“The difference between the right word and the almost-right word is the difference between lightning and a lightning bug.”

~ Mark Twain

I. WHAT IS DIVERSITY? EQUITY? INCLUSION? AND WHY ARE THEY IMPORTANT?

Despite all the talk about increasing diversity in the practice of law, creating equity within our firms, and the importance of inclusion in the workplace, what does each term actually mean? Is there any difference between diversity, equity, and inclusion or are they just different ways of saying the same thing? Are they simply issues of “fairness” or do they benefit our law practices and our firm’s bottom line? Or both? And what in the world do they have to do with attorney well-being?

Each term has a different definition, although all are rooted in a similar concept of justice, dignity, and respecting one another and acknowledging and validating the whole person, regardless of differences (whatever that difference may be). Let’s first explore the definition and a brief explanation of each.

A. Diversity

There are various definitions for diversity. For purposes of a discussion of diversity in the workplace, language from the D5 Coalition, Racial Equity Tools Glossary, and UC Berkeley is helpful. The D5 Coalition was a five-year coalition to advance philanthropy’s diversity, equity, and inclusion.¹

Diversity includes all the ways in which people differ, encompassing the different characteristics that make one individual or group different from another. While diversity is often used to refer to race, ethnicity, and gender, we embrace a broader definition of diversity that also includes age, national origin, religion, disability, sexual orientation, socioeconomic status, education, marital status, language, and physical appearance. Our definition also includes diversity of thought: ideas, perspectives, and values. We also recognize that individuals affiliate with multiple identities.

Diversity is more than race, ethnicity, gender, age, class, sexual identity, sexual orientation, or disabilities. Diversity is about differences, and more about how those differences shape, modify and enrich our life

¹ Some sections in these materials have been taken from the Kentucky Bar Association’s 2019 Diversity and Inclusion Summit program, “There’s a Certain Quietness in the Room,” presented by former American Bar Association President Paulette Brown.

¹ https://www.d5coalition.org/about/.
experiences. We are all different. It’s a fact of life. It’s an important thing. And it’s also an extremely good and healthy thing.

Our identities are shaped by our differences. Some differences are permanent, for example, our countries of origin or the color of our skin. But other differences evolve and are shaped over time. Opinions, biases, and fears (the three of which are more closely linked to one another than most of us recognize), many of which are rooted in our geographical location and families of origin, can and often do develop over the course of a lifetime. They are impacted and changed through our education, experiences, and exposures. Someone at age 50 generally has modified or completely different opinions, biases, and fears than they did when they were 15. Changes are inevitable if a mind is open. As lawyers, we have spent a lifetime opening our minds to ideas, theories, knowledge, creative and critical thinking. Our opinions, biases, and fears should be shaped and evolving through these experiences, also.

Using such a broad definition of diversity, we can agree that we are all different because none of us is just like the other. But diversity is not always defined in such a positive way. “Instead, there is a normative reference. This reference becomes the standard by which the ‘ideal’ is identified.” That’s how it can feel when we are working in a profession, or in a firm or company, that has a homogeneous population. The implication in this definition of diversity is that any characteristic or trait which doesn’t align with the normative is considered “divergent and ‘other than.’ The more the divergent characteristic deviates from the normative reference, the more the diversity is perceived as not the ideal.”

For example, historically, society’s stereotypical image of a successful lawyer is a hard-charging, heavy-drinking, macho man. In Kentucky, that stereotype is an older white male. In Kentucky, 50 percent of the bar membership is over 50, and it is predominately white.

There is a suggestion that there is a problem with the phrase “diverse candidate.” Some opine that a team can be diverse and so can an organization – but a person? One author says “a person is not diverse, no matter how many norms or glass ceilings they shatter. No matter how outside of the norm I am, I am not a “diverse person.” Diversity is about a collective or a group and can only exist in relationship to others. A candidate is not diverse – they’re a unique, individual unit. They may bring diversity to your firm or your workplace, but they in themselves are not

3 Id.
4 Id.
diverse. They’re a woman; they’re a person of color; they’re part of the LGBTQ+ community; they have rad ombre hair.6

The phrases “affinity group” and in the law, “affinity bars” are frequently used. An affinity bar association is a professional organization of lawyers of diverse backgrounds. This includes, but is not limited to, race or ethnicity, gender and sexual identity, sexual orientation, national origin, disability, religious affiliation, or veteran status. Samples of affinity bars include the National Bar Association, Association of Muslim American Lawyers, National Association of Women Lawyers, The National LGBT Bar Association, and the National Asian Pacific American Bar Association.

