



Report

THE STATUS OF MINORITY ATTORNEYS IN NEW MEXICO—AN UPDATE

1999 - 2009

 COMMITTEE ON DIVERSITY
IN THE LEGAL PROFESSION
STATE BAR OF NEW MEXICO

Dedication

by Justice Patricio M. Serna

Ten years ago, it was my distinct privilege to author the dedication for “The Status of Minority Attorneys in New Mexico – An Update for 1990 – 1999” prepared by the Diversity Committee of the State Bar of New Mexico. Now, it is once again my honor to provide the dedication for the 2009 report.

There isn't space enough to acknowledge the many fine men and women who have worked so tirelessly for the advancement of minorities in the New Mexico legal profession. As the third report which spans 30 years of study is released, I commend it to all as a unique and thorough examination of the progress of minority attorneys here in New Mexico. While there is still work to be done, great strides toward equality and fairness have been made.

Without a doubt, there is one individual who has made a commitment to the three reports that have been issued, first in 1990, then in 1999 and now in 2009. Without his leadership, determination and dedication over three decades, we would not have the background and perspective the reports offer. That person is Arturo L. Jaramillo. The lawyers of New Mexico owe a tremendous debt of thanks to Arturo for his years of service on the important topic of diversity in the legal profession.

Perhaps Arturo's more important contribution has been in serving in 1993 as the first Hispanic President of the State Bar of New Mexico in its then 81-year history. This achievement alone is significant in that Arturo Jaramillo broke through a barrier and helped create an environment and culture of inclusiveness and acceptance. Arturo instituted the State Bar of New Mexico Task Force on Diversity and then the Diversity Committee in 1987-1990, and currently serves as co-chair of the Committee which will release its third study over 30 years of minorities in the profession in New Mexico.

Arturo has served as an inspiration and role model of what it takes to succeed and excel as a lawyer of color in the profession. His commitment to a diverse profession can be seen not by his words alone, but by his actions in his commitment to service to the State Bar of New Mexico, the New Mexico Hispanic Bar and the Hispanic National Bar Association. Throughout his career, he has sought to provide guidance and mentorship to young people, law students and lawyers alike. He has been honored for his service by numerous groups, including the State Bar, the ABA, the University of New Mexico School of Law, the Santa Clara School of Law, the Hispanic National Bar Association, the New Mexico Hispanic Bar Association, and the Paralegal Division of the State Bar.

Perhaps the most visible and valuable contribution Arturo has made toward influencing others to pursue legal careers and succeed in law is his creation of the Summer Law Clerk Program. This program was established in 1993 in his term as President of the State Bar.

Arturo was instrumental in establishing the State Bar of New Mexico's Leadership Training Institute. The mission of the Institute is to identify and train younger and diverse lawyers for current and future opportunities in leadership roles. Participants learn what it means to be a leader and how to communicate, motivate, inspire and succeed, not only in the law, but also in service to professional, political, judicial, and civic and community organizations.

Arturo has a unique and valuable perspective as a lawyer who has served as a named partner in a larger New Mexico law firm and as cabinet secretary in state government. His management and personal skills have allowed him an avenue into many different practice areas and lawyer populations. He has worked with solo and small firm practitioners, large firm practitioners, and government and public service lawyers. He is successful in all venues because of his personal philosophy of mutual respect, open and effective communication, professionalism and accountability.

As many of us are aware, he has become quite adept at the concept of emotional intelligence, and has spoken nationally on this topic, especially as it relates to racial and ethnic diversity issues. Perhaps the best example of these efforts in this regard is his work on the Diversity Committee to present Conferences on Commonality to explore the common missions shared by voluntary and mandatory bar associations.

As an AV rated attorney in New Mexico, Arturo has become well respected by his peers and clients alike. Unquestionably, he is appreciated and valued by the profession he holds in such high regard. He has also worked very hard throughout his career, and is known for his civility, openness and competence. Arturo is also blessed to have a loving and supportive family that has aided immeasurably toward his success and professional excellence. Jayne, his wife of more than 30 years, and their children and grandchildren are his pride and joy.

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I. Introduction—An Update on the Status of Minorities in the Legal Profession in New Mexico

A. Overview

After reviewing the comparative demographics, survey information and focus group responses developed by the State Bar’s Committee on Diversity in the Profession for this 2009 report, I was reminded of Winston Churchill’s familiar adage that “the farther back you look, the farther forward you are likely to see.” The extensive commitment of the State Bar of New Mexico to the mission of this committee has produced more than two decades of credible information on the status of minorities in the legal profession. That information now serves as a lens that allows us to examine and gauge the growth, value and future of our diversity as a profession with greater resolution and understanding.

The Committee on Diversity is the successor in interest to the Standing Committee on Minorities in the Profession and to the original Task Force on Minorities, which was created by the Board of Bar Commissioners in 1987. One of the primary and consistent responsibilities of these working groups has been to study and prepare a comprehensive report on the status of minority lawyers in New Mexico, to identify any barriers that may impede the full integration of minorities into the practice of the profession and to recommend what the State Bar of New Mexico could be doing to assist minority lawyers in their practice. This report is the third detailed study published by these committees since 1990.¹

This third decennial report addresses a variety of subjects ranging from narrowing disparities in bar examination passage rates to the impact of the judicial selection process on the diversity of our courts. As described throughout this report, when current data is compared with the committee’s prior studies, important improvements are demonstrated on several diversity fronts while less success is seen on others. For example, current survey data reflect significant reductions in reported instances of demeaning comments or actions by opposing counsel based on race or ethnicity when compared to those reported in the 1999 Report. Observed and perceived instances of gender bias by opposing counsel have also declined significantly. It is important to recognize that perspectives on these and many other significant issues are markedly different among diverse members of the bar.²

In the end, this report will assist each of us in defining the breadth, richness and volatility of diversity in our profession. Hopefully, the long look back will also reinforce the enduring value of acceptance, tolerance and respect for the dignity of others, while prompting all lawyers and judges to be always mindful of the continuing challenges faced by diverse practitioners who find themselves outside the mainstream of our profession.

B. Tracking the Issues

For purposes of consistency and to facilitate trend analysis, the committee organized its investigation by tracking, with minor revisions, the “Statement of Issues” listed in the 1990 and 1999 reports. Additionally, the committee incorporated in the present report an important issue describing the experiences and perspectives of New Mexico attorneys on racial and ethnic fairness in the practice of the profession. That subject was surveyed and addressed in the 1999 Report but not listed in the Statement of Issues.³ The analysis of these issues contained in the 1999 report are compared and contrasted, where possible, with the recent survey responses compiled for this report.

¹ See also, *Final Report The Status of Minority Attorneys in New Mexico*, January 20, 1990; *Report The Status of Minority Attorneys in New Mexico—An Update 1990-1999*. These reports, as well as the current study can be reviewed and downloaded at <http://www.nmbar.org/Attorneys/PubReptSurv/statusminorityattysNM.html>.

² See Goal IX Report, 2007-2008, *The Status of Racial and Ethnic Diversity in the American Bar Association*, ABA Commission on Racial and Ethnic Diversity in the Profession, at page 1. (“When it comes to measuring the success or failures of diversity efforts, it is all a matter of perspective. . . . It’s like those pictures that appear to be a single image, but upon closer inspection prove to be comprised of many smaller, individual pictures.”).

³ See *Report on the Status of Minority Attorneys in New Mexico—An Update 1990-1999*, at pages 56-65.

Thus, the issues addressed in this report are as follows:

1. What is the demographic distribution and profile of the membership of the State Bar of New Mexico? What additional information should the State Bar collect?
2. To what extent have reported observations and perspectives of New Mexico lawyers on racial and ethnic fairness in the practice of the profession changed since the 1999 report?
3. Are the activities directed towards recruitment and retention of minority law students in New Mexico adequate and effective? What action should be taken by the State Bar to complement these efforts?
4. What is the percentage of full-time faculty positions held by minorities at the University of New Mexico School of Law? What steps should be taken by the State Bar to encourage the appointment and retention of minority faculty in the future?
5. In reviewing bar examination passage rates over the last ten years, do disparities continue to exist between minority and non-minority applicants? What steps should be taken by the State Bar to support and collaborate with the New Mexico Board of Bar Examiners to identify and address disparities?
6. What is the distribution of minority lawyers among the various categories of public and private sector law practitioners? Do disparities exist by sector and, if so, what role should the State Bar play in addressing this issue?
7. Have minority lawyers experienced disciplinary actions at disproportionate rates? If so, why, and what steps should be taken by the State Bar to address these circumstances?
8. Are minority lawyers actively and meaningfully involved in the activities and leadership of the State Bar of New Mexico? What steps are being taken to promote active and meaningful participation of minority attorneys in the State Bar?
9. What impact has the constitutional requirement on the judicial selection process had upon minority lawyers in securing appointment and/or election to judicial positions?

For purposes of this report, “minorities” are defined as females, ethnic/racial minorities, lesbian, gay, bisexual and transgender (LGBT) members and those who are disabled. Data is segmented by the various minority groups throughout the report. Given the comprehensive segmentation of the data presented, it is important for the reader to use the text as a guide when reading the graphs and tables throughout the report.

C. The Work of the Committee Beyond Numbers and Glass Ceilings

Besides investigating and reporting on these issues for the better part of two decades, the Committee on Diversity has significantly broadened its focus beyond racial and ethnic minorities. The committee has diversified its own membership, and thereby expanded its perspectives, experience base and network by reaching out to gay and lesbian lawyers, lawyers who practice in geographically isolated communities, senior and retired lawyers, lawyers with disabilities, and law students interested in promoting diversity in the academic setting.⁴ With greater inclusiveness, the subject matter considered by the committee has been broadened and enriched and new forums have been designed for addressing diversity issues. For example, over the past few years the committee organized two major “Conferences on Commonality,” moving the subject matter away from disparities and glass ceilings to collaborative discussions on improving self-awareness, interpersonal skills and socially responsible lawyering. The committee developed innovative CLE programs on “Cultural Competency” and other social and emotional learning skills that promote greater awareness of diversity and enable strategies for improving communications and perceptions in cross cultural situations.

⁴ A list of the members of the State Bar of New Mexico Committee on Diversity in the Profession is attached hereto as Appendix “B.”

D. Understanding and Valuing Diversity—Reflecting the Community

One of the primary purposes of this report has been about understanding and valuing diversity in our profession. The robust integration of diverse populations in our profession, as advocates and decision makers, increases the public's perception of fairness, equal access to the courts and the integrity of the judicial system. The more lawyers and judges reflect the diversity of the communities we serve, the more confidence the public will have in the administration of justice by our courts. The composition of the State Bar of New Mexico is highly diverse compared with virtually every other state in the nation.⁵ Measured by New Mexico's own diversity, however, a significant gap exists and closing it may prove to be challenging. Accordingly, it is appropriate to include in the introductory section of this report a high-level description of the minority membership of our state bar and key issues they face as practitioners and judges.

New Mexico is a "minority-majority" state in which racial and ethnic minorities comprise 54% of the total adult population.⁶ Conversely, ethnic/racial minorities constitute only 23% of the active in-state members of the State Bar of New Mexico.⁷ Looking back at 20 years of bar admissions data, there was reason to expect that this disparity would narrow over time, albeit gradually. Between 1990 and 1999, ethnic/racial minority lawyers increased from 18% to 22% of active in-state members. However, admission rates to the State Bar over the last ten years have tempered that optimism, as ethnic/racial minorities gained but a single point to the present total of 23%.

A more encouraging view results when age is considered. Ethnic/racial minority lawyers comprise about 36% of active in-state lawyers aged 28 or less, and 30% of lawyers aged 29 to 44. These data suggest that if present trends were to continue and as older lawyers retire or become inactive, the percentage of ethnic/racial minorities will progressively increase. But however the numbers are parsed, experience over the last 30 years has demonstrated that without significant and creative outreach to prospective ethnic/racial minority law students and a concerted effort to recruit and retain minority lawyers in our state, approximating a representative cross-section of minority lawyers in our state will be difficult in the years to come.

E. Advancements and Cross-Sections

Women have significantly increased their numbers among active in-state lawyers in New Mexico, moving from 28% in 1989 to 38% in 2009. Fifty-five percent of all active in-state lawyers aged 28 or less are women, as are 50% of all active in-state lawyers aged 29 to 44. When gender and ethnic/racial makeup are considered, white males presently comprise 48% of all active in-state lawyers; 29% are white females, 11% are Hispanic males and 7% are Hispanic females. Native Americans comprise only 3% of active in-state members, while 1% are African Americans and 1% are Asian. Clearly, outreach efforts must be significantly increased to encourage and promote greater diversity and inclusivity, particularly among African American, Native American and Asian lawyers.

On the subject of law school admissions and faculty composition, the University of New Mexico School of Law remains a model of diversity with a national reputation. Minority enrollment at the School of Law has ranged from 34% to 46% over the last decade, with women averaging 56% of total enrollment. The School of Law remains a critical factor in maintaining the diversity of the State Bar of New Mexico at present levels. The School of Law consistently awards 30% of its degrees to Hispanics and has a law faculty that is 23% Hispanic, recently earning the school first place for the third consecutive year by *Hispanic Business* magazine in its report on the top ten law schools.

⁵ According to the ABA Commission on Racial and Ethnic Diversity in the Profession, 89.2% of the nation's lawyers are white, non-Hispanic. 3.3% are Hispanic, 3.9% are Black non-Hispanic, 2.3% are Asian and 0.2% are Native American. In terms of gender, 71.3% are male and 28.7% are female. Statistics about Minorities in the Profession from the Census. <http://www.abanet.org/minorities/links/2000census.html>.

⁶ Research & Polling, Inc. estimate based on most recent census data.

⁷ The greatest disparity exists among African American and Native American lawyers. African Americans constitute 3% of the state's population but only 1% of the state's active-instate lawyers. Native Americans are 9.7% of the population but only 3% of the state's active-instate lawyers.

The diversity of our district and appellate courts is very strong and has increased significantly over the past decade. Of the state's 166 current metropolitan, district and appellate judges, including the New Mexico Supreme Court, 38% are ethnic/racial minorities. This far outpaces the overall 23% ethnic/racial minority membership of the State Bar. In 1990, minorities represented only 27% of the judiciary and 26% in 1999. As explained below, fluctuations in the numbers of ethnic/racial minority judges over the last 20 years are influenced largely by the increased numbers of minorities applying for judicial appointments or running for election, and the level of commitment to diversity of successive governors who appoint judges under the state's modified merit system.

So with that basic sketch of the minority members of our bar and judiciary, we move to the substantive detail and discussion of the status of minority lawyers in New Mexico. But first, to the dedicated lawyers, judges and law students who comprise the Committee on Diversity in the Legal Profession and with whom it was my privilege to participate in the development of the report, I extend my lasting appreciation for their thoughtful research, input and editing. The expertise of Brian Sanderoff and his highly talented group was essential to the development and analysis of the data compiled for this report. Mr. Sanderoff's expertise adds great credibility and clarity to the study.

Most importantly, it should be recognized that this project would not have been possible without the consistent and steadfast support of the Board of Bar Commissioners and Joe Conte, the executive director of the State Bar of New Mexico, and the continuing encouragement of the New Mexico Supreme Court. Their collective commitment to diversity in the legal profession has been constant and unwavering. The committee is encouraged and inspired by the tremendous value they place on diversity and inclusiveness in the profession.

F. Survey Methodology

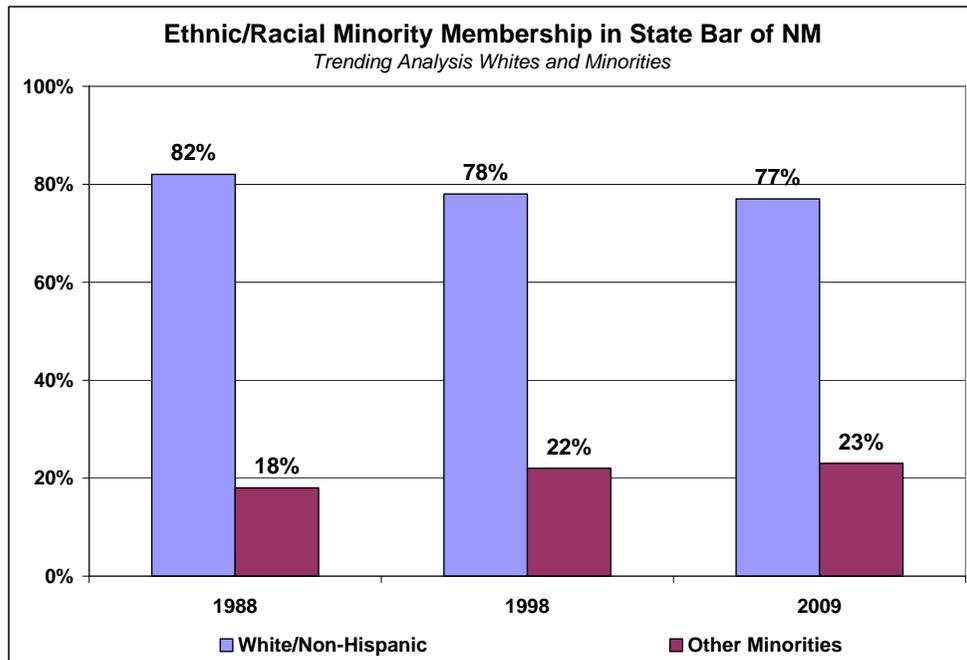
As part of the 2009 study, the Committee on Diversity in the Legal Profession commissioned Research & Polling, Inc. to conduct a survey of active State Bar members. The survey was conducted via the Internet and by mail. E-mail invitations were sent to all active Bar members who have an e-mail address. The e-mail contained a link to an external website where the survey could be completed online. A paper survey was sent by mail to those members who did not have an email listed in the member database.

Each of the 5,322 active in-state members was invited to participate in the survey which included 4,718 email invitations and 604 paper surveys sent by mail. A total of 1,318 completed surveys were returned which included 1,167 completed Internet surveys and 151 completed standard mail surveys. The 1,318 returned surveys represent a response rate of 25%. All individual responses to the survey were kept confidential and anonymous. Surveys were completed between June 8 and July 3, 2009.

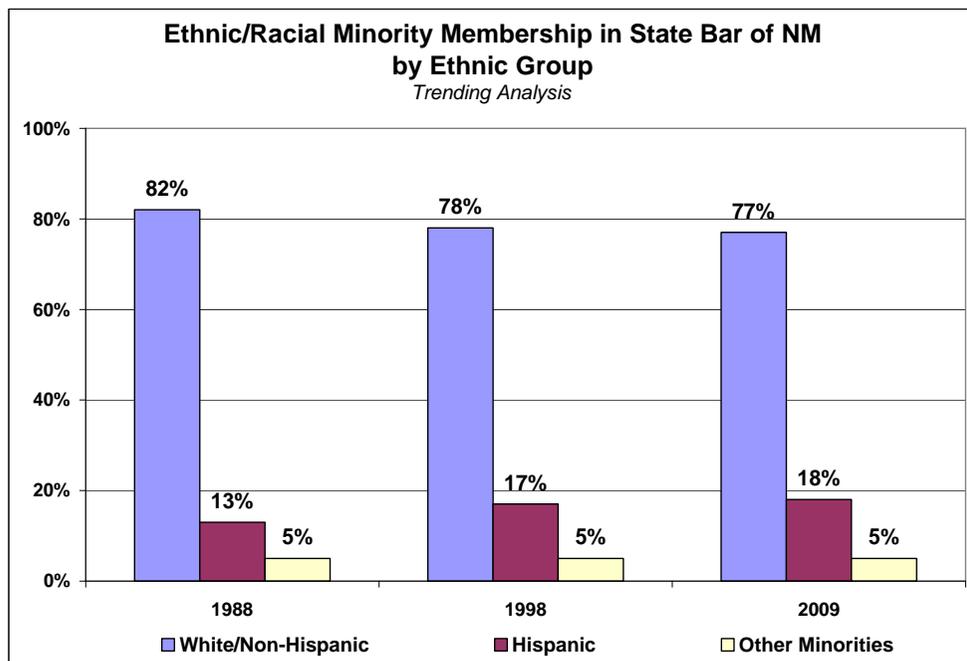
Some of the questions in the survey were taken from a similar study conducted in 1998. When possible, comparisons are made between the results of the 1998 study and the results of the current study. Due to limitations in the sampling methodology used in the 1998 survey, direct comparisons are only made at the subgroup level (race/ethnicity and gender) rather than making comparisons at the total sample level.

II. Demographic Data on Minority Attorneys in New Mexico

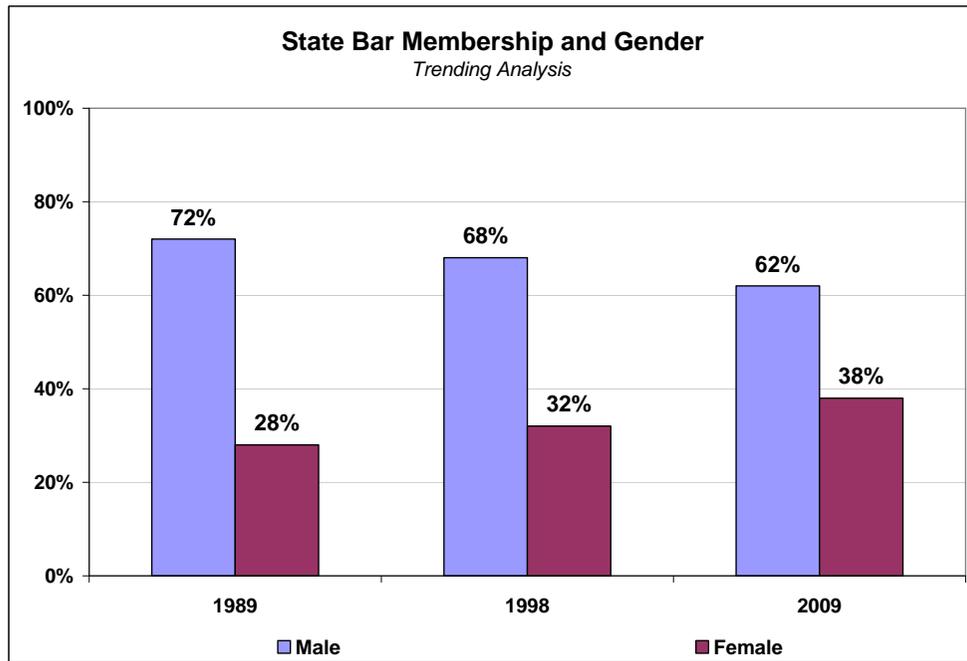
A. Minority Membership



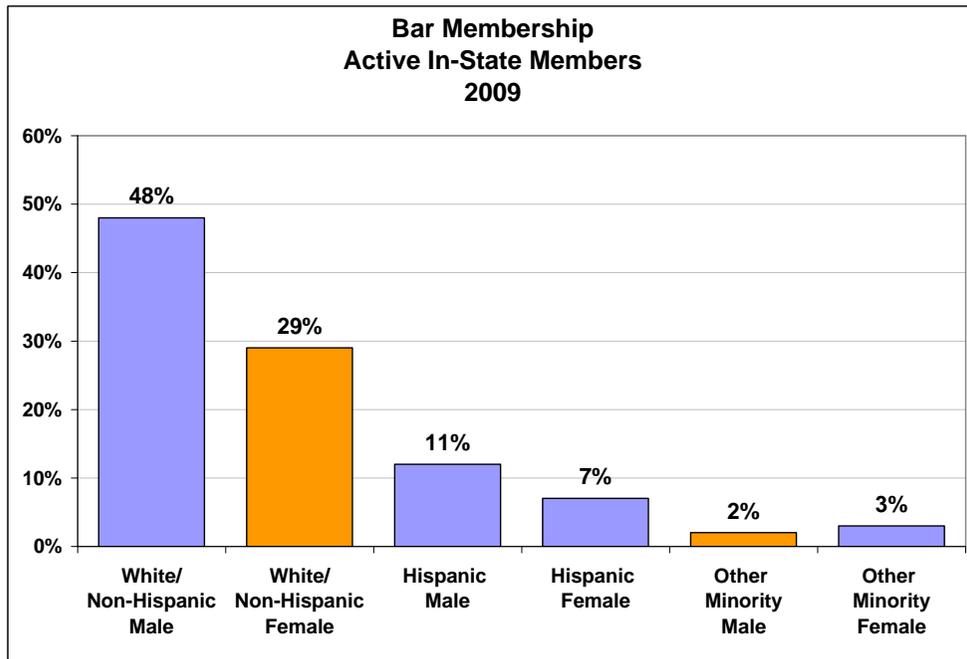
From data provided by the State Bar of New Mexico between 1988 and 1998, the percentage of in-state ethnic/racial minority attorneys increased by four percentage points from 18% to 22%. However, over the past 11 years, there has been very little change in the percentage of ethnic/racial minorities practicing in New Mexico. Currently, ethnic/racial minorities make up 23% of all active in-state members, nearly identical to that observed in 1998.



