

STATE BAR OF NEW MEXICO
SUPREME COURT OF NEW MEXICO

SPECIAL TASK FORCE REPORT

FINAL REPORT
Task Force on Minority
Involvement in the Profession

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The State Bar of New Mexico, founded in 1886, is a mandatory bar that will reach a membership of 5,000 in the early 1990's. The population of the State is predominately Anglo, Hispanic and Native-Americans, with a smaller population of Blacks and Asians. Although the Bar has been "integrated" by virtue of its mandatory membership requirement for many years, in late 1987, then President of the Bar, C. Emery Cuddy, Jr., became interested in knowing just how integrated. President Cuddy's query was prompted by the historical lack of significant involvement by minority attorneys in the activities of the State Bar in general and in the leadership of the State Bar specifically.

While minority attorneys were being admitted to the New Mexico Bar in significantly increasing numbers since the early 1970's, only a few minority attorneys had sporadically been elected to the Board of Bar Commissioners or appointed to significant leadership positions within the State Bar structure. Moreover, the lack of involvement by minority attorneys appeared to be chronic. Never in the long history of the Bar had a minority attorney ever served as president or as an officer. In a State whose judicial and political history has witnessed enormous contributions by highly capable and respected justices, judges and lawyers of minority decent, this discovery was both surprising and alarming.

Working from a minority perception that the State Bar organization is "large firm, white male dominated," and that little had been done by the State Bar to correct that impression or to promote greater interest and involvement by minority attorneys, President Cuddy appointed a special task force to determine the state of affairs with respect to minority attorneys and make recommendations on ways to more fully integrate minorities into the mainstream of the profession.

This is the summary of the report, adopted by the Board of Bar Commissioners, January 20, 1990, in Albuquerque, NM. For a more complete document including the survey research instruments, findings and detailed analyses, contact the offices of the State Bar of New Mexico.

**Summary
of the
Final Report**

**State Bar of New Mexico
Task Force on Minority Involvement
in the Profession**

January 20, 1990

Introduction

Attorneys of minority descent have been admitted to the State Bar of New Mexico in significantly increasing numbers since the late 1970's, but only a few have been elected to the Board of Bar Commissioners or appointed to significant leadership positions within the State Bar. In the 103-year history of the New Mexico Bar, a minority attorney has never served as president or as an officer of the State Bar.

In response to these issues, the Board of Bar Commissioners created the State Bar Task Force on Minority Involvement in the Profession, which was subsequently endorsed and co-sponsored by the New Mexico Supreme Court. The goals of the Task Force were three:

1. to investigate and report on the general status of minority attorneys in New Mexico;
2. to study and report on their apparent lack of involvement in the activities and leadership of the State Bar; and
3. to identify any barriers that may exist to the complete integration of minority lawyers into the legal system.

The Task Force, composed of 30 lawyers and judges from throughout the State, identified minority groups as Hispanic, Black, Asian-American/Pacific Islander, American Indian/Native Alaskan and Other.

Research Methods

The research design selected for the project was survey research (open and closed-end responses required), interviews and comparative analyses. The Task Force surveyed three populations:

- (1) ethnic minority members of the State Bar, self-identified on the annual licensing form, and chosen for the survey at random;
- (2) managing partners of New Mexico law firms; and
- (3) employers of attorneys other than law firms, which included a listing of all public sector employers.

The rate of return for minority members of the Bar was 60 percent.

The overall plan of the Task Force was to develop a variety of basic data on the status and distribution of minority lawyers in the private and public sectors by type and area of practice and size of firm, and to compare that data with the stated career objectives of minority lawyers in an effort to determine whether any barriers exist in the achievement of those objectives.

Basic Demographics

In 1989, 93.25 percent of the 3,558 State Bar of New Mexico active in-state members reported their ethnicity. Anglo attorneys comprised 81.57 percent, Hispanics 14.35 percent, Blacks 0.56 percent, American Indian/Native Alaskan 1.33 percent and Asian Americans 0.27 percent.

Minorities are geographically located throughout the State, with large concentrations in Albuquerque, Santa Fe, northcentral New Mexico and Las Cruces.

