it is clear that termination is necessary, do it in a swift, fair, and respectful manner. Prolonging it serves no purpose, and no one benefits. Finally, learn the lessons and move forward. You should not become a prisoner of the past.

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# Reflections on Ta-Nehisi Coates' *Between the World and Me*, Through the Lens of the Law and Diversity

*by Norberto A. Garcia*

A common suggestion in programs promoting diversity is that executive board members of organizations read at least one book a year authored by a member of a minority background. Based on this suggestion (and because he is one of my favorite *Atlantic Magazine* contributors) I read Ta-Nehisi Coates' *Between the World and Me*. This article is a review of the book through the prism of diversity in the legal profession—past, present and future.

Initially, I strongly suggest that Coates's book be on everyone's required reading list. I read a large quantity of books every year, and I have not read a book this thought provoking in a very long time.

The book is a letter by Coates to his 16-year-old son on what it means to be Black in America. The book is short (152 pages) but deep—I found myself underlining ideas on almost every page. The message is bleak, but profound.

Coates criticizes what he calls the "Dream" (his shorthand for the American dream) as being built on the back of slave labor, discrimination and the unequal treatment of non-white America. He writes: "There exists, all around us, an apparatus urging us to accept American innocence at face value and not to inquire too much. And it is easy to look away, to live with the fruits of our history and to ignore the great evil done in our names." This passage brings me to the current protests at Harvard Law that seek, among other things, to remove the image of the Royall family coat of arms from the Harvard Law School emblem. That family's patriarch, Isaac Royall Sr., built his fortune as a slave trader and slaveholding plantation owner on the island of Antigua, where he co-owned a slave ship and helped brutally suppress a slave revolt. Harvard Law recently took steps to drop the image from the emblem.

The continuing unequal treatment of white and non-white communities is addressed in the context of housing, education and criminal justice. He writes: " [A] society that protects some people through a safety net of schools, government backed home loans, and ancestral wealth but can only protect you with the club of criminal justice has either failed at enforcing its good intentions or succeeded at something much darker." This passage made me think of the home mortgage crisis and how it disproportionately affected lower-income America. For the upper one percent, it was a bump in the road (See "The Big Short.") It reminds me of the work we must do as lawyers to provide access to legal counsel to underserved communities. It also made me think of the current spate of police brutality cases occurring throughout our country.

The book begins by describing Coates' childhood in Baltimore. He describes his streets as "[transforming] every ordinary day into a series of trick questions, and every incorrect answer risks a beatdown, a shooting or a pregnancy." He contrasts this with the 'other' America, the dream he was connected to only through what he saw on television; the 'other' world where "there were little white boys, with complete collections of football cards and their only want was a popular girlfriend and their only worry was poison oak."

Coates' assertion that America uses violence as policy caused me to look at this argument through the lens of the law. For years, we have had higher penalties for crack cocaine as opposed to powder, the latter being more prevalent in affluent communities. Affluence also provides access to a legal system where pre-trial intervention or dismissal of charges are obtained instead of career crippling guilty pleas. I think of the reluctance to address the drug epidemic until heroin started ravishing white suburban communities in recent years.

Coates draws a conclusion that the dangers of his world were somehow connected, or dependent, on the privileges of the white world. "[F]ear ruled everything around me, and I knew, as all Black people do, that this fear was connected to the Dream out there, to the unworried boys, to pie and pot roast, to the white fences and green lawns nightly beamed into our television sets."

This passage had me thinking about the contrast in my own life. My office is in the inner city of Hudson County, in Jersey City. The troubles facing my office

community are a regular spate of shootings, house fires and burglaries. Fights in the local schools are common and the streets are often forbidding. My home, in a leafy suburb of Morris County, only 25 miles away, is arguably an oasis. The police blotter is dominated by vehicle arrests for DWI. The big debate is whether we should invest in artificial grass for our playing fields. That being said, my block in Morris County consists of a white family, a Hispanic family, a Black family and an Asian family. It is tough to separate what elements of Coates' arguments on community disparity are really attributable to income rather than race.

I digress to make a personal observation. As a person pushing 50 years of age, having not been born in this country and having started life in an urban, inner-city, immigrant setting, my experience is as follows: The difference between the friends who ended up in suburbia (or the 'Dream') and those still residing in the inner-city is the result of a combination of effort, luck, good choices, bad choices and finding the right life partners. A big dividing line is that those who finished college did far better than those who did not. I have also found that once you make it to 'the dream,' even if you have financial set backs, you do not move back to the inner city. You find a way to keep yourself and your family in the 'promised land.'

