

# Diversity and Inclusion in the Modern Workplace

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ACBA Committee for Diversity and Inclusion

# Linguistic & Stylistic Differences

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# Types of Communication Barriers

## 1. Physical - the physical environment around us

This includes the physical layout of the office and how it may result in obstructing views or access to people in an office. This may also include issues with remote work and how this hinders effective communication and collaboration.

## 2. Emotional - feelings of doubt or anxiety

This manifests in the workplace in the form of an intimidating supervisor who makes employees feel they cannot engage in open discussion or approach higher level employees with concerns.

## 3. Linguistic - written, verbal, or physical cues we use to convey a message

# Common Examples of Linguistic Barriers

Some examples of linguistic barriers are obvious, such as language itself. When someone speaks a different language than you, it is difficult to understand each other, especially since all cultures utilize some form of idiomatic phrases or expressions, a.k.a. “slang” so translation may be difficult.

Another more familiar concept may be the idea that people have different learning and communication styles. Some people are more receptive to visual cues or behaviors, whereas others respond better to the written word.

# Less Common Examples of Linguistic Barriers

Barriers which may not be as obvious are those that stem from cultural differences or disability. We are a product of our environment and the culture in which we were raised. Certain gestures and mannerisms used in one culture may be considered offensive or confusing to members of another culture. If this issues is not acknowledged, it can cause conflicts.

Physical disability barriers can range from obvious to subtle, or even nearly imperceptible, depending on the type of disability. For instance, and individual who is considered neurodivergent may not have an obvious physical disability, but may require accommodation when it comes to communication.

# Code Switching

The ways in which a member of an underrepresented group (consciously or unconsciously) adjusts their language, syntax, grammatical structure, behavior, and appearance to fit into the dominant culture.

Many people likely believe this doesn't apply to them, or may not understand what it is. But in reality the concept is both simple, and more pervasive, than most people think. Examples include someone using a different voice or tone on the phone with a work colleague compared to a friend, or making a conscious choice to use less local slang when speaking with a client than when speaking with an acquaintance from the same geographical area.

# Practical Concerns Related to Code Switching

Code switching by people of color or those considered to be in an ethnic minority is an issue we all need to be aware of when dealing with employees, colleagues, or clients. Some very basic examples of code switching related to racial and cultural differences are when an individual chooses not to wear colorful clothing to a job interview, or feels the need to “tone down” their manner of speech for fear of offending others.

Code switching is also a product of economic and class differences. For instance an individual who moves from the Midwest to the Northeast may drop a Southern accent in order to not seem so “redneck.”

Individuals in the mental health field believe that the pressure to code switch can make people feel as though they have lost their cultural identity or abandoned their culture. Studies show that over time, the pressure to conform to a dominant culture can lead to burnout and emotional exhaustion. It is therefore important to acknowledge that code switching affects all of us, and to accept that it is not something we can ignore simply because we may not be in a particular minority group.

# How These Differences Appear in the Workplace

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# Implicit Bias

We are all guilty of using stereotypes to form an opinion about someone based on their gender, age, or other characteristics. There are some stereotypes that are essentially commonly accepted. However, there is a danger in accepting that these stereotypes are a way of life. Not only can they sometimes be hurtful, they can also sometimes be considered actionable when these assumptions are made in the workplace.

The other, less obvious, danger comes from allowing our thoughts on how someone else communicates form the basis of our opinion about them, when in reality, their way of communicating is a product of their background and personality or, in some cases, a disability.

Conscious or unconscious biases can lead to inequality in the administration of justice, as well as in hiring, promotions, pay, assignments, and opportunities for advancement.

Stereotypes are not  
a problem because  
they're true; they're  
a problem because  
they're ***incomplete.***

# Unintended Micro-Aggressions

- Actions, behaviors, or expressions that make people feel othered
- Typically, small behaviors
- In isolation or as a one-of experience, they may just be off-putting
- When grouped together, or over a series of interactions, especially repeatedly, they feel pointed and isolating
- Often unconscious behaviors rooted in learned experiences

# Retention & Recruiting Issues

- Office culture
- Working relationships
- Candor & belonging
  - Fit vs. belonging
  - Belonging is a metric of inclusion
- Who do people want to work with?
- Who do people want to send business to?
- How do people see themselves advancing?
- Is this a place I work, or is this the place where I'm building my career/legacy?