The areas in which minorities practice are diverse with personal injury, civil litigation and family law being the top three areas. Utilities, tax and education were areas of law less concentrated with minority members.

Sixty-three and seventy-four one hundredths percent (63.74%) of the State's minority attorneys have been admitted to practice since 1979, about 25 percent were admitted between 1973 and 1978, and only 13 percent were admitted prior to 1973. Eighty-three percent (83%) of all minority attorneys have been admitted since 1975.

Sixty-six percent (66%) of the State's minority attorneys are less than 40 years of age. Ninety-one percent (91%) are under 50 years of age. Twenty-four percent (24%) of the minority attorneys are women.

Net income levels are widely distributed. Approximately 68 percent of minority attorneys earn less than \$50,000 a year. About 8 percent earn more than \$100,000.

Statement of the Issues: from Law School Recruitment to Judicial Appointment

- ISSUE 1 Are the programs and activities directed toward recruitment and retention of minority law students in New Mexico adequate and effective? What action, if any, should be taken by the State Bar of New Mexico to supplement these efforts?
- ISSUE: 2 What has been the level of interest and success by minority lawyers in obtaining faculty positions at the University of New Mexico School of Law, and what steps, if any, should be taken by the State Bar of New Mexico to encourage and promote the appointment of minority lawyers to faculty positions?
- ISSUE 3 How have minorities fared over the past ten years on the New Mexico Bar Examination?
- ISSUE 4 Are minority attorneys adequately represented among the ranks of

public and private sector legal employees? If not, what are the reasons for disproportional representation, and what role should the State Bar play in remedying this circumstance?

ISSUE 5 Has there historically been a disproportionate number of minority attorneys in New Mexico who have been the subject of disciplinary proceedings? If so, what are the reasons for this circumstance, and what steps can be taken by the State Bar of New Mexico to correct it?

ISSUE 6 What factors explain the traditional lack of involvement by minority attorneys in the activities and leadership of the State Bar of New Mexico? What steps can be taken by the State Bar to encourage and promote the meaningful and active participation of minority attorneys in the State Bar?

ISSUE 7 What has been the level of interest and success by minority lawyers in seeking appointments to judicial positions in New Mexico, and what impact will the recent constitutional amendment on judicial selection have upon minority attorneys seeking judicial appointment?

Research Findings

General Findings

The general survey results indicate that the number of minority attorneys in New Mexico is increasing, that a very large percentage are recent Bar admittees who are employed as sole practitioners or government attorneys, and that relatively few are employed in medium to large law firms.

Law School Admissions

Minority enrollment in the University of New

Mexico School of Law was 31 percent of the 1987 first year class of 112, as compared to 13 percent first year minority enrollment in all ABA-accredited law schools. Of the 112 students at UNM, 27 were Hispanic, one Black, and seven Native American. In the 1980's, the number of first year students has ranged from 123 to 103, with approximately one-third of the School of Law student body comprised of minority students.

The Law School Admissions Committee considers race and ethnic origin as a relevant factor but not as a determinative factor. The Law School has no quotas for any group of applicants, and admission decisions are based on the entire application.

Bar Examination Success Rates

Statistics indicate that 70 percent of the Hispanics taking the August 1974 Bar Examination failed, while overall only 24 percent of the applicants failed the Exam. In April 1979, the New Mexico Supreme Court *en banc* conducted an evidentiary hearing to determine whether the New Mexico Bar Examination unfairly discriminated against minorities. Since then, steps have been taken to improve the New Mexico Bar Examination content and the procedure of administering. Subsequently, the disparity between the Hispanic success rate and the general success rate has significantly decreased.

Hiring and Promotion

At least in a statistical sense, data indicate that minorities are underrepresented in many areas of the legal profession.

The percentage of minority attorneys engaged in private practice (61 percent) is roughly comparable to the percentage of all attorneys engaged in private practice (63 percent). The percentage of minority attorneys who are sole practitioners (32 percent) is only slightly higher than the percentage of sole practitioners among the general attorney population (31 percent). However, the level of minority representation in law firms declines markedly as the size of the firm increases.

