

S E M I N A R

Practicing with Professionalism Program Materials

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NEW ENGLAND
Keep raising the bar.®

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BARBARA J. BOWE is a licensed independent clinical social worker who has been on staff at Lawyers Concerned for Lawyers (LCL) in Boston since 1996. She handles client assessments, referrals, and case management. She is also LCL's liaison with the deans of Massachusetts' nine law schools. Ms. Bowe has been involved in training programs for various segments of the Bar, including judges, the Massachusetts Bar Association, the Boston Bar Association peer support program, bar advocacy, and professional responsibility classes. She has managed both inpatient and outpatient substance abuse treatment programs in the Greater Boston area, most recently at Westwood Lodge Hospital. She has worked in both in-house and offsite employee assistance programs and has maintained a private practice for many years in Brookline. Ms. Bowe is a graduate of the Boston University School of Social Work.

DAVID A. KLUFT is an assistant bar counsel with the Massachusetts Board of Bar Overseers Office of Bar Counsel in Boston. Previously, he was a partner of Foley Hoag LLP, a special assistant district attorney for Norfolk County, a clerk to the Honorable Judith Cowin of the Massachusetts Supreme Judicial Court, and a film and television producer. Mr. Kluff is a member of the Massachusetts and Boston Bar Associations (BBA), as well as a member of the BBA's ethics committee. He is on the board of directors of Greater Boston Legal Services. Mr. Kluff is a graduate of Boston University School of Law, Temple University, and Brown University.

HON. PETER M. LAURIAT has served as an arbitrator and mediator at JAMS (Judicial Arbitration and Mediation Service) in Boston and across the country since 2018. He previously served as a Massachusetts Superior Court judge for twenty-nine years, including two in the business litigation session, before retiring from the bench. Prior to his appointment to the bench in 1989, he practiced law as an associate and then a partner in two Boston law firms for seventeen years, specializing in civil and criminal litigation. Judge Lauriat has presided over and tried all manner of civil actions, including employment discrimination cases; medical, legal, and accounting malpractice cases; breach of contract cases; wrongful death, personal injury, and products liability cases; defamation cases; workplace injury cases; commercial litigation of all types, including trade secret claims and noncompete agreements; commercial and residential construction cases; real estate disputes; insurance coverage disputes; and environmental cases. He has long specialized in civil discovery matters and has been an author, editor, and contributor to various publications, including the *Massachusetts Jury Trial Benchbook* (Flaschner Judicial Institute 5th ed. 2022) and *Discovery* (49 and 49A *Massachusetts Practice Series*) (West 3d ed. 2017). He has

also taught and lectured nationally on juries, jury trial issues, and innovative jury trial techniques. Judge Lauriat is a graduate of Middlebury College and the University of Chicago Law School. He has been a member of the Massachusetts Bar for more than fifty years.

INGRID C. SCHROFFNER joined the Office of Management at the University of Massachusetts Chan Medical School in March 2020. Previously, she served as acting deputy general counsel and as associate general counsel at the Executive Office of Health and Human Services (EHS). She joined EHS as assistant general counsel in 2008 as the lead attorney for MassHealth Estate Recovery. She has written and spoken extensively in her areas of expertise, most recently on issues of unconscious bias. A native of Hawaii, Ms. Schroffner is a past president of the Asian American Lawyers of Massachusetts and served on its board from 2002–2012. Since 2012, she has served on the Supreme Judicial Court standing advisory committee on professionalism. She has also served on the MCLE board of trustees since 2019 and is cochair of its diversity and inclusion committee. *Massachusetts Lawyers Weekly* named her among its “Top Women of Law” in 2013. Ms. Schroffner graduated from Boston College (Phi Beta Kappa, summa cum laude), and Boston College Law School, where she was a recipient of the Campbell Fellowship and the White, Inker, Aronson Professional Achievement & Service Award.

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Program Agenda

Monday, May 8, 2023

9:00 a.m. – 9:05 a.m.

Law as a Profession: The Relevance and Importance of the Practicing with Professionalism Requirement

- A member of the SJC’s Standing Committee on Professionalism emphasizes the value of this course, and identifies attributes and the importance of professionalism in the practice of law, while also highlighting the historical significance of Massachusetts lawyers in upholding the rule of law.
Ingrid C. Schroffner, Esq., *University of Massachusetts Chan Medical School Office of Management, Shrewsbury*

9:05 a.m. – 9:45 a.m.

Professionalism in Developing, Managing, and Maintaining Relationships—and in Problem Solving

- Your reputation takes years to build; start off right today: Civility in attorney-client relationships, attorney-to-attorney interactions, relationships with colleagues (including non-attorney staff), and communication with court and government agency personnel must all be respectful and rooted in ethical principles.
Jared D. Correia, Esq., *Red Cave Law Firm Consulting, Beverly*—Chair
Hon. Peter M. Lauriat, *JAMS, Boston*
- How to artfully balance the tension between zealous advocacy and the duty to conduct oneself civilly at all times; and how to diffuse difficult personalities (group session).

9:45 a.m. – 10:40 a.m.

Connecting with the Legal Community: Building Your Skills, Reputation, and Network through Pro Bono Work, Continuing Legal Education, and Engagement with Bar Associations

- Supporting Access to Justice and Pro Bono Service
Susan M. Finegan, Esq., *Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, PC, Boston*—Moderator
Bethany Yue-Ping Li, Esq., *Greater Boston Legal Services, Boston*
Cynthia T. Runge, Esq., *Peridot Family Law LLC, Boston*
Payal Salsburg, Esq., *Laredo & Smith LLP, Boston*
- Engaging in Bar Associations and Continuing Your Legal Education
Michael A. Kippins, Esq., *Seyfarth Shaw LLP, Boston*
Michael J. Merriam, Esq., *Law Offices of Michael J. Merriam, Boston*
Christina Miller, Esq., *Suffolk University Law School, Boston*
Victoria M. Santoro Mair, Esq., *Sweeney Merrigan Law LLP, Boston*
Ingrid C. Schroffner, Esq., *University of Massachusetts Chan Medical School Office of Management, Shrewsbury*

10:40 a.m. – 11:20 a.m.

Challenges and Opportunities of New Technology and Social Media

- Maximize the benefits of technology and social media in your practice and marketing, with civility, while steering clear of potential ethical traps and pitfalls.
Jared D. Correia, Esq., *Red Cave Law Firm Consulting, Beverly*—Chair

11:20 a.m. – 11:35 a.m.

Break

11:35 a.m. – 12:20 p.m.

Implicit Bias; the Importance of Diversity and Inclusion in the Legal Profession; and Promoting Access to Justice

- Impact implicit biases have on the practice of law, including on attorney interactions, client representation, court access, and jury selection. What can lawyers do to address this problem and promote diversity within, and equal service from, the legal profession?

Ingrid C. Schroffner, Esq., *University of Massachusetts Chan Medical School Office of Management, Shrewsbury*

12:20 p.m. – 1:05 p.m.

Tools and Resources for Maintaining Your Professional and Personal Well-Being: A Better Practice and a Better YOU

- Top 10 tips for avoiding rookie missteps that can lead to an inquiry from the Office of Bar Counsel.

David A. Kluft, Esq., *Office of the Bar Counsel, Board of Bar Overseers, Boston*

- Resources abound: The importance of well-being, and tips for caring for yourself and your practice from Lawyers Concerned for Lawyers (LCL) and its Law Office Management Assistance Program (LOMAP).

Barbara J. Bowe, *Lawyers Concerned for Lawyers, Inc., Boston*

<https://lawyerwellbeingma.org/news/mentorship-program-signup>

1:05 p.m. – 1:15 p.m.