Segmenting the data further it is observed that Hispanics currently make up 18% of the State Bar, while 5% are other ethnic/racial minority members. Interestingly, the percentage of members who are non-Hispanic minorities has not changed over the past 20 years, while Hispanic membership has grown by five percentage points. It should be noted that 3% of State Bar membership is comprised of American Indian members, while 1% are African Americans and 1% are Asian.



While the percentage of ethnic/racial minority membership has changed very little over the past 10 years, women continue to increase their membership levels in the State Bar. Currently, nearly two-in-five State Bar members (38%) are female, up from 32% observed in 1998 and 28% observed in 1989.



Looking at the gender and ethnic/racial makeup of the State Bar, we find that 48% of all members are White males, while 29% are White females. Hispanic males represent 11% of the State Bar, while 7% are Hispanic females. Non-Hispanic minority males are 2% of the State Bar, while other ethnic/racial females constitute 3% of State Bar membership.

Composition of State Bar: Age By Ethnicity/Race						
Age	Total % of Members		White/ Non-Hispanic	Hispanic	Other	Total
28 or less	2%	→	64%	24%	12%	100%
29 to 44	30%	→	70%	23%	7%	100%
45 to 63	55%	→	79%	17%	4%	100%
64+	13%	→	87%	10%	3%	100%

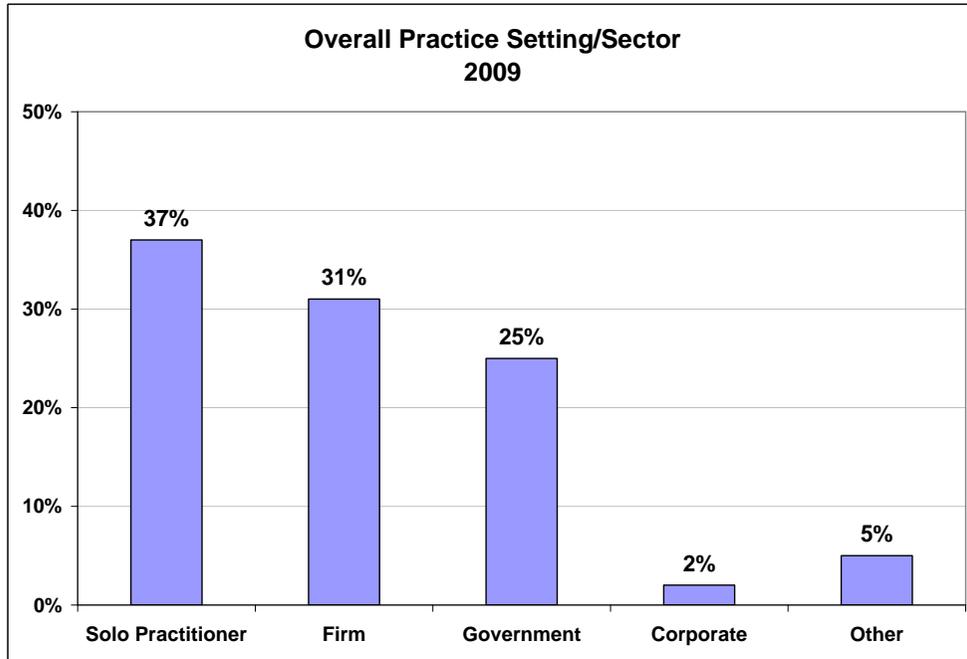
The table above shows the age profile of active in-state State Bar members. Overall, 32% of members are 44 years of age or younger, while the majority (55%) fall between the ages of 45 and 63, and 13% are 64 or older.

Looking at the ethnic/racial profile within each age grouping, it is observed that the older members of the State Bar are far more likely to be White non-Hispanics. The efforts to promote diversity within the State Bar over the past two decades is evidenced by the fact that while just 10% of the members 64 or over are Hispanic, the percentage of Hispanics rises to 17% among members between the ages of 45 to 63, and nearly one-quarter of the members under the age of 44. Other ethnic/racial minorities also have higher representation among the younger age groups.

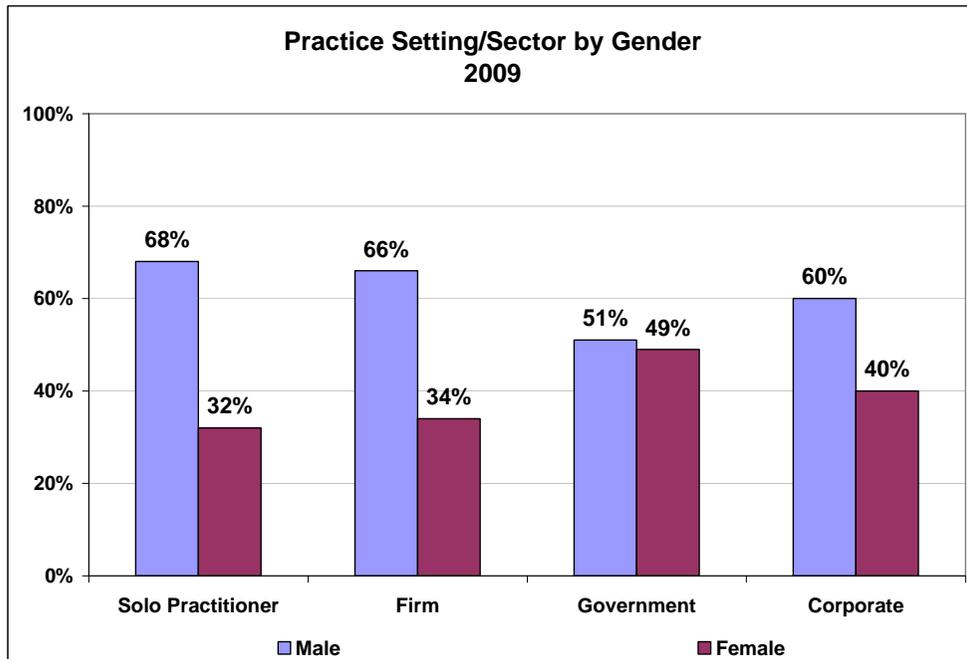
Composition of State Bar: Age By Gender					
Age	Total % of Members		Male	Female	Total
28 or less	2%	→	45%	55%	100%
29 to 44	30%	→	50%	50%	100%
45 to 63	55%	→	63%	37%	100%
64+	13%	→	85%	15%	100%

The differences in gender among the various age groups is even more dramatic. Looking at members 64 years or older, 85% are male compared to 15% who are female. Even among those between the ages of 45 to 63 we find that the large majority (63%) are male compared to only 37% female. However in the next generation (those age 29 to 44) half of the members are female and among those 28 years of age or less, the majority are female.

B. Practice Setting



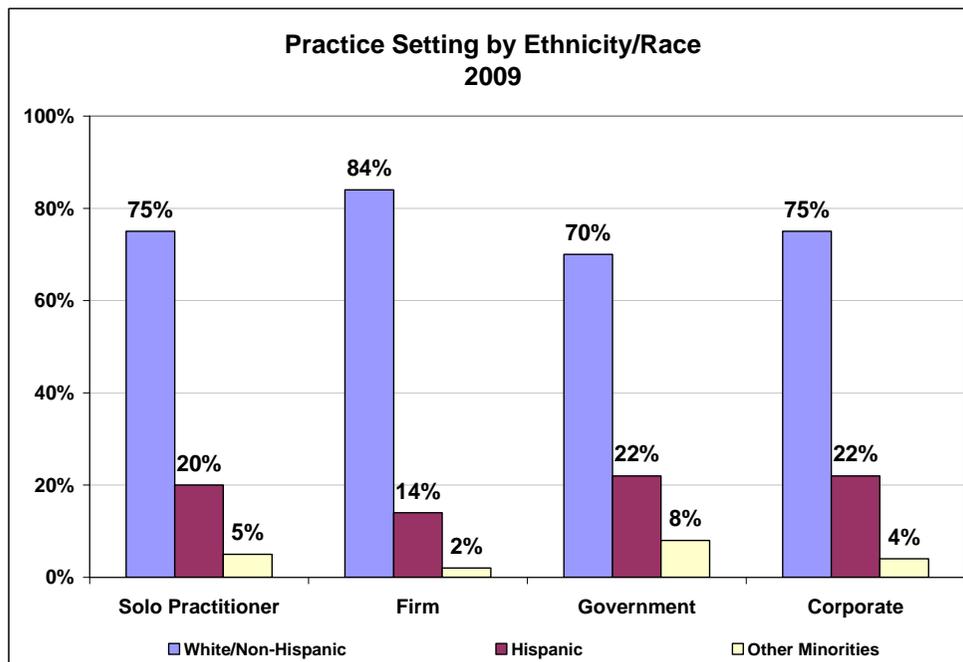
Data furnished by the State Bar of New Mexico reveals that approximately two-thirds of State Bar members are either solo practitioners (37%) or work for a law firm (31%), while 25% work for a government agency and 2% work for a corporation.



Looking further into the composition of the various practice settings, we find that 68% of the solo practitioners are male, while 32% are female. Law firms have a very similar profile as 66% of the attorneys are male and 34% female. However, the percentage of female attorneys in the government sector (49%) is nearly equal to that of men (51%).

Type of Practice/Sector by Gender Trending				
	Male		Female	
	1998	2009	1998	2009
Solo Practitioner	74%	68%	26%	32%
Firm	75%	66%	26%	34%
Government	57%	51%	43%	49%

The table above shows how the makeup of various practice settings has changed over the past decade when it comes to gender. The percentage of solo practitioners and government attorneys who are female has increased by six percentage points since 1998, and the percentage of females who work in a law firm has increased by eight percentage points from 26% in 1998 to 34% currently.

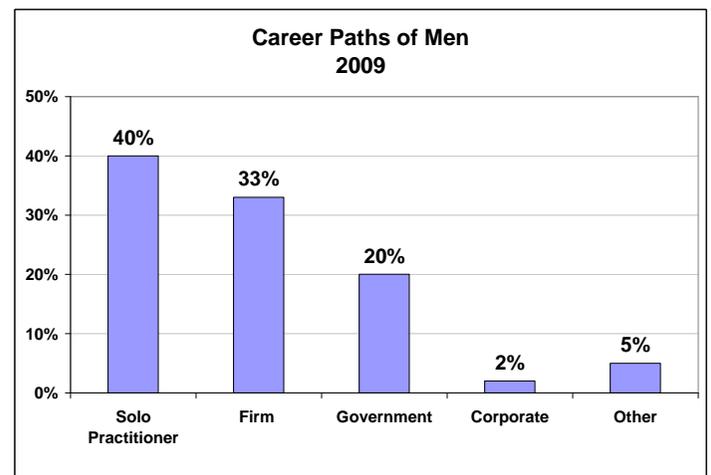
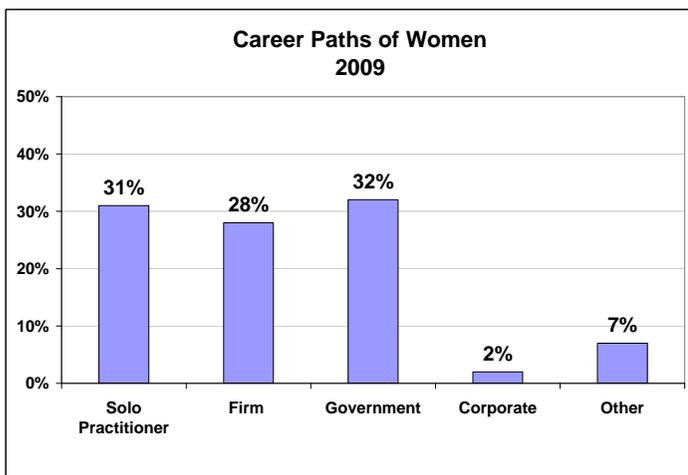


The table above shows the ethnic/racial makeup of various practice settings in New Mexico. Overall, 75% of the solo-practitioners are White non-minorities while 20% are Hispanic and 5% are other ethnic/racial minorities. Over four-fifths (84%) of those working for a private firm are White non- ethnic/racial minority attorneys, while 14% are Hispanic and 2% are non-Hispanic minorities. In the government sector 70% are White non-minorities, 22% Hispanics, and 8% are other racial/ethnic minority members.

Type of Practice by Ethnicity/Race Trending						
	White/ Non-Hispanic			Minorities		
	1988	1998	2009	1988	1998	2009
Firm	87%	84%	84%	13%	16%	16%
Solo Practitioner	79%	74%	75%	21%	26%	25%
Government	74%	69%	70%	27%	32%	30%
Corporate	83%	72%	75%	17%	28%	26%
Other	N/A	72%	72%	N/A	27%	28%

The table above shows how the makeup of various practice settings has changed over the past two decades when it comes to race and ethnicity. Overall, there has really been very little change in the ethnic racial makeup of the various practice settings, particularly in the past 10 years. For example, 26% of the solo practitioners were ethnic/racial minorities in 1998 compared to 25% observed currently. Sixteen percent of those currently working in a firm are ethnic/racial minority members, which is identical to that observed in 1998.

C. Career Paths

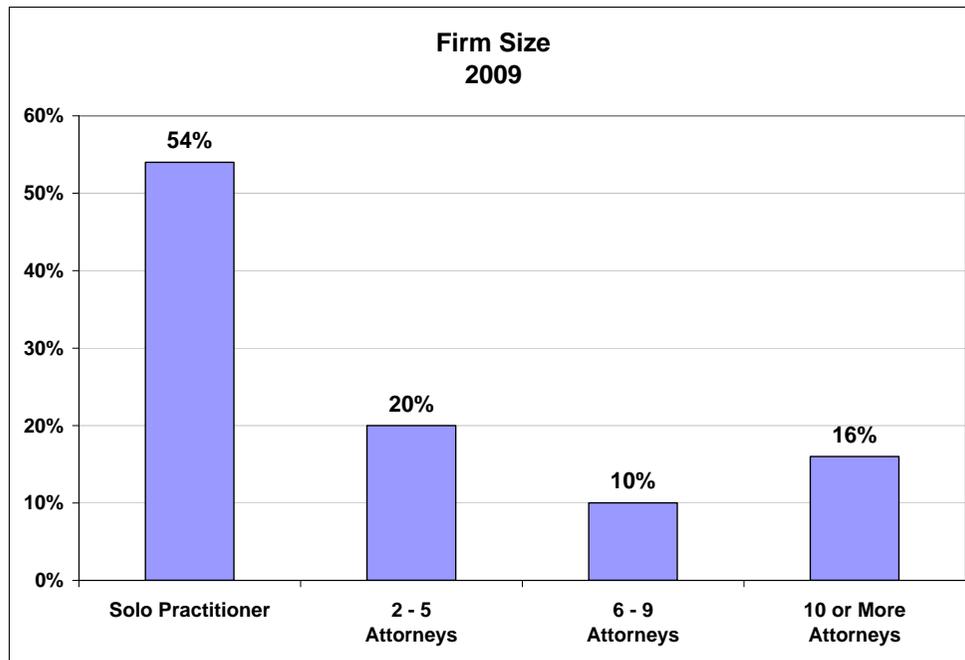


Looking at the various career paths by gender in a different way, it is observed that 59% of the female attorneys in New Mexico are either solo practitioners (31%) or work for a private firm (28%) while 32% work for a government agency. In comparison, nearly three-quarters of male attorneys are working either as a solo practitioner (40%) or in a firm (33%) compared to 20% who work for a government agency.

Career Paths by Race/Ethnicity				
		<i>White/ Non- Hispanic</i>	<i>Hispanic</i>	<i>Other Minority</i>
Solo Practitioner		36%	40%	34%
Firm		34%	23%	13%
Government		23%	29%	38%
Corporate		2%	3%	2%
Other		5%	5%	13%
	Total	100%	100%	100%

Looking at the career paths within the various ethnic/racial groups, it is observed that 40% of the Hispanic attorneys in New Mexico work as a solo practitioner while 23% work for a firm and 29% work for a government agency. Hispanics (40%) are slightly more likely than White-non-Hispanics (36%) and other ethnic/racial minority members (34%) to work as a solo practitioner. White non-Hispanic attorneys (34%) are much more likely than Hispanics (23%) and other non-ethnic/racial minorities (13%) to work for a law firm. It should also be noted that the plurality (38%) of other minority attorneys work for a government agency.

D. Firm Size



Of the private practices in New Mexico, 54% are solo practitioners, 20% are firms with two to five attorneys, 10% have between six to nine attorneys, and 16% are larger firms with 10 attorneys or more.

Firm Size by Gender and Ethnicity/Race 2009						
	Male	Female		White/ Non- Hispanic	Hispanic	Other Racial/Ethnic Minority
Solo Practitioner	68%	32%		75%	20%	5%
2 – 5 Attorneys	67%	33%		84%	14%	2%
6 – 9 Attorneys	65%	35%		83%	14%	3%
10 or More Attorneys	64%	36%		86%	12%	2%

Looking at the demographic compositions of the various private practices, it is observed that 68% of the solo practitioners are male, while 32% are female. Overall, there is relative small variability in terms of the gender composition of smaller and larger firms. Women constitute 36% of the attorneys working in large firms of 10 or more.

When it comes to the ethnic/racial composition of the private practitioners, we find that Hispanics tend to be overrepresented as solo practitioners. In total, 20% of the solo practitioners are Hispanic and another 5% are non-Hispanic minorities. In comparison, only 14% of the attorneys working in firms of 10 or more are a ethnic/racial minority member.

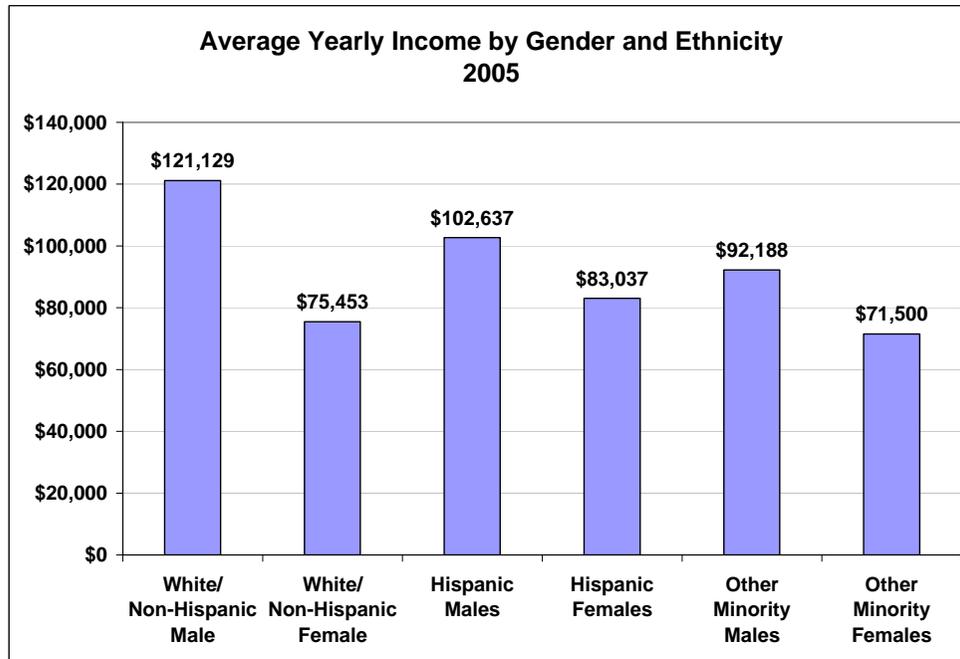
Though not shown, it should be noted that the ethnic/racial composition of attorneys working in law, be it large or small firm, has changed very little over the last 20 years. For instance, 13% of attorneys working in law firms of 10 or more were ethnic/racial minorities in 1998, nearly identical to the 14% observed in 2009.

Ethnic/Racial: Firm Size 2009					
	Sole Practitioner	2 – 5 Attorneys	6 – 9 Attorneys	10 or More Attorneys	Total
White/Non-Hispanic	51%	22%	10%	17%	100%
Hispanic	63%	17%	8%	12%	100%
Other Minority	73%	11%	8%	8%	100%

Looking at the firm size and the career choices of ethnic/racial minority members in a different way, it is observed that 51% of the White non-minority attorneys in private practice work as a solo practitioner, while 49% work in a law firm (17% work in a firm with 10 or more attorneys).

In comparison, 63% of private Hispanic attorneys work as a solo practitioner compared to 37% who work in a firm. Furthermore, nearly three-quarters (73%) of non-Hispanic minority attorneys work as solo practitioners. Again it should be noted this data is based only on attorneys working in private practice, excluding those who work for the government, a corporation, or other setting.