The survey results suggest that minorities in private practice are predominantly employed in firms, including sole practitioner offices, with less than 10 attorneys (88.3 percent), compared to 67.79 percent of all attorneys.

On the other hand, minority attorneys generally are better represented in government agencies, at least in relation to the percentage they represent of the general attorney population: 25 percent vs. 18 percent.

The underrepresentation of minorities in law firms raises a number of questions. Is there generally a preference among minority attorneys to practice alone or in small law firms, or are minority attorneys faced with perceived or actual barriers to entry, retention and promotion in law firms? In the survey, 66 percent of the minority attorneys answered "yes" when asked if minority lawyers face barriers to law firm employment not equally faced by non-minority lawyers. Once employed, 42 percent of minority lawyers surveyed believe that barriers to advancement or retention by law firms exist that are not faced by non-minority attorneys. In addition, 47 percent of the survey respondents thought minority lawyers face barriers to the development of a successful law practice not equally faced by non-minority lawyers.

That perception does not seem to be shared by the law firms. A significant number of law firm respondents attributed a lack of active recruitment efforts as a contributing factor in minority underrepresentation. To an even greater extent, law firm respondents attributed minority underrepresentation to the existence of only a small pool of minority lawyers who meet academic standards.

When asked the question related to underrepresentation, 60 percent said they believed minority lawyers were given equal opportunities for advancement in the respondent's organization, while only 9 percent indicated that they were not. No response was received from 32 percent. However, among law firm respondents there

seems to be a perception that barriers, in fact, exist to minority hiring, retention and advancement in law firms. Only 5.76 percent of the respondents said that racial discrimination was "non-existent" in law firm hiring. Other responses included "diminishing," (17 percent); "sporadic," (32 percent); "prevalent" (16 percent) and "very prevalent" (0.72 percent).

Many firms acknowledge that once a minority applicant is hired, advancement to the partnership level may be more difficult than for his or her non-minority counterpart. Some firms recognize that the lack of minority partner mentors may explain why more minority attorneys do not make partner. Law firm recruitment efforts targeted at minorities tend to be the exception rather than the rule. Many law firms who have adopted targeted recruitment practices indicate, however, that the programs have been successful.

Disciplinary Procedures and Minority Attorneys

To determine whether minority attorneys are disproportionately involved in disciplinary proceedings and whether minority attorneys are subject to harsher penalties for their actions than are non-minority attorneys who commit the same offense, Disciplinary Board records were analyzed.

Seven types of sanctions are applied to attorneys who violate the Rules of Professional Conduct. In ascending order of harshness, they are letter of caution, informal admonition, formal reprimand, public censure, probation, suspension, and disbarment.

Of the 241 attorneys disciplined between 1983-87, 53 percent of the attorneys sanctioned by the Disciplinary Board were sole practitioners, though only 30 percent of the active in-state Bar members were sole practitioners in 1988. Of the attorneys sanctioned, 68 percent were Anglo, 29 percent were Hispanic, 1.6 percent were Black and 0.80 percent were Native American, indicating a highly disproportionate number of

sole practitioners and Hispanics in the group of sanctioned attorneys. The overrepresentation of sole practitioners in the group of sanctioned attorneys combined with the disproportionate number of Hispanics in the sole practitioner and small law firm group may explain the disproportionate number of Hispanics in the sanctioned group of attorneys.

"Ethnicity" emerged as an important factor in evaluating sanction levels, although it was not as significant as size of firm or the reasons for sanction. The two lowest sanctions were imposed on 78 percent of the Anglo attorneys while 13 percent received the severest two sanctions. Seventy percent (70%) of the sanctioned Hispanic attorneys received the two lowest sanctions while 15 percent received the harshest two sanctions. Four Black attorneys were sanctioned in the time period studied. Two of them were cautioned, one was suspended and one was disbarred. Only two Native American attorneys were sanctioned between 1983-87. One was informally admonished and one was formally reprimanded.