Closing Remarks

- Be proud to be a lawyer, and develop the great one inside you!

Jared D. Correia, Esq., *Red Cave Law Firm Consulting, Beverly*—
Chair

Please complete the program evaluation online: <https://tinyurl.com/pwp-may2023>

WELCOME TO THE PROFESSION!

SECTION 1

**Challenges and Opportunities of New Technology
and Social Media**

Jared D. Correia, Esq.
Red Cave Law Firm Consulting, Beverly

Navigating the
Challenges +
Opportunities in
New Technology +
Social Media



Practicing with Professionalism course
5/8/2023

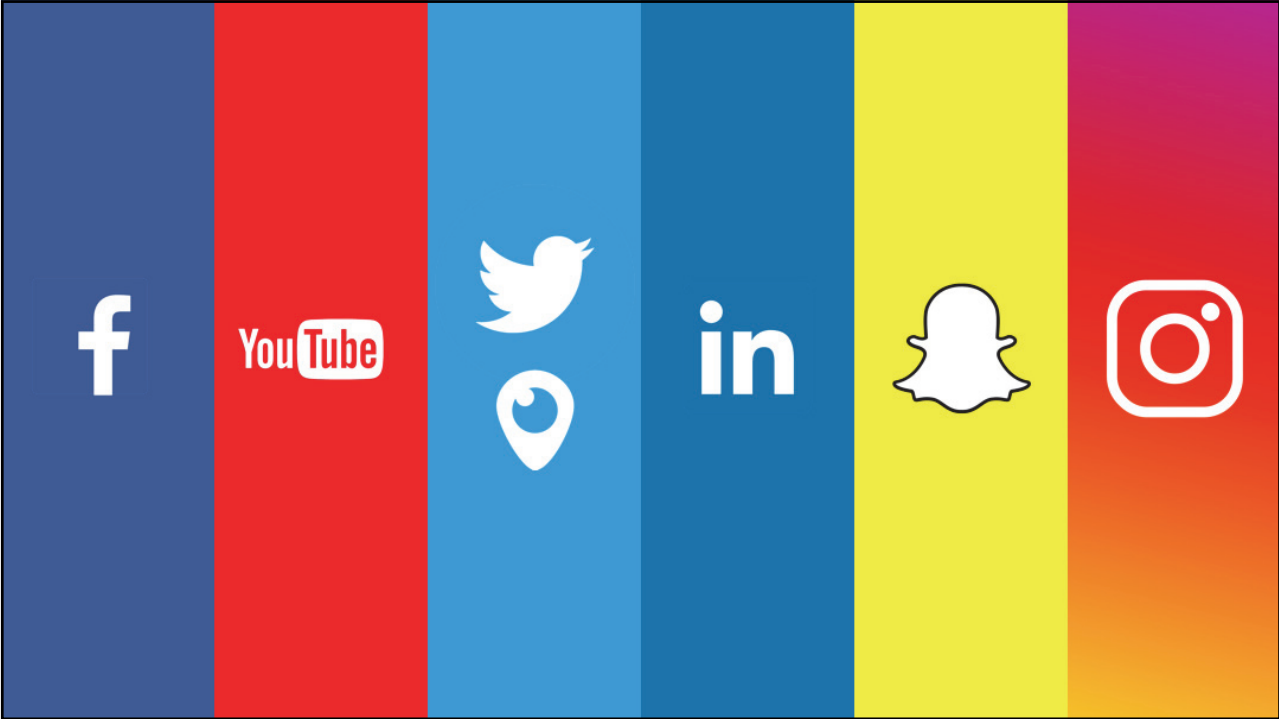












Data Security

- Obligations
 - Ethics Rules
 - Ethics Opinions
 - State Law
- Practical Considerations
 - Access Control/Passwords
 - Encryption
 - Vetting Responsibilities
 - Management Responsibilities



Marketing



- False/Misleading
- Analogous Activities
- Solicitation
- Attorney-Client Relationship
 - Disclaimers, Documentation
- Confidentiality



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SECTION 2

Implicit Bias, the Importance of Diversity and Inclusion in the Legal Profession, and Promoting Access to Justice

Ingrid C. Schroffner, Esq.
*University of Massachusetts Chan Medical School
Office of Management, Shrewsbury*



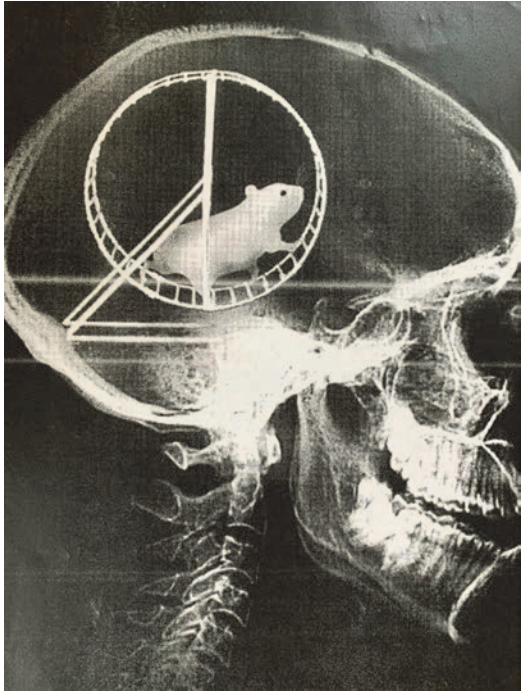
**Implicit Bias; The Importance Of
Diversity & Inclusion in The Legal
Profession; & Promoting Access To
Justice**

A Remote Training Segment For:
**Practicing With Professionalism
provided by MCLE**

2023

Ingrid Chiemi Schroffner, Esq.

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Objectives



- Define current terminology & explore bias & its impact.
- Review how unconscious bias in particular impacts our relationships, decision-making, and experiences within everyday life.
 - Explore how language can create in and out groups & how to mitigate
- Identify strategies to mitigate biases in our interactions and foster inclusive practices, including inclusive language.

3

Bias [How do you see things?]



- An attitude or point of view that colors your perception. The lens through which you view the world.
- An **internal belief** that makes you predisposed to think of someone in a certain way.
- A bias could make you view someone in a negative light **or in a positive light.**
- Our experiences create/inform our biases.

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Different Types of Bias*

[There are over 150 types of bias – these are just a few]

- **Confirmation Bias-** tendency to search for and focus on information that supports what someone already believes and ignoring facts that go against those beliefs
- **Stereotype bias-** expecting a person or group to have certain (usually negative qualities) based on wide misconceptions and not real or truthful information
- **Halo/Horn Bias-** A tendency to judge someone on the basis of an overall impression of that person – either positive or negative, rather than truth or facts
- **Attribution Bias-** Attribute reasons or motivation to the actions of others without concrete evidence to support such assumptions

*Adapted from: Cook, Tiffany *Addressing Unconscious Bias* online training, UMass Chan Medical School (2021)



How are unintended biases formed & reinforced?



- Evolution
- Cultural Archives
- Perceptions
- Assumptions
- Stereotypes

“Stereotypes act like firewalls, blocking new info from penetrating our thoughts and preventing us from changing our minds unless something truly dramatic happens”

Francesca Gino,
Rebel Talent
(2018)

Cultural Archives



- Knowledge we gained through our experiences that affect how we approach any communication process
- Informs how we respond to a particular situation
 - Be conscious of what's in your cultural archive, because the way you communicate plays a key role in creating a positive environment with your colleagues, superiors, employees, and clients.