E. Income



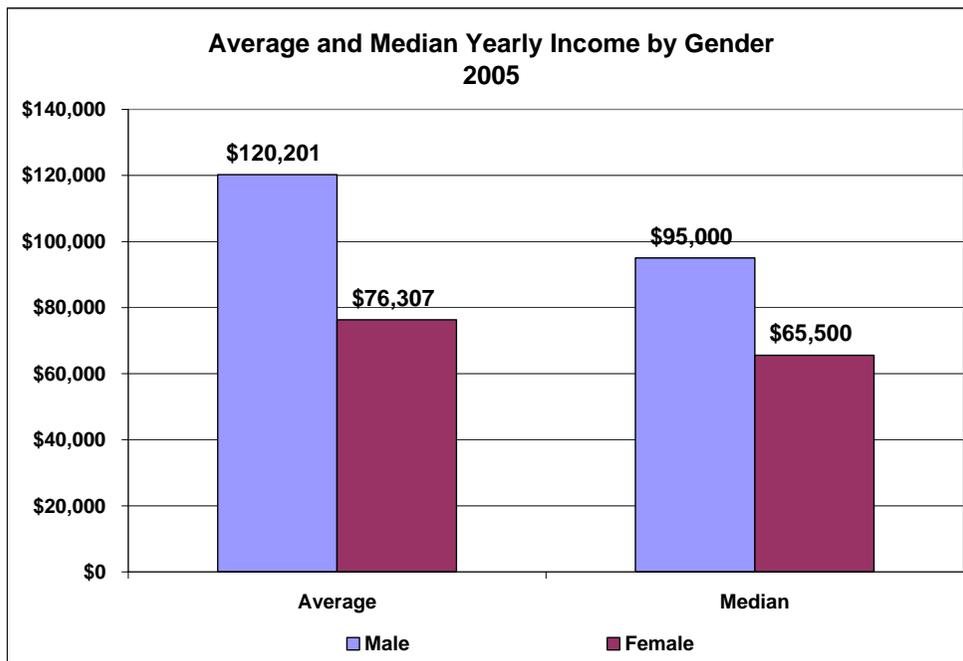
The most recent comprehensive salary survey among State Bar members was conducted by Research & Polling in 2005. As shown above, there were large differences in salaries between the different population groups.

The overall average salary for an attorney in New Mexico was \$99,321 in 2005. However, the average salary for Anglo males was \$121,129 compared to an average salary of \$92,188 for non-Hispanic minority males.

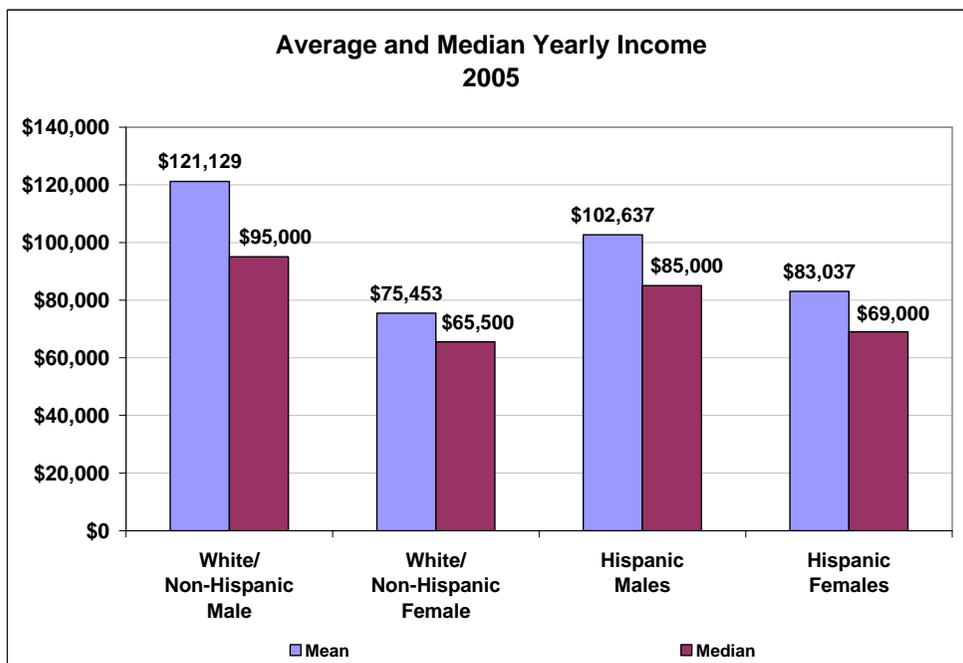
Female attorneys earned significantly less than their male counterparts. Among female attorneys, Hispanics had the highest average salary of \$83,037 compared to \$75,453 among White female attorneys and \$71,500 among other minority females.

The discrepancies in salary may be attributable to a variety of factors. As pointed out in the *2005 State Bar of New Mexico Compensation Survey*, women were more likely than men to work part-time rather than full-time.⁸ Furthermore, as pointed out earlier, women are much more likely than men to work for government agencies which tend to have lower salaries when compared to the private sector.

⁸ 12% females and 5% males worked part-time, *2005 State Bar Compensation Survey*.



As shown above, the average annual salary for male attorneys was \$120,201 in 2005 compared to an average salary of \$76,307 among female attorneys. The median or midpoint salary for men was \$95,000 compared to \$65,500 for women. Part of the discrepancy between male and female attorneys can be explained by the fact that female attorneys had been practicing for shorter periods of time when compared to male attorneys. Female attorneys were also more likely than males to work in government positions which tend to pay less, and women are more likely than men to work part-time. Although some of the disparity in income between male and female attorneys can be explained, it still merits more scrutiny by the State Bar and the Committee on Women in the Profession.



The salaries previously discussed are the overall averages for each population group. The overall median or midpoint where half of the salaries fall either above or below is considerably lower for each group. In the case of Hispanic males, we observe the 2005 average salary was \$102,637; however, the median salary or midpoint for Hispanic males was \$85,000. Thus, in 2005 half of the Hispanic males made \$85,000 or above while half made \$85,000 or below. In comparison, the median salary among White males was \$95,000 compared to their overall average of \$121,129.

III. The Perspectives of New Mexico Attorneys on Racial and Ethnic Fairness in the Legal System

A. Bar Diversity Introduction

As noted earlier, the 2009 State Bar of New Mexico Committee on Diversity commissioned a private firm, Research & Polling, Inc, to conduct a survey of active State Bar members. Electronic surveys were e-mailed to all State Bar members with an e-mail address, while paper surveys were mailed to members who did not have an e-mail listed in the membership list. A total of 1,318 surveys were completed either online or by mail, which represents a response rate of 25%. The demographics of the survey respondents closely mirrors that of State Bar members overall.

The following section of the report discusses the key survey findings, with breakouts of important population groups. Also reported are comparisons to a study conducted for the 1999 task force. In the 1999 study, 152 respondents completed the questionnaire, 40% of whom were Hispanic, more than twice the actual percentage of Hispanics in the State Bar at that time. Because of this, comparisons cannot be made among the total samples; however, it is possible to show comparisons between White non-Hispanic members and Hispanic members when looking at the results from the 1999 and 2009 studies.

Comparison Between Survey and State Bar Demographics

	<u>Bar</u>	<u>Survey</u>		<u>Bar</u>	<u>Survey</u>
<u>Race/Ethnicity</u>			<u>Practice Setting</u>		
White	77%	67%	Solo Practice	37%	22%
Hispanic	18%	22%	Firm	31%	32%
American Indian	3%	3%	Government/Judiciary	25%	35%
African American	1%	2%	Corporation/In-House	2%	4%
Asian American	1%	1%	Counsel		
Other	<1%	5%	Legal Aid/Non-Profit	1%	4%
			Other	4%	3%
<u>Age</u>			<u>Length of Time as Lawyer</u>		
30 or younger	5%	6%	Less than 5 years	NA	14%
31-40	19%	18%	5-10 years	NA	15%
41-50	22%	21%	11-15 years	NA	12%
51-60	32%	32%	16-20 years	NA	11%
61+	22%	23%			
			<u>Sexual Orientation</u>		
			Heterosexual	NA	94%
<u>Gender</u>			LGBT	NA	6%
Male	62%	56%			
Female	38%	43%	<u>Disabled</u>		
			Yes	NA	6%
			No	NA	94%

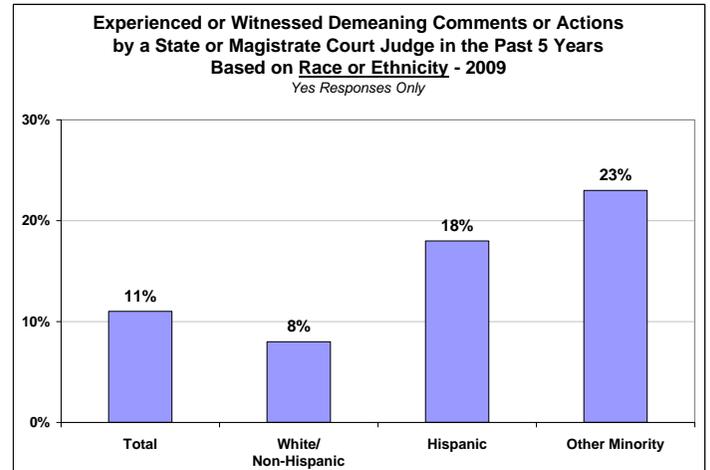
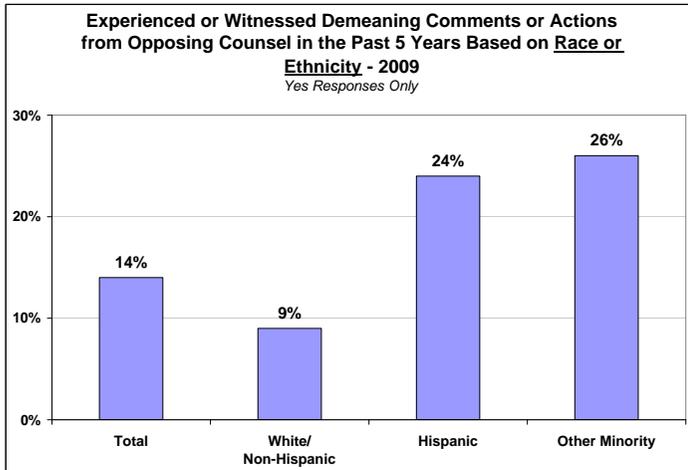
The overall demographics of those who responded to the 2009 survey closely match that of the membership of the State Bar of New Mexico. As shown above, 67% of the survey respondents are White non-Hispanics, 22% are Hispanic, while 6% are other non-Hispanic minorities. Another 5% marked their race/ethnicity as “other.” Data supplied by the State Bar shows that 77% of active in-state members are White Non-Hispanics, 18% are Hispanic, and 5% are other non-Hispanic minorities.

The overall age demographics of those who completed the survey are almost identical to those of the State Bar membership. For gender, 56% of those who completed the survey are male and 43% are female, which is similar to overall State Bar membership (62% male/38% female).

B. Experienced Demeaning Comments or Actions

We first asked the survey respondents if they witnessed or experienced demeaning comments or actions from opposing counsel within the past five years they thought were based on race or ethnicity. Respondents were also asked if they experienced such actions or comments from a state or magistrate judge within the past five years.

RACE/ETHNICITY



As shown above, 14% of survey respondents say they experienced or witnessed demeaning comments or actions in the course of dealing with opposing counsel they thought were based on race or ethnicity in the last five years. However, when looking at the differences between ethnic/racial groups, it is observed that both Hispanics (24%) and other ethnic/racial minorities (26%) are almost three times as likely as White non-Hispanic members (9%) to have observed such demeaning comments/actions from opposing counsel.

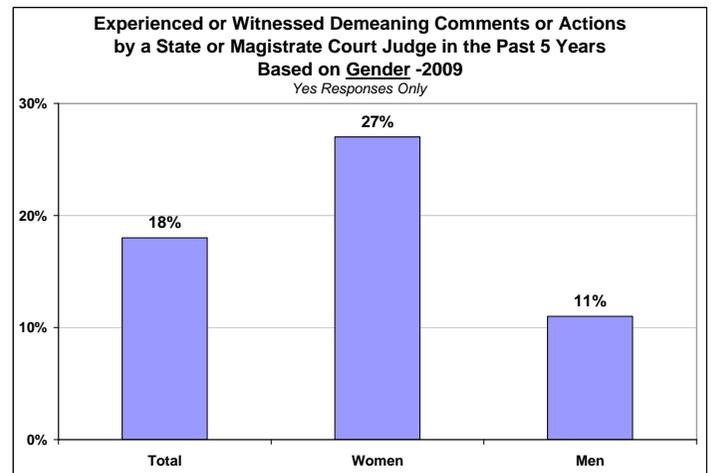
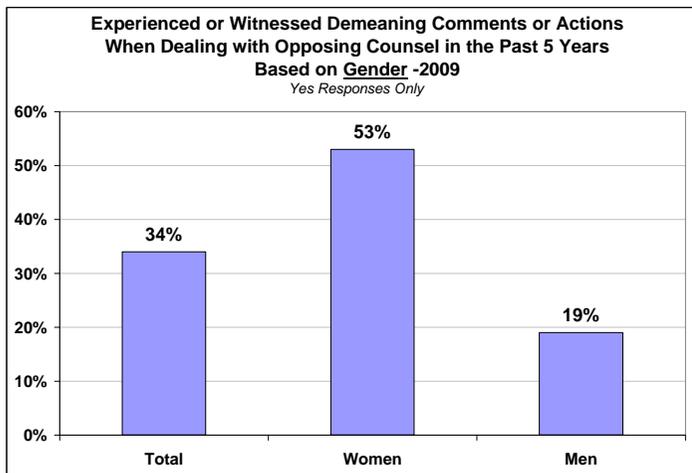
It is also observed that 11% of all survey respondents say they experienced or witnessed demeaning comments or actions by a state or magistrate judge in the last five years they thought were based on race or ethnicity. Again it is observed that both Hispanics (18%) and other minorities (23%) are more likely than White members (8%) to have observed such demeaning comments/actions from a judge.

TRENDING ANALYSIS
Percentage of Respondents Witnessing Demeaning Comments
or Actions by Opposing Counsel or Judges

	White/ Non- Hispanic		Hispanic	
	1999	2009	1999	2009
Opposing Counsel	26%	9%	46%	24%
Judges	29%	8%	33%	18%

Looking at trending results when compared to the survey conducted for the 1999 *Committee on Diversity in the Legal Profession Study*, it is observed that the percentage of both Hispanics and White/non-Hispanics who say they have witnessed or experienced demeaning comments or actions from either opposing counsel or judges has declined significantly. In the 1999 study, 46% of Hispanic respondents reported having such experiences with opposing counsel compared to 24% in the current study. The percentage of Hispanics who report such experiences with judges has also declined from 33% in 1999 to 18% currently. It should be noted that in 1999 this question specifically asked about magistrate court judges; whereas, the 2009 study asked about state court or magistrate court judges.

GENDER

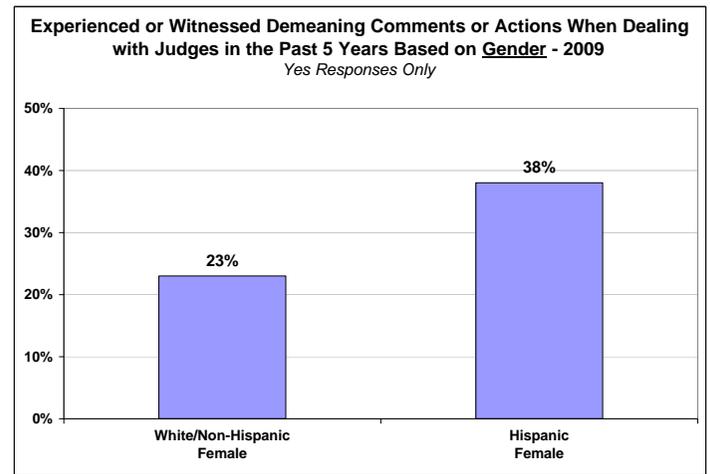
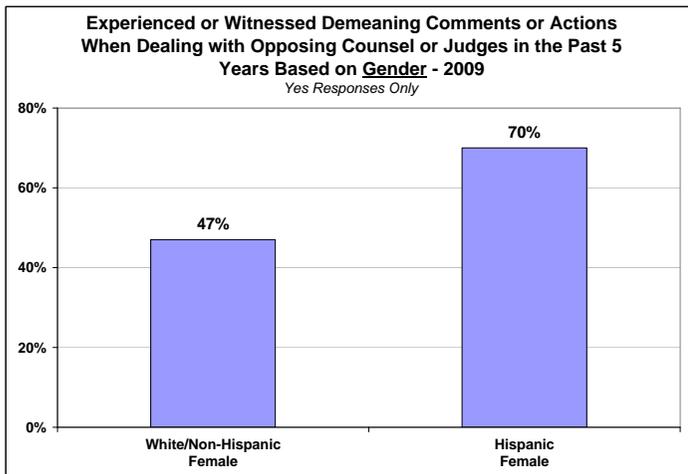


Members were also asked if they witnessed or experienced demeaning comments or actions from opposing counsel and judges they thought were based on *gender* within the past five years.

In total, approximately one-third (34%) of survey respondents say they experienced or witnessed demeaning comments or actions in the course of dealing with opposing counsel they thought were based on gender. Women (53%) are almost three times more likely than men (19%) to say they have experienced or witnessed such comments or actions from opposing counsel. It should be noted that in the 1999 study, 73% of female respondents reported having experienced or witnessed demeaning comments or actions from opposing counsel compared to 53% observed in 2009.

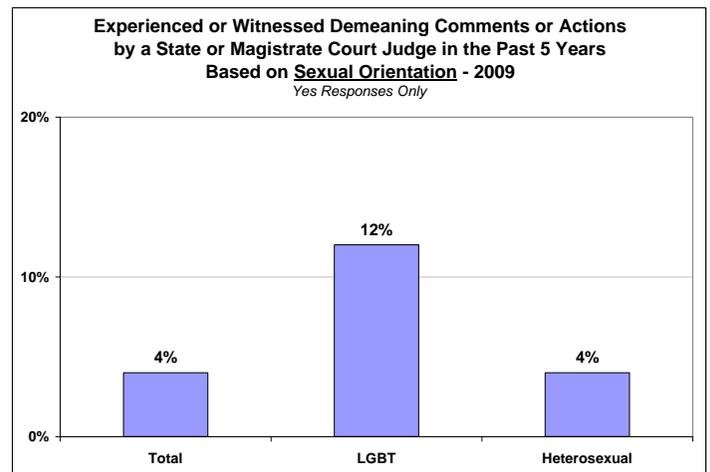
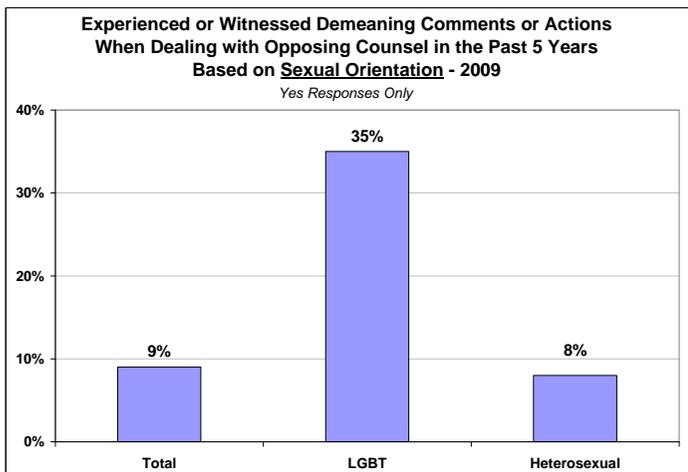
When it comes to judges, it is observed that 18% of respondents witnessed or experienced demeaning comments/actions they felt were based on gender. Again, women (27%) are more inclined than men (11%) to have experienced or witnessed demeaning comments or actions from a state or magistrate court judge believed to have been based on gender within the past five years.

The fact that the majority of female respondents have witnessed or experienced demeaning comments from opposing counsel and over one quarter have such experience with judges shows there is still work to be done to increase awareness and reduce discriminatory words or actions.



While one might expect that women and men would have different experiences in terms of gender based comments and actions, there are striking differences in perception between Hispanic females and White females. As shown above, 70% of Hispanic females compared to 47% of White females say they have witnessed or experienced demeaning comments or actions from opposing counsel they felt was based on gender. Furthermore, Hispanic females (38%) are more likely than White females (23%) to say they have witnessed or experienced demeaning comments/action from judges that were based on gender. Although the sample size is very small, other minority females are also more likely than their White female colleagues to have such experiences.

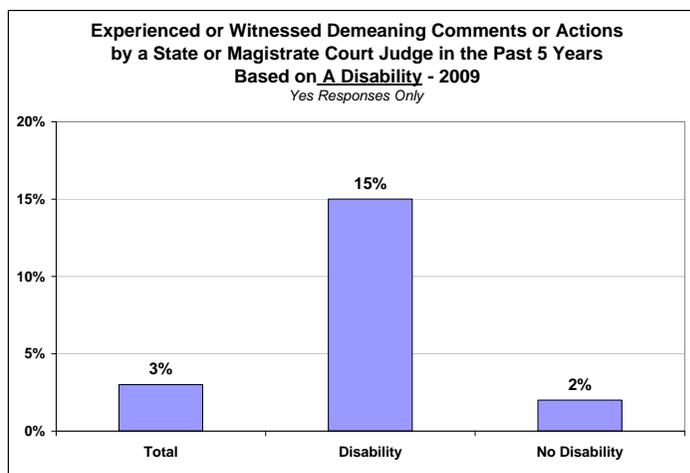
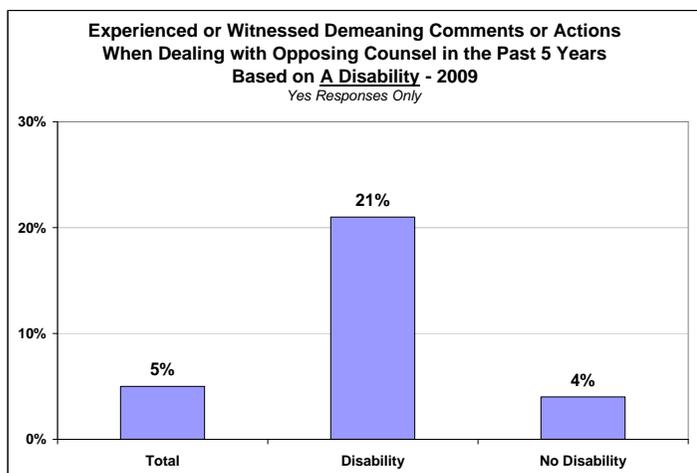
SEXUAL ORIENTATION



Nine percent of all survey respondents experienced or witnessed demeaning comments or actions from opposing counsel that were based on actual or perceived sexual orientation. LGBT respondents are approximately four times more likely than heterosexual respondents to have witnessed or experienced such actions from opposing counsel (35% and 8%, respectively).

Just 4% of all respondents witnessed or experienced demeaning comments/actions they felt were based on sexual orientation from a state or magistrate judge. Again, LGBT respondents are more likely than heterosexual respondents to have witnessed or experienced such comments or actions from a judge within the past five years (12% and 4%, respectively).

