Diversity, Equity, and Inclusion Crucial Elements of Lawyer Well-Being

Kristine Kuzemka, director of the State Bar of Nevada’s Nevada Lawyer Assistance Program, has been researching lawyer well-being in 2020 and 2021. Her second report takes a look at how diversity, equity, and inclusion (DEI) can affect change in progress toward lawyer well-being.

The 2019 Massachusetts Supreme Judicial Court Steering Committee on Lawyer Well-Being Report to the Justices found alienation results from a lack of diversity and inclusiveness, noting the ABA Task Force’s findings:

Research reflects that organizational diversity and inclusion initiatives are associated with employee well-being, including, for example, general mental and physical health, perceived stress level, job satisfaction, organizational commitment, trust, work engagement, perceptions of organizational fairness and intentions to remain on the job. A significant contributor to well-being is a sense of organizational belongingness, which has been defined as feeling personally accepted, respected, included, and supported by others.

Kuzemka’s report also notes that the subcommittees’ efforts to prioritize enhancing diversity, equity, and inclusion underscore the significance — and pervasiveness — of this concern. The Boston Bar Association (BBA) subcommittee report noted that women, LGBTQ lawyers and lawyers of color often experience additional stresses as they are under-represented in the bar, particularly at the higher echelons of the profession, and may experience isolation, pressure to “over perform,” and the effects of discrimination and bias throughout their careers.

In the BBA subcommittee report, public lawyers noted that increasing diversity and inclusiveness “not only mitigates alienation and isolation but, at least equally important, improves morale, creativity, and the quality of work product for all employees.” In-house counsel noted that they encounter bias grounded in race, gender, sexuality, or other protected categories, just as other members of the profession do. In private firms, financial incentives can undercut efforts to enhance diversity, equity, and inclusion.

Kuzemka’s findings in Nevada reflect what is outlined in the ABA and Massachusetts reports. She cited numerous examples of Nevada attorneys experiencing racism and homophobia. Here are a few examples:

“People hear me talk on the phone and when we meet in person down the road, they are surprised when they see I am black.”

“Many black attorneys are spread thin, strapped with a disproportionate share of community work in effort to create change, thus less time to climb the corporate ladder and family time.”
“My community work is part of my black heritage. One way law firms can help is by understanding, supporting, and offering a platform to engage in service to promote change.”

Some barriers are overcome by assimilation, “to the extent that people are more accepting of minorities who speak their languages and/or have similar speaking nuances, intonation, etc., i.e., you don’t talk like other black people.” Thus, the inference that because you “speak” like us, you are included.

A state vendor called a law firm and asked for [Michael]. The receptionist said there were three [Mikes] at the firm and which did he want to speak to. The state vendor replied, “the f----t.”

“I had experience of a judge having regular tirades in the courtroom about immigrants.” Stating, “this is an invasion, these people come here and screw things up.”

The ABA Report made several recommendations to build a more sustainable culture and to address issues affecting well-being. Four of the recommendations are:

1. Identifying stakeholders and the role that each of us can play in reducing the level of toxicity in our profession;
2. Emphasizing that well-being is an indispensable part of a lawyer’s duty of competence;
3. Expanding educational outreach and programming on well-being issues to educate lawyers, judges, and law students on well-being issues; and
4. Taking stock of where your organization is on awareness of implicit biases.

The recommended corrective steps are:

- First identify where your organization is with policies and procedures that address diversity, equity, and inclusion.
- Have all members of the organization take an implicit bias test and determine where the members are situated on that scale to decide where to start.
- Utilize the tools of the ABA addressing implicit bias.
- Look at the process for partner advancement in relation to social activities, such as golf outings, luncheons, dinners, and other firm activities.
- Look at processes of partner advancement in relation to more than rainmaking, billable hours, and/or mentoring those to establish contacts to bring in business.
- Pair associates with mentors to guide in cultural capital and activities outside of the organization. Be aware. Be open. Be inclusive.

We would like to extend a warm congratulations to Mr. Hengstler and Mr. Rouse.