One problem with the term “diversity” is that it is often used as a euphemism. People say, “We are working to diversify our upper management,” instead of, “We are working to ensure there are more women and people of color in our upper-management roles.” Stepping away from the euphemism requires us to get more specific and accurate in our goals, which can lead to more substantive and accurate conversations and strategies.7

B. Equity

Again, using the language from the D5 Coalition: Equity is the fair treatment, access, opportunity, and advancement for all people, while at the same time striving to identify and eliminate barriers that have prevented the full participation of some groups. Improving equity involves increasing justice and fairness within the procedures and processes of institutions or systems, as well as in their distribution of resources. Tackling equity issues requires an understanding of the root causes of outcome disparities within our society. Equity is about actually leveling the playing field. This visual is the best descriptor of equity v. equality.

EQUALITY  EQUITY

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7 Id.
Why is equity important in the workplace? The behavioral psychologist, John Stacey Adams, developed a useful model for explaining why employee perceptions about fairness matters. Equity Theory (Adam's Equity Theory) explains the thought process an employee uses to determine the fairness of management decision-making. The core of equity theory says that individuals judge the fairness of their treatment based on how others like them are treated. Employees make social comparisons to others who are similarly situated in the organization.8

Said another way, an employee will consider the following: Based on what I am giving to this organization (inputs), am I getting the same rewards (outcomes) as others are getting who give similar inputs? Equity theory says that employees view a situation as equitable when employees who give similar inputs receive similar outcomes. When the rewards differ for the same degree of effort, employees view the situation as inequitable.9

C. Inclusion

“Diversity is being asked to the party. Inclusion is being asked to dance.”10

– Verna Myers, DEI Educator

Inclusion is the act of creating environments in which any individual or group can be and feel welcomed, respected, supported, and valued to fully participate. An inclusive and welcoming climate embraces differences and offers respect in words and actions for all people. It’s important to note that while an inclusive group is diverse, a diverse group isn’t always inclusive. Increasingly, recognition of unconscious or ‘implicit bias’ helps organizations to be deliberate about addressing issues of inclusivity. The issue of implicit bias is addressed more thoroughly below.

Inclusion is about folks with different identities feeling valued and being valued, leveraged, and welcomed within a given setting (e.g., your firm, workplace, or in the bar association). Again, being asked to dance at the party to which you’re invited.

Inclusion is the only way to build diversity within an organization. If there are not thoughtful and deliberate discussions and action to cultivate an inclusive environment, all the energy and resources spent on recruiting a more diverse workforce are for naught. Hiring a half dozen candidates who are representative of multiple affinity groups, but not creating an inclusive environment in your workplace will likely result in the candidates ultimately moving on.


9 Id.

10 Id.
Even when a firm has hired a diverse team of talent, that doesn’t mean that everyone in the firm (particularly those with historically marginalized identities, e.g., women and people of color) feel welcome or are valued, given opportunities to grow, or developed by a mentor. There must be a culture change.

Inclusion is not a natural consequence of diversity. Again, a firm can spend a lot of time, energy, and money recruiting a diverse population of lawyers but if it never changes the environment that the individuals walk into, it will lose those lawyers. This, of course, assumes the firm has historically been staffed fairly homogenously. If a firm has already created a workplace with a diverse membership and a practice of inclusivity, these concerns occur much less often.

There are many reasons that inclusion has proved so difficult for most organizations to achieve. Broadly, they tend to stem from strong social norms and the failure to gain support among dominant group members. According to the *Harvard Business Review*, diversity doesn’t stick without inclusion. There are several dynamics that frequently work against inclusiveness in law firms:

1. People gravitate toward people like them. We’ve long known that similarity makes people like and identify with each other. In organizations, leaders often hire and promote those who share their own attitudes, behaviors, and traits. Thus, many organizations unknowingly have “prototypes for success” that perpetuate a similarity bias and limit the pool of potential candidates for positions, important assignments, and promotions.

   To counteract this natural tendency, leaders must focus on the systems in place, look at basic statistics, and ask deeper questions, such as: “Who is getting hired? Who is getting promoted at the highest rate? Why don’t we have more diversity in various positions or on teams? Who has access to information and who doesn’t? Who is not being included in these decisions? Whose opinions have I sought and whose have I left out? Am I building relationships with people who are different from me?”