Involvement in State Bar Activities

While participation in the activities of the State Bar by minority attorneys seems to be increasing, generally this group participates at a lower percentage (71 percent) than public (85 percent) and private (91 percent) practicing attorneys. Minority participation is good or encouraging in several areas, including:

- Annual Convention, with 32 percent of minority attorneys having attended, compared to 24 percent of public and 27 percent of private practicing attorneys.
- Law Day has a minority participation rate of 18 percent, which is above the 14 percent of the active in-state minority attorney population benchmark.
- The Young Lawyers Division has an 8 percent minority attorney representa-

tion, compared to 3 percent for both public and private attorneys. Although better than other groups, the percentage of representation falls below the Hispanic population representation of 14 percent.

- Section membership has a very favorable representation of minority attorneys at 43 percent, compared to 36 percent of public and 34 percent of private attorneys. Section leadership, however, is only 5.3 percent.
- Task forces or special committees reflect a favorable percentage (13 percent); however, the current emphasis on studies dealing with minorities is believed to have directly influenced this percentage.
- Minority lawyer participation in the Lawyer Referral for the Elderly Program is impressive at 11 percent, compared to 4 percent for public and 17 percent for private attorneys, although it is slightly under the 14 percent of the total Bar membership represented by minority attorneys.
- Board of Bar Commissioner representation has improved with two minority attorneys currently on the Board. For population equity, however, there should be at least three.

For minority attorneys who do not participate in State Bar activities, key reasons listed included time constraints, lack of outreach by the State Bar, and expense. Importantly, the traditional lack of participation by minority attorneys is not being viewed in the context of cultural, social or ethnic reasons or barriers.

Appointment of Minority Attorneys to Judicial Positions

In the past, minorities have fared well in judicial appointments as well as partisan judicial elec-

tions. Since the passage of the judicial reform amendment in November 1988, no minority lawyers have been appointed to the bench by the governor, though qualified minority applicants have been recommended by judicial nominating commissions.

As demonstrated by past success, the one-time partisan election process can provide a viable alternative for qualified minorities who may have been unsuccessful in the new judicial selection process.

Since the current system of selecting the judiciary is barely more than a year old, it is too early to tell if it is discriminatory toward minorities. Political considerations aside, minorities must take the initiative to fully participate in all aspects of the judicial reform amendment if the State's judiciary is to maintain essential fairness and equality of opportunity in the eyes of the public.

As the number of more experienced minority attorneys increases over the next few years, the outlook, with continued initiative and leadership, can be a positive one for New Mexico's minority attorneys.

Recommendations

1. The Law School should actively recruit at New Mexico pueblos and New Mexico Indian schools.
2. The number of minority professors at the Law School is quite high in comparison with other law schools in the United States. However, the Task Force believes that because of the minority population in New Mexico, greater efforts in this area should be considered.
3. To increase further the numbers of minority students, especially Blacks and Native Americans, the pool of applicants from those minority groups must be increased. The

Law School and the State Bar should address a strategy for accomplishing this goal.

4. If the pool of minority applicants is to increase, additional recruiting strategies are needed requiring new efforts by members of the New Mexico State Bar and by the Law School.
5. The State Bar, in cooperation with the Law School, should consider establishing a financial aid program including scholarships and loans.
6. Minority students should be made aware of any available Bar Examination study loans.
7. The Law School has recruited and hired minority lawyers for the faculty, but because of the large minority population in New Mexico, the Law School should continue and intensify its efforts to recruit, hire, and retain minority professors. In addition, greater efforts should be made to move minority professors into administrative positions.
8. The Law School should seek to hire a full-time tenure track Native American professor.
9. The State Bar and the Law School should encourage minority lawyers to consider teaching law as a career or to consider teaching specialized courses as adjunct faculty members.
10. The Board of Bar Examiners should recognize that they are administering an imperfect Examination and that further study and analysis of methods for improving the fairness of the Examination and its administration must continue as a crucial part of the Board's functions and duties. Accurate records on applicants' ethnicity and passing rates should be maintained to assist this effort.