Stereotypes

- Exaggerated beliefs, images, or distorted truths about a person or group – generalizations that allow for little or no differences or social variation.
- May be based on media, perception passed on by parents, peers, and other members of society.
- Stereotypes can be positive or negative.¹

Assumptions

- Assumptions are made during any interaction – for example: seeing a blind person stand by a busy crosswalk and assuming they need help crossing; or that deaf people don't enjoy dancing.

Perceptions

- Based on messages from our cultural archives -shaped by schooling, media, family, etc....
- We ask ourselves unconsciously – is this person like me or different – and adjust our behaviors accordingly.

¹Adapted from Southern Poverty Law Center



1.



2.



3.



4.



5.



Micro-aggressions

[They suddenly got upset, I don't know why]



- These are brief, **commonplace statements**
- They may be unintentional or even well-meaning
 - Asking an Asian American “Where were you born?”
 - Stating to an African American “You’re so articulate!”
 - Telling a person with a disability that he or she is doing “so well!”
 - “Wow! You created that document on your own!”
Showing surprise at a baby boomer’s tech abilities.

3 Types of Microaggression



Microassault

- More likely to be conscious and intentional.
- Explicit disparagement that is meant to cause pain.
- Verbal and non-verbal attack.

Microinsult

- Verbal and nonverbal communication that conveys insensitivity and disrespect.
- Demeans a person’s heritage or identity

Microinvalidation

- Communications that exclude or invalidate the emotions, feelings, thoughts and experiences of others.

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Recognizing Barriers to Inclusion*



Tokenism

- *The illusion of being diverse and inclusive, but in fact is a superficial method of appearing to do so. Hiring underrepresented employees to show that you are following the rules.*

Covering

- *When someone 'covers' a certain portion of their identity to be more accepted by the majority group in the workplace.*

Passing

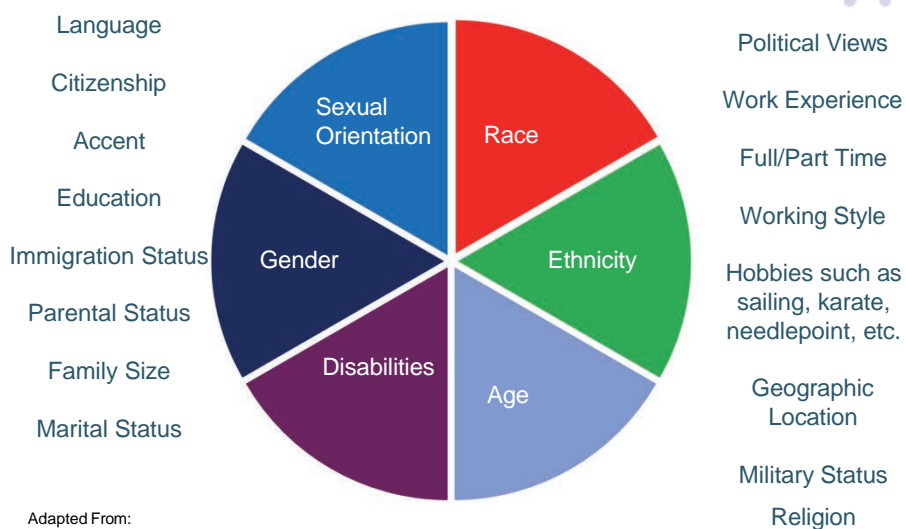
- *When a person hides an entire aspect of their identity to be accepted by the majority group in the workplace.*

Code Switching

- *When a person adjusts their speech or behavior, their appearance, to make others feel comfortable in order to be treated fairly.*

*UMMS 6+1 Core Competency Program: Diversity & Inclusion, June 2021.

Our Culture



Adapted From:
Marilyn Loden & Judy B. Rosener, 1991

Self-Awareness Exercise



- Considering the culture wheel we just saw, what groups do you feel a part of?
- In what order?
- Is your identified group(s) a dominant one?
- Does it have characteristics that are considered a norm?

Talking to Strangers: What We Should Know about the People We Don't Know

by Malcolm Gladwell (2019)



- Identifies three “mistakes” (p. 280):
 - 1) “default to truth”;
 - 2) “illusion of transparency”; and
 - 3) “our inability to make sense of the stranger as an individual.”
- “Coupling” (p. 296) = the idea that behaviors are limited to specific circumstances and conditions; **Lesson = “Don’t look at the stranger and jump to conclusions. Look at the stranger’s world.”**
- “Because we do not know how to talk to strangers, what do we do when things go awry with strangers? **We blame the stranger.**” (p. 346).

Toolbox

- Recognize *positionality* – how your identity influences & potentially biases, your understanding of & outlook on the world.
- Become consciously aware of your own **culture** and identity.
 - Keep in mind people can be biased regardless of whether or not they are part of an oppressed group.
- Understand that others identify with their cultural heritage just the way you identify with yours.
- Practice **respect**, which will build trust and rapport



Intersectionality Theory*

- It is impossible to separate different types of discrimination and oppression as they can compound in unique ways.
 - Marginalization and privilege can be experienced simultaneously.

*Adapted from:
Crenshaw, Kimberlé *On Intersectionality: Essential Writings* (Columbia Law School 2017)



Self-Awareness



- Conscious knowledge of one's own feelings, motives, and desires¹ character,
- Strong self-awareness can help you recognize your own biases, develop empathy and become better prepared for culturally responsive interactions²
- These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual's awareness or intentional control³

Adapted from:

1-2 Negi, Nalini J., et al. *Enhancing Self-Awareness: A Practical Strategy to Train Culturally Responsive Social work Students*, 2010 *Advances in Social Work* Vol. 11 No. 2 (Fall 2010), 223-234.

3 Kirwan Institute for the Study of Race and Ethnicity, <http://kirwaninstitute.osu.edu/research/understanding-implicit-bias/>

Explicit Bias – when it is not unconscious

What are your options?

- First, recognize your feelings and weigh your options, is it safe to respond?
- Explain your reaction – “When you said my hair wasn’t professional, that made me feel uncomfortable and not valued as an employee.”
- Ask a question – “Why do you say that? Tell me more about that thinking?”
- Call it out – “That was demeaning to immigrants.”
- Give information – “Not all people with black skin are African American.”
- Alternative approaches – abruptly change the topic, non-verbal communication, report to someone else. (Supervisor, Board Member, HR, Risk management ...)

Recognize if you are in a position of power, you have a responsibility to address offensive comments and create an inclusive work environment.

Tips inspired by Harvard Business Review: <https://hbr.org/2017/02/how-to-respond-to-an-offensive-comment-at-work>

Tips for Inclusive Communication*



- **Be Authentic & Accountable**
 - Focus on connecting and being genuine to build trust.
 - Acknowledge mistakes, learn from them, and integrate new knowledge into your work.
- **Genuinely Listen**
 - Keep an open mind
 - Learn from others on your team & who have different perspectives
 - Be careful not to reject something new because it is different
- **Build Trusting Relationships**
 - Ensure every voice & idea is heard
 - Healthy conflict is important to create accountability

*Adapted from: Cook, Tiffany *Inclusive Communication* online training, UMass Chan Medical School (2021)

NAMES, PRONOUNS, TERMS*



- **Ask**
 - My name is Ingrid, I use she/her pronouns
 - What name do you prefer to be called?
- **Use**
 - Transgender, Trans Woman, Trans Man Cisgender, Cis Woman, Cis Man Gender Nonbinary, Gender Nonconforming, Gender Queer Pronouns and Preferred names
- **Don't Use**
 - “Transgendered” “Transsexual” “Sex change” “Born a man/woman”
- **Change**
 - Male-to-female (MTF) → Assigned Male at Birth (AMAB)
 - Female-to-male (FTM) → Assigned Female at Birth (AFAB)

*Adapted from: Cook, Tiffany *Inclusive Communication* online training, UMass Chan Medical School (2021)

Overcoming Communication Errors*

- Listen
- Validate & Apologize
- Repeat Back
- Thank
- Integrate Feedback
 - RINSE & REPEAT

*Adapted from: Cook, Tiffany *Inclusive Communication* online training, UMass Chan Medical School (2021)



Question Your Assumptions

Ask Yourself: Why am I thinking this way? Would I be drawing the same conclusions if this scenario involved someone of a different profile (e.g., a man instead of a woman, a person with no children instead of a mother)?