2. Subtle biases persist and lead to exclusion. When minority-group employees are hired, they may experience more subtle forms of discrimination such as being excluded from important conversations, participation in a supervisor’s or peers’ in-group of decision-makers and advisers and may be judged more harshly. [The reference’s author] recently completed a study, for example, demonstrating that individuals who were racially different from their supervisors perceived differential treatment in the forms of discrimination, less supervisor support, and lower relationship quality. The findings also suggested that dissimilarity might lead supervisors to favor people who are similar (in terms of race, gender, etc.) and demonstrate bias against people who are different. Researchers refer to this phenomenon as “subtle bias.”
which is often a result of unconscious mindsets and stereotypes about people who are different from oneself.

To neutralize exclusion, leaders need to proactively review the access of all groups of employees to training, professional development, networks, important committees, nominations for honors, and other opportunities. Often, employees who differ from the group in power must satisfy higher standards of performance, have less access to important social networks, and have fewer professional opportunities. A recent Monster poll showed that eight out of 10 female respondents “believe that women need to prove they have superior skills and experience to compete with men when applying for jobs.” Leaders may need to invest in training to reduce the subtle biases of the workplace.

3. Out-group employees sometimes try to conform. Often as a coping strategy, those who are different from the majority will downplay their differences and even adopt characteristics of the majority in order to fit in. Female attorneys, for example, might adopt masculine behaviors to foster others’ perceptions of them as successful. But when unique employees move towards the norms of the homogeneous majority, that negates the positive impact of having diversity within the group.

To reduce conformity, leaders need to talk authentically about the issues, seek out, and encourage differences. Leaders should ask important questions such as “What is it like being the only African-American executive?” or “What has your experience been as a female executive?” “How can we leverage your unique perspective more effectively?” While the key is asking the right questions, it is also important to listen to the responses and not react negatively if the leader does not like what he or she hears.

4. Employees from the majority group put up resistance. Majority employees often feel excluded from diversity initiatives and perceive reverse favoritism. Many companies have experienced backlash when leaders don’t engage majority members in the conversation on diversity and inclusion, explain why change is necessary, and make everyone accountable.

PwC chairman and CEO Robert Morwitz has said that diversity and inclusiveness are major priorities for him personally. Morwitz prefers to serve as a role model and lead from the front. He pushes to have a diverse team on all major issues. Further, he believes that critical thinking comes from inclusion, that is, from the diversity of perspective. Leaders need to put inclusion – not just diversity – at the top of their agendas and mean it. They need to actively talk
about its importance, notice when it is present and absent, and set the agenda for the organization.¹¹

What should inclusion really look like in the workplace? According to Peggy Yu, a co-founder of Stack Education, there are several things that nearly any firm or business can implement (not even all, but some) which start opening the arms of inclusivity in the firm/company. This list is not exhaustive, but it’s a start:

- All gender-friendly bathrooms: There are many different ways this could happen, but one powerful way is to provide partitions from floor to ceiling in all stalls.

- A nursing room for mothers: Complete with a door that locks, covered windows with proper ventilation, a special fridge that allows storage of the milk pumped, and only allows the room to be booked for that specific purpose. [The reference’s author] shamefacedly confess[es]; “not so long ago, I was that inconsiderate person who saw an empty conference room and booked it.”

- Using gender neutral language throughout company benefits and policies: “They” is a preferred gender-neutral pronoun.

- Not everyone drinks alcohol: It sounds so simple but including non-alcoholic beverages at company events lets those who don’t drink know that you care.

- Executives and top management should reflect the diversity the organization seeks: As one alumna succinctly put it, “Honestly, I think most organizations need women of color in hiring positions. Inclusivity happens organically when you have diversity at the top of the organization.”

- Tampons and pads: Make them available in all bathrooms.

- A space to disconnect: Providing a quiet, meditative, no-technology, no-talking space where weary introverts can go to restore and rejuvenate is critical.

- Acknowledge all religious and cultural holidays celebrated by the organization’s employees: One policy could be to offer “designate your holiday” days to your employees. As an alumna shared, “...having a special fridge to put Kosher food so it’s not contaminated is a small but powerful gesture.”

- It’s more than the written word: Policy is important for legal protections, but daily actions, unconscious and conscious, cultivate

the everyday experience for employees. As one student said, “Inclusion means to consider everyone’s backgrounds, thoughts, and opinions when assessing a situation or idea. Inclusion is oftentimes not a conscious thought…the unconscious effort to include someone in a process is what seems more natural and effortless.”

