



July 13, 2020

**APABA-DC Urges Legal Profession to Remain
Focused on Diversity and Inclusion During COVID-19**

Recent events have impressed upon us the need to not only examine larger issues of systemic and historical injustices, but also to be self-reflective about how the legal profession and our communities and organizations handle issues of diversity and inclusion.

As our profession faces economic difficulties due to COVID-19 that are unprecedented since the 2007 to 2009 recession, APABA-DC calls on law firms and law departments of companies, non-profit organizations, and public entities to take action to preserve the significant gains that have been made in retaining and advancing diverse lawyers. We applaud the Chicago Committee on Minority Lawyers at Large Law Firms, Diversity Lab, Leadership Council on Legal Diversity, and National Association of Minority and Women Owned Law Firms for their leadership in this area, and add our voice to amplify the need for meaningful action.

Learning from Diversity and Inclusion Losses from the Last Recession

Diverse attorneys were disproportionately impacted during the last recession, which offers a cautionary tale as our profession tackles present challenges:

- Minority attorneys at large law firms were almost twice as likely to be laid off during the 2008 recession as their white peers;¹
- Women accounted for half of the equity partners terminated after the recession, even though they made up only 16% of the equity partnership in 2008;²
- The pay gap between women and men partners increased by nearly a third after the 2008 recession;³
- The share of Black/African-American attorneys among law firm associates peaked in 2008, then suffered a seven-year decline, finally returning to pre-recession numbers in only 2019;⁴ and
- Although the percentage of women and minorities has increased over the last seven years, it has yet to return to pre-recession levels.⁵

¹ Debra Cassens Weiss, *Only 3 Percent of Lawyers in BigLaw Are Black, and Numbers Are Falling*, ABA Journal (May 30, 2014), https://www.abajournal.com/news/article/only_3_percent_of_lawyers_in_biglaw_are_black_which_firms_were_most_diverse.

² Cynthia Fuchs Epstein & Abigail Kolker (2013) *The Impact of the Economic Downturn on Women Lawyers in the United States*, 20 Indiana J. Global L.Studies Issue.2, Art. 20, <https://www.repository.law.indiana.edu/ijgls/vol20/iss2/20>.

³ Thomas Forestier, *Diversity at Law Firms in the Post-Recession Era*, JDSUPRA (May 6, 2013), <https://www.jdsupra.com/legalnews/diversity-at-law-firms-in-the-post-reces-27930>.

⁴ Nat'l Ass'n of Legal Professionals, *2019 Diversity Report*, at 2, 3, https://www.nalp.org/uploads/2019_DiversityReport.pdf; Nat'l Ass'n of Legal Professionals, *Women and Minorities at Law Firms — What Has Changed and What Has Not in the Past 25 Years*, NALP Bulletin (Feb. 2018), <https://www.nalp.org/0218research>.

The Need to Prioritize Diversity and Inclusion, Especially Now

While we understand that law firm and law department leadership need to take steps to ensure that their organizations weather the economic difficulties associated with COVID-19, they must be vigilant in focusing on retaining and advancing talented diverse attorneys throughout their ranks. We must continue to work towards a diverse and inclusive legal profession and ensure that history does not repeat itself.

Tools for Ensuring That Diversity and Inclusion Are Prioritized

Prioritizing diversity and inclusion can take many forms, but we encourage law firms and corporate law departments to adopt the following:

- Review the organization's criteria for awarding origination credit and measuring success, and ensure that it does in fact provide a level playing field for diverse attorneys;
- Provide robust support for diverse lawyers to enable their retention and advancement;
- Collect, report, and periodically review diversity data;
- Compare your diversity data both pre- and post-COVID-19, against leading peer firms and companies;
- Commit to accountability measures, such as adopting the Mansfield Rule (certifying that the organization continues to consider at least 30% diverse lawyers for leadership roles)
- Continue to facilitate and maintain a diverse pipeline;
- Evaluate the effect that proposed austerity measures would have on diverse attorneys and on diversity within the organization; and
- Ensure that your teams are staffed by diverse attorneys.

APABA-DC remains committed to promoting diversity and inclusion across the legal profession in the DC area, and stands ready to work with law firms and corporate legal departments in achieving this vision.

⁵ Olivia Covington, *Minority Law Firm Representation Up Modestly Post-Recession* (Jan. 9, 2017), <https://www.theindianalawyer.com/articles/42454-minority-law-firm-representation-up-modestly-post-recession>.