Coates acknowledges his arrival into the trappings of economic success and his appreciation of the advantages it provides. His argument is that even entry into this economic class does not protect you if you are Black. A large portion of the book is devoted to the killing of Prince Jones, his schoolmate at Howard University and the son of a physician, who died at the hand of a police officer in a case of mistaken identity.

The book contains criticism of both the left and right of the political spectrum. He writes: "It does not matter that the "intentions" of individual educators are noble…Very few Americans will directly proclaim that they are in favor of Black people being left on the streets. But a large number of Americans will do all they can to preserve the Dream... a great number of educators spoke of "personal responsibility" in a country authored and sustained by a criminal irresponsibility…We meant well. We tried our best. 'Good intention' is a hall pass through history, a sleeping pill that ensures the Dream." This passage makes me think of all the Mount Laurel and Abbott District litigation in New Jersey. People who are for equal housing often pause when a development is proposed in their township. This is an ongoing issue in the New Jersey courts and communities.

In terms of higher education, the book made me think of our current student loan crisis. Is it a 'trick' to attract underprivileged students into student debt with the promise that their education is a road to upper-class status? What happens when the result is crippling student debt that cannot be discharged in bankruptcy and ties them to a lower economic class existence? Those with means and proper guidance avoid debt because they can. This traps whites and non-whites alike.

In arguments for and against diversity programs, the historical perspective is sometimes lost.

Coates notes that "for 250 years Blacks were born into chains…We have been enslaved in this country longer than we have been free." Coates writes that "the destruction of the black body [is] incidental to the preservation of order… safety was a higher value than justice, perhaps the highest value." This reminds me of what was said by the speaker Mark Curriden at the New Jersey State Bar Association 2015 Diversity Summit. Curriden wrote a book about the Supreme Court case that created the modern day *habeas corpus* practice. The case involved a young Black man falsely accused of rape, who was railroaded through the justice system. In researching the book, he went through the history of lynching in America. He noted that lynchings, often thought of as the product of backwoods/lower economic areas, were most prevalent in the towns where Blacks were the most financially successful.

The Coates book addresses the issue of the amount of work it takes for non-whites to succeed, even with the existence of diversity programs. Coates writes: "All my life I'd heard people tell their Black boys and girls to be 'twice as good,' which is to say, accept half as much…No one told those little white children, with their tricycles, to be twice as good. I imagined their parents telling them to take twice as much." Coates argues that the amount of time Blacks spend dealing with issues that whites do not have to contend with results in a plunder of time. "It struck me as the defining feature of being drafted into the black race was the inescapable robbery of time, because the moments we spent readying the mask, or readying ourselves to accept half as much, could not be recovered." One thinks of the accomplishments of President Barack Obama in his post-academic life—and still there are those who want to see his grades at Columbia and Harvard Law. Minority lawyers face that every day.

It is suggested that whites believe in the dream not

just because it is just, but because they believe "their possession of the dream is the natural result of grit, honor and good works. There is some passing acknowledgement of the bad old days, which, by the way, were not as bad as to have any ongoing effect on the present." This reminds me of the argument that we are in a post-racial America, proven by the election of President Obama. It also calls to mind the history and continuing ramifications of 'redlining' in America—the discriminatory use of home mortgages by the federal government, resulted in many Blacks missing out on the benefits of suburban home ownership, the quickest, most common path to wealth accumulation in America. This was not 'grit—it was federal policy.

One of the more provocative passages in the book is Coates' critique of the continuing plunder of Blacks in America: "As slaves were this country's first windfall, the down payment on its freedom [from England]. After the ruin and liberation of the Civil War came redemption for the unrepentant South and reunion, and our bodies became the country's second mortgage. In the New Deal, we were their guest room, their finished basement. And today, with a sprawling prison system, which has turned the warehousing of black bodies into a jobs program for Dreamers…Black life is cheap, but in America Black bodies are a natural resource of incomparable value."

As in most of the book, Coates focuses on American history. But slavery did not exist in a vacuum. I did my senior thesis at Seton Hall on slavery in Brazil, which was the last Western nation to abolish slavery in 1888, 20 years after it ended in the United States. The issue of race relations does not draw the attention in Brazil that it draws in the United States. I would be curious to see what Coates' thoughts are on that issue in his future writings.