DISABILITY

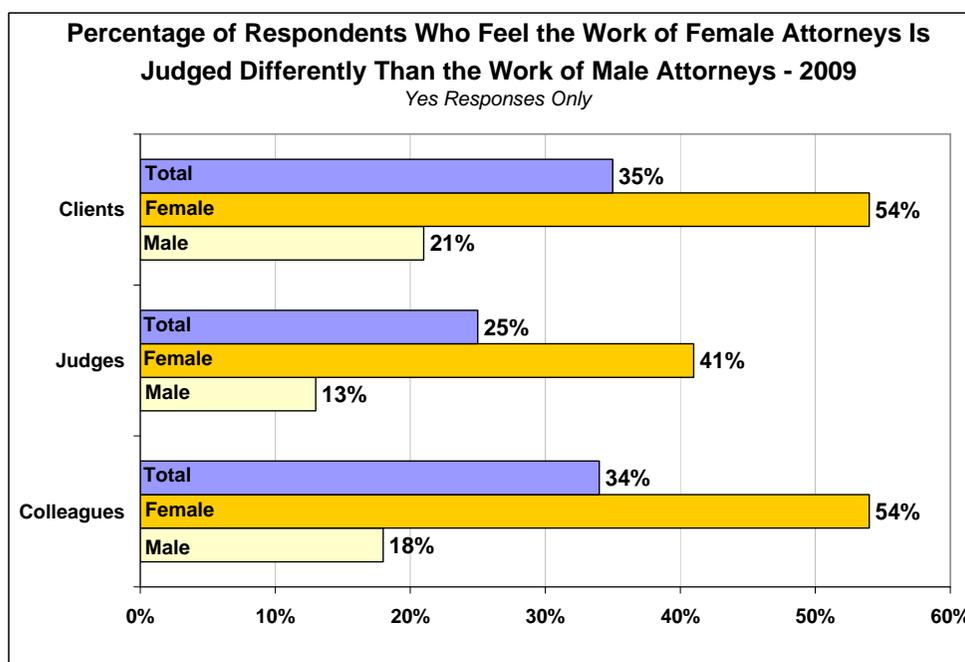


Five percent of all survey respondents experienced or witnessed demeaning comments or actions from opposing counsel they felt were based on a disability. Twenty-one percent of respondents who have a disability report having experienced or witnessed such actions from opposing counsel in the past five years compared to just 4% of those who do not have a disability.

Just 3% of all respondents witnessed or experienced demeaning comments/actions they felt were based on a disability from a state or magistrate judge. Those who have a disability are more likely than those who do not have a disability to have experienced or witnessed such action from a judge (15% and 2%, respectively).

C. Differential Treatment of Work Based on Race/Ethnicity and Gender

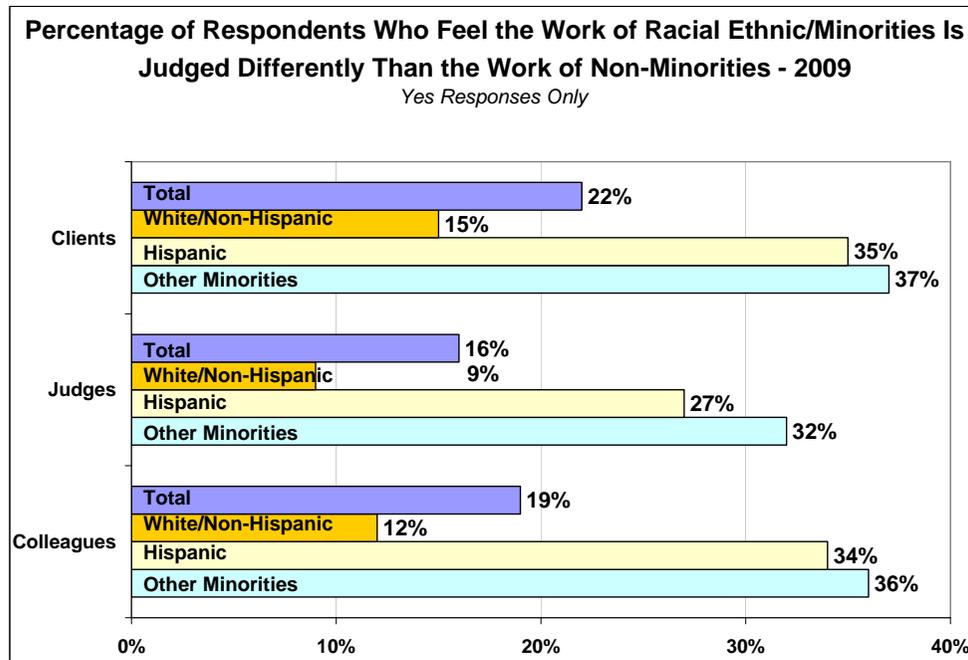
State Bar members were asked if they feel the work of female attorneys is judged differently from the work of male attorneys by three separate groups: clients, judges and colleagues. The table below shows the percentage of all respondents who believe the work of female attorneys is judged differently as well as the differences in perception among males and females.



Overall, 35% of survey respondents believe that clients judge the work of female attorneys differently from that of male attorneys. Female respondents (54%) are far more likely than males (21%) to believe clients judge their work differently.

One-in-four respondents believe that judges evaluate the work of male and female attorneys differently, though women are more than three-times as likely as men to believe that judges view their work differently (41% and 13%, respectively).

The majority of female attorneys (54%) also believe that colleagues judge the work of female attorneys differently from that of males. In comparison, just 18% of male attorneys believe this to be the case



State Bar members were also asked if they feel the work of ethnic/racial minority attorneys is judged differently from the work of non-minority attorneys. There are clear differences in perception among Hispanics and other ethnic/racial minority attorneys when compared to non-minorities.

Overall, 22% of survey respondents believe that clients judge the work of ethnic/racial minority attorneys differently from that of non-minority attorneys. Hispanic respondents (35%) and other ethnic/racial minority attorneys (37%) are far more likely than White non-minorities (15%) to believe clients judge the work differently.

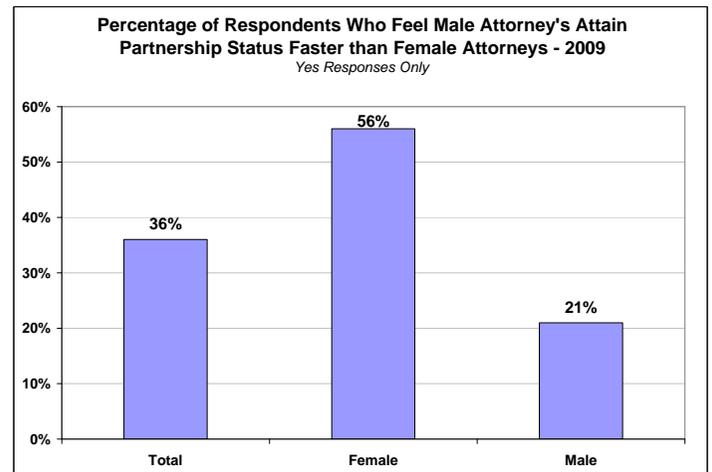
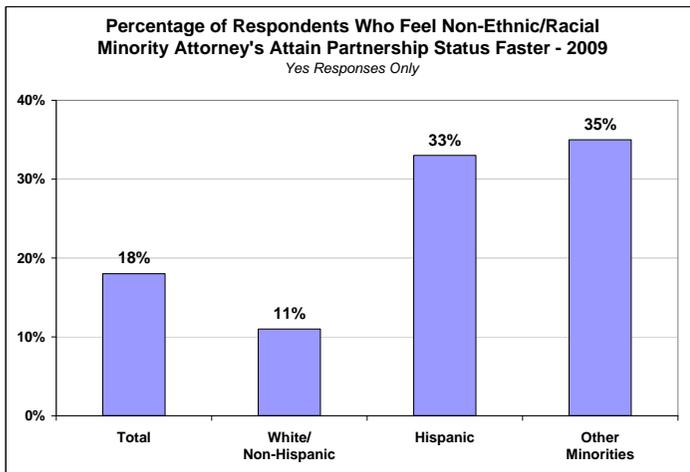
Sixteen percent of all respondents believe that judges look at the work of ethnic/racial minority and non-minority attorneys differently. Hispanics (27%) and other ethnic/racial minorities (32%) are far more likely than non-minorities (9%) to believe judges evaluate the work of ethnic/racial minority attorneys differently.

Approximately one-in-five (19%) respondents believe their colleagues judge the work of ethnic/racial minorities and non-minorities differently. Again, this feeling is more prevalent among Hispanic (34%) and other ethnic/racial minority attorneys (36%) than it is among non-minorities (12%).

Percentage of Respondents Who Feel Work of Ethnic/Racial Minorities Is Judged Differently - <u>Gender/Racial Comparisons</u>				
	<u>White/ Non-Hispanic Male</u>	<u>Hispanic Male</u>	<u>White/ Non-Hispanic Female</u>	<u>Hispanic Female</u>
Clients	9%	32%	22%	39%
Judges	5%	25%	15%	30%
Colleagues	6%	31%	19%	38%

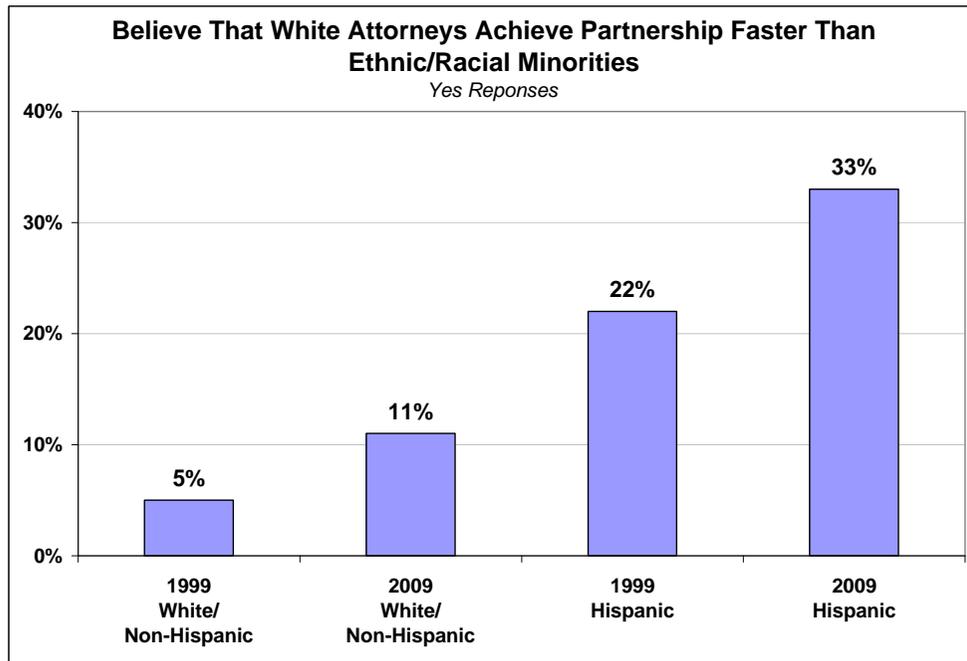
The table above provides a little more insight into the perceptions of different population groups on the issue of how the work of ethnic/racial minorities is judged. What this shows is that Hispanic females are more inclined than either White or Hispanic males or White females to believe that clients, judges, and colleagues judge the work of ethnic/racial minorities differently. Nearly two-fifths of Hispanic females believe clients (39%) and colleagues (38%) judge the work of ethnic/racial minorities differently from non-minorities and 30% feel this way about judges. In comparison, less than 10% of White males feel this way about clients, judges or colleagues.

D. Career Advancement Opportunities

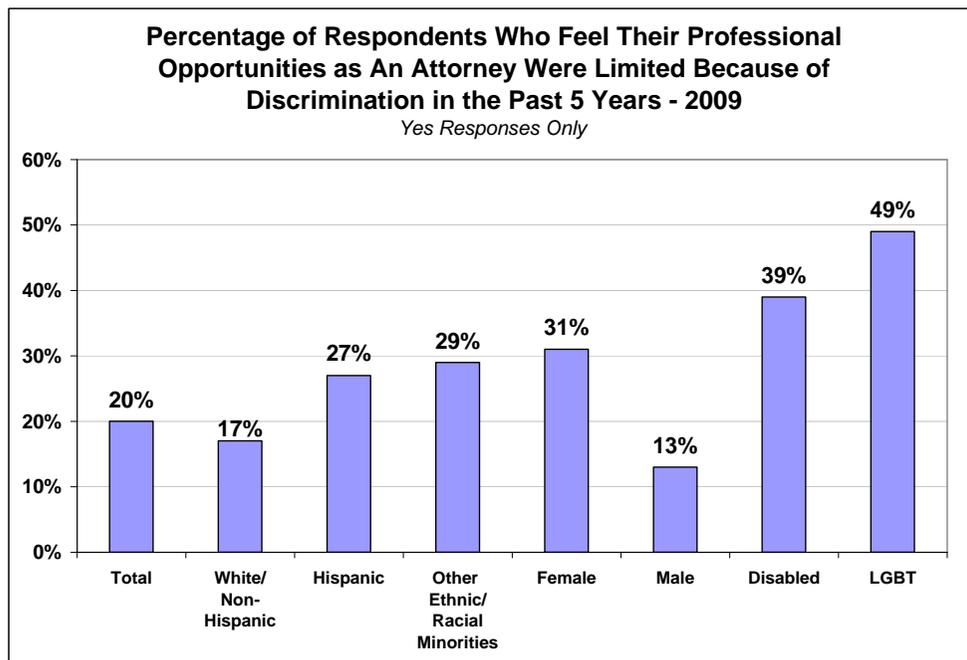


State Bar members were asked a variety of questions pertaining to career advancement in the legal profession. As shown in the table above, approximately one-fifth (18%) of all respondents believe that non-ethnic/racial minority attorneys attain partnership status faster than do ethnic/racial minority attorneys. One-third of Hispanics and 35% of other ethnic/racial minority respondents believe that non-ethnic/racial minority members attain partnership faster compared to just 11% of White non-Hispanic respondents.

Looking at gender, it is observed that 36% of respondents believe that male attorneys attain partnership status faster than female attorneys. Women are nearly three times as likely as men to believe that male attorneys attain partnership faster than female attorneys (56% compared to 21%, respectively).

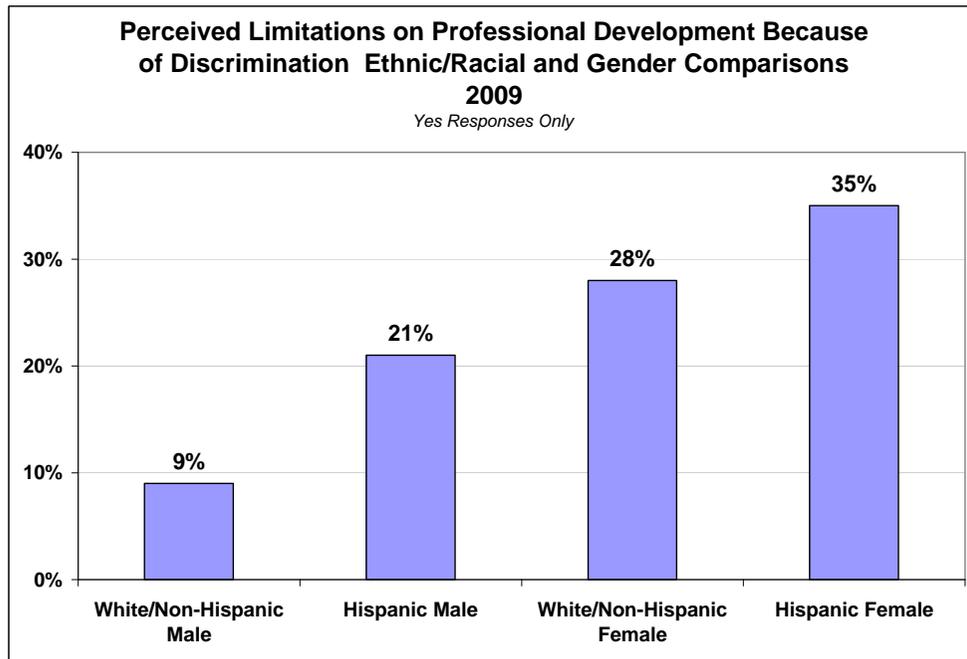


When comparing the results to those observed a decade ago, it is observed that both White and Hispanic members are now more apt to believe that white attorneys achieve partnership faster than ethnic/racial minorities do. This is interesting given that other questions in the survey indicate that perceptions have actually improved over the past decade.

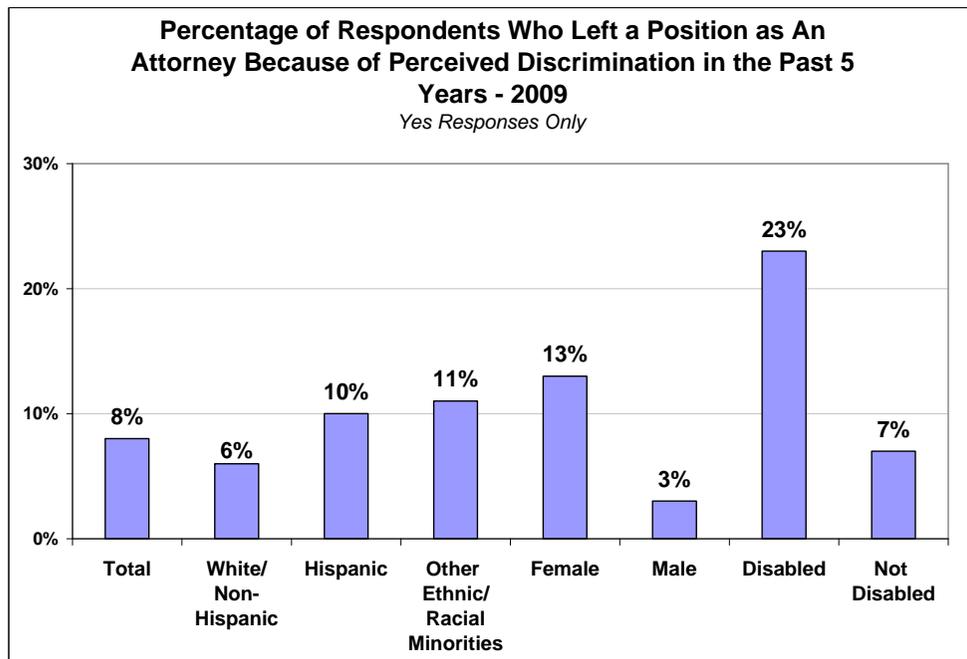


One-in-five survey respondents believe their professional opportunities as an attorney have been limited in the past five years because of discrimination. This feeling is more prevalent among Hispanics (27%) and other ethnic/racial minorities (29%) compared to White non-minorities (17%). Women (31%) are also more inclined than men (13%) to believe their professional opportunities have been limited because of discrimination. It should also be noted that those who have a disability (39%) are twice as likely as those who are not disabled (19%) to believe their opportunities were limited because of discrimination.

Perhaps the most striking finding is that nearly half (49%) of LGBT members say their professional opportunities as an attorney have been limited because of perceived discrimination.

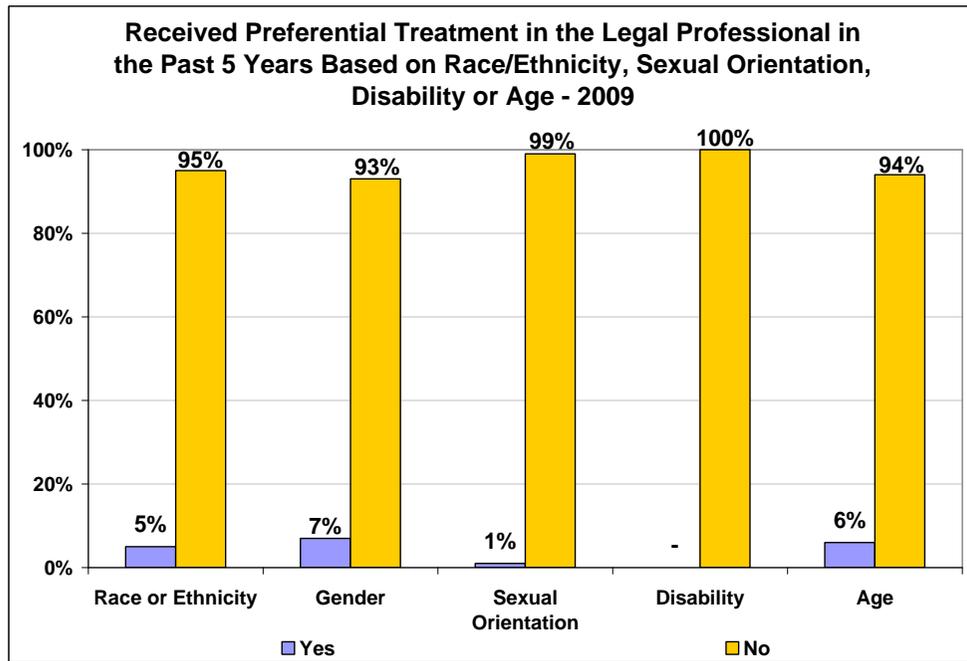


As mentioned, women are more apt than men to feel their career opportunities have been limited because of discrimination, but this belief is stronger among Hispanic female attorneys (35%) than it is among their White female colleagues (28%). Hispanic males are also twice as likely as White males to feel their opportunities have been limited because of discrimination (21% and 9%, respectively).



While 20% of respondents believe their professional opportunities have been limited because of discrimination, 8% say they have actually left an attorney position in the past five years because of perceived discrimination.

Women (13%) are more inclined than men (3%) to have left an attorney position based on discrimination. Furthermore, 10% of Hispanics and 11% of other ethnic/racial minorities say they have left an attorney position because of discrimination compared to 6% of White respondents. Nearly one-quarter (23%) of the respondents who have a disability have left a position because of perceived discrimination compared to 7% of those who are not disabled.

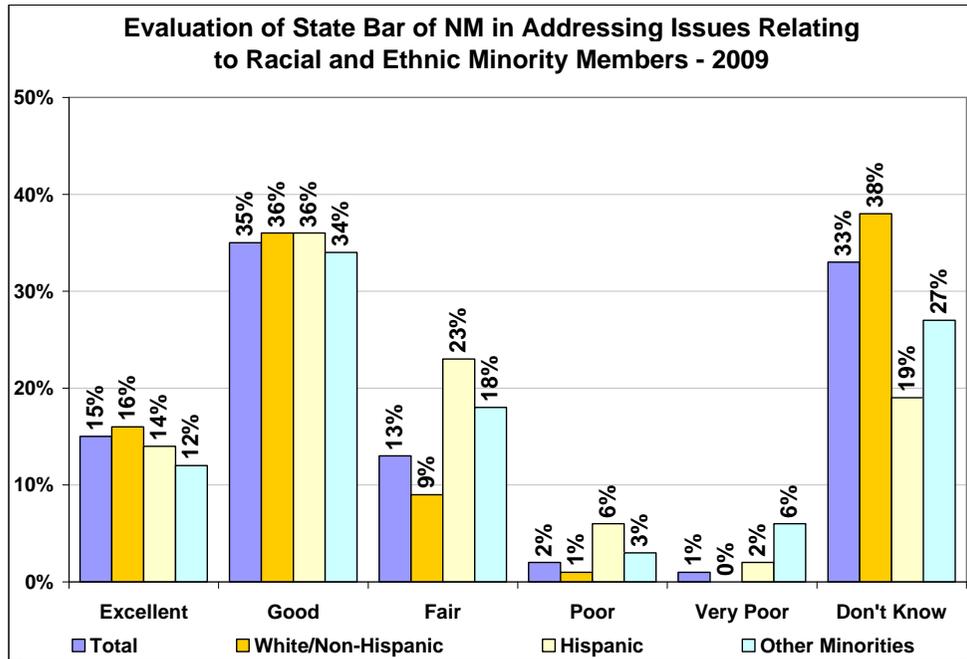


In addition to asking respondents if they believe they have been limited professionally because of perceived discrimination, we asked if they received any preferential treatment in the legal profession based on their race/ethnicity, gender, sexual orientation, a disability, or age.