Analyze

Ask yourself if you are making assumptions to cover up biases based on your personal and organizational values. If you are, identify opportunities to change.

Take A Risk

Place yourself outside your comfort zone. Find people such as your manager, mentors, and sponsors who will help you work through those risks to make them worthwhile.



Disrupt The Default

- Challenge elements of the status quo that may perpetuate bias.
- For example, create connections across differences by finding a mentor or sponsor from a different demographic group than you, or facilitating and/or participating in cross-group learning and engagement.

Hold Yourself And Others Accountable

- Hold yourself accountable for self-reflection, learning, and continually analyzing your behaviors and experiences.
- Suggest constructive alternative ways of thinking and speaking



25

How To Be An AntiRacist

by Ibram X. Kendi (2019)

- **“The opposite of ‘racist’ isn’t ‘not racist.’ It is ‘antiracist.’”**
 - “One - endorses either the idea of a racial hierarchy as a racist, or racial equality as an antiracist.” (p. 9).
- “[T]he **movement from racist to antiracist is always ongoing** – it requires understanding and snubbing racism based on biology, ethnicity, body, culture, space and class.” (p.10)
- “To be an antiracist is to **emancipate oneself from dueling consciousness.**” [antiracism v. assimilation]. (pp.33-34).
- “Whoever creates the norm creates the hierarchy and positions their own race-class at the top of the hierarchy.” (p. 153) – i.e. **Racism is based on “self-Interest”** (not ignorance or hate). (p. 230).
- “The most effective demonstrations (like the most effective educational efforts) **help people find the antiracist power within.**” (p. 215).
- **Successive steps** include: not using the “defense of denial”; admitting racism and racist policies, struggling to “remain at the antiracist intersections where racism is mixed with other bigotries”; “[l]eveling group differences” (p. 226).



Before you sign off ...

- Write down one thing that you, as an individual, are going to do differently after this training.
- When you write it down, you commit to it – and even if you don't get around to doing it, it's there to look at later as a reminder from when this training was fresh in your mind.
- **Bigger Picture – To Ponder and Consider:** What can we do to address unconscious bias and be more inclusive –
 - As an individual?
 - As a profession?



Best Practices

- ▶ Resolve misunderstandings before they fester.
- ▶ Take ownership of mistakes and pledge to learn from them.
- ▶ Pause before you react.
- ▶ Ask questions rather than provide solutions.
- ▶ Ensure all voices in the group are heard.
- ▶ Be critical of your own perceptions and biases before making a decision.

Best Practices & Tips

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Tips to think about addressing bias

- Acknowledge your bias
- Take note of your first impression, is it a bias or stereotype?
- Stop and think before making a decision
- Set clear criteria related to performance
- Embrace differences
- Take the perspective of others
- Have a sense of accountability (can you justify your bias/decision?)
- Deliberative processing

Best Practices & Tips

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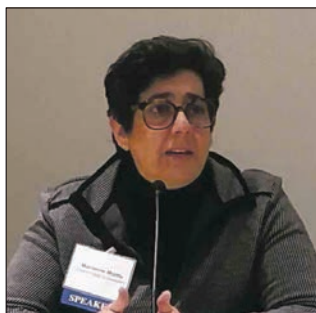
Making the business case for diversity and inclusion

Moderator: Tommy M. Shi, Director of Diversity, Day Pitney

Panelists: Marianne Monte, Chief People Officer, Shawmut Design and Construction
Ingrid C. Schroffner, Associate General Counsel, Massachusetts Executive Office of Health and Human Services
Raquel Webster, Senior Counsel, National Grid

Q: *What are your perspectives as to the business case of diversity and inclusion for your respective organizations?*

Marianne Monte, Shawmut Design and Construction: Post-recession, so many people left the industry because it was devastated by the lack of growth that went on in '08, '09 and certainly into '10.



Marianne Monte

As we started to build our workforce again, finding talented workers who could go out and build became incredibly hard. So we had to think differently about how we were going to attract talent.

We're also a very unique builder. We're not the kind of firm that builds a square building in an office park somewhere. We are highly engaged in academic and educational work. What we realized is across the

table from us our clients were women, people of color, transgendered people. We had to do something to mirror our clients.

Ingrid C. Schroffner, Massachusetts Executive Office of Health and Human Services: Whether you're in the public sector or the private sector, different perspectives from different places, different ethnicities, different backgrounds, make us better professionals, whether we're social workers, attorneys or business people. I work at Health and Human Services, and we're in the service industry. We have people we are providing benefits to, and from the perspective of the people we serve, if there is no diversity then there is less of a connection even before any communication occurs.

Raquel Webster, National Grid: National Grid serves five service territories — New York state, upstate New York, downstate New York, Rhode Island. Over half of the customers we serve are diverse. That is why it is critical for National Grid to ensure that its employees reflect our customers and our constituents. We have a large elderly customer base. We have a large population of customers [where] English is not their first language. [We have] programs that we have to implement in order to meet the Governor's goals for clean energy by 2050. There's no way that you will have a diverse perspective on these very innovative and very important energy policies and

initiatives, if you do not have a diverse range of people working on those matters.

Tommy M. Shi, Day Pitney: From the law firm perspective, we're all getting these requests for proposals from existing or prospective clients that ask for specific information as to what law firms are doing from a diversity context, down to who your diversity attorneys are [and] what the diversity of the team is. Virtually all of our clients are asking for that information throughout the entire engagement.

“Unconscious bias is about snap judgments. When we make snap judgments, we're not thinking. We're reacting.”

— Ingrid C. Schroffner, Massachusetts Executive Office of Health and Human Services

Q: *What are you seeing are the best practices for getting engagement from senior management as far as supporting diversity and inclusion?*

Monte: I know I have worked at organizations where someone says, “We should do diversity,” and they put something on their website and nothing actually comes of it. About five years ago we were at our quarterly board meeting, and the board wanted to talk about talent, and we started with this topic and it took two full days. They took the initiative as the board to say, “We can't just have this meeting. We need to now hold our leaders accountable and we need to make sure this is something that we're constantly checking in on.”

We created a diversity leadership council. It included a few things. One was going around the country and explaining the business case to all employees, including our superintendents who were at job sites. We hired a firm called Mind Gym to go out and do unconscious bias training for us. Every employee went through it. [We have] an executive sponsorship program. Everyone in executive leadership and our board is responsible for at least two diverse employees. It's more than just mentorship. Our goal is to get more women and people of color into that senior level management role and executive level management.



Tommy M. Shi

Shi: Ideally diversity and inclusion is more than just an HR issue. Where I was previously at Mercedes Benz I reported directly to the

CEO because diversity and inclusion is relevant to HR but it's much broader than that. If you limit it solely to HR or it's seen as an HR issue, it really diminishes the potential. It's really about the culture. How do you change the culture so that it's one that values diversity and inclusion? Because you can have all the diversity in the world in an organization or a team, but if you don't have an inclusive environment, then you have nothing.