Coates recognizes that his outlook may be so bleak because of his lack of spiritual or religious faith. He recognizes that the Black church has been a pillar of support for the Black community throughout its hardships. He writes: "I thought of my own distance from an institution that has, so often, been the only support for my people. I often wonder if in that distance I've missed something, some notion of cosmic hope, some wisdom beyond my mean physical perception of the world, something beyond the body."

I do not share Coates' lack of spirituality and his rejection of faith. I see faith as an antidote to fear. It is the basis of hope for many in many otherwise bleak environments.

The book expresses little belief in America's promise. It offers no hope. Coates counsels his son not to fall for 'hope'—to protect himself. This is where I disagree, and where I see our roles as lawyers as making a real difference. As bad as things may still be, they do not compare to what Blacks had to face in the Jim Crow South. These accomplishments are attributable to the hard work of lawyers and legislators of all backgrounds. We think of humanity as having a moral arc where good triumphs over evil. Coates calls our attention to the prospect that "failure is a distinct possibility."

There are no pat answers in the book—just a long discourse on some disquieting questions. In the same way, there may be no definitive answer on what diversity in the legal profession should look like. It evolves.

America is not unique. History is full of people who oppress other people. It is through the rule of law that the field gets leveled. Injustice is not permanent; it cannot be. While I do not quarrel with many of the observations in the book, my outlook is not as bleak. Coates concludes with an exaltation that I share with him, but for different reasons. Coates urges his son to struggle forward despite the futility. I agree. You still try to do your best; to do good in what seems, at times, like an unfair world. Even if you know a certain fight cannot be won, if it is a 'just' fight, you struggle forward. You have no choice but to lean into it because it is the right thing to do. Sometimes it is enough just to believe in something. That's faith. That's the impetus behind many of the great legal changes in our nation.

While reading the book, I thought of the *Paradoxical Commandments* by Dr. Kent M. Keith: "People are illogical, unreasonable, and self-centered. Love them anyway. If you do good, people will accuse you of selfish ulterior motives. Do good anyway. If you are successful, you will win false friends and true enemies. Succeed anyway. The good you do today will be forgotten tomorrow. Do good anyway. Honesty and frankness make you vulnerable. Be honest and frank anyway. What you spend years building may be destroyed overnight. Build anyway. Give the world the best you have and you'll get kicked in the teeth. Give the world the best you have anyway."

In continuing our efforts toward diversity, it should be noted that despite great progress, the law is still the least diverse profession in the nation. According to a 2015 study by the Bureau of Labor and Statistics, Blacks, Latinos and Asians are 33 percent of the population but only 20 percent of law school graduates, fewer than seven percent are law firm partners and nine percent are

corporation general counsel. At major firms, only three percent of associates and two percent of partners are African American. The future work lies in figuring out what aspect of this lingering inequality is due to capability, commitment and choices, as opposed to inherent bias.

As lawyers and leaders, we cannot simply play the role of spectators. We need to effectuate change with the tools we possess, the legal tools so few people have access to, even if it is just the bully pulpit our positions provide us. As lawyers and leaders, we should be precise in how we use the legal tools we have. A powerful tool used the wrong way is more destructive than constructive. We lose precious capital when we pick a fight that is random, vague or lacks substance.

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# Advice for Future Solo Practitioners

*by Maritza Rodríguez*

I became a solo practitioner in 2012, after a clerkship in family court. I had wanted to strike out on my own at some point, and that moment in my career seemed as good a time as any to do it. Today, I'm as happy as ever with that decision. It has provided me with unique knowledge and experiences.

To law students or attorneys considering hanging their own shingle, I say go for it! But keep in mind that you don't need to go it alone. Make the effort to meet with and talk to other solo practitioners. Their insights will prepare you for the work that lies ahead. To this day, I continue to seek the advice of my fellow solos. The list below compiles the best information I've received from these dedicated attorneys. My hope is that it may help the next courageous lawyer who is thinking about going out on their own.

**1)** Ask other solo practitioners to sit down with you for a few minutes. You'll be surprised at how many are eager to spend time with you over coffee or drinks. This is the perfect time to ask them to share the tips and advice they received or wish they had received when they started out. Don't be shy; just ask. You'll be glad you did.