As shown in the graph on the preceding page, very few of the respondents feel they received preferential treatment based on their race/ethnicity (5%), gender (7%), sexual orientation (1%), a disability (>1%), or age (6%). Overall there are only slight differences in perception among the various demographic groups. Hispanics and other ethnic/racial minorities (8%) are twice as likely as White respondents to say they received preferential treatment.

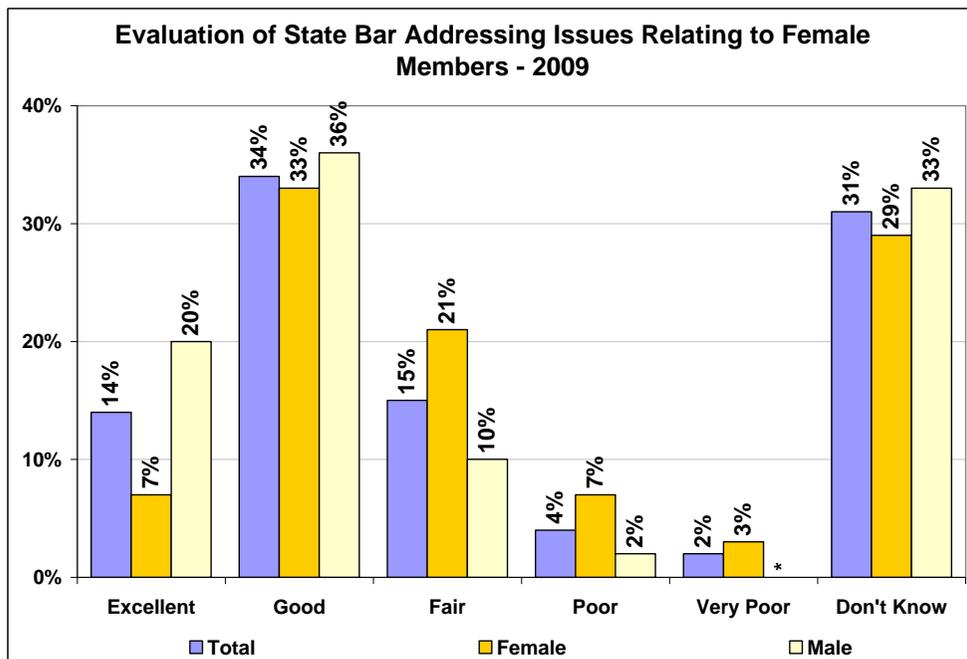
E. Evaluation of the State Bar of New Mexico

State Bar members were asked to evaluate the job the State Bar of New Mexico is doing in addressing issues relating to various population groups.



As shown above, half of the survey respondents believe the State Bar is doing either a *good* (35%) or *excellent* (15%) job in addressing issues relating to racial and ethnic minority members while 13% give a *fair* rating and just 3% rate the State Bar poorly. One-in-three respondents have no opinion as to how the State Bar is doing when it comes to addressing issues relating to racial and ethnic minority members.

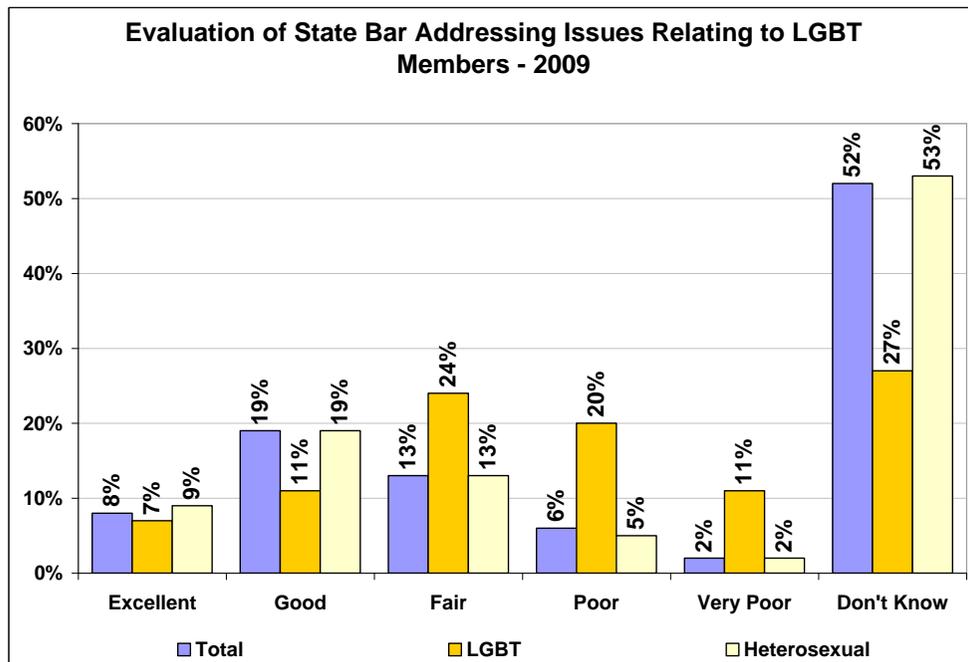
It should be noted that while there are no significant differences between different ethnic/racial groups in terms of the percentage of those giving *good* or *excellent* ratings, White non-minorities are far more inclined than others to have no opinion. Hispanics and other minority respondents are also more inclined than their White colleagues to give the State Bar *fair* or *poor* ratings.



As shown on the preceding page, approximately half (48%) of the survey respondents also believe the State Bar is doing either a *good* (34%) or *excellent* (14%) job in addressing issues relating to female members, while 15% give a *fair* rating and 6% rate the State Bar poorly. Thirty-one percent of respondents have no opinion as to how the State Bar is doing when it comes to addressing issues relating to female members.

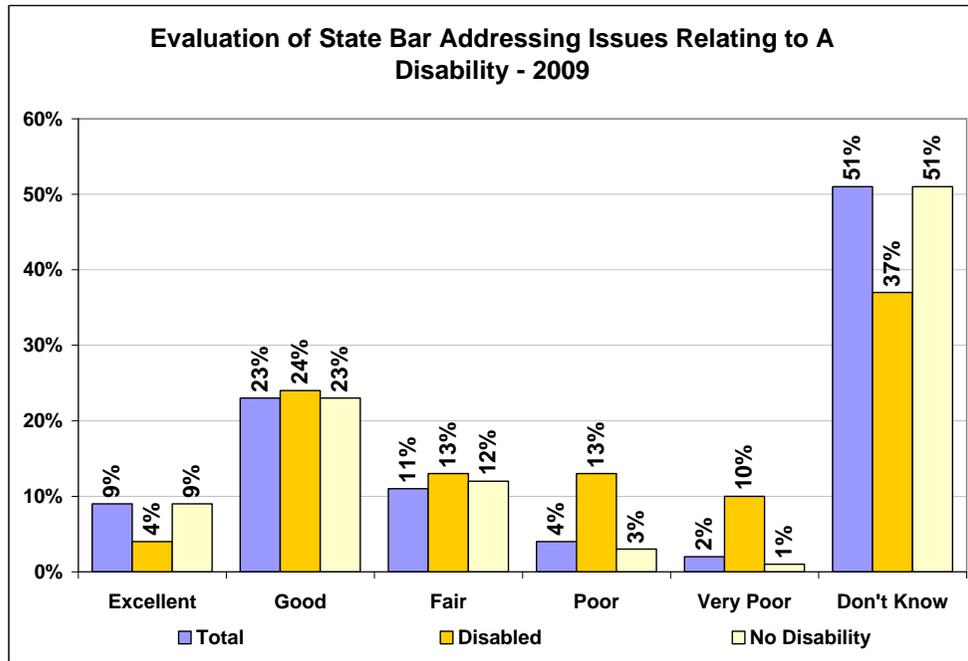
Two-fifths of the female respondents believe the State Bar is doing either a *good* or *excellent* job in addressing issues that relate to them compared to 56% of males who believe the State Bar is doing a *good* or *excellent* job. Approximately one-third of the female respondents believe the State Bar is doing either a *fair* (21%) job in addressing issues relating to female members or is doing poorly (10%).

Interestingly, 19% of Hispanic female members rate the State Bar poorly when it comes to addressing female-related issues compared to just 6% of White female members.



Approximately one-quarter (27%) of all respondents believe the State Bar of New Mexico is doing either a *good* (19%) or *excellent* (8%) job in addressing issues relating to LGBT members while 13% give a *fair* rating and 8% rate the State Bar poorly. Just over half (52%) of the members have no opinion as to how well the State Bar is doing.

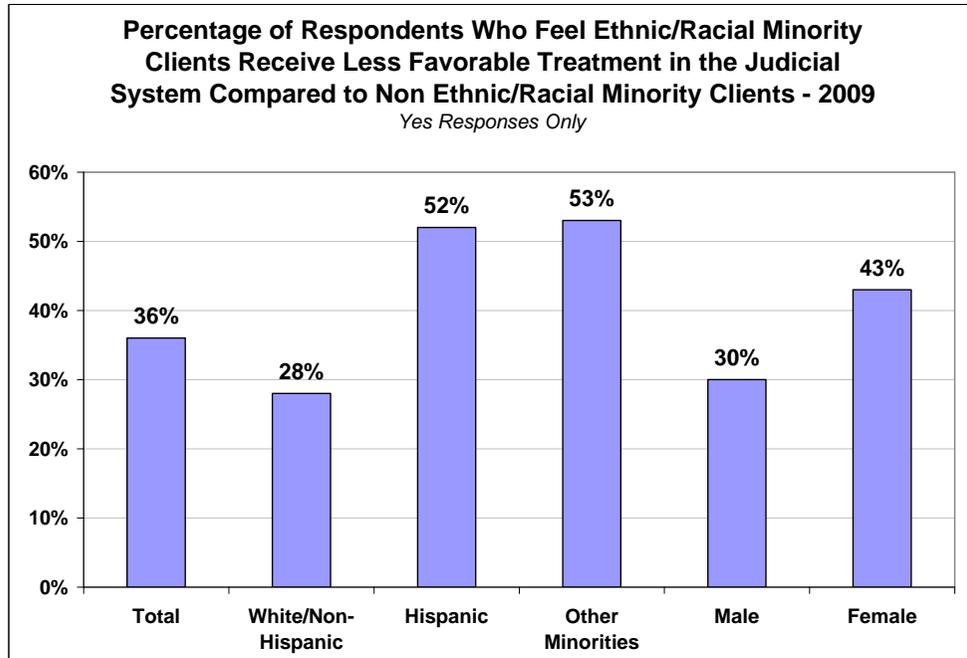
Just 18% of LGBT members believe the State Bar is either doing a *good* or *excellent* job in addressing issues that relate to them while 24% rate the State Bar as *fair* and 31% give a *poor* or *very poor* rating. This would appear to be an area the State Bar has an opportunity to improve upon.



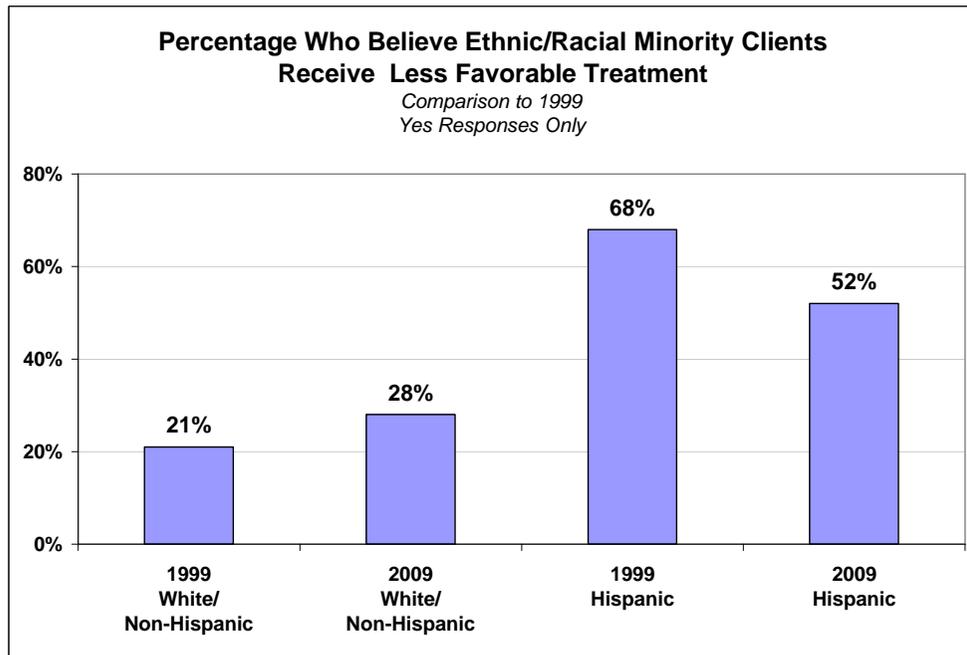
As shown above, approximately one-third (32%) of all respondents believe the State Bar is doing either a *good* (23%) or *excellent* (9%) job in addressing issues relating to members with a disability while 11% give a *fair* rating and 6% rate the State Bar poorly in this capacity. Just over half (51%) of the members have no opinion as to how well the State Bar is doing in this area.

Twenty-eight percent of members who have a disability believe the State Bar is doing either a *good* or *excellent* job in addressing issues that relate to them while 13% rate the State Bar as *fair* and 23% give a *poor* or *very poor* rating. Thirty-seven percent of disabled respondents have no opinion on the issue.

F. Perceived Fairness of the Judicial System



Members were asked if they feel ethnic/racial minority clients receive less favorable treatment in the judicial system when compared to non-ethnic/racial minority clients. As shown above, 36% of respondents believe that ethnic/racial minority clients receive less favorable treatment in the judicial system. Overall, Hispanics (52%) and other minorities (53%) are more likely than White members (28%) to believe ethnic/racial minority clients receive less favorable treatment in the judicial system. Furthermore, females (43%) are more likely than males (30%) to believe ethnic/racial minority clients receive less favorable treatment.



When compared to the 1999 study, it is observed that Hispanics are now less likely to believe that ethnic/racial minority clients receive less favorable treatment in the judicial system (68% and 52%, respectively). Interestingly, 28% of White non-Hispanic members currently believe that ethnic/racial minorities receive less favorable treatment, which is a seven percentage point increase from that observed in 1999.

Respondents were also asked if they have considered rejecting different types of expert witnesses over concerns that person would not be afforded credibility as another situated expert witness based on race/ethnicity, gender, sexual orientation, or disability.

Considered Rejecting an Expert Witness Over Concerns That the Person Would Not Be Afforded Credibility Based on the Witness Being of Various Minorities – 2009		
	<u>Yes</u>	<u>No</u>
A racial or ethnic minority	3%	97%
Female	3%	97%
Gay/Lesbian	2%	98%
Had a disability	1%	99%

As shown in the table above, very few of the respondents surveyed indicate that they have considered rejecting an expert witness over concerns about race/ethnicity, gender, sexual orientation, or a disability.

IV. Focus Group Research

A. Methodology

This focus group research project was commissioned by the State Bar of New Mexico Committee on Diversity in the Legal Profession as part of its 2009 diversity research, which also includes a quantitative survey among active State Bar members. The three focus groups were conducted in order to capture more in-depth observations from minority attorneys regarding their experiences practicing law in New Mexico. The minority populations included in the research were Native American, African American, and Lesbian/Gay/Bisexual/Transgender (LGBT) State Bar members.

The focus groups were conducted as follows:

African American attorneys	Wednesday July 22	11:00 a.m. to 1:00 p.m.
LGBT attorneys	Thursday July 23	11:00 a.m. to 1:00 p.m.
Native American attorneys	Thursday July 23	5:30 p.m. to 7:30 p.m.

Marie Mound, owner of Insight Out, worked with staff of Research & Polling, Inc. in developing the discussion outline. She moderated the focus groups and wrote this summary of findings.

Arturo Jaramillo, Co-Chairman of the Committee on Diversity in the Legal Profession, spearheaded this effort to update the previous diversity studies, which had been conducted in 1989 and 1999. State Bar of New Mexico Executive Director Joe Conte and Assistant Director of Boards and Meetings Kristina Becker provided assistance in development of the research.

Participants were compensated \$100 for their time and effort. Participants that traveled to Albuquerque were reimbursed for mileage.

About this report – In most focus group research, the identity of the participants is protected. This practice made writing this report challenging because of the unique profiles and personal histories of the attorneys who participated. But the anonymity of the participants has been preserved, sometimes at the expense of providing specific details that were offered by participants.

B. Summary Observations

The further one looks back, the greater the case can be made for progress in race relations (prejudice) within the New Mexico legal profession. Progress in people’s receptivity to LGBT attorneys practicing in the New Mexico legal profession is less evident, yet pockets of openness and respect were certainly reported.

Participants in all three focus groups acknowledged a decrease in the level of prejudicial attitudes by generation. Younger attorneys recognized that they have had it easier than those that “blazed the trails” before them, and LGBT attorneys felt younger attorneys were finding it easier than older attorneys to “come out.” The contrast in views among older African Americans and Native Americans and those much younger was stark. Does this constitute progress?

Participants felt that it did. Is there more to be accomplished? According to participants, more progress is warranted.

While a reduction in prejudice is observable in the courtroom, participants noted that there are still individuals whose prejudice scars their professional experience. Sometimes it is a co-worker, sometimes opposing counsel. Because people’s appearance can belie their racial heritage or sexual orientation, participants shared numerous accounts of having heard derogatory comments in professional settings. This means there are yet professionals and legal system office staff that feel comfortable expressing prejudicial slurs in the company of people they believe feel the same way. Participants suggested diversity (sensitivity) training be incorporated in the “Professionalism” CLE course so that it becomes part of the mandatory curricula. They did not feel “optional” diversity training would be effective because many people who need sensitivity training do not realize it.

Perceived progress in acceptance of LGBT people depended on where one lived prior to coming to New Mexico or where one worked within the state’s legal system. Some LGBT participants felt New Mexico has a “don’t ask, don’t tell”⁹ climate. Nevertheless, there are pockets of receptivity and considerable acceptance on a personal, individual level.

Female participants in all three focus groups talked about the confusion they feel when experiencing condescending treatment from male professionals because they cannot determine whether the insult is a reaction to their gender, ethnicity, and/or sexual orientation.

Participants’ evaluation of judges’ performance revealed largely a sense of fairness toward minorities, though it was said that some minority judges can be unduly harsh on “their own people” because they want to avoid the appearance of favoritism. Participants felt there is yet prejudice in the prosecution of African Americans and Native Americans (especially in the area of DWI). Such prejudice cannot be narrowed to judges alone because it can also involve jurors and prosecutors. Participants in all three focus groups noted the prejudicial attitudes among law enforcement personnel and suggested greater sensitivity training.

The working environment at the New Mexico Public Defender Department’s offices was said to be the most receptive to differences among people; it was also said that attorneys who do not fit the ‘white’ mold feel more comfortable obtaining employment in a public defender’s office or legal aid agency.

Participants talked about the fear of rejection or of “not fitting in” as the underlying reason they did not attempt to obtain employment in a white (largely male) law firm.

When one does not fit the mold of so-called mainstream society (dominant culture), a discomfort is created due to the anticipation of being judged. The more people of minority status encounter respect and receptivity among whites/straights, the greater their confidence in themselves and the less anxiety they experience. This is how many participants described their journey. Because prejudice has decreased in recent years, some participants said they have learned to have an open mind rather than assume they will encounter prejudice. Some older participants described the milestone they passed when they were able to believe that other players in the legal process (jurors, judges, opposing counsel, and litigants) wanted the same thing as they did—justice and a “fair” system.

Both African Americans and Native Americans discussed the “low expectations” syndrome they have encountered. Because of their minority status, many participants said they feel a pressure to perform, to exceed expectations. A few participants said they were able to use this condescending attitude to their advantage in the courtroom.

Some participants said it can be bothersome to see inferior work performed by a white person be perceived as “passable,” because they do not believe white professionals would have been as forgiving had other groups performed at the same level.

Regardless of the minority group, participants expressed a strong *desire* and *need* for mentorship opportunities. The focus group discussions frequently returned to the need for developing a strong mentorship network. Thus, there is considerable opportunity for the State Bar of New Mexico to develop a mentoring program that will connect young attorneys with seasoned attorneys with similar interests and backgrounds. This could be accomplished by providing administrative assistance in developing and maintaining a mentoring database for the voluntary bar associations that serve African American, Native American, and LGBT attorneys. Of course, it would be advantageous to provide this mentoring service to all attorneys.

While one of the objectives of the Black, Indian, and Lesbian and Gay Bar Associations is to provide outreach and networking opportunities to young people and professionals of similar backgrounds, participants said time constraints and the limited number of active volunteers creates a challenge. Many minority attorneys are already donating pro bono time to organizations with a social justice mission and related community efforts.

⁹ “Don’t ask, don’t tell” is a term referring to the current military policy of not allowing openly gay and lesbian individuals to serve in the military.

Networking is important in most professions. Participants felt that it is extremely important in the legal profession if one expects to build a career. “Being in the loop” was described as crucial to a successful career in the legal field. Participants felt they were yet dependent on people with a common background to develop fruitful professional relationships. No one specifically said they would not rely on relationships with white attorneys to provide career opportunities; they simply emphasized the need for cultivating relationships among successful attorneys within their ethnic/racial group. LGBT participants noted that their cohorts could only be helpful in building careers if they were “out” and had achieved a position of authority or power. Because many LGBT people are not open (do not feel safe being open) about their sexual orientation or gender identity, the numbers of professional allies is greatly reduced.

The two-hour time frame did not allow for sufficient discussion of some topics. The State Bar of New Mexico may want to consider hosting a few forums to elicit more input on the following:

- To suggest articles for the *Bar Bulletin* to educate non-minority attorneys on diversity and sensitivity issues;
- To identify topics of interest to the various minority bar associations so that meeting agendas and speakers can be tailored to each population’s needs and interests;
- To explore means by which to increase minority participation in voluntary associations and mentorship opportunities; and
- To provide forums (school assemblies) to pitch the legal profession to high school students.