11. Additionally, in furtherance of goal 10, alternative methods of testing and licensing should be investigated by the Supreme Court through its Board of Bar Examiners.
12. The Task Force believes that the State Bar can and should play a role in seeking to increase employment opportunities for minority attorneys both in the private and public sectors.
13. The State Bar can and should be instrumental as an advocate calling for better employment opportunities. The Resolution adopted at the 1989 State Bar Convention to this effect is a first step. In furtherance of implementing the Resolution, the Task Force believes that the State Bar and its leadership should sponsor specific programs aimed at achieving the following:
 - a. With the assistance of minority bar associations, conduct programs for law students to make them better aware of existing employment opportunities and how better to seize those opportunities.
 - b. Promote consultation between minority bar association organizations, minority business leaders, and successful minority attorneys, on the one hand, and management partners of medium and large law firms on the other, to assist those law firms in developing effective minority recruitment programs.
 - c. Encourage law firms and government employers of attorneys to adopt aggressive minority recruitment programs. Such programs should seek to recruit minority attorneys into their organizations at the earliest stages of their careers as possible, preferably at the clerkship level. Also, such programs should be designed to provide mentoring for minority applicants, and if possible, mentoring by minority partners.

14. Law schools should provide introductory courses or clinical programs that deal with small law office management, the handling of client funds, and the establishment of internal mechanisms for client and docket control.
15. Law schools should provide mandatory courses dealing with common ethical issues that arise in the practice of law as well as courses dealing specifically with the Code of Professional Responsibility and disciplinary issues.
16. The State Bar should continue its efforts to provide continuing legal education to lawyers which emphasize the practical aspects of law office management for the small or solo practitioner.
17. The larger firms in New Mexico should be encouraged to actively recruit minority attorneys for summer intern and associate positions.
18. A Joint Standing Committee on Minority Involvement in the Profession should be created consisting of designated officers or directors of the New Mexico Hispanic Bar Association, the New Mexico Indian Bar Association, the New Mexico Black Lawyers Association, together with designated members of the Board of Bar Commissioners and the Executive Director of the State Bar. This Joint Standing Committee would be responsible for recruiting and recommending minority attorneys for active service and involvement in the activities and leadership of the State Bar and for developing a strategy for increasing the opportunities for meaningful involvement of minorities in the activities and leadership of the Bar.
19. Pursuant to the Resolution passed by the State Bar membership on September 23, 1989, and approved by the Board of Bar Commissioners on November 3, 1989, the Task Force recommends that the State Bar, through a

Joint Standing Committee or otherwise, develop a program for addressing and implementing the stated objective in the Resolution of promoting full and equal educational, professional and judicial opportunities for minorities in New Mexico.

20. The Board of Bar Commissioners should consider recommending to the Disciplinary Board, and ultimately to the New Mexico Supreme Court, that the Rules of Professional Conduct be supplemented to include among the professional and ethical responsibilities of a lawyer that he or she, in the conduct of his or her practice, refrain from the expression or manifestation of bias or prejudice on the basis of race, sex, religion or national origin where such conduct would adversely reflect upon the professionalism of the lawyer or his or her fitness to practice law.
21. The State Bar should investigate and address more fully the needs and professional interests of the sole or small practitioner, and that additional continuing legal education programs be designed and offered to assist small practitioners in such areas as law office organization and management, law office economics, the maintenance of trust accounts and the accounting and reporting of trust account activities.
22. The State Bar should encourage the Young Lawyers Division of the State Bar to actively recruit and promote minority attorney participation in the varied programs sponsored by that progressive organization.
23. The State Bar should consider the adoption of a "mentor program" or alternatively recommend to the New Mexico Bar Foundation that the Bill Kitts Society "mentor program" be expanded to invite increased participation by experienced minority attorneys and that new and recent minority admittees of the State Bar be advised of the availability and benefits of that program.

24. The State Bar, through its Young Lawyers Division, and in cooperation with the University of New Mexico School of Law, should expand its Law Day program activities by increased outreach efforts in the high schools and smaller colleges of New Mexico, with the objective of making minority and other students more aware of educational and career opportunities in the legal profession.
25. The State Bar should study and actively promote and encourage programs designed to enhance employment opportunities for minorities in the larger law firms in New Mexico.

TASK FORCE ON MINORITY INVOLVEMENT IN THE PROFESSION

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