**2)** Create a referral network of attorneys practicing in different areas of law, and meet with them informally every few months. Suggest lunch or drinks to get folks together during the week. Do this regularly so it becomes a routine event the group looks forward to. These types of gatherings allow you to develop camaraderie with these attorneys while getting a better understanding of the kind of work they do. They're also less formal (and more fun) than conferences.

**3)** Thank the people who refer business to you, often. Be sure to meet with them periodically to show your appreciation for the work they've sent your way. While you're at it, you can talk about what you've been up to in your business, as well as opportunities for you to collaborate with one another again in the future. The adage 'out of sight, out of mind' is especially true when it comes to referrals. The more attorneys see you, the more they will think of you.

**4)** Make friends with business owners and ask them about their best business practices. Talking to someone who works in a different field can provide you with valuable insight about running your practice more efficiently.

**5)** Keep in touch with your long-time mentors and foster relationships with new ones. Mentors are great when you have questions. If you have a few of them you can call different people at different times, so you're not reaching out to the same person all the time.

**6)** Reach out to your local church or community center and ask if you can host a workshop in an area of law that you practice. If you're fluent in another language, host the workshop in that language and offer simple informational materials to take home. Keep in mind that people will attend a program if it's held in a location they're already comfortable with, and community marketing can be invaluable.

**7)** It's important to give back and help others. It's also a great way to become familiar with a particular area of law under the guidance of an organization. My parents were immigrants, so I feel a sense of obligation to support the immigrant community. I volunteer with Kids in Need of Defense (KIND), representing children in special immigrant juvenile status cases, and for Volunteer Lawyers for Justice (VLJ) at their Spanish language divorce clinics. Many organizations desperately need attorneys to volunteer a few hours of their time. It's a rewarding experience, as you are helping folks and, often, helping change lives. *Pro bono* work is an opportunity for you to make the world better.

**8)** Join an inn of court to improve your abilities. I belong to the Vanderbilt Inn of Court. The experienced attorneys there teach newer attorneys trial skills and motion practice in civil court. I also belong to the Barry Croland Inn of Court, which specializes in family law—the focus of my practice. I've learned quite a bit about effective lawyering from these organizations.

**9)** Get involved with the bar association and attend its events. Sometimes the cost of attendance can be pretty steep, so you'll have to decide which events are best for your purposes. If the choice is between a social event or a conference, go to the conference. At a gala or dinner, people may bring a date or spouse and you won't have their undivided attention like you would during a break at a conference.

**10)** Create a backup system. When you begin to get busy, you'll confront the problem of having multiple cases on the same day. Start talking to attorneys with an eye toward figuring out who may be available to cover for you in these situations. Also, if you ever want to take a vacation as a solo, backup is essential!

**11)** Help other attorneys, especially new ones. The importance of this rule can't be overstated. Do it because you've been helped in the past. Do it because it's good business. Do it because we're all in this profession together.

**12)** Never forget how scared you were in law school. One of my mentors, Ronald Chen (the current dean of Rutgers School of Law and the former public advocate), gave me this advice when I was a 1L. Dean Chen said that the fear, embarrassment and humiliation of the beginning of law school are often the feelings clients have when they come to see an attorney. If you remember that, you'll be able to empathize with your clients and make them feel at ease. Dean Chen's guidance has stayed with me throughout my career.

I love being a solo practitioner. Sure, it's time consuming and stressful. But it's also exciting and meaningful. If you do become a solo, hustle, do great work, and help people—then you'll see what I mean. ■

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# Affinity Bar Associations and Engaging the Millennial Attorney: The Benefits of Participating and Leading in Affinity Bar Associations

*by Natalya G. Johnson and Asad Rizvi*

From Fortune 500 companies to the solo law practice, all businesses, big and small, share a common goal: improving the bottom line. In a world increasingly woven together by globalization, businesses must quickly adapt to diverse perspectives and backgrounds in order to remain profitable. In addition to the inherent benefits of diversifying the legal profession as a social goal, the financial benefits of making efforts toward increased diversity in the legal profession are plentiful.[1] For instance, a diverse legal community facilitates increased participation in the labor force by previously marginalized communities, thereby improving the overall economy and helping businesses reach untapped markets. One critical way in which the legal profession can enhance diversity is through the vehicle of affinity bar associations. These associations play an instrumental role in attracting, developing, retaining, and advancing millennial attorneys and diversifying the legal profession.