Webster: National Grid realized that metrics were not working. We had managers say, "We have 'x' number of women, 'x' number of

"You can have all the diversity in the world in an organization or a team, but if you don't have an inclusive environment, then you have nothing."

— Tommy M. Shi, Day Pitney

ethnically diverse employees so we're doing our jobs." That was the diversity piece. They checked the box. But then those numbers fell off. We had problems with retention. So what National Grid did to address that was they hit the bottom line because we all know money talks. When you start tying these objectives to compensation, all of a sudden, it becomes important. Some may argue that should not be what drives you to do the right thing, but it's a starting point.

What National Grid has done is hold leaders accountable. It is no longer enough to say my team is diverse. You have to now say: Who have I promoted? Who did I send to the company's accelerated leadership development program? Who did I send to this conference which leads to career opportunities? The company is seeing a shift in the culture because now folks are not just focusing on getting people in, they're focusing on inclusion. Diversity is inviting everyone to the party. Inclusion is actually inviting folks to dance. You go to a party and you see people dancing, and then you see folks just standing around. I think what they recognized at my organization was that there were just too many of us standing around. We were in the room, but weren't being seen, we weren't being heard, and the folks who held the tools to make the decisions weren't really getting it because it was enough for us to be at the party. That's no longer going to cut it.

Q: What are some best practices to combat unconscious bias?

Schroffner: At the baseline, thinking about unconscious bias is about thinking about respect. It's about thinking about humility and



Ingrid C. Schroffner

thinking about us all being on the human team, not the different demographic team, not divided up because of some group that we belong to. Unconscious bias is about snap judgments. When we make snap judgments, we're not thinking. We're reacting. So really what unconscious bias is about is stopping the jumping to conclusions.

What we need to do is acknowledge bias. We all make snap judgments, and so the point really is to acknowledge that we all do this and it's not bad. The fact that you make a snap judgment or that you have unconscious bias doesn't make you a person who grew up in a racist family. It doesn't make you somebody who is not sophisticated. We all do it, and as soon as we acknowledge that it takes away any gradations of morality.

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So stop and think before making decisions. Set clear criteria related to performance. Embrace differences because different perspectives make us better and cause innovation. Think about and encourage those who do not agree with you. Deliberative processing — these days it's called mindfulness — is another thing we should think about. Not just pausing, but evaluating internally before doing something externally.

There [are] questions to limit the effects of hidden bias in the workplace: Do I typically hire the same person, same abilities, gender, race, ethnic background? What do I mean when I say that the candidate is not the right fit? To whom do I like to assign work and leadership roles? Is it a certain demographic every time? Do I have the same go-to people most of the time? Who do I encourage to lead or speak out at meetings? Am I creating opportunities for those less extroverted to demonstrate their capabilities? How do I identify candidates for promotion? It's being thoughtful and mindful about criteria.

Q: How do you recruit and retain diverse talent?

Webster: We reach out to the affinity groups. We attend their conferences. We attend their events. We encourage students to take our business cards and actually follow up when they take those business cards.

In terms of retaining, what National Grid has done is really targeting leadership, because once you get folks at the top of the organization to show that they care and that they are supportive of every measure we have, it changes everything.

Leadership has gone out of its way to support and sponsor all the employee resource groups. It's not just about race. We have groups for folks with disabilities and veterans, and the fact that leadership supports these organizations through sponsoring conferences or showing up at their 8:00 a.m. "brown bags" to speak makes a difference.

We have a lot of accelerated development programs with different levels. They compress what would be a year-long program into six months, and those have created huge opportunities for growth internally. It's another way to let talent know that not only do we care about keeping you but we care about developing you. You see the people who go through these programs move up the ranks pretty quickly. And fifty percent of the participants in our accelerated development programs are ethnically diverse.



Raquel Webster

Monte: Your employees will stay for two reasons: If they feel like they belong at the table, and if they have a good manager. 60 to 65 percent of the reason people leave their organizations is not money. It's not benefits. It tends to be that person they interact with, or not, every day, and so we have doubled down on great leadership training that has D&I woven through everything that we do.

Shi: Just hiring diverse individuals isn't the end. Very crucial is how do you retain them. I think for law firms particularly that is a challenge. Attrition [and] retention is a major [issue] for law firms today. Another key thing for retention is listening. At our firm we do associate surveys because it's important to listen. And then once you listen, you have to follow through, because one of the worse things to do is to ask people what they want and then not give it to them.

Schroffner: Climate surveys are very important because if you are part of an organization that's doing one, they are taking that first step to say, "We might not like the data, but we're willing to do this." The fact that you do one at all is important.

An industry look at diversity and inclusion

**Panelists: Eugene H. Ho, Verrill
Nadine P. Peters, Verrill**

Eugene H. Ho, Verrill: The studies have shown time and time again that diversity is good business. In 2015, McKinsey did a study of 366 public companies in the U.S., the U.K., Canada, and Latin America. They looked at financial performance and the composition of the top leaders in those organizations and how diverse or not diverse they were. What they found was quite interesting. Companies that were in the top quartile for racial and ethnic diversity were 35 percent more likely to have financial returns above their respective national industry averages. Companies in the top quartile for gender diversity were 15 percent more likely to out-perform their respective competitors. And the reverse was true: companies that were in the bottom quartile for both gender diversity and ethnic diversity were less likely to perform as well as their competitors.



Eugene H. Ho and Nadine P. Peters

show is that when companies commit themselves to having more diverse leadership, they're going to be more successful. Employees are better able to collaborate with one another. [There's] more diverse views, more dissent, better problem solving.

In the U.S., the study found that there's a true lineal relationship between racial and ethnic diversity and better financial performance. So, for every 10 percent increase in racial and ethnic diversity on leadership teams, the company's financial performance rose a certain percentage.

While correlation doesn't necessarily make causation, I think what this does

"Monitor rigorously. You have to constantly be creating metrics, measuring success, and holding firm leadership accountable."

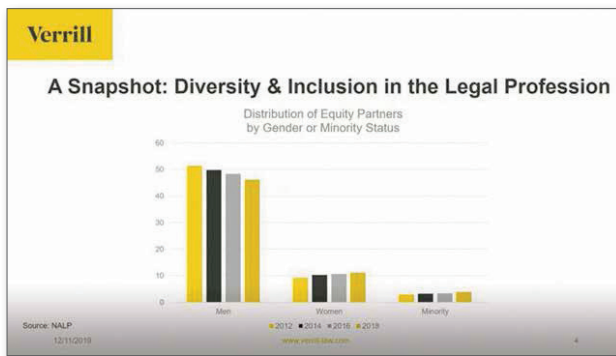
— Nadine P. Peters, Verrill

From a law firm perspective, we've been receiving a lot of pressure from clients to staff teams with diverse numbers. [There] was an open letter from about a hundred and seventy companies earlier this year with GC's from some pretty big names, from Google Fiber, Etsy,

Heineken, Chobani, Lyft, etc. They wrote an open letter to private law firms and said, "We're going to direct our spend to those firms that manifest results with respect to diversity and inclusion."

One thing that we've also noticed from our clients is they care about how many diverse folks in your firm are doing the work with respect to that client. Some clients we have before they will pay their bill will make you fill out a survey that shows the hours and the team members that worked on that project. That's another pressure point that we're feeling from our clients.

But despite the business case and pressure from clients, the legal profession remains one of the least diverse professions. Earlier this year NALP published some new numbers about equity partners that are telling.



From 2012 to 2018, 51.4 percent of partners that were male were equity partners, and that fell to 46.2 percent. For women, it rose from 9.3 percent to 11.2 percent. And then for minority equity partners, it went from 2.9 percent to 3.8 percent.