What is interesting about the experience of prejudice is that it is perceived and experienced even when the “perpetrator” denies it or is even unaware of it. It is a gut-level experience. As greater numbers of white and/or straight people move beyond prejudicial attitudes and minorities and LGBT people experience this receptivity, they become less anxious and more comfortable in their role as barrister. It’s a win-win situation for all parties to the legal system.

Participants in the African American and Native American focus groups talked about the need for greater outreach to children and teens to encourage them to become attorneys. They felt the outreach would be more effective if performed by minority attorneys who have achieved authority positions. Regardless of minority status (African American, Native American, LGBT, etc.), participants believed increasing the number of attorneys within their respective minority niche would ultimately level the playing field.

As observed with both African Americans and Native Americans, participants in the LGBT group believed equality and acceptance will increase as more LGBTs achieve positions of authority and importance.

Although most participants acknowledged the increasing number of minority attorneys in the State Bar, they were less convinced that substantial career advancement has occurred among minority attorneys.

1. AFRICAN AMERICAN ATTORNEYS

The participants in the African American focus group represented a diversity of ages and geographic origins.

A. Perceived progress

Participants definitely noted progress on the racial front. The contrast that emerged between the stories told by attorneys in their fifties and sixties and the experience of younger attorneys illustrated progress.

“I sense a generational thing here. I grew up at the time when black people doing anything positive was almost unique. I was concerned about my safety. My parents were concerned with my safety. There is a shocking difference between me and my 40-year old son who does not necessarily see issues in terms of race.”

Participants were aware of an African American being elected student body president of the UNM School of Law for the second year in a row. They perceived this as a sign of progress.

While there have been two African American law clerks on the New Mexico Supreme Court or Court of Appeals within the past few years, there has never been an African American justice or judge on the New Mexico Supreme Court or Court of Appeals.

B. Equal opportunity

Participants noted that a few of New Mexico’s largest law firms had hired African-American attorneys in recent years. The law firms were mentioned by name, as participants conferred. Participants said that in the past, most African Americans would not even bother to apply to a large firm for fear of rejection.

“Most black attorneys are in government jobs. Very few are with large law firms. It is very hard to get in.”

Recalling the past, an older attorney described the dilemma as follows:

“It was a two-fold problem: law firms were reluctant to reach out to young black attorneys and blacks were reluctant to apply for large law firm jobs. This has been changing.”

Indicating the change in social consciousness, this discussion led to one young African-American attorney saying,

“It never occurred to me that working in a white firm would be a problem, but I am very young.”

A young graduate of a private law school said she had applied to a big law firm but ended up taking a job with a public defender’s office. Participants suggested that there is a “certain independence” among black attorneys, which explains their disinterest in working for large law firms.

“Maybe that’s why I chose the public defender, because they are more accepting of people.”

As noted, participants felt this reluctance to apply and resistance to hire African Americans was slowly lifting.

“When I graduated in 1983, the other blacks had a reluctance to want to work for the big firms—it was as if I was being a traitor. Today, I think blacks can get jobs in the big firms if they know the right people to recommend them.”

Career-wise, the drawback to starting employment with the NM Public Defender or Legal Aid is the lack of opportunity to build a promising client base because of the financial status of the clientele. A former public defender said:

“My contact list was poor people or people in constant trouble. My client list did not enable me to make the types of contacts to get ahead.”

A female who retired from state government noted that women were paid less than men 30 years ago and they continued to be paid less by the time she retired. She added to her observation, “It’s doubly true for minorities.”

One very successful middle aged African American attorney working for a law firm said he worked with a corporate client through teleconferencing and written communication. He then represented the client in court in one of New Mexico’s mid-sized cities—and won. Afterwards, the client contacted the law firm and said they could not be represented by an African American. Prior to the trial, the corporation was unaware of the race of the attorney. Participants in the focus group felt the law firm should have “fired” the client rather than penalizing the attorney. This incident occurred more than a decade ago.

C. Coping with (pre)judgment

Older participants in the African American focus group talked openly about the “fear and trepidation” they felt during the first few decades of their legal careers. A few participants did not even attend law school until they were older because they had not believed it was an option as a young adult. They described the anxiety they experienced when unsure how they would be perceived and treated by others in the profession and in the courtroom. This fear of judgment was said to cultivate a lack of confidence. Due to a lack of confidence, they did not pursue mentorship relationships or ask needed questions. Some participants said they did not even consider applying to large, prestigious law firms because there was no track record of hiring African Americans. As one older attorney said,

“I was scared to be considered for the big law firms after I graduated because I was afraid of rejection.”

“I have had to overcome my own prejudice about how other people would perceive me.”

This prejudicial hiring practice began to break down in cities like New York and Chicago. One participant characterized New Mexico as just arriving at where New York was in the 1970s, because the large law firms are beginning to hire African Americans.

Participants said they have often felt that others in the profession held “low expectations” of them.

A former large law firm attorney recounted the following story from his past,

“I went to a very good law school and had great training, but sometimes the opposing counsel would give me ‘the look’. They just didn’t take us seriously!”

A couple said that this has sometimes worked to their benefit. One young attorney said she continues to be spoken to condescendingly by white attorneys whom she has “beaten in court.”

“It’s almost hilarious to watch how we are underestimated. Even by our clients. We have to prove to them.... Some clients don’t think we know what we are doing.”

A participant said she had avoided working with another African American attorney in court because they were concerned about how the judge, jurors and others would react to two blacks as co-counsel in a community with very few African Americans. She joked about the potential reaction to two African American attorneys representing an African American defendant in a largely Anglo and Hispanic community. In her opinion, she did not feel this would serve the best interests of the client. She went on to say that she would take a white attorney with her to court if the case entailed a crime committed against a white victim and the defendant was black.

Some of the older attorneys talked about past experiences practicing law in historically racist communities.

“I had to conduct voir dire in white areas with Ku Klux Klan types. I eventually realized that they wanted the same thing I did [justice].”

Participants joked about the “mantra” among Black people: “You have to be ten times better.” This discussion elicited comments like:

“We have to work harder to prove ourselves.”

“The only thing that works is being prepared.”

A young attorney realized during the course of the focus group discussion that she will ask co-workers’ opinions and follow their advice because she doubts herself. In retrospect, she realizes she should have followed her own instincts.

The following comment was made by a sixty-plus year old African American male who had lived and worked in a number of different regions of the U.S. And, he had lived and worked in a couple of New Mexico’s mid-sized cities that are sometimes characterized as “conservative.”

“New Mexico is probably the most racist state I have ever lived in—not because they beat you down, but because they look at you as Black, White, Indian or Hispanic.”

His point illustrates the gut feeling people experience when they are being categorized and judged (perceived) by others.

D. Mentoring

While the lack of mentoring opportunities can be an issue for a young attorney, regardless of race or sexual orientation, the lack of guidance or role models can be even more common among minorities than among whites.

Many of the participants noted that they were the first in their family to go to college. Their parents did not have the educational or professional experience to provide guidance, much less to serve as a role model for educational attainment. In addition to the lack of models or mentors within one's childhood reach, participants talked about the lack of peer-to-peer guidance.

“I would like to have a local mentor. Initially I was the only African American attorney in a small town. There was no one to share with.”

“I remember feeling like I was an island being the only African American attorney in my community.”

“I didn't have anyone to turn to, even a relative. Sometimes you get it right. Sometimes you get it wrong. There were things that could have enhanced my journey that I just didn't have.”

“Learning law in school does not necessarily provide the skills needed for navigating the legal field and developing connections that will help one with their career.”

The topic of mentoring came up early in the focus group and received considerable attention. Participants also returned to the topic of mentoring throughout the discussion.

“There is a lack of real mentors for young attorneys. This may or may not be a minority issue, but it was definitely an issue for me.”

“While I set high expectations for myself, it wasn't clear how to meet the right people in order to cross over that next level.”

“It would be nice to be able to be paired up with the ‘right’ person in a mentorship, not just some randomly selected person with whom you may have nothing in common.”

“I worked for 40 years before I had the opportunity to work with a black colleague. I was unwilling to ask for help, so I made mistakes. But it was so much more productive to be able to share with her. To share our experiences with other people could be extremely helpful.”

A few older attorneys said the lack of hands-on training (mentoring) for young black attorneys is currently a major problem.

“Young black attorneys are not getting the training they need; consequently, they are more likely to come before the disciplinary board. The worse course of action for a new attorney is to ‘hang up a shingle’ right out of law school. They lack the judgment and skill—regardless of race.”

“It really is about having people to talk to everyday—two or three people that you can have open discussion with.”

“We need to teach young black attorneys to go the extra mile—to do whatever it takes for a job interview.”

A young attorney who had worked with a mentor made the following comment about the State Bar's current efforts in the area of mentoring.

“I see the State Bar trying when it comes to mentors, but I wish they would put a little more thought into pairing young attorneys with an appropriate mentor who has more common shared experiences.”

Participants worried about attorneys living and working in small, remote or isolated communities in New Mexico. They felt there was a need to reach out to these minority attorneys.

Participants acknowledged that they personally should try to find more time to give to improving opportunities for Blacks and to mentoring the young. It was noted that most African American attorneys are already giving of their time to social justice-oriented organizations.

“We have to get more active in the State Bar and in politics and government if we want to advance. It’s up to us. We have to be more involved in the Bar.”

E. Financial debt

Participants talked about the high levels of debt incurred during law school and the struggle to repay their loans. Apparently, the loan assistance programs do not take into account the salary grades of entry level jobs taken by recent graduates.

“Attorneys that begin their careers at legal aid or the public defender cannot afford to pay back their loans. The Loan Assistance Program does not take this into account.”

“To be a public defender and make \$46,000 is really frustrating. I have a six-figure debt and cannot get assistance to try to pay back that debt. It’s crushing. I know new attorneys working at Wal-Mart to make their loan payments.”

Some participants suggested that law school students be educated on the magnitude of the debt they are taking on and their potential for repaying it.

2. LESBIAN, GAY, BISEXUAL, AND TRANSGENDER ATTORNEYS

Upon opening the focus group discussion, we learned that the designation ‘Gay Lesbian’, used to describe the composition of the group, excludes bisexual and transgender individuals. Participants noted that the appropriate identifier is LGBT. Based on comments by the focus group participants, this organization should probably be renamed the NM LGBT Bar, rather than the NM Lesbian and Gay Lawyers Association, in order to be more fully inclusive.

A. Perceived progress

Throughout the 1980s and early 1990s, an informal group of lesbian and gay lawyers met for lunch periodically in Albuquerque and Santa Fe. A handful of judges asked to be kept up-to-date on group activities, but no judge met regularly with the informal organization. The New Mexico Lesbian and Gay Lawyers Association was formed in 1996. The ability to join the association via check-off box on the State Bar annual dues form has been around approximately five years. The association currently has 28 members who pay their membership via this check-off box method, plus another group of members who choose to pay their dues directly to the organization, rather than via the State Bar sign up. That there are members of the organization unwilling to identify themselves through the State Bar, as well as another group of individuals on the organization e-mail lists who ask to be provided information regarding the LGBT Bar, but not be listed as members is in itself useful–yet unscientific–information.

Participants noted that 2003 amendments to the New Mexico Human Rights Act, making it unlawful to discriminate based on sexual orientation or gender identity (including transgender), represented progress.

Participants noted that there yet exists the need for updating the language in human resources rules and regulations. Participants felt human resources language needs to make people of all types feel comfortable seeking employment at any institution or government agency.

Participants said that some attorneys will edit out LGBT-related work experience from their resumes in order to seek certain employment. Others felt it shouldn’t be necessary to rewrite their resume in order to pursue employment at a large firm. Consequently, they do not intend to pursue employment with firms that they perceive to be resistant to hiring LGBT attorneys.

“I am proud of the work I have done. I can’t stuff who I am to please someone else.”

Human resource policy (language) affects prospective students' and employees' assessment of institutions and organizations they are considering for law school or employment. If written policy does not acknowledge the rights of diverse populations, then they may assume the organization is not receptive to minorities.

“Do they have ‘sexual orientation’ written into their discrimination clause?”

A couple of examples of diversity training were cited as positive measures.

B. Bias within the judicial system

Participants in the LGBT focus group had contrasting perspectives about New Mexico because of their varied experiences in different geographic regions. From the perspective of attorneys schooled and practiced in San Francisco or Washington D.C., New Mexico can seem closed-minded; whereas, an attorney schooled in a Midwestern Catholic university and now working in Bernalillo County Metro Court, found New Mexico receptive and non-judging.

A participant who had left a marriage, but retained his/her profession, felt that New Mexico, as a legal community, did not differ from the larger community:

“The [New Mexico] legal community seems in step with overall social change and acceptance.”

For the most part, judges were perceived as fair minded, though it was suggested that some LGBT judges (just like Native American and African American judges) can overcompensate in order “to avoid looking like they are showing favoritism.”

Sometimes attorneys are challenged in handling a case in court because of the biases of a client or witness. They noted that handling these attitudes, which the client or witness may not be aware of, is a sensitive matter.

“Occasionally I get a client or witness that is either ‘ignorant of’ or who has never confronted their biases and who thus does not realize their attitude is inappropriate for the circumstances.”

C. Life on Hold

Some LGBT participants did not encounter any challenges in their early educational or professional experiences because they did not reveal their sexual orientation to anyone associated with their schooling or employment.

“I never felt I was discriminated against in my education or initial employment because no one knew my sexual orientation.”

“Due to family obligations and other priorities I had to put ‘my life’ on the back burner.”

“I was married for 10 years and practiced for 15 years as a straight person, thus my professional life was not initially affected.”

D. In the closet

Participants said that many attorneys and some judges prefer to keep their sexual orientation private.

“Sometimes an attorney or judge reminds me that they are ‘in the closet.’”

“It’s been shocking to come back to New Mexico. It’s more of a ‘don’t ask, don’t tell’ policy. For straight people, they just want to shove me back in the closet. Many of the gays at work do not talk to me because they are not out of the closet.”

Participants felt that a ‘don’t ask, don’t tell’ attitude allows discrimination to persist.

A woman who works in an office that is largely attorneys said she observes “gay and bisexual people there who don’t speak to me” because of their fear of being exposed. Along these lines, another participant said,

“I get very lonely in my office. Co-workers don’t come and talk to me. There are some great supporters, but the numbers are small.”

Some of the participants felt there is “a whole lot of snickering in the State Bar.” An attorney that practices only transactional law in a small firm disagreed. Others pointed out that this attorney probably did not have much face-to-face interaction and thus did not have the same exposure to insensitive attitudes.

A participant shared a current situation with a Santa Fe attorney wherein another Santa Fe attorney advised her not to come out “because it would damage her future job potential.” This participant said she had “come out” in a major urban area in the 1970s. She found the level of discomfort and uncertainty that persists in New Mexico disappointingly “back to the dark ages.”

“When you have people in positions of authority who ‘come out,’ it makes it easier for all of us.”

E. Straight discomfort

People can feel uncomfortable when a situation is unfamiliar or they are uncertain about what is proper language or behavior. Participants noted that the more open society becomes with LGBT realities, the more comfortable straight/heterosexual people become.

A participant described a receptionist/typist that was stressed over how to address correspondence to a transgender client. The participant suggested that the employee simply call the client and ask his or her preference. Receiving this advice from an openly bisexual person relieved the pressure and made solving the problem easy.

Sometimes straight attorneys may enlist the assistance of an LGBT attorney due to personal discomfort with a particular client’s sexual orientation. It was pointed out that this is not always in the best interest of the client because the LGBT attorney may lack knowledge of the relevant area of law.

On a related note, one participant said:

“Bar panels need to be more diverse regarding sexual orientation. It helps the straight people too because they get to learn about our issues.”

F. Experience by type/level of government

Participants differed in the degree to which they perceived the receptiveness of straight people toward those with differing sexual orientation or gender identity. This difference in experience derived from the unit or level of government in which they are or have been employed or with which they routinely interact. For example, attitudes are more accommodating at the Bernalillo County Metro Court as compared to some other units of state government. And some participants were of the opinion that it is easier to be “out” in state government than in federal agencies. Participants believed as more LGBT people gain visibility in positions of authority or power, respect will grow among the general population.

G. Retaliation

Participants said there is still considerable fear of retaliation or jeopardizing one's career by being open or “coming out” as an LGBT attorney in New Mexico. A few examples of retaliation were shared, wherein one participant's employment was terminated because someone found out about that attorney's sexual orientation and another when her non-conforming gender-identity was observed.

A transgender attorney, who disclosed her gender-identity before being hired, presented as male at work and later appeared at an event presenting as a female, her true gender-identity. Shortly thereafter she was fired. When hired, the employer had expressed receptivity to her gender-identity because it would make some of the clients more comfortable. The justification for termination had nothing to do with sexual orientation or gender-identity and was described by the participant as “horrendous.” The participant said she was reluctant to file a lawsuit because she did “not want to risk making bad case

law." It was noted that there has yet to be a case in New Mexico testing the amended language to the Human Rights Act covering transgender people.

“A city official fired an attorney shortly after ‘the wrong person’ heard that he/she was considering coming out. The reasons cited for the firing were other than sexual orientation.”

Similar to the experience of Native Americans who do not necessarily look Native American, LGBT people experience straight people making derogatory comments without realizing they are speaking to someone who does not share their biased viewpoint.

“A lot of times people say horrible things about others, not realizing I am bisexual.”

A woman who described herself as androgynous said it is not unusual for her to hear comments like,

“She is one of the boys.”

If a wrongful termination based on sexual orientation were litigated, some participants questioned whether it was realistic to believe that LGBT people would have their case heard “by a jury of their peers.”

H. Mentoring

Currently, there is no formal structure by which mentorship’s can be set up for LGBT attorneys. One participant noted the lack of any forum for open dialogue among LGBT attorneys, making it difficult to build a sense of community.

A bisexual woman in her fifties felt there is a strong need for mentoring of young attorneys at the New Mexico Public Defender Department. She said she tries to serve in this capacity because “young people need someone to talk to,” regardless of their ethnicity or sexual orientation.

A couple of participants said they had been able to assist younger attorneys or employees with sexual orientation issues as well as other young people who were experiencing challenges in either a university or employment setting.

The discussion of mentoring did not center on sexual orientation issues; rather, it pertained to honing one’s skills at learning the practice of law.

I. Human Resources

Participants talked about the need to update language in the written material governing employment regulations and human resources generally. By using the appropriate language, applicants would realize the workplace recognizes and respects the rights of diverse populations.

The inability to obtain benefits for partners, an issue most are familiar with through media coverage over the past decade, continues to be a problem according to the LGBT participants.

“Socially there is a presumption about family structure which affects benefits, such as health insurance. My law firm pays for spouse and children; I am considered single. People make an effort to be inclusive but there is an unintended inequality.”

A lesbian working in a legal aid agency worked for a number of years to get “partnership benefits.” Participants found it ironic that an agency with “fairness” as its mission did not readily embrace expanding benefits to partners because it was the “right thing to do.” Once the partnership benefits were instituted, many straight people living with a partner also benefited from the change in coverage.

“It makes a huge difference on how people are perceived, based upon the employee benefits they receive.”

In addition to health benefits, participants said maternity leave is not extended to non-heterosexuals.

J. Case law

A few participants expressed concern that cases that are litigated in the pursuit of increasing civil rights among LGBT people can run the risk of “creating bad case law” that possibly causes undesirable long range effects. Organizations working toward LGBT rights were said to cherry pick cases, as do any special interest group, in order to get desirable media attention. However, there is more to consider than winning the case.

“I have a lot of fear around creating bad case law. I don’t want to win a case, as a great advocate for my client, and create long term negative consequences.”

3. NATIVE AMERICAN ATTORNEYS

The composition of the Native American focus group represented a diversity in itself, given the variety of tribal heritage (some participants were of mixed heritage) from several different federally recognized tribes.

A. Perceived progress

Overall, participants felt there were positive signs of progress:

“There are more associates in firms that are Native, but still not at the partner level.”

“Many of the professional associations along with the legal community as a whole are now beginning to embrace the idea of Indian attorneys more so than in the past.”

“I believe the progress I’ve seen is a result of the increase in minorities becoming licensed to practice law and being appointed and selected for various positions.”

Participants noted the increase in Native American faculty at the UNM School of Law as a demonstration of progress. There was said to be four-tenure track Native American professors currently, whereas in 2000 there was only one and none in the mid 1990s.

The state funded Tribal–State Judicial Consortium established by the New Mexico Supreme Court within the past decade was described as a successful means to deal with cross-jurisdictional issues.

Participants noted that the addition of Indian law to the bar exam showed progress though many of the law students had not taken any course work in Indian Law and thus had to prep prior to the exam.

It was noted that two of the members on the Board of Bar Examiners are Native Americans.

It was also noted that the establishment of the Native American Community Academy (charter school) in Albuquerque is yet another example of the increase in opportunities for Native American citizens.

“We need to show young Native faces that it [the law] is something that is attainable and not beyond their reach.”

“Increasing funding to primary and secondary schools on reservation and pueblo lands would really help because there are lots of Native American kids who want to go to law school, but they cannot do well on standardized tests.”

While Native Americans have historically faced overt prejudice, their plight has received less attention nationally than that of African Americans (and Hispanics). Native Americans participating in the focus group project pointed out that they have had to raise the issue of Native American opportunities when public policy is clearly addressing opportunity among African Americans and Hispanics.

“After we increase the number of Native American attorneys we will have more people that are ‘part of the conversation’ and we will find ourselves ‘at the table.’”

B. Stereotyping

Participants did not feel the legal system itself was biased, but some individuals within the system are. Consequently, the perception of Native Americans as alcoholics and uneducated people persists in some quarters.

Quite a few participants felt bias against Native Americans exists in the prosecution of DWI. The high profile (“hyped”) media coverage of the Gordon House collision and trials were cited as an example. A participant noted that the case “was tried three times” in order to obtain the desirable conviction. Some participants felt the persistence of the state legal system in prosecuting a Native American would not have been the case if the family killed had been Native American or even Hispanic. While the judicial system is not responsible for media coverage, an association of importance is inferred by the viewing public:

“Just when I came back to New Mexico, a Hispanic family was wiped out by a white driver. The media coverage was completely different.”

“Bias still exists in treatment of Native Americans in New Mexico, especially in reservation border towns like Gallup, Grants and Farmington. It is better than 25 years ago, but stories in the media still point out that teen ‘sports’ for some Anglo/Hispanics still consist of beating up Native Americans. Also, I have seen examples of lower expectations for Indian students in public school.”

A few participants also pointed out that non-Native Americans tend to lump all Native Americans into one classification and fail to understand the differences between the various tribes, as well as distinctions characterizing Native Americans that have adopted a Christian religion vs. traditionalists or those that reside in urban environments, etc.

Conversely, some participants talked about the prejudice they observe among tribal people toward “the outside world,” which can mean non-Indians or members of other tribes. They cautioned that it was just as important for Native Americans to increase their awareness of bias as it is for non-Native Americans to do the same. One participant had recently completed an online course on ethics and reported having found tendencies in himself that could be classified as biased. The course served as a wakeup call for him. In addition to having to deal with occasional prejudice in the Western legal system, participants noted that they sometimes encounter either tribal or gender bias among their own tribal leadership.