Affinity bar associations are organizations of attorneys that are generally identified by a common race, ethnicity, or sexual orientation, among other affiliations (*e.g.*, South Asian Bar Association of New Jersey, New Jersey Muslim Lawyers Association, New Jersey Women Lawyers Association). While each affinity bar association has a unique mission statement, many are united by a similar objective: to promote the needs, interests, and goals of their members and to increase the visibility of traditionally marginalized groups in the practice of law. In an increasingly diverse society, affinity bar associations play a crucial role in lobbying for the needs of attorneys across the demographic spectrum, particularly in light of a legal profession that continues to make efforts toward reflecting and representing the makeup of the nation as a whole.

New Jersey is home to one of the most diverse populations in the United States. Due to this great diversity, the New Jersey bar is fortunate to host an array of vibrant affinity bar associations that represent a multitude of affiliations and racial, religious, ethnic, and other backgrounds.

## The Importance of Affinity Bars in the Development of Young Lawyers

### Key Networking Opportunities, Business Development, and Mentorship

Affinity bar associations provide their members with a range of professional development and networking opportunities. One of the key benefits is the ability to gain exposure to lawyers with varied backgrounds and levels of experience. These associations bring together attorneys, judges, and elected officials in uniquely intimate settings. For example, the New Jersey Women Lawyers Association (NJWLA) routinely holds panels that provide young practitioners with the opportunity to interact with seasoned members of the Judiciary at judicial roundtables. The Hispanic Bar Association of New Jersey (HBA-NJ) holds its annual Women's Empowerment Leadership and Law Conference, a program focused on professional development, career advancement, and empowerment within the legal community. These varied receptions, meetings, conferences and programs create unparalleled networking opportunities that position the millennial attorney to interact with senior professionals in law firms, corporations, government agencies, the Judiciary, and politics.

### Mentorship

Many affinity bar associations recognize the value of mentorship and, consequently, have implemented formal mentoring programs. For instance, both the Association of Black Women Lawyers of New Jersey (ABWL-NJ), and HBA-NJ, among others, have mentorship programs designed as platforms for seasoned New Jersey attorneys to impart knowledge to newly admitted attorneys and law students. The Garden State Bar Association's (GSBA)

Reaching Back as We Climb mentorship initiative was designed to pair practicing attorneys with law students throughout New Jersey. For diverse attorneys, these mentorship programs provide both context and a roadmap into and through the profession—benefits that may not be readily available to attorneys who are often the first members of their families, and sometimes communities, to embark into the practice of law.

## Leadership Opportunities

For many millennial attorneys, a leadership role within an affinity bar association creates a well-rounded, civic-minded, and informed legal professional. One of the important roles that affinity bar associations play is lobbying for the professional advancement of their members. The leadership of the New Jersey Muslim Lawyers Association (NJMLA), along with allies in the New Jersey political community, was instrumental in lobbying for the appointment of the first Muslim-American judge on the New Jersey Superior Court, the Hon. Hany A. Mawla, J.S.C., during Governor Jon S. Corzine's administration.[2] More recently, Paulette Brown, a co-incorporator of the GSBA and past president of the National Bar Association, became the first African-American woman to be named the president of the American Bar Association.[3] For both Judge Mawla and Paulette Brown, affinity bar associations laid the groundwork for their rise to the pinnacle of their professions.

Moreover, affinity bar associations provide attorneys with access to leadership roles at an early stage in their careers. Many affinity bar associations have young lawyer divisions (YLDs) and related initiatives that target attorneys with 10 years of practice or less with activities that help foster networking opportunities, training, and development. One such example is the GSBA-YLD, which hosts an annual professional development panel on the practice of law for law students and newly admitted attorneys. YLD initiatives exist across many affinity bar associations and provide a convenient springboard for assembling attorneys to share ideas and foster new connections.

Perhaps among the more significant ways that affinity bar associations aid in the development of millennial attorneys is the opportunity they provide for members to serve on various New Jersey Supreme Court committees. Several affinity bar associations regularly appoint qualified candidates from their respective organizations to serve on these committees. Participation on these important committees, among which are the Minority Concerns Committee, Women in the Courts Committee, and the Model Criminal Jury Charge Committee, ensures the inclusion of diverse attorneys when the highest court is considering changes to the rules of practice.