- It’s asking: It’s knowing what you don’t know and just asking. Do proactively have discussions and solicit input and feedback. There’s no need to wait until someone is uncomfortable or unhappy. One alumna, who works in Berlin with co-workers from over 40 countries, illustrates this point eloquently, “From people coming in with different ideas around humor and what’s deemed offensive, to what kind of physical contact signifies respect versus harassment, seeing so many different perspectives on the same topic is not only inclusive, it feels really enriching.” We need to foster an environment that allows these kinds of conversation to happen.¹²

A real focus on inclusion asks these questions:

- What is the experience for individuals who are the minority within the organization?
- What barriers stand in the way of people with marginalized identities feeling a sense of welcome and belonging?
- What don’t we realize we are doing that is negatively impacting our new, historically marginalized or under-represented attorneys?

II. BIAS: IMPLICIT AND EXPLICIT

Bias is defined as an “Inclination or prejudice for or against one person or group, especially in a way considered to be unfair.”

Example:

‘there was evidence of bias against foreign applicants’

‘the bias towards younger people in recruitment’

Synonyms: prejudice, partiality, partisanship, favoritism, unfairness, one-sidedness.¹³

Stated more simply, bias is a preference or an aversion about a person, people, place, or thing. Bias can be either implicit (unconscious) or explicit (intentional).


Either way, it's important to identify our own biases and make them conscious (they're often unconscious). "Experts agree that once we are conscious of those deeply embedded biases, we can monitor our thinking and adjust our actions." For example, using "people first" language to identify members of affinity groups. This is most often an issue when dealing with persons with physical disabilities, including mental health issues. A basic primer of “people first” language is Attachment A.

Regarding implicit or unconscious bias, “we naturally assign people into various social categories divided by salient and . . . accessible traits, such as age, gender, race, skin color, physical disability, etc. And science has proven that we begin to do some of this as early as six months old.”

Project Implicit (https://www.projectimplicit.net) is a non-profit organization and international collaboration between researchers who are interested in implicit social cognition – thoughts and feelings outside of conscious awareness and control. The goal of the organization is to educate the public about hidden biases and to provide a “virtual laboratory” for collecting data on the Internet. Project Implicit was founded in 1998 by three scientists.

Within Project Implicit are Implicit Association Tests which are designed to uncover our implicit or unconscious biases. The swiftness with which we respond to certain stimuli in making decisions is gauged. The tests are located on the Harvard website at https://implicit.harvard.edu/implicit/aboutus.html. There are Implicit Association Tests (IATs) addressing numerous areas of potential bias including the following:

A. Gender-Science IAT – This IAT often reveals a relative link between liberal arts females and between science and males.

B. Age IAT – This IAT requires the ability to distinguish old from young faces. This test often indicates that Americans have automatic preferences for young over old.

C. Gender-Career IAT – This IAT often reveals a relative link between family and females and between career and males.

D. Religion IAT – This IAT requires some familiarity with religious terms from various world religions.

E. Disability IAT – This IAT requires the ability to recognize symbols representing abled and disabled individuals.

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15 Klocek, Priya D., From Unconscious Bias to Conscious Connections, KBA Diversity & Inclusion Summit, March 22, 2019.

F. Race IAT – This IAT requires the ability to distinguish faces of European and African origin. Recognize White and Native American. It indicates that most Americans have an automatic preference for white over black.

G. Sexuality IAT – This IAT requires the ability to distinguish words and symbols representing gay and straight people. It often reveals an automatic preference for straight relative to gay people.

H. Presidents IAT – This IAT requires the ability to recognize photos of Barack Obama, and one or more previous Presidents.

I. Weight IAT – This IAT requires the ability to distinguish faces of people who are obese and people who are thin. It often reveals an automatic preference for thin people relative to fat people. It should be noted that 66 percent (2/3) of Kentuckians are overweight, and 34.3 percent of Kentuckians are obese (BMI of 30 or higher).

J. Arab-Muslim IAT – This IAT requires the ability to distinguish names that are likely to belong to Arab-Muslims versus people of other nationalities or religions.

You can find all of these at https://implicit.harvard.edu/implicit/takeatest.html. They each take about six minutes. This is a good place to begin learning about your own unconscious associations. More discussion of Project Implicit is set forth in Section III, infra.

Identifying More Subtle Forms of Bias

Much of the bias experienced by members who identify with various affinity groups is so subtle that those against whom the conduct is not directed don’t even notice it is happening. These are sometimes called “micro-aggressions.” Micro-aggressions are a term used for brief and commonplace daily verbal, behavioral, or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative prejudicial slights and insults toward any group.