C. Opportunities

While prejudice was definitely reported in the pursuit of employment, a few Native American participants said they have had more opportunities presented to them because of their ethnic heritage.

“My opportunities have never been limited by my ethnicity but, in fact, have been enhanced because of it.”

“I have had more opportunities rather than fewer because I’m Native American.”

“I have had more opportunities available to me because my tribe and the Indian community watch out for me—and they want me to come back and serve the tribe’s needs.”

Having a door opened because of one’s ethnic heritage also highlights the need to perform well.

“The color of your skin can get you in the door, but then you have to work hard and can’t take things for granted.”

Younger participants acknowledged that their path had been made easier by those who preceded them because the degree of prejudice has declined.

“My hat is off to all those who blazed the trail. I did not have to go through all those tough times.”

D. Negative employment experiences

A few Native American participants said they had left employment due to the experience of prejudice. One woman (in her mid thirties) said that an attorney interviewing her asked whether her skin color was a “tan.” Recognizing the prejudice in the question, she reassured the interviewer that indeed her (natural) skin tone was due to a tan.

Another Native American female felt she had encountered obstacles when looking for a job and had begun to believe it was due to prejudice.

“I have two ivy league degrees and a wealth of high-level management experience, but I find it incredibly difficult to get an interview and/or job. It could be the ‘good old boys network’ but I am starting to think it must be bias.”

One participant said his ethnicity had not been a problem because, “I look very Anglo.”

Two participants had perceived bias in their efforts to obtain employment due either to their race or to their resume reporting their credentialing in Native American law. Some interviews left the applicant feeling that the interviewer did not believe they were capable in areas of law other than Indian law.

“I think being a Native woman with an Indian law background has even hindered me when I applied for non-Indian law jobs.”

One woman said that during a job interview two non-Indian attorneys worried that she might hold prejudices against tribes other than her own.

E. Professional experiences

A number of stories were shared of co-workers making racist comments “you wouldn’t believe” because they did not realize that a Native American was part of the conversation or within hearing distance. One woman said her shock was compounded by the fact that the state government unit within which she was employed was all attorneys. She did not expect educated people to express derogatory prejudice.

The effort to build equality among ethnic groups through the framework of government does not guarantee acceptance. A Native American participant commended Governor Richardson for establishing a cabinet level Indian Affairs Department. However, her experience of co-workers’ resentment ultimately led to her resigning from state government.

“When Indian Affairs became a cabinet level agency, some people thought it was just tokenism. They did not feel it was deserved. They balked when they realized they were going to have to deal with Native American officials. Many blamed it on Richardson’s presidential aspirations. It was this negativity that made me leave state government.”

A focus group participant said she attended a conference wherein most attendees were Hispanic. She said she fit in well when they thought she was Hispanic, but once she said she was Native American, she no longer fit in.

“All was fine at this largely Hispanic conference until I mentioned that I was Indian. After that, no one talked to me.”

F. Bias within legal profession

Note the discussion in the previous section on *Stereotyping*, above, as an example of overt bias. And while some participants described overt bias, one participant described what he called a “passive bias.”

“There is a passive bias [due to the minimal] presence of Native Americans on the bench and the lack of expertise on Indian issues among attorneys.”

Others suggested that the structure of the federal criminal justice system was inherently biased against Native Americans. One Native American recounted an experience in which federal law enforcement agencies, including the FBI, held a community meeting to seek input from Native Americans on criminal justice activities on tribal land. She felt that the federal government officials were defensive and unresponsive to the feedback offered by tribal members. This was very insulting to her.

A participant shared an experience with a committee charged with recruiting minorities. She had to point out that they did not have any statistics on Native Americans. They did have stats on Hispanics and African Americans. Others concurred that they sometimes feel that other minorities receive more attention than Native Americans.

G. Challenges of tribal courts

Participants discussed the challenges faced by tribes in developing consistency within the tribal legal systems. The pressure to establish tribal legal systems stems from the perception among non-tribal members that one “cannot get a fair trial in a tribal court because they do not believe it would be impartial.”

“The reason we get slammed in federal court so often is because we do not maintain consistency in our courts.”

“While federal courts would not question the legitimacy of state court, they will question the legitimacy of a tribal court.”

Participants talked about the efforts across the country to develop and codify the rules of tribal courts.

“Tribal courts are always working to prove that they are as good as or as legitimate as non-tribal courts.”

“The trouble is that many tribes do not have an official legal system; they have some traditions and in some cases they have the elders dictating decisions.”

“Sometimes we get lax with the rules within our tribal courts. We need to hold up our standards in tribal court even if they are tough on the people sometimes.”

Participants talked about the challenges in developing language that reflects tribal traditions while avoiding use of Western legal terminology. An example was shared wherein a northwestern U.S. tribe involved in developing its legal system worked hard to avoid the use of “Anglo terminology” because they might then be expected to adopt all of the Anglo language. Thus, rather than using the word “hearsay” they wrote the law to say “the person who said this is not here.”

Also, some people are concerned with “preserving tribal oral traditions rather than converting to all written rules.” Discussion of the differences in tribal and non-tribal court highlighted the “adversarial” nature of the Western legal system and the reluctance of some Native Americans to emulate the Western legal system.

A Native American prosecutor said she felt comfortable staying true to her tribal traditions in the courtroom:

“I can be an effective prosecutor though I am not a ‘Type A’ with a killer instinct. I am able to maintain some of my Indian traditions and tribal values and still prosecute in state court.”

4. THE FEMALE QUANDARY

Female participants in all three focus groups described the confusion they experience in situations where they cannot determine whether the way in which they are being treated is due to their minority status or to being female. A female LGBT attorney said:

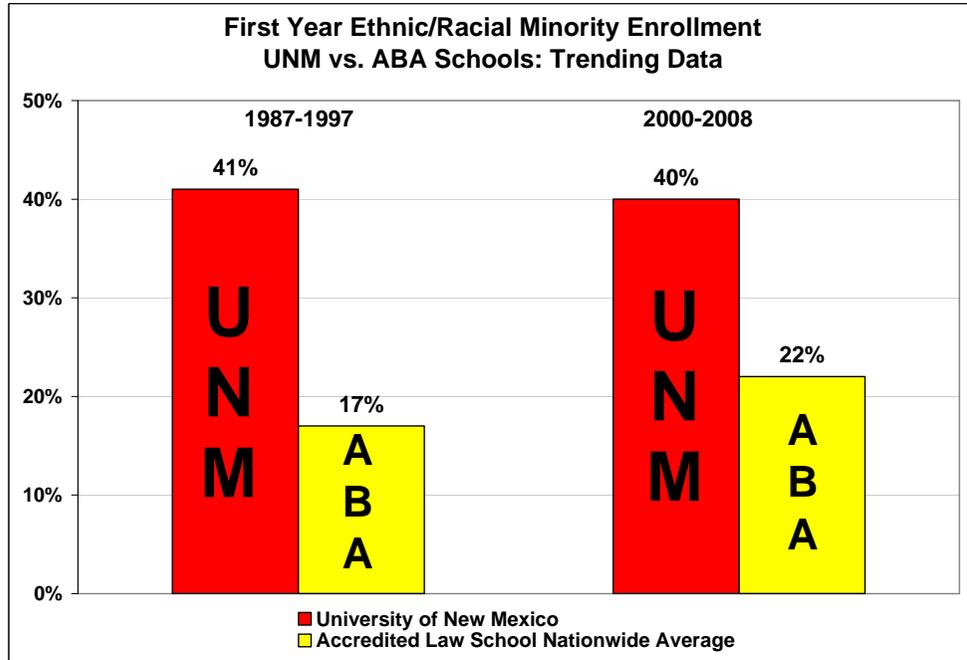
“There’s subtle discrimination that overlaps or may have more to do with being a female.”

The following two statements were made by Native American females.

“I’ve seen bias against women and talking down to me. I feel expectations are less. Judges also seem to take men more seriously and I have been told numerous times to ‘smile.’”

“In the courts and state government I have been privy to conversations, proceedings, and decisions which displayed bias or prejudice. It can be difficult, on certain occasions, to determine if it is because of being Native American or because I’m a woman.”

V. The University of New Mexico School of Law

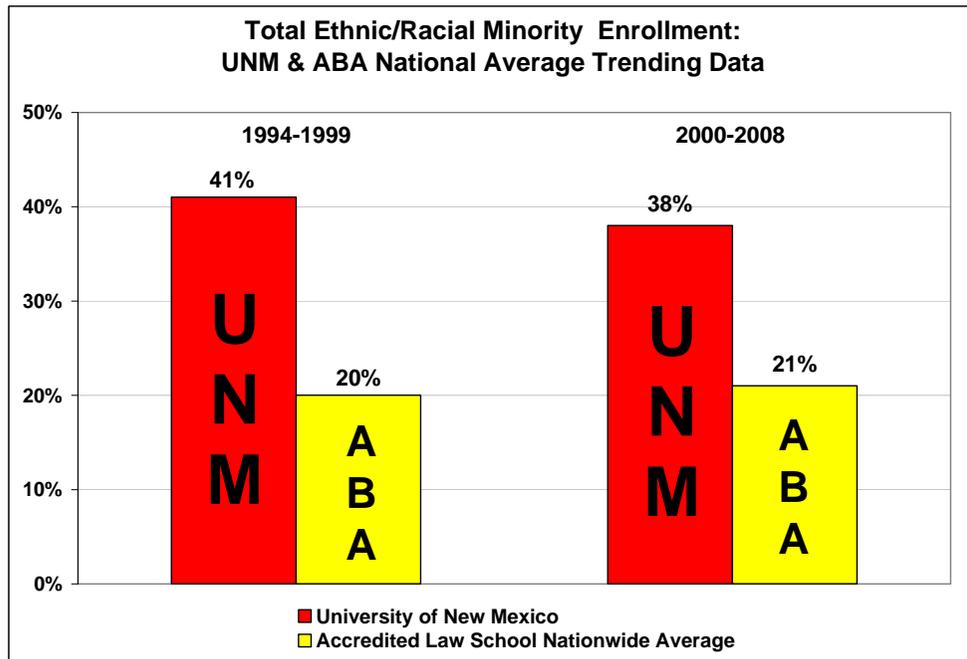


UNM’s dedication to offering opportunities to ethnic/racial minority law school students is evident when looking at first-year enrollment numbers over the past two decades. As shown in the table above, between 1987 and 1997 ethnic/racial enrollment for first-year law students at the UNM School of Law was more than twice that of the national average for ABA-accredited law schools across the country (41% and 17%, respectively). It should be noted that the UNM School of Law was ranked number one for Hispanics for the third consecutive year by *Hispanic Business* magazine in its report on the top ten law schools and was ranked number four by *U.S. News* for diversity.

Ten years later the results are similar as 40% of first-year students at the UNM School of Law between 2000 and 2008 were minorities, compared to 22% ethnic/racial minority enrollment for first-year students at ABA schools across the country.

First Year Ethnic/Racial Minority Enrollment: UNM and ABA Averages								
	<u>00-01</u>	<u>01-02</u>	<u>02-03</u>	<u>03-04</u>	<u>04-05</u>	<u>05-06</u>	<u>06-07</u>	<u>07-08</u>
UNM School of Law	36%	34%	37%	36%	40%	47%	50%	40%
ABA Accredited Law Schools National Average	22%	21%	21%	21%	22%	22%	22%	22%

The table above shows the percentage of ethnic/racial minority first year students for each class between 2000 and 2008. At the UNM School of Law, the percentage of first-year ethnic/racial minority students fluctuates a bit on a year-to-year basis, ranging from 34% in 2001-2002, to a high of 50% in the 2006-2007 entering class. It should be noted that over the past three years, first-year ethnic/racial minority enrollment at the law school has averaged 46% compared to 37% over the five previous entering classes. In comparison, the national average has been quite stable over the past decade.



Looking at the total enrollment at the UNM School of Law when compared to the national average of ABA-accredited schools nationwide, it is again observed that the law school has a much higher ratio of ethnic/racial minority students compared to the national average. Between 2000 and 2008 ethnic/racial minorities constituted 38% of the law school compared to 21% at the national level. Between 1994 and 1999 the total enrollment of ethnic/racial minority students at the law school was slightly higher than that observed between 2000-2008 (41% and 38%, respectively).

	<u>00-01</u>	<u>01-02</u>	<u>02-03</u>	<u>03-04</u>	<u>04-05</u>	<u>05-06</u>	<u>06-07</u>	<u>07-08</u>	<u>08-09</u>
UNM School of Law	35%	35%	34%	35%	37%	41%	46%	44%	46%
ABA Accredited Law Schools National Average	21%	21%	21%	21%	21%	21%	22%	22%	N/A

As shown above, total ethnic/racial minority enrollment at the UNM School of Law has fluctuated between 34% in the 2002-2003 school year to 46% in 2006-2007 and 2008-2009. In comparison, ethnic/racial minority enrollment at ABA-accredited schools nationwide has been extremely consistent at 21% or 22% in each school year since 2000-2001.

Over the past three years ethnic/racial minority enrollment at the law school had a steady average of 45%. It is worth noting that between 2001 and 2004, there was a high percentage of students who did not declare their race/ethnicity.

Racial and Ethnic Enrollment at UNM School of Law 2000-2009									
	<u>00-01</u>	<u>01-02</u>	<u>02-03</u>	<u>03-04</u>	<u>04-05</u>	<u>05-06</u>	<u>06-07</u>	<u>07-08</u>	<u>08-09</u>
African-American	3%	3%	3%	3%	4%	4%	3%	3%	3%
American Indian	6%	7%	7%	9%	9%	11%	12%	10%	9%
Asian	3%	2%	2%	1%	1%	2%	3%	2%	3%
Hispanic	23%	23%	22%	22%	23%	24%	28%	29%	31%
White	56%	49%	48%	51%	54%	50%	46%	46%	46%
Undeclared	8%	16%	16%	14%	9%	9%	9%	9%	7%
Total Minority Enrollment	35%	35%	34%	35%	37%	41%	46%	44%	46%

Looking at a more detailed ethnic and racial breakout of enrollment at the UNM School of Law, it is worth noting that the percentage of Hispanic students has increased over the past decade from an average of 23% between 2000-2006 to 31% in 2008-2009. The percentage of White students enrolled has declined from a high of 56% in 2000-2001 to 46% observed in each of the last three school years.

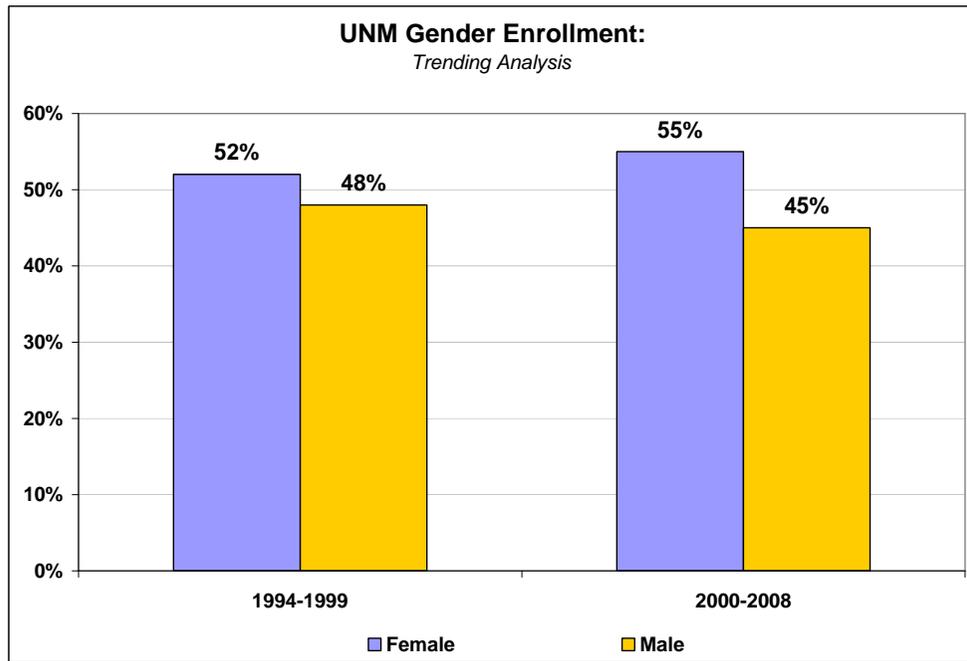
The percentage of Native American, African American, and Asian students has remained relatively stable and closely mirrors the percentages found in the general population in New Mexico.

UNM Total Enrollment by Gender									
	<u>00-01</u>	<u>01-02</u>	<u>02-03</u>	<u>03-04</u>	<u>04-05</u>	<u>05-06</u>	<u>06-07</u>	<u>07-08</u>	<u>AVG</u>
Women	59%	59%	60%	60%	55%	51%	50%	51%	56%
Men	41%	41%	40%	40%	45%	49%	50%	49%	44%

As shown in the table above, women have been well represented at the UNM School of Law over the past decade. The average enrollment of women over the past decade is 56%. Between 2000 and 2004, 60% of the students were women, though this number has fallen in recent years with women and men now being almost equally represented.

Female Enrollment: UNM and ABA National Average									
	<u>00-01</u>	<u>01-02</u>	<u>02-03</u>	<u>03-04</u>	<u>04-05</u>	<u>05-06</u>	<u>06-07</u>	<u>07-08</u>	<u>AVG</u>
UNM	59%	59%	60%	60%	55%	51%	50%	51%	56%
National Average	48%	49%	49%	49%	48%	48%	47%	47%	48%

The UNM School of Law has a higher enrollment of female students when compared to the national average of ABA-accredited schools. Over the past decade the national average of female law students is 48% compared to 56%. Some of the large difference is attributable to the fact that a high proportion of female students attended the law school in the early part of the decade, where fully three-in-five students were female. Looking at the more recent records between 2005 and 2008, it is observed that UNM averaged 51% female enrollment compared to 47% at the national level.



Looking at trending results between 1994 and 1999 we find that 52% of UNM School of Law students were female. In comparison, female enrollment at the law school averaged 55% between 2000 and 2008. Again, female enrollment was particularly high between 2000 and 2004 averaging 60% for the period but has since fallen to approximately 50%.

Total Enrollment UNM										
	<u>00-01</u>	<u>01-02</u>	<u>02-03</u>	<u>03-04</u>	<u>04-05</u>	<u>05-06</u>	<u>06-07</u>	<u>07-08</u>	<u>08-09</u>	<u>AVG</u>
Female: White	37%	38%	40%	40%	36%	30%	26%	28%	28%	34%
Female: Minority	22%	21%	20%	20%	19%	21%	24%	23%	25%	21%
Male: White	27%	27%	25%	24%	27%	30%	29%	28%	26%	27%
Male: Minority	14%	14%	15%	16%	18%	20%	21%	21%	21%	18%

Further analysis of the gender and ethnic/racial make up of the UNM School of Law shows the high diversity of the school. The current student body (2008-2009) is composed of 28% white female, 25% ethnic/racial minority females, 26% white males, and 21% ethnic/racial minority males.

Enrollment of ethnic/racial minority males has risen from 14% in the early part of the decade to 21% in each of the past three years. Enrollment among ethnic/racial minority females and white males has remained relatively stable over the past 10 years, while there has been a drop among white females from a high of 40% between 2002-2004 to 28% over the past two years. As previously noted, enrollment among women was particularly high in the first half of the decade.

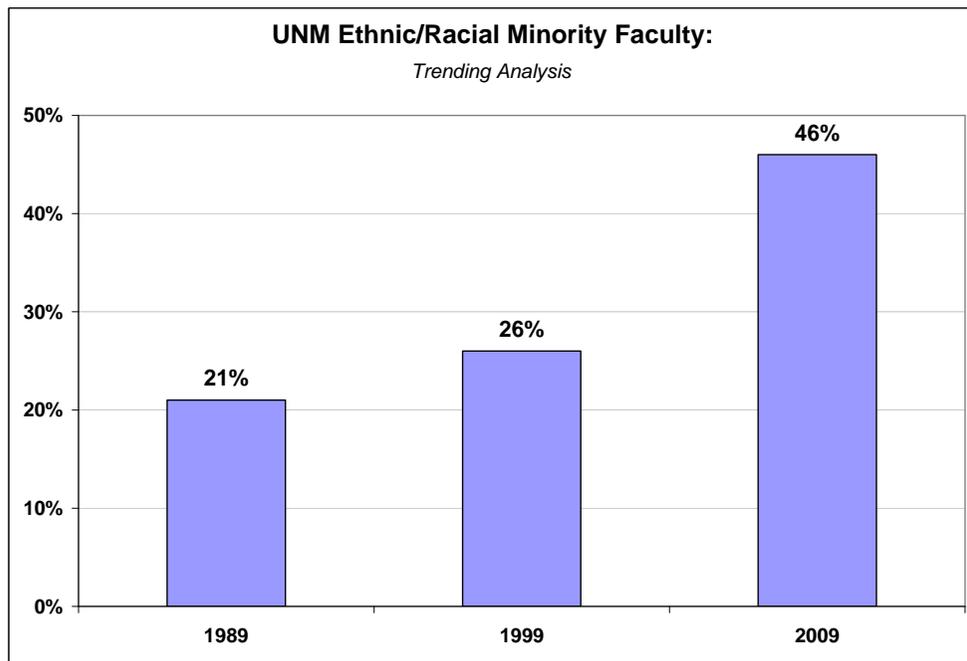
Admission versus Graduation					
Admit Year	Graduation Year	Hispanic	Asian	Native American	African American
2002		28	1	9	2
	2004-2005	26	1	7	2
2003		23	2	10	5
	2005-2006	25	1	9	6
2004		25	4	14	4
	2006-2007	22	4	15	3
2005		35	2	13	4
	2007-2008	34	1	13	3
2006		35	4	12	5
	2008-2009	35	4	10	5

The above table lists the data from the UNM School of Law registrar showing the number of ethnic/racial minority matriculants from Fall 2002 through Fall 2006 paired with the number of minority graduates three years later. While there appears to be a disconnect in the data, note that the data do not reflect specific student matching—in other words, the registrar did not take each individual matriculant and then look to see if that specific student graduated three years later. Instead, the data show the gross number of minority matriculants each August during the period and the gross number graduating after three years. Some students may have transferred into a second-year class during the period (which could account for the occasional larger number of graduates than corresponding matriculants), some may have taken leaves of absence and thus graduated more than three years after matriculating (which would decrease the number of graduates three years later but increase the number after four or five years), and some may have accelerated their studies and thus graduated in less than three years, etc. Nevertheless, over a five-year period, most of these aberrations should have largely balanced out.

Diversity and UNM School of Law Faculty

Current UNM Faculty 2008 – 2009		
<u>Race/ethnicity</u>	<u># of faculty members</u>	<u>% of faculty members</u>
White non-minority	19	54%
Hispanics	9	26%
African American	2	6%
Asian	2	6%
Native American	3	9%
Total Minority Faculty Members	16	46%

The commitment of the UNM School of Law to diversity is clearly illustrated when looking at the demographic makeup of the faculty in the 2008-2009 school year. As shown above, of the 35 full-time/tenured law school professors, 16 or 46% are ethnic/racial minorities. It should also be noted that 55% of the faculty is female and 45% male.