So, what does this show? It shows movement, but only tiny increments. Equity partners in multi-tier law firms continue to be disproportionately white and disproportionately male. Overall just one in five equity partners were women, and 6.6 percent were racial ethnic minorities. Among nine non-equity partners, the numbers are better: 59.5 percent of non-equity partners are male, 30.5 percent are women, and 10.7 percent are racial and ethnic diversities.

I think it probably comes as no surprise to most folks that there's still much to do. But anecdotally, at least among the bar that I'm most affiliated with, the Asian American bar, we have noticed within the last one or two years a distinct improvement in terms of partners, mostly on the non-equity side.

Nadine P. Peters, Verrill: Verrill is a Portland, Maine-based firm with about 130 lawyers. I don't want to make it sound like we've solved all the issues, but I think it's important to focus on where you can make progress and achieve readily available targets and objectives.

Verrill took deliberate steps towards a gender diverse professional workforce starting in the mid-1970s, and as a result has had a strong record of attracting women. It elected its first female managing partner in 1992, a woman named Judy Coburn. She had previously served as department chair and a member of the firm's executive board after being hired in 1980. And I think that has shaped the culture at Verrill.



You'll see from these statistics [that] about forty percent of the attorneys at the firm are women. And more than half of the female attorneys at Verrill are partners. I think even more important is that three-quarters of female partners at Verrill are equity partners, so there's a lot of representation at the executive and leadership levels at the firm.

The other statistic that's really important here is that our executive board is majority female led, with three out of five board members being women, including the board chair.

The high representation of women in these important leadership roles really does shape the culture at the firm. It gives other women a very visible pathway to how you can be successful and have a long-term career at the firm, and that really does help with both attracting women and retaining women.

But notwithstanding that success, the firm is always striving to continue to be a leader. In 2012, the firm named a diversity task force, and that task force surveyed looking back ten years, particularly at women attorneys who had left the firm, to identify the reasons they left. We're trying to do some assessment as to what may be barriers to retention.

That's the first initiative that the task force undertook. It continues to look at the firm's various programs around hiring, mentoring, associate development, compensation, associate review and just day-to-day practices to identify and try to address other barriers to a diverse and inclusive workforce.

"Encouraging younger attorneys in particular to participate in bar associations is sort of an under-appreciated way that firms can support diversity in the legal profession."

— Eugene H. Ho, Verrill

Verrill does not have a chair or chief diversity officer at this point. We're a smaller firm, so we have a diversity and inclusion committee and committee chair. Again, there's no one way to do this. But I think the task force has been effective in addressing some of the early issues that were identified.

Ho: Encouraging younger attorneys in particular to participate in bar associations is sort of an under-appreciated way that firms can support diversity in the legal profession.

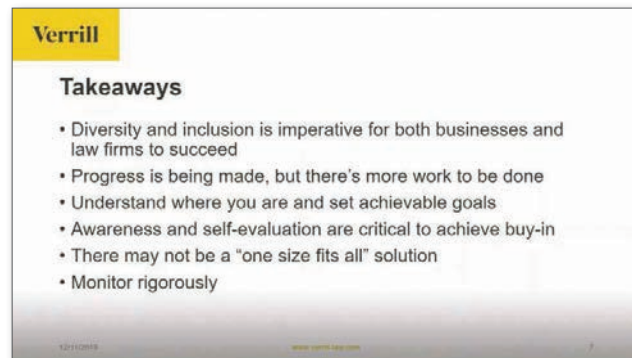
There was a study done in 2017 by Yale Law School, looking at Asian Americans in the legal profession and how they were doing.

And one of the things that it found that was a big impediment for career advancement was mentorship. These affinity bars are another source of folks for you to meet in order to get mentors, because that's the big piece of how a young attorney develops their career.

And these affinity bars give you a lot of opportunities to sit on committees and sit on boards and lead an organization and see how to deal with different perspectives. That's something it's important for firms to support.

Peters: The Leadership Council on Legal Diversity is a private organization that's a group of managing partners from law firms and general counsel of large corporations, with an emphasis on identifying future leaders among diverse lawyers at their organizations. The goal of it is to create relationships and match early career law firm partners with in-house counsel who are going to be looking to hire outside counsel. The goal isn't to just get business. It's to establish these relationships so that as you each grow in your respective careers you have made those connections early. It's a really dynamic organization with people doing a lot of great things.

The barrier to getting from non-equity to equity partner in a law firm is really about your business development. [If you're] a superb



associate and you become partner, then what? You can't rely on the same skill set that got you there, because you can't just put your head down and do your work really well. You really have to figure out how to build your practice and distinguish yourself from other partners. Continuing to support those diverse attorneys who you've invested in and continuing to think about how to support their business development is an important thing for firms to think about. Groups like affinity bar associations can be important factors.

Here are some takeaways:

1. Understand where you are and set achievable goals. Use where you have strengths to expand on your program.
2. Self-evaluation is critical to achieve buy-in. It's important to shape your programming by the voices from the population you're targeting. So, to the extent you have diverse attorneys in your ranks, listen to them, whether it's through formal surveys or small focused groups. Really tapping into the folks who are most affected by this programming is important.
3. Monitor rigorously. You have to constantly be creating metrics, measuring success, and holding firm leadership accountable. Every firm has to figure out how they can implement that, so that the folks who are the target of your programming feel that you're listening and that you're putting into action what you're learning.

Telling Stories

In Law, and in Life, Cultural Competence is Key

BY INGRID CHIEMI SCHROFFNER

C

an we live our lives, relishing the inevitable contradictions, and try to harmonize and transform the complexities into something for the greater good through sharing with others? That is what cultural competence is all about – reaching out to a diverse other with respect, to understand their story, notwithstanding any perceived ethnic veneer. Cultural competence is not just about educating ourselves about different cultures, but acting on what we learn. Although this particular discussion may be ostensibly geared towards attorneys, the main concept applies to many other professions and contexts.

Storytelling in Law

Lawyers often overlook the human aspects of storytelling within their profession. The give and take of storytelling can be both instructive and inspiring – it is not a one-way street. It is this aspect of storytelling in the legal context that renders cultural competence so important for lawyers.

We must be sensitive to issues that can arise from cultural differences. Some of these issues relate to communication problems by and among clients, attorneys, witnesses and judges. A judge must evaluate facts, which may be inadvertently distorted by the perspective of a litigant. For instance, what constitutes domestic violence or what property means to someone from another country may be different from what is conventionally viewed as such by a court. Another example is differing perceptions of what role a parent's culture and its ramifications should have in a child's education as an issue in a divorce/child custody matter. This is not to say that culture should be an additional legal factor. Rather, it is relevant to understanding the facts.

Each person has their own way of looking at things based on experiences, which are often driven by cultures and/or ethnicities. Individuals often see themselves as members of racial, ethnic or other groups. If we are not careful, miscommunication issues may arise when we attorneys represent individuals who are from other cultures, in an American courtroom. We may be unaware of our own assumptions. For instance, in the Japanese culture, a Japanese individual may say "yes" to indicate that he or she has heard or understood the speaker without necessarily agreeing with the substance of the question. A person who is not cognizant of this cultural consideration might misunderstand

an affidavit filled with information that the client does not agree with and therefore will not sign. Likewise, a fact finder hearing such acquiescence might also read a response, with respect to a fact, with a different meaning than intended by the person testifying.