Here are some of the ways bias or micro-aggressions may be showing themselves in your workplace:

- Micro-assault is an explicit verbal or non-verbal derogatory attack.

  Slurs, touching without permission, restricting a person’s movement, deliberate triggering of another person’s disorder. Micro-assaults are almost always deliberate and intentional and targeted at a person. They

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Kentucky ranks 8th in state obesity rates; 34.3 percent of our population is obese (BMI of >30). https://www.richmondregister.com/news/kentucky-ranked-th-worst-for-obesity/article_ab5b96c7-8978-5e36-9b7b-5a2c0905db13.html.

https://www.kentuckyonehealth.org/body.cfm?id=7604&action(detail&ref=1553.
are easy to identify so they are usually easy to address and correct. (note: in school we called this “bullying”).

• Micro-insults are general rudeness and insensitivity toward someone because of their identity.

Compliments that place someone above the rest of their group, taking photos of people without permission, touching or asking someone about their skin, hair, or anatomy because it is different from yours. Micro-Insults are usually back-handed. They are curiosity mixed with condescension. More often than not, Micro-insults are unintentional, and the aggressor doesn’t even realize they’ve done anything wrong and if you confront them, there will be conflict because they are looking at it from the perspective of their intention while you’re looking at it from the perspective of the impact on you.

• Micro-Invalidations are comments or actions that exclude or nullify what the other person feels or experienced.

It is the most passive of the passive forms of bias. The offended party is told by the aggressor or by some neutral party that they are being too sensitive, reading too much into something, or imagining it. Micro-invalidations almost always imply that power imbalances are that way because the people in power deserve to be in power and those at the bottom deserve to be there.19

Unconscious bias can affect and infect hiring decisions. It shows up in “name discrimination,” which is triggered when the name on a resume indicates racial or ethnic background. Numerous studies also show more positive responses to a resume bearing a male name than to an identical resume with a female name.20 In fact, a *Fortune* article reports that a woman who switched to a man’s name on her resume went from 0 to 70 percent response rate.21

One of the best descriptions of the impact of bias on the individual against whom it is directed (whether intentionally or not) is from Sarah Morgan, an HR renegade who addresses, head-on, issues such as harassment and microaggressions in the workplace as well as diversity and inclusion:

Part of the challenge in dealing with microaggressions at work is getting people to understand the huge impact it has on a person’s future career success as well the company’s performance. “Microaggressions are often likened to paper cuts,” said Morgan. You’re not necessarily openly wounded but it still hurts. People who do not fit into the power groups (e.g., white, Christian, male,


heterosexual, young, able-bodied) may experience micro-aggressions several times during their workday. Imagine going through life getting multiple paper cuts every single day for the 40+ years of your career. That’s the reality for many black people, women, and other people of color in the workplace. Because we are constantly filtering through microaggressions, we have difficulty focusing and processing information, said Morgan. We tend to avoid people and situations where microaggressions are likely to occur to protect ourselves. This avoidance limits our opportunities and access, which limits our advancement to positions of power and our earnings. Also, we are doubtful of people in power because we are unsure if that person will show micro-aggression toward us or not. We experience hopelessness because we feel powerless and unsupported in stopping microaggressions from happening to us.22

The truth is, we really don’t have to understand every detail (including the origins) of why the micro-aggressions are offensive to the individual. It’s helpful if we do, and understanding is important, but it’s not mandatory. If someone tells us that something is offensive to them, hurts their feelings, makes them feel “less than,” creates an environment of exclusion, or is otherwise troubling to that individual, it really doesn’t matter if we “understand” why it makes them feel that way. We don’t need a dissertation on the impact or why it’s hurtful – other than what we need to understand how to change the behavior. What we have is an obligation to treat everyone with respect and dignity; to change our behaviors and our conduct so that the individual is no longer emotionally bullied, minimized, or further marginalized. Samples of racial micro-aggressive language are in Attachment B.23

III. IDENTIFYING OUR OWN BIASES. DO WE ALL HAVE THEM?

According to Priya D. Klocek, President and CEO of consulting firm, Consultant on the Go LLC, which focuses on diagnosing and improving the fundamental human interactions upon which all successful businesses are built, and speaker at the 2019 KBA Diversity & Inclusion Summit, “if you have a human brain, then you have biases.”24 Scientists have found that our brain is wired to have biases. Since our brain doesn’t have the capacity to process everything it needs for every second of the day, it creates biases as a coping mechanism. They’re “short-cuts for our brain.” And most of us don’t even realize how these biases are actually impacting our decision-making on a daily basis.25

The Project Implicit tests (IATs) identified above and hosted online at Harvard University’s Project Implicit to make people aware of their implicit biases, are


24 Klocek, Priya D., supra.

widely praised by some. While the IAT is helpful, there are criticisms to its use, and it's important to be aware of the limitations and potential for error. The IAT is not necessarily the foundation for creating a diversity initiative.