## DIVERSIFYING THE LEGAL PROFESSION IN PENNSYLVANIA

### VOLUNTARY DEMOGRAPHIC CHECK-OFF BOXES ON PA LAW LICENSE APPLICATIONS- 2020

After recommendations from the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness, the Pennsylvania Bar Association, and other groups in the legal community, the Disciplinary Board of the Supreme Court of Pennsylvania included a voluntary race/ethnicity self-identification question on attorney registration forms beginning in 2018. In 2021, the Board reported the following results. Of approximately 78,000 attorney registrants, 87.8 percent answered information regarding their race/ethnicity. 99.8 percent of attorneys provided information regarding their gender.

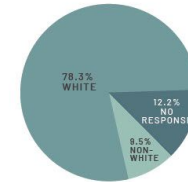
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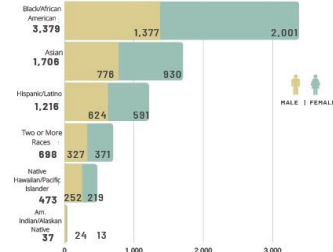
### CURRENT DIVERSITY MAKE UP



82% OF LAWYERS IN PA IDENTIFY AS MALE. 18% IDENTIFY AS FEMALE.



### RACE/ETHNICITY OF NON-WHITE ATTORNEYS



### PURPOSES:

- To establish a demographic baseline of all applicants for Pennsylvania law licenses
- To track changes in demographics of the profession for purposes of measuring progress in diversifying the profession
- To provide data to help inform appointing authorities of the availability of diverse attorneys for career-enhancing appointments

### BENEFITS

- ENHANCED FUNCTIONING AND COMPETITIVENESS OF THE PROFESSION
- INCREASED OPPORTUNITY TO ATTRACT QUALIFIED INDIVIDUALS
- INCREASED PUBLIC TRUST AND CONFIDENCE IN THE JUSTICE SYSTEM
- INCREASED ACCESS FOR HISTORICALLY MARGINALIZED INDIVIDUALS

# Retention & Recruiting Issues, Cont.

The Pittsburgh area has its own unique set of challenges including, but not limited to:

- The maternal mortality rate
- Lack of support (social and economic) for local diverse communities
- The effects of purposeful historic exclusion, correlated to industry, redlining/zoning policies, and geography

# Evaluations & Feedback

- Do not conflate the dissemination of information with communication

<b><u>Evaluations</u></b>	<b><u>Feedback</u></b>
Circumstantial review of known information.	Ongoing process.
Should be delivered in way that minimizes the potential for harm as a result of cultural nuances	Should be delivered in way that minimizes the potential for harm as a result of cultural nuances
informational	actionable

# Minimizing the Negative Impact of These Differences

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# Employee Evaluations

- Consider the environment and mechanism you use to deliver evaluations
- Ensure transparency of process wherever you are able
- Engage with difficult questions rather than/before defending familiar positions
- Allow time for processing of conversation or results
- Allow room for responses and continuing dialog
  - Consider communication styles & mechanisms
- The information in evaluations is a direct measurement of the success of feedback that led into them
- Evaluations are a point of reference – what pertinent, learning material are you providing?



# Ongoing Feedback

- Understand what feedback the recipient values, as well as the information you need to communicate
- Establish a regular and frequent schedule for more formalized check-ins
- Address concerns as they arise
- Feedback is a tool – what are the action items you are asking the recipient to deliver?
- Always ask, “why?” For every “why,” ask, “how.”
- Develop a way to hold yourself accountable for both giving and receiving feedback

# Federal Inclusivity Requirements for Disabled Individuals

The Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq. (1990), provides guidelines for covered entities related to effective communication for people with disabilities. New provisions of the ADA related specifically to communication went into effect on March 15, 2011. The purpose of these new rules is to ensure that people with a vision, hearing, or speech disability can communicate with, receive information from, and convey information to, the covered entity.

The ADA requires covered entities to provide auxiliary aids and services to those with disabilities, such as large print or Braille materials for a blind individual, a qualified notetaker, interpreter or written materials to a deaf individual. This can also include assistive listening systems, captioning software, telephone handset amplifiers, and hearing aid-compatible telephones.