Steps Towards Cultural Competence

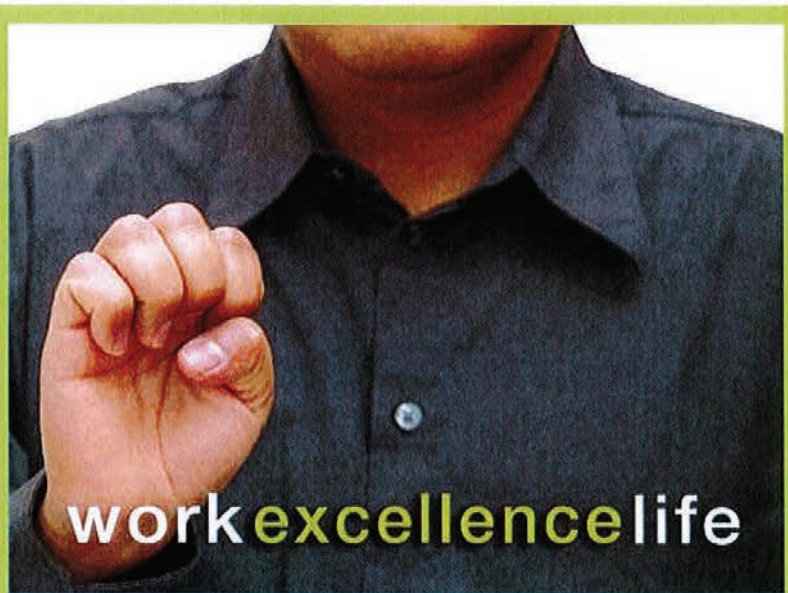
Ask yourself which groups you may feel a part of, and in what order, whether it is gender, ethnicity, profession or something else. Whether you or your clients' particular identifying groups are dominant, or have characteristics that are considered a "norm," might depend on the city or state. Whether or not a member of a dominant racial or other group in a particular location, our positions as attorneys provide us



with power to help make justice accessible to those of different backgrounds. Consider these cultural professionalism guidelines for connecting with your clients: be mindful of the cultural barriers that your communications are passing through; do preliminary research on your client's culture and what you know about the culture *vis a vis* what your client has informed you about that culture as it specifically applies to him or her; focus on your main point only, at first; use clear, simple language and words; be careful not to speak louder than usual when you are not immediately understood; and recognize that you may need to ask a question several times to get a complete and accurate answer. It is also important to pay attention to nonverbal behavior (body movements, voice tone and eye contact). In some cultures, not looking an elder in the eye is considered polite and respectful, while in others, lack of direct eye contact is perceived as rude and can indicate that a person is untrustworthy.

Furthering Equal Access to Justice

When a cultural issue plays a role in a case, or a litigant's story, it is the attorney's duty to raise it. This may be especially true with respect to family disputes requiring legal adjudication. When representing someone where culture may be a factor, lawyers are obligated to use the tools of cultural competence. Due to the increasing diversity of the population, according to recent U.S. census statistics, it is incumbent on us to ensure that those litigants, whose backgrounds differ from the mainstream, have their interests properly represented. This sort of professionalism may require research on a particular culture. Even before any research is done, however, recognizing the need for it may be the first step to bridging the gap with respect to differing conceptions, communications and expectations. Those differing perspectives can stand in the way of revealing important facts. Once the need for cultural information to grasp a situation is identified, it brings the focus on meaningful communication to a new level because culture as a consideration is dignified with that recognition. Then, the story is more likely to be told and to an informed audience, promoting equal access to justice and the wider perception that people of all backgrounds are being heard.



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The Letter 'E' in American Sign Language

MGH Council on Disabilities Awareness

Moving beyond compliance to ensure a comfortable environment for all individuals with disabilities.

The Massachusetts General Hospital Council on Disability Awareness was established to improve access and the overall experience for patients, family members, staff, volunteers and visitors with disabilities. Among the many goals attained by the Council are the addition of assistive technologies at MGH's Blum Patient & Family Learning Center. Visually impaired visitors have access to Zoom Text, Dragon Naturally Speaking, JAWS and a keyboard with oversized letters and numbers. In addition, the Council designed and implemented a web portal to assist individuals with mobility disabilities to navigate the hospital with increased ease. The most recent achievement was the creation of a beginning American Sign Language/Deaf Culture class. This course is open to MGH employees and is taught by a deaf instructor, which provides for a true immersion experience.

The Massachusetts General Hospital not only offers unparalleled opportunities for fulfilling work; we also believe we are enriched by an environment in which all employees, patients and their families can fully participate and contribute.

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www.mghfordiversity.org



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By embracing diverse skills, perspectives and ideas, we choose to lead. EOE.



Dear Readers,

Although the idea of a cold weather plays havoc with my Caribbean origins and my love of the warm sun, I do love the fall. The variety of hues in the foliage in New England is particularly impressive and brings a sense of rejuvenation and new growth to come. Our debut into New York City is an example of such growth, and it is a step towards our goal of bringing inclusion and awareness into a broader perspective.

That said, October is National Disability Awareness Month and while it is often overshadowed by more celebrated months like Hispanic Heritage and Black History, it is equally important in our quest for inclusion. I invite you to send us your suggestions on improving our product and scope.

I would also like to invite you to join us at the All-Inclusive Awards in Boston on December 3, 2009. Please visit our website, www.colormagazineusa.com, for information, updates and how to buy tickets or become a sponsor.

Thank you for your support and I look forward to seeing you in the cities.

Josefina

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COLOR MAGAZINE

In a city rich in shades here is a color that includes all

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Baer, Drake. "Professionalism Is a Bias-Making Machine That Needs to End. Here's How to Dismantle It." *Business Insider*, Business Insider, 26 Mar. 2022, <https://www.businessinsider.com/professionalism-is-a-bias-making-machine-how-to-dismantle-it-2022-3>.

SECTION 3

**Tools and Resources for Maintaining Your Professional and
Personal Well-Being: A Better Practice and a Better You**

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of Bar Overseers, Boston*

Barbara J. Bowe
Lawyers Concerned for Lawyers, Inc, Boston



TOP TEN TIPS TO AVOID ETHICAL ISSUES

Kristy Lavigne, Assistant Bar Counsel
Office of the Bar Counsel
Massachusetts Board of Bar Overseers

COMMUNICATE

[Rule 1.4]



Return

Return clients' telephone calls promptly, even if you have no update



Respond

Respond to written communication & info requests from clients



Consult

Regarding Status, Objectives, Means



Notify

Notify your clients promptly if something has gone wrong



Cooperate

Respond to telephone calls & requests for information from the Office of the Bar Counsel & ACAP

Put it in writing

- **MUSTS**
 - Fee agreements [Rule 1.5]
 - Consents to conflict of interest [Rules 1.7- 1.9]
 - Notice of Fee Withdrawals [Rule 1.15]
- **SHOULD**
 - Non-engagement and disengagement letters [Rule 1.16]
 - Settlement offers and demands [Rule 1.2]
 - Notice of something going wrong
 - Requests for compliance



It's not your
file

Rules require attorneys to promptly provide clients a copy of their files upon request

Rule 1.15A specifies the information that must be provided and whether attorneys may charge the clients for copying