The IAT has been controversial since its introduction in 1998. Serious methodological concerns have been expressed about its reliability and validity. There is some subsequent meta-analysis that indicate the test is not a predictor of a person’s real-world behavior relative to their test results. A 2016 meta-analysis found that the IAT has less predictive ability than a 2013 study “which found it a poor predictor of biased behavior, judgments and decisions and that it provided little insight into who will discriminate against whom.”26 The criticism is that the IAT identified biases do not necessarily inspire change.

Even assuming the IAT has no validity to predict an individual’s real-world behavior, judgments, or decisions, and does not inspire change, it is still valid for revealing our implicit biases. The IATs can be used to help us start somewhere with identifying our own implicit bias and help us to begin developing strategies within ourselves and within our firms that will foster diversity, equity, and inclusion.

How do we, as individuals, overcome our own unconscious bias (even before undertaking change in our firms and businesses)?

A. Assess and get to know about your bias.

B. When assessing the behavior or performance of someone from a stigmatized group, try to focus on concrete positive and negative factors and your memory of what happened, rather than relying on overall “gut” feelings.

C. Notice when your responses, decisions, or behaviors might have been caused by bias or stereotypes and make an intention to think positive thoughts when encountering those individuals or other members of stigmatized groups in the future.

D. Imagine, in detail, people who violate expected stereotypes in a positive way and practice thinking about these positive examples.

E. Try to assess and think about members of stereotyped groups as individuals. Recall their individual traits and how they differ from stereotypic expectations.27


27 Klocek, Priya D., supra.
IV. THE IMPACT OF DIVERSITY, EQUITY, AND INCLUSION ON BUSINESS AND ON LAWYER WELL-BEING

A. The Business Perspective

Having varied perspectives helps generate better ideas to solve the complex problems of a changing – and increasingly diverse – world.

Four key arguments make the case for diversity, equity, and inclusion in our law practices:

1. The moral or social justice case asserts that each person has value to contribute, and that we must address barriers and historical factors that have led to unfair conditions for marginalized populations. For example, racial equity refers to what a genuinely non-racist society would look like, where the distribution of society’s benefits and burdens would not be skewed by race, and individuals would be no more or less likely to experience them due to the color of their skin. From a moral perspective, nonprofits are created to improve society and as such they should be diverse, inclusive, and equitable.

2. The economic case is based on the idea that organizations and countries that tap into diverse talent pools are stronger and more efficient. Economists see discrimination as economic inefficiency – the result of a systematic misallocation of human resources. In fact, the Center For American Progress finds that workplace discrimination against employees based on race, gender or sexual orientation costs businesses an estimated $64 billion annually. That amount represents the annual estimated cost of losing and replacing more than 2 million American workers who leave their jobs each year due to unfairness and discrimination. In this argument, organizations should become more diverse and inclusive because it makes economic sense to leverage the talent pools of different populations.

3. The market case states that organizations will better serve their customers if they reflect the diversity of their market base. A dramatic demographic shift is under way in the U.S., which will be majority non-white around 2043 according to the Census Bureau. In the private sector, companies such as Deloitte recognize the buying power of minority populations and highlight that diversity is critical to growing market share and bottom line. In the legal sector, clients are our customers, and they want to see themselves represented in the firms and businesses that serve them. What’s more, firms and businesses with diverse leadership are more likely to understand the needs of a diverse client base.

4. The results case is that diverse teams lead to better outputs. Scott Page, author of The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools and Societies, uses mathematical
modeling and case studies to show how diversity leads to increased productivity. His research found that diverse groups of problem solvers outperform the groups of the best individuals at solving problems. Diverse law firms and the diversity of perspectives within them, will lead to better solutions to our clients’ legal problems.28

All of these are great reasons and great resources for investing in a more diverse, more inclusive, and more equally balanced law firm. Here’s a top ten “cheat sheet” of the benefits of diversity, equity, and inclusion in the workplace that might also be helpful to remind you to focus on these issues.