## Cross-Collaboration Across Affinity Bars

Millennial attorneys are also afforded the opportunity to collaborate with other affinity bar leaders by assuming leadership roles within affinity bar associations. It may come as no surprise that most affinity bar associations share significant organizational goals and objectives. Participation in affinity bar associations provides ample opportunities to interact with people of diverse cultural, ethnic, racial, socioeconomic, and religious backgrounds, as well as varied practice areas and disciplines.

Affinity bar associations across New Jersey regularly co-sponsor events, combine resources, and promote programs to ensure the largest, and most diverse, audiences possible. The New Jersey State Bar Association's annual Diversity Summit is spearheaded by the state bar's Diversity Committee. The summit is co-sponsored and promoted across affinity bar associations. The sixth annual summit was held this past February, and featured legal experts from the private sector, government, nonprofit organizations, corporations, and academia, who tackled practical topics about the importance of diversity and inclusion in the legal profession, unconscious bias, and increasing the enrollment and retention of diverse students in law schools.

In the wake of constitutional changes impacting individuals of Haitian ancestry residing in the Dominican Republic, the Haitian-American Lawyers Association of New Jersey (HALA-NJ) and HBA-NJ joined forces to host a productive, intellectually rich, and informative discussion about ethnic denationalization. The conversation involved a critical analysis of the constitutional laws at play in the Dominican Republic and their adverse impact on the island's population. Former HALA-NJ board member and president, Wilson D. Antoine, explained that "it was part of the organization's mission to collaborate with other groups to facilitate inclusiveness" and "partnering with the Hispanic Bar Association showed that this was not just a Haitian issue, but a human rights issue." Through this partnership, the greater New Jersey legal community was able to view this contentious issue "through that broader lens of human dignity and equality," a mission that was non-partisan and shared by HALA-NJ and HBA-NJ.

### Civic Engagement and *Pro Bono* Opportunities

Attorneys are well aware of their responsibility to provide *pro bono* services to indigent clients and those with limited means. In New Jersey, attorneys must report their *pro bono* hours, while New York requires that candidates to the bar complete 50 hours of *pro bono* service prior to admission. These *pro bono* activities are particularly meaningful to affinity bar associations, because the central goals of many of these organizations are focused on the issues most commonly seen among marginalized and diverse groups (*i.e.*, increased participation in the judicial system, initiatives focused on economic growth in communities, and the elimination of discrimination based on race and ethnicity). As such, the mission of most affinity bar associations is to promote *pro bono* opportunities to engage in meaningful civic work.

Last year, the South Asian Bar Association of New York's *Pro Bono* Clearing House held a citizenship workshop where attorneys worked with indigent clients to assist them in completing applications for U.S. citizenship. The NJWLA, for its part, supports shelters that cater to women in domestic violence situations through partnerships with charities such as Shelter Our Sisters. As specialty organizations with a focused organizational objective, affinity bar associations can be especially effective in addressing the issues faced by diverse segments of society.

### Training and Career Development

Affinity bar associations across New Jersey supplement the development of millennial attorneys by offering training and practical skills courses. For example, last spring the NJWLA hosted a panel on practical tips for new lawyers and federal practice rules, as well as techniques on how to get appointed to boards and make effective pitches to potential clients. Similarly, the GSBA routinely hosts continuing legal education seminars ranging in topics from estate and financial planning to corporate law. These affinity bar associations add value by providing attorneys of all stripes with quality training opportunities.

### Scholarships

Finally, yet another way in which affinity bar associations provide their constituencies with access is through law school scholarship programs. Many organizations like HBA-NJ, ABWL-NJ, and GSBA have initiated successful scholarship programs that reward diverse attorneys who demonstrate financial need, academic excellence, and a commitment to civic engagement and community empowerment. The benefits of such programs are two-fold: 1) increased retention (and, thus, graduation from) law schools by diverse law students facing financial difficulties; and 2) incentivizing law students to engage in affinity bar associations with the aim of continued membership and leadership within such organizations as they enter the practice of law.

## Conclusion

There are many benefits of active and sustained participation in affinity bar associations. These associations provide a window of opportunity, a roadmap to success, and a network of peers and mentors that are invaluable in the professional growth and development of diverse millennial attorneys. Affinity bar associations provide access and, in the process, help to amplify diverse voices within the legal profession. The legal profession will be enriched through continued support of affinity bars and their initiatives. Law students and young attorneys should be encouraged to join, lead, and promote these extremely valuable organizations both within and beyond the Garden State. ■

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## Endnotes


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