You cannot ransom the file for unpaid legal fees

Failure to do may result in complaint to OBC

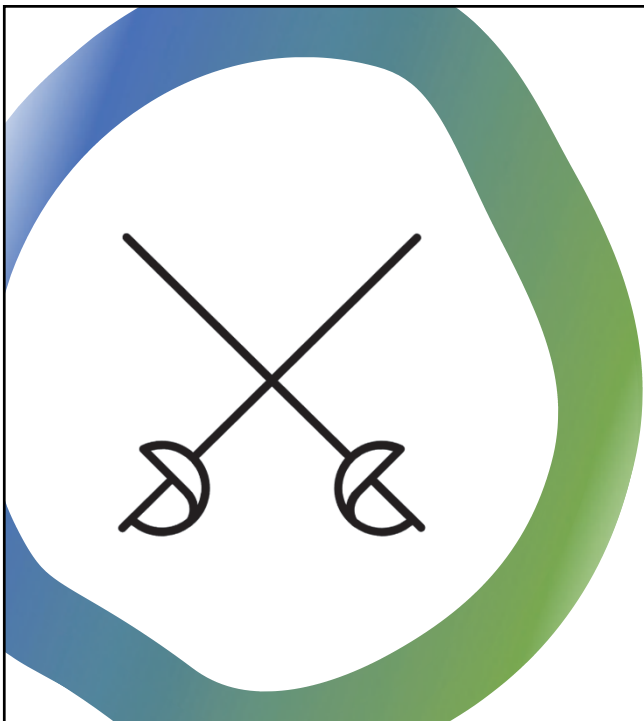
Breaking up is hard to do

- If you don't want a case, reject it ASAP
- Permissive & Required Withdrawals [Rule 1.16]
- You are either in a case or out of it; Don't withhold services for nonpayment
- Withdraw in accordance with tribunal rules
- Document termination of representation
- Return file and unearned fee
- Avoid noisy breakups
 - Do not disclose client confidences



If it feels like a conflict, it probably is


- Avoid conflicts of interest [Rules 1.7-1.12]
- Identify who is your client at the outset
- Develop conflict-checking system and use it
- Obtain waivers in writing where required
- Get Advice
 - Read Rules & Comments
 - Call the Ethical hotline
- Red Flags
 - Multiple clients in the same matter
 - Business relationship with client





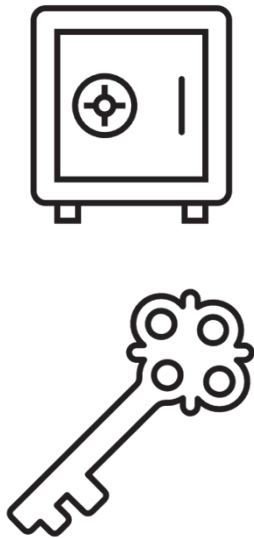
Don't take the money and run

- Requirements for client funds [Rule 1.15]
 - IOLTA or individual trust account?
 - What goes into account?
 - When/how can you withdraw?
 - What records must you keep?
- Put a record-keeping system in place and use it
 - Can delegate tasks, but not obligation
- Common Scenarios
 - Bounced Checks
 - Paying Firm Bills directly from IOLTA account
 - Improper reconciliation
- Resources
 - Trainings
 - Massachusetts IOLTA Committee website
 - Law Office Management Assistance Program (LOMAP)



Be aware of limits of advocacy

- Misrepresentations to Tribunal [Rule 3.3]
- Remediate client misrepresentations [Rule 3.3(a)(3)]
- Caution dealing with unrepresented parties [Rule 4.3]
- Never contact represented party w/o consent of counsel [Rule 4.2]
- Misrepresentations to Opposing/Third Parties [Rule 4.1, 8.4(c)]
- Civility: Be civil to clerks, court personnel, opposing counsel and clients



Maintain Confidences

- Keep client confidences [Rule 1.6]
- Concept of confidentiality much broader than attorney-client privilege which is a legal issue
- Be aware of your surroundings when discussing case
- Be aware of inadvertent electronic disclosures
 - Take appropriate security precautions
 - Take corrective measures if there is an inadvertent disclosure
- Be particularly wary when:
 - Withdrawing
 - Responding to client complaints
 - Responding to online reviews
 - Talking with successor counsel
 - Revealing confidences to prevent violence/harm



Choose wisely, you must

- Don't accept every case
- Be aware of your skills and expertise
- If you are too busy or unable to handle the case, decline the case in writing
- If investigation reveals case is not viable, advise the client ASAP
- If asked to do something that violates your professional obligations by a client or supervising attorney, just say "no"

RESOURCES

- Comments to the Mass. R. Prof. C.
- Articles on ethics, disciplinary decisions, trainings, news– www.massbbo.org
- Ethical hotline of OBC:
2-4pm MWF (617) 728-8750
- Attend a trust account training program
- Massachusetts IOLTA Committee
- LOMAP (Law Office Management Assistance Program)
- Disciplinary decisions can be searched on Westlaw and through Social Law Library



Tools and Resources for Maintaining Your Professional Well-Being

Lawyers Concerned for Lawyers, Massachusetts | Law Office Management Assistance Program



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- Career Development
- Time + Organization
- Marketing
- Data Security
- Technology
- Policies + Procedures
- Finance
- Starting a Practice

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MEET OUR TEAM!



Stacey A. L. Best, Esq.
Executive Director



Barbara Bowe LICSW,
Staff Clinician



Rachel Casper
Dir., Strategic Operations & Marketing



Jamice Edge
Administrative Professional



Jeffrey Fortgang, Ph.D. LADC,
Staff Clinician



Shawn Healy, Ph.D.
Staff Clinician



Laura Keeler
Law Practice Advisor



Tracey Meyers, Psy.D.
Staff Clinician



Emmanuel Okharedia III, Esq.
Law Practice Advisor

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Welcome to the
Massachusetts
legal profession!



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SJC will continue effort to study, improve well-being of Bay State attorneys

By *Jordan Frias* Globe Correspondent, October 30, 2019, 9:11 p.m.



SJC Steering Committee on Lawyer Well-Being
Report to the Justices
July 15, 2019

“The obvious goal, which we all share, is to help all Massachusetts lawyers attain greater success in achieving a healthy, positive, and productive balance of work, personal life, and health.”



Attorney Well-Being: It's Not a Fad, It's a Movement

Law.com - Jan 10, 2019

Attorney Well-Being: It's Not a Fad, It's a Movement ... Working Group to Advance Well-Being in the Legal Profession (ABA Working Group).

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CAN YOU
RELATE?



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CAN YOU
RELATE?

I must **balance** multiple matters and deadlines.

I'm worried that I might **make a mistake** and that it will result in a serious consequence.

I feel **overwhelmed** by my clients' demands and needs.

I focus primarily on **solving others' problems** and rarely take time for myself.

I must **manage challenging** office relationships, politics, supervisors, and staff.

It's hard to **make time** for personal commitments and family.

I must make enough money to pay off **student loans** in addition to covering current **living expenses**.

I'm concerned I lack **training, mentorship, and support**.

Sometimes I feel like **an imposter**.

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HEALTHY LAWYER 7 TIPS



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MAKE SELF-CARE YOUR FIRST PRIORITY.

TIP NUMBER *1*

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REMEMBER,
LAWYERS ARE HUMAN.

TIP NUMBER 2

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"It's an ergonomic ankle support to help you be more productive."

SCHEDULE ME-TIME
AND SET LIMITS.

TIP NUMBER 3

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**GET ORGANIZED.
STAY ORGANIZED.**

TIP NUMBER 4

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**TRY MEDITATION, OR JUST
FOCUS ON BREATHING.**

TIP NUMBER 5

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**DON'T IGNORE PROBLEMS;
BE AWARE OF OTHERS.**

TIP NUMBER 6

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- ✓ Bar Associations
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- ✓ Social Law Library
- ✓ BBO Ethics
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- ✓ BBO Ethics Articles:
www.massbbo.org
- ✓ LCL | Mass LOMAP
- ✓ SJC Lawyer Well-Being Cmte



**USE RESOURCES AVAILABLE;
ASK FOR HELP.**

TIP NUMBER 7

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