B. Top Ten Benefits of Diversity, Equity, and Inclusion in the Workplace

1. Variety of different perspectives.

2. Increased creativity.

3. Higher innovation.


5. Better decision-making.

6. Increased profits. A study of 180 international companies found that companies with more diverse leadership teams were also the top financial performers.


8. Reduced employee turnover.

9. Better company reputation. Not only is your company seen as good, more human and socially responsible, your workforce is more interesting and relates to a larger body of clients. There's more opportunity for opening doors in new markets, customers and business partners.

10. Improved hiring results. Diversity boosts the company’s employer brand and reflects a more desirable place to work.29


C. The Lawyer Well-Being Perspective

Everything discussed thus far underscores how diversity, equity, and inclusion within the bar, within our law firms, and within our client-base improves lawyer well-being.

As a recap:

- There’s less employment turnover because employees feel valued and included.
- There’s less pressure on an individual’s right or desire to practice their own religion because all religions represented are honored and respected.
- Individuals in recovery who are trying to live a sober lifestyle aren’t constantly pressured to participate in alcohol-based events because the firm has other types of social events that don't involve alcohol and business development is not always centered around fine wines and bourbon-laced evenings out.
- Members of the LGBTQ community are comfortable including their families in firm events because all individuals and families are welcomed and respected.
- There is a true community within the firm and the working environment.
- Communities are precious to us. Individuals flourish in community. New ideas are welcome, and traditions are respected.

In the National Task Force on Lawyer Well-Being’s report “The Path to Lawyer Well-Being: Practical Recommendations for Positive Change,” there are numerous recommendations that are designed to instigate movement to improve the well-being of the legal profession. In our current state, our profession is in a completely dysfunctional system, with rampant (unsustainable) rates of addiction and depression, and high rates of suicide and suicidal thoughts. In their efforts to address our dysfunction from the top down, the drafters of the report include a charge to urgently address the lack of diversity and inclusion in the profession.³⁰ “Simply stated, a profession that actively promotes the well-being of its members will inherently and simultaneously foster an environment that supports a diverse and fully inclusive workplace.”³¹

³⁰ Reardon, Jayne, and Buchanan, Bree, supra.

³¹ Id.
V. HOW DO WE EFFECT CHANGE IN THE CULTURE OF LAW FIRMS AND THE PRACTICE OF LAW?

There are many suggestions and resources that firms can adopt in order to effect a change in the culture of law firms and the practice of law in Kentucky. We'll list just a few for you to start exploring in order to create a more cohesive and successful law practice and community.

Some ways to improve hiring efforts:

• Expanding the diversity of your talent pool by networking and using recruiters with a good track record of finding diverse talent.

• Ensuring all lawyers and staff influencing hiring decisions go through effective bias training. (Good training reveals our unconscious views or biases and gives us practice in overriding them with more balanced and enlightened thoughts.)

• Considering blind hiring or systems that mask personal data (e.g., redacting names that indicate race or gender) at early stages of the hiring process.

There are numerous articles, books, websites, webinars, and other sources of information that can help you begin effecting a change in the culture of your law firm. In the article “Four Things Law Firm Leaders Can Do About Diversity,” there is a lengthy discussion of how to promote and support meaningful diversity equity, and inclusion in our firms, thereby changing the culture and the narrative in the practice of law.32 There are several other articles in Law Practice Today about leading culture change in our firms,33 and making a leadership commitment to equality.34 All are filled with recommendations and suggestions for any firm trying to improve their law firm well-being.

VI. THE MANSFIELD RULE

The Mansfield Rule was inspired by the NFL’s Rooney Rule, which was created by the late Dan Rooney in 2003 and is now supported by his son, Art Rooney II, President of the Pittsburgh Steelers. The Rooney Rule requires every NFL team to interview at least one minority candidate for head coach vacancies. In the years following its implementation, the number of minorities hired to fill head-coach roles doubled. New research, which controlled for other factors that may have contributed to this positive outcome, shows that a diverse candidate is about 20


33 https://www.lawpracticetoday.org/article/leadership-culture-change/.

percent more likely to fill an NFL head coaching vacancy during the Rooney era than before the rule was introduced.\textsuperscript{35}

The Mansfield Rule was one of the winning ideas from the 2016 Women in Law Hackathon hosted by Diversity Lab in collaboration with Bloomberg Law and Stanford Law School. Diversity Lab partnered with nearly 50 of the country’s leading law firms to pilot the inaugural version of the Mansfield Rule from Summer 2017 through mid-2018. There are now more than 65 law firms participating in the 2.0 version that runs from July 2018 to July 2019.\textsuperscript{36}