# The ADA and Neurodivergent Individuals

Neurodivergent individuals are not necessarily disabled, however the ADA defines disability in a way that includes neurodivergence, which affords these individuals the protection afforded by the law.

Communication barriers with neurodivergent individuals can sometimes be hard to pinpoint, and you may not know an employee, colleague, or litigant is neurodivergent. However this should not be a reason to allow communication barriers to exist. Having a basic understanding of how to implement effective communication with individuals regardless of their neurological status, and providing alternative communications options are just a few ways to foster a more inclusive environment in our work spaces and in Court.

# Technological Support to Promote Inclusion: ***Make these your defaults!***

- Accessibility in Content Creation: Microsoft Office has implemented ***Accessibility Suggestions*** that will run just like Spell Check
  - Microsoft will ask you if you want to review its suggestions to increase accessibility of the content you are creating -- all you have to do is follow its prompts.
  - It will provide you with suggestions relating to, among other things:
    - Whether the text that you are writing into an email formatted such that those with low vision, color blindness, or any vision impairment could still read it?
    - Whether you would like to add description “alternative text” for graphics that you included
- Accessibility in Video Conferences: Enable live captions on Teams or Zoom
  - Teams > Settings > Accessibility > Toggle “Captions” to enable (the toggle should turn purple)
  - Zoom > Settings > Accessibility > Change size of Closed Caption to enable; Check “Dim Screen Share Video”

# Forums for Safe Discussion

The value of creating a forum for safe discussion is the effectiveness of allowing folks to process and internalize new ideas, and process and let go of harmful beliefs, without an inhibiting fear of judgment.

These types of forums are often best created with a facilitator, we cannot overstate the importance of hiring a DEI **professional** as the facilitator. A professional facilitator will ensure:

- Effective communication to achieve the desired goal
- Protection of the integrity of persons negatively impacted by things said during the forum
- Avoidance of burdening those harmed by negative statements with the responsibility of directly responding

# Affinity Spaces

## What is an affinity space?

- There are different categories of affinity spaces, each with a ***different goal*** and accordingly ***different requirements***
  - Employee Resource Groups (ERGs) focus on professional development, mentorship opportunities, awareness efforts
  - Business Resource Groups (BRGs) focus on driving strategic business imperatives forward
- Affinity spaces create synergy, facilitate new employee integration, and improve employee retention. They can also act as forums to address discrimination.

## Are affinity spaces *exclusionary*?

- Depending on the context, exclusion is not always bad -- here, for example, exclusion may be one way to create a space where a minority group can engage in discourse without literally being a minority in that space

# Mentoring & Sponsorship

- Mentor vs. Sponsor
  - A mentor is a person who gives a protégé advice, answers questions, strategizes career moves and professional development (peer, personal life, someone who understands your experience)
  - A sponsor is someone who promotes a protégé to other people to help advance the protégé's career (in your field, maybe in your workplace, someone with leverage)
- One person can be your mentor and your sponsor; or different people can be mentors and sponsors, or you can have many mentors and sponsors to cover different areas of your life, provide different perspectives, or leverage different roles
- For example: a peer can be your mentor, while a supervisor can be your sponsor

# Accountability

For Judges, Managing Partners, or supervisors of others in your workplace, how this issue applies to you may seem fairly obvious. However, it is not just employers who need to be aware of and recognize the importance of this issue. We must also be accountable for ourselves, and how we treat fellow co-workers, our staff, and other members of the legal profession. This is not a “high-level” issue.

As advocates, attorneys have a duty to represent our clients and protect their interests, and this includes how the clients are treated within the legal system. Understanding your client’s background and the potential barriers to communication they will face will help ensure that Judges, opposing counsel and other they encounter understand how to best communicate with them.

Effective representation of our clients means holding ourselves accountable for breaking down communication barriers which create bias and harm to our clients and their rights.



# Building Community Connections

- Join local and applicable professional groups like the ACBA!
- Think about the situations where you feel most comfortable connecting with people, and where you're best at connecting with people
- Be mindful of the space you hold in every room – center yourself and others by being self-aware and empathetic
- Building connections can be a solo or joint effort!
- Inclusion is not an initiative. DEI happens in between the initiatives; the initiatives are events.

## ***Presenters***



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