Participating law firms are expected to consider a diverse slate of candidates for the following roles, committees, and leadership activities. They are also encouraged to generate and post job descriptions for these leadership roles and ensure that the processes for election and/or appointment to these roles are transparent and accessible to all lawyers. The positions are:

A. Equity Partner Promotions
B. Lateral Partner and Mid/Senior Level Associate Searches
C. Practice Group & Office Head Leadership
D. Executive Committee and/or Board of Directors
E. Partner Promotions/Nominations Committee
F. Compensation Committee
G. Chairperson and/or Managing Partner
H. Formal Pitch Opportunities

For example, if firm management has identified a short list of five candidates for an opening on the executive committee, under the Mansfield Rule guidelines, two of the candidates would need to be women, attorneys of color, and LGBTQ+. Firms that consider diverse lawyers for 70 percent or more of their leadership committees/roles that exist at the firm and are open during the review period qualify to become Mansfield Certified.\textsuperscript{37}

The Mansfield Rule Certification measures whether law firms have affirmatively considered at least 30 percent of women and attorneys of color for leadership and governance roles, equity partner promotions, and senior lateral positions. The goal of the Mansfield Rule is to boost the representation of under-represented affinity groups in law firm leadership by broadening the pool of candidates considered for these opportunities.

\textsuperscript{35} https://www.diversitylab.com/pilot-projects/mansfield-rule/

\textsuperscript{36} https://www.diversitylab.com/pilot-projects/mansfield-rule/

\textsuperscript{37} Id.
There is now a Mansfield Rule 2.0. Mansfield Rule 2.0, the next iteration of the Rule, launched July 16, 2018 and included LGBTQ+ lawyers in addition to women and attorneys of color. Also new, Mansfield 2.0 measures consideration for participation in client pitch meetings and request that participating law firms make appointment and election processes transparent to all lawyers in their firms.

As part of the yearlong certification process, the Diversity Lab team checks in with each participating firm monthly through group knowledge sharing calls and also more formally through a one-on-one six- and twelve-month data collection process.

The results at the six-month check-in point for the inaugural pilot showed that significant cultural and procedural changes have already occurred at the participating firms within the first few months of the reporting period.

Key findings include:

- Before adopting the Mansfield Rule, only 20 percent of the 44 participating firms tracked the diversity of candidates considered for lateral senior associate and partner openings, and only 30 percent had formally tracked the diversity of candidates for leadership and governance roles.

- Because of the Mansfield Rule, 95 percent of participating firms experienced an increase in formal discussions among firm leaders regarding broadening the pool of diverse candidates for appointments to leadership positions and lateral hiring; 83 percent of participating firms reported an increase in formal discussions regarding broadening the pool for partnership promotions.

- Many of the firms have now added reporting on the diversity of their leadership, hiring, and promotions pipelines (i.e., the Mansfield Rule statistics) as a regular agenda item for Management Committee meetings.

- Nearly 75 percent of participating firms did not have written job descriptions for leadership roles in place; more than one-half have adopted them as part of the Mansfield Rule process.38

The Mansfield Rule 1.0 results report are Attachment C.

Even small firms can adopt and implement the tenets of the Mansfield Rule and Mansfield Rule 2.0 through Diversity Lab’s website, and make changes that will encourage far more diversity, equity, and inclusion.

VII. CONCLUSION

“Humanity is plural. Not singular. The truth is, we don’t see things the same. The power is, we don’t see things the same.”

– “Different Together” Video
www.apple.com/diversity

38 Id.
As human beings, we are capable of change. Even our deep-rooted biases and beliefs can be changed with an intention to do so. And our conduct can easily change, even as our own ideas and beliefs are progressing. Bill Wilson, founder of Alcoholics Anonymous is credited with saying “you can’t think your way into right action, but you can act your way into right thinking.” One of the criticisms of the IAT testing is that it’s not a predictor of conduct. But we have the power to change our conduct. People change their conduct every day. It’s rooted in the desire to promote humanity, one individual at a time. It’s rooted in the desire to stop thinking, saying, and doing things that are hurtful to another human being. We are all capable of change. We are all capable of being more open, kinder, more sensitive, and more inclusive. The by-product of that changed conduct will be a healthier, happier, more inclusive, more diverse, and more contented bar.