The table above shows the shift in ethnic/racial minority faculty hiring over the past 20 years. While the UNM School of Law has been a leader in minority hiring over the past few decades, there has really been a dramatic change over the past 10 years. In 1989, 21% of law school faculty were ethnic/racial minorities, which rose to 26% at the time of the 1999 study. However, since 1999, the percentage of minority faculty has nearly doubled to 46%.

VI. The New Mexico Bar Examination – History, Progress, and an Update on New Initiatives

A. Historical Overview of the Bar Examination and Its Impact on Minorities

The Task Force on Minorities in the Legal Profession detailed the history of the New Mexico Bar Examination in its initial report, titled “The Status of Minority Attorneys in New Mexico (January 1990) (“1990 Task Force Report”) and its update to that report, titled “The Status of Minority Attorneys in New Mexico—An Update (1990-1999)” (“1999 Update Report”). To preserve the integrity of that history and past recommendations of the task force, this Section reprints in pertinent part the Executive Summary of the 1999 Update Report, “New Mexico Bar Examination—History and Progress—An Update,” pp. 5-7:

Judge Steve Herrera and *Melendez v. Burciaga*—A Point of Departure

The original Task Force on Minorities in the Profession was privileged to have among its members the Honorable Steve Herrera, Chief Judge of the First Judicial District. Judge Herrera died tragically in an automobile accident in August of 1998. No one understood or appreciated the history of the New Mexico Bar Examination and its impact on minorities any better than Judge Herrera. As a young attorney in the 1970s, he changed the course of that history, first as an outspoken and resolute advocate for change, and ultimately as an architect of reform in his role as lead counsel for the Petitioners in *Melendez v. Burciaga* (NMSC No. 12449, April 1979).

Melendez was an original evidentiary proceeding before the New Mexico Supreme Court in which 15 attorneys, including Steve Herrera, challenged the New Mexico Bar Examination on equal protection and due process grounds. As described more fully below, the challenge was prompted by a decade of highly disparate bar passage rates experienced by Hispanics and other ethnic/racial minority applicants. At the close of the proceedings in *Melendez*, the Supreme Court ordered that a number of substantive modifications be made in the content, structure, and administration of the Bar Examination. Over the next decade the disparity in bar passage rates between minority and non-minority applicants was significantly reduced.

Judge Herrera was the author of the history of the struggle by minorities with the New Mexico Bar Examination in the January 1990 Task Force Report. (Task Force Report, January 20, 1990, pp. 35-39). His first-hand knowledge of the issues, the people involved and the importance he ascribed to this subject in his professional life made Judge Herrera uniquely qualified for the assignment. Because that history provides a proper context and a baseline for evaluating how well minorities have fared in the New Mexico Bar Examination during the 1990s, the principal aspects of Judge Herrera’s history of the Bar Examination are summarized as follows.

The centerpiece of Judge Herrera’s history was a comparison of bar examination failure rates for Hispanics and non-Hispanics from 1970 to 1978 (Pre-*Melendez*), and from 1980 to 1989 (Post-*Melendez*).

The Pre-*Melendez* period demonstrates a huge disparity in failure rates throughout the 1970s, just as minorities began graduating from law schools in significant numbers. Hispanics averaged a 61% failure rate during this decade compared with an average failure rate of 24% for non-Hispanics (including other minorities), a huge differential of 37%. The magnitude of this disparity gave rise to a long series of newspaper articles, sit-ins and other protests challenging the fairness of the New Mexico Bar Examination. The United States House of Representatives Committee on Education and Labor conducted hearings in Santa Fe on a proposed bill to remove discriminatory barriers to minorities seeking legal services or admission to the practice of law. (Task Force Report, January 20, 1990, at 36). The continuing wide disparity in failure rates would become a turning point in the history of the New Mexico Bar Examination by the end of the decade.

The 1970s was a particularly frustrating period for unsuccessful minority applicants. In 1972, a Hispanic applicant petitioned the New Mexico Supreme Court seeking a review and evaluation by the Court of his answers to the bar examination. *Petition of Pacheco*, 85 N.M. 600 (1973). A number of novel issues were presented, including a claim that the bar examination, by concentrating on business law and other traditional subjects as distinguished from legal problems of the poor, was unfair to minorities and discriminated against persons whose culture or values were different from those of the examiner. 85 N.M. at 600-601. The Court observed that an unsuccessful applicant had the right to review the questions asked, the applicant's responses thereto and a sample of a passing answer to each question. The Court determined that this post-examination procedure was adequate and that Petitioner had not been denied due process or equal protection. *Id.* at 604.

Thereafter, in October of 1974, the New Mexico Supreme Court refused to administer the attorney's oath to several prospective attorneys who had passed the Bar Examination when they appeared at the swearing-in ceremony wearing black arm-bands in silent protest of disproportionate bar passage rates for Hispanics and other minorities. (Task Force Report, January 20, 1990, at 35). More than four years later, in April of 1979, mounting discontent over highly disproportionate failure rates by Hispanics provoked the filing of the petition in *Melendez*.

If the 1970s were a time of frustration and confrontation over disproportionate failure rates, the 1980s were a time of transition that witnessed a gradual and sporadic narrowing of the disparity. Within three years after the reforms ordered by the Supreme Court in *Melendez* were implemented, the disparity in failure rates was reduced to approximately five percentage points (5%) in the February 1983 bar examination. (Task Force Report, January 20, 1990, at 38). The good news was short-lived, however. Over the next six years, failure rates for Hispanics exceeded 40% in the August 1983 exam, the February and August 1985 exams and the February 1987 exam. Over the entire decade of the 1980s, the failure rate for Hispanics averaged 39%, compared with 19% for non-Hispanics, a differential of 20%. *Id.* While the differential of 20% in the 1980s was certainly better than the 37% differential seen in the 1970s, the continuing disparity was still significant and very troublesome to the original Task Force on Minorities in the Profession.

The passage rate for Hispanics averaged 21% less than white applicants. The passage rates for other ethnic/racial minorities were between 15% (Asian) and 50% (African American) less than for white applicants. The Board of Bar Examiners data was based on a passing score for the Bar Examination of 133.

Effective with the July, 1995 Bar Examination, the passing score for the Bar Examination was lowered from 133 to 130. At the same time, the Board of Bar Examiners began compiling a computerized database that included a statistical breakdown for comparing first-time applicants and repeat applicants. The Board emphasizes in its February 13, 1998 letter that in the February, 1996 and February, 1997 bar exams, although the overall pass rate of Hispanics was 85% and 88% respectively, the pass rate for first-time applicants in each of those categories was 100%.

This more recent data leads to a number of important observations. First, the overall differential in passage rates between Hispanic applicants and white applicants from July 1995 to July 1997 has been narrowed to an average of 12% (Hispanic 83% 119P/25F vs. White non-Hispanic 95% 542P/31F). This is an important and significant reduction from the 20% differential seen in the 1980s and the early 1990s.

Lowering the passing score from 133 to 130 appears to have been one factor in closing this gap, at least for most minority groups. The passage rate for White non-Hispanic applicants after the score was lowered went from an average 88% overall to 95% for first-time applicants, a gain of 7%. The average passage rate for Hispanics went from 67% overall to 87% for first-time applicants, an increase of 20%, for a net gain of 13% when compared with White non-Hispanic applicants. (See Tables 18 and 19). This analysis logically suggests that many first-time applicants, ethnic/racial

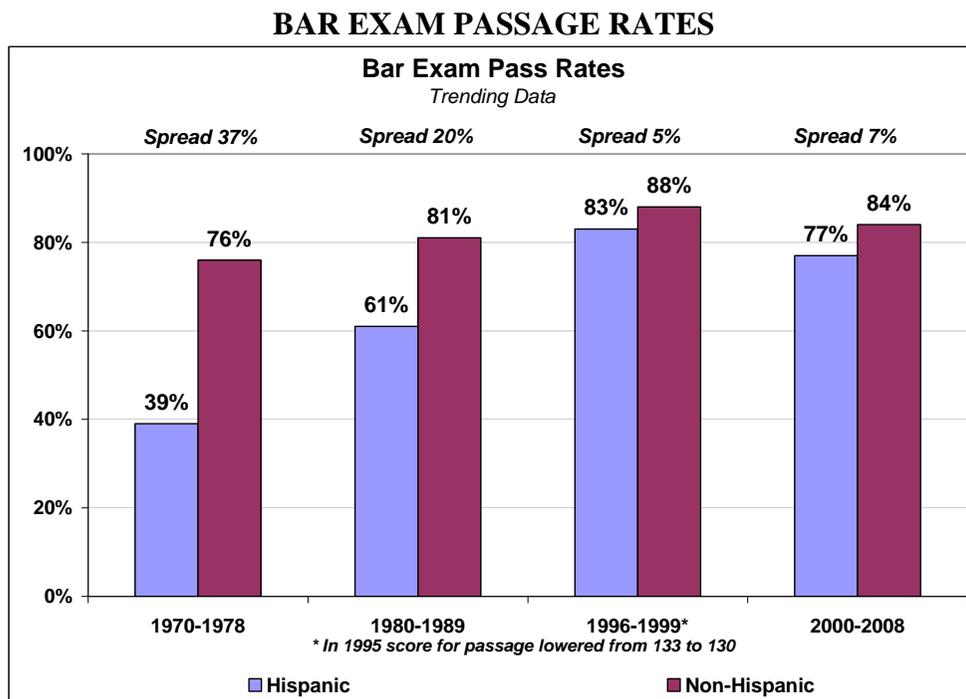
minority and non-minority alike, had been on the borderline in passing the bar examination prior to July 1995.

The disproportionate bar passage rates experienced by ethnic/racial minorities has been a continuing concern of the Board of Bar Examiners for the past two decades. The Board’s actions over that time have been both responsive and effective. As the current Chair explained in the Board’s letter of February 13, 1998, much has been done to address this problem. Specific action identified by the board includes the following:

1. The passing score has been lowered from 133 to 130.
2. The Board has re-instituted a third phase of the re-grade for borderline applicants whose scores are within 3 points of passing.
3. Effective July 1997, the Board has included a performance test component in the Bar Examination.
4. The Board has continued to work with nationally recognized consultant, Dr. Stephen P. Klein. Dr. Klein is the author of an article attached to the Board’s letter of February 13, 1998 entitled, “The Size and Source of Differences in Bar Exam Passing Rates among Racial and Ethnic Groups.”
5. Based on Dr. Klein’s recommendation, the Board approved and is implementing a change in the statistical scoring method for conversion of raw scores and equating the MBE and essay scores using the standard deviation method.
6. The Board’s Executive Director was appointed to the National Conference of Bar Examiners Committee on Minority Issues.

As Judge Herrera concluded in the 1990 Task Force Report, while much good work has been done to date by the Board of Bar Examiners, the Bar Exam will remain a “minority issue” as long as disparate bar passage rates continue.

B. Bar Exam Passage Rates



In looking at New Mexico Bar Exam passage rates over the past four decades, dramatic improvements are observed among Hispanic applicants. Between 1970 and 1978 just 39% of Hispanics taking the bar exam passed compared to a 76% passage rate among non-Hispanics, a spread of 37%.

The 1980s saw an improvement in passage rates among Hispanics rising to an average of 61% compared to 39% just a decade earlier. However, Hispanic applicants still lagged far behind non-Hispanics, who had a passage rate of 81% during the 1980s.

In 1995, the score for bar passage was lowered from 133 to 130. This resulted in another large improvement in passage rates among Hispanic students. Between 1996 and 1999 passage rates among Hispanics jumped from 61% observed in the 1980s to a high of 83%. In fact, between 1996 and 1999, overall passage rates among Hispanics nearly mirrored that of non-Hispanics (83% and 88%, respectively).

The past decade saw a drop in passage rates among both Hispanic and non-Hispanic students. Between 2000 and 2008, passage rates among Hispanics averaged 77% compared to an average of 84% among non-Hispanics.

First Time versus Repeat Passage Rates		
	1996-1999	2000-2008
First Time Applicants	92%	88%
Repeat Applicants	47%	53%

While overall passage rates are important when looking at historical trends, they only paint part of the picture. First-time bar applicants have a much higher success rate than do repeat applicants. As shown above, between 2000 and 2008, passage rates among first-time applicants was 88% overall, compared to 53% among repeat applicants. Somewhat similar results are observed when looking at passage rates between 1996 and 1999, with passages among first-time applicants (92%) being nearly double that of repeaters (47%).

Hispanic, White, and Other Ethnic/Racial Minority Passage Rates		
First-Time Passage Rates		
	1996-1999	2000-2008
Hispanic	86%	82%
White	95%	91%
Other ethnic/racial minority	76%	77%
Total	92%	88%
Repeat Passage Rates		
	1996-1999	2000-2008
Hispanic	67%	54%
White	62%	63%
Other ethnic/racial minority	25%	39%
Total	47%	53%

It is important to point out that in the 1989 and 1999 task force reports, comparisons were only made between Hispanics and non-Hispanics. The non-Hispanic classification included both white applicants and non-Hispanic minorities. This simple classification of Hispanics versus non-Hispanics can be misleading given that ethnic/racial minority non-Hispanics have lower overall passage rates than do either Hispanics and White applicants in both their first attempt and repeat attempts.

Looking at the differences between ethnic/racial groups between 2000 and 2008, it is observed that 91% of White first-time applicants passed the exam, compared to 82% of Hispanic first timers and 77% of other ethnic/racial minority applicants.

There is a significant drop-off in passage rates for repeat applicants. Among Hispanics, just over half (54%) of the repeat applicants passed compared to 82% of first-time applicants, a difference of 28%. Similarly, passage rates among other ethnic/racial minority groups fell from 77% among first-time applicants to 39% of those repeating the exam between 2000 and 2008.

In terms of trending, there has been a slight drop (4%) in first-time passage rates among both Hispanics and Whites when comparing data from 1996-1999 and 2000-2008. Among Hispanics, 86% of first-time applicants passed in the 1996-1999 time period compared to 82% in the period between 2000-2008. There is an even bigger drop among repeat Hispanic examinees falling from a passage rate of 67% in 1996-1999 to just 54% between 2000-2008.

First-time passage rates among other non-Hispanic minorities were stable across the two time periods, though repeat passage rates show an increase from 25% in 1996-1999 to 39% between 2000-2008.

All Races/Ethnicities		
First-Time Passage Rates		
	1996-1999	2000-2008
Hispanic	86%	82%
White	95%	91%
Native American Indian	76%	77%
African American/Black	92%	88%
Asian	67%	84%
Other	86%	84%
Total	92%	88%
Repeat Passage Rates		
	1996-1999	2000-2008
Hispanic	67%	54%
White	62%	63%
Native American Indian	26%	31%
African American/Black	25%	39%
Asian	0%	38%
Other	20%	62%
Total	47%	52%

The table above shows a more detailed breakout of first-time and repeat passage rates among various ethnic/racial groups. For instance, between 2000-2008 the passage rate among first-time African American/Black applicants was 88%, nearly equal to that of White applicants (91%), and higher than that of Asian (84%), Hispanic (82%), and Native American Indian (77%) first time applicants.

From 1996 to 2008, Native American applicants (both first-time and repeat) have shown consistently lower passage rates when compared to others.

C. About the Data in the 2000s – Comments from the Board of Bar Examiners on Interpreting the Data

Thirty years after *Melendez*, passage rates for ethnic/racial minority applicants as a collective group have unquestionably improved, and lowering of the passage rate 3 points in 1995 likely contributed to this trend. Nevertheless, disparities in passage rates persist, particularly for certain racial groups and repeat applicants, and the fact remains that minority applicants fail the bar exam more frequently than their non-minority counterparts.

Comparing passage rates for 1996-1999 to the 2000s, the board notes that, for first time applicants, only American Indians and Asian applicants showed any further improvement in overall passage rates. Hispanics, African Americans, and white applicants all showed lower overall passage rates during the 2000s. Significantly, however, the improved passage rate of 74% for first-time American Indian applicants is not only the lowest passage rate for any minority group taking the bar exam, but also remains clearly disparate when compared to the 91% passage rate for White first-time applicants.

When the board lowered the passing score, Dr. Klein did advise that the board could expect to see the pass rate rise. However, after a few exams the overall pass rate could drop. The reason for this is that applicants would become complacent and not put forth the same effort assuming that they would not be one of the 10%-15% of first-time takers who failed. Also, because New Mexico does enjoy a fairly high pass rate in comparison to most jurisdictions, it does attract applicants who have not been successful in other states and, in some cases, fail this exam as well.

Repeat takers of the bar exam continue to have low overall passage rates. Nevertheless, overall passage rates for repeat applicants showed some improvement in the 2000s for all racial groups except Hispanic applicants, whose overall passage rate dropped from 67% to 54%. Significantly, the passage rate of 31% for repeat Native American applicants is not only the lowest passage rate for any minority group, but also remains clearly disparate when compared to the 63% passage rate for White repeat applicants.

Finally, the board emphasizes that, in many instances, the number of minority applicants taking the Bar Examination from particular racial groups, such as African American, Native American, and Asian applicants, is very small, thereby perhaps limiting the meaning of the statistical results. For example, there may be only one African-American applicant taking the bar exam either as a first-time or repeat taker. In such an instance, the African American passage rate for that particular exam would be reflected as either 100% pass or 100% fail. Nevertheless, the Board recognizes that the passage rate data being kept and maintained by the Board is not only an invaluable tool, but also the only real measure now available for monitoring trends over time in how minority applicants are being impacted by the Bar Examination. The historical data on minority and gender based Bar Exam passage rates maintained by the New Mexico Board of Bar Examiners is one of the most extensive, on-going efforts in the Nation.

D. Addressing Continuing Disparities in Bar Exam Passage Rates – Implementation of a Strategic Plan by the Board of Bar Examiners

1. Continuing Measures

The Board continues to implement measures identified in the 1999 Update, including maintaining the lower scaled score of 130 as the minimum passing score; re-grading the written answers for borderline applicants whose scores are within 3 points of passing; and using the standard deviation method for the scoring method for conversion of raw scores on the written portion of the bar exam and equating the Multi-State Bar Exam and essay scores and scaling the written score to the Multi-State Bar Exam using the standard deviation method.

2. New Initiatives

After reviewing the Bar Examination format in all other jurisdictions and seeing that the vast majority tested for two days, the format of the bar examination changed from a two and one-half day to a two-day examination, consisting of six 30-minute essays and two 90-minute multi-state performance test essays on the first day, followed by the Multi-State Bar Exam on the second day. In conjunction with the reduction in exam days, the board spent two years reviewing the list of testable subjects and compared it to those of other states as well as soliciting recommendations from the faculty at the law school. As a result, the number of testable subjects was reduced so that applicants could focus their study time on those subjects they are more likely to need to know when they are in practice. In 2006, the board authorized the use of laptop computers to write the essays. The number of applicants using laptops since then has steadily increased.

Recognizing that repeat applicants are often at an economic disadvantage and not always gainfully employed, the board has reduced the retake fee twice in the last decade. The fee was first lowered from \$400 to \$200 and then to the current retake fee of \$100. The board lowered this fee to encourage repeat applicants to take the next exam without experiencing a financial hardship or barrier in doing so. Applicants are more likely to succeed if they are able to take consecutive exams rather than waiting a year or more before they can afford to retake the exam.

In the spring of 2008, the Board of Bar Examiners discussed the development of strategies to improve Bar Examination passage rates among minority and repeat applicants. In August 2008, the Board unanimously approved and moved forward with implementation of new initiatives under a written Strategic Plan for Bar Exam Passage (“Strategic Plan”). The Strategic Plan states that:

In response to continuing disparities in bar exam passage rates, particularly among African American, Native American, and repeater applicants, the board will pursue the following three specific goals intended to improve the passage rates for such applicants:

Goal 1: Bar Exam Preparation Initiative

Coordinate and collaborate with the State Bar of New Mexico, University of New Mexico School of Law, American Indian Law Center, Inc., and minority and specialty bar associations, committees, and sections (“Specialty Bars”) to promote equitable and affordable access for all applicants to Bar Exam preparation courses.¹⁰

Goal 2: Bar Exam Passage Mentoring Program

Encourage and support collaborative efforts of the specialty bars and their members to provide advice, counseling, and recommendations to law students and applicants for the Bar Exam, concerning strategies, courses, financial assistance, and other resources available to enhance passage of the Bar Exam.

Goal 3: Information Access Project

Coordinate and collaborate with the State Bar of New Mexico, UNM School of Law, and the specialty bars to promote effective access by all applicants to information related to passing the bar exam, including but not limited to bar exam preparation courses, bar exam mentoring programs, and financial support.

¹⁰ For purposes of the Strategic Plan and its goals, references to “Specialty Bars” includes minority and voluntary bar associations as well as committees, divisions, and sections within the State Bar of New Mexico. At the outset, the Board of Bar Examiners identified a number of specialty bars likely to have a strong interest, including but not limited to the New Mexico Black Lawyers Association, Indian Bar Association, Navajo Nation Bar Association, Hispanic Bar Association, and the State Bar of New Mexico’s Committee on Diversity, Indian Law Section, Young Lawyers Division, and Senior Lawyers Division.

The Board of Examiners, through its Bar Exam Passage Committee, identified a number of proposed activities under each of these goals to start the process. The entire Board overwhelmingly supported these goals and activities; however, several things were obvious. First, the Strategic Plan must be a living document capable of including new ideas and adjusting to changing circumstances. Second, successful implementation simply must have support from and close collaboration with and between the various specialty bars as well as entities such as the State Bar of New Mexico, UNM School of Law, and the American Indian Law Center, Inc. The board designated various members as liaisons and contacts for these specialty bars and other entities. Third, each applicant and his or her particular circumstances are unique, requiring individualized approaches to promote success on the bar examination.

a. Activities Implementing the Bar Exam Preparation Goal

In the fall of 2008, the board reached out to a number of entities. The board followed up with the Young Lawyers Division regarding the status of its Minority Bar Passage Project that had been proposed in the past but never implemented; explored whether the American Indian Law Center, Inc. might consider augmenting its Pre-Law Summer Institute for American Indians, which is highly successful in helping American Indian students be admitted and learn academic skills, to include programs for bar exam preparation; and through its liaison to the State Bar, proposed that the State Bar consider sponsoring an Interactive Bar Exam Strategy Workshop for first and third-year law students.

Several activities may hold particular promise with respect to the Bar Exam Preparation Initiative Goal. Although the board has been available to meet with unsuccessful applicants for several decades regarding their essays, few applicants actually took advantage of the opportunity. To overcome this problem, the board organized and hosted a one-day event. The board sent a letter to all applicants who were unsuccessful on the bar exam encouraging them to meet individually with a member of the board who has graded the bar exam to review and discuss their performance on the essays (“Performance Review Tutorial”). In urging these unsuccessful applicants to participate, the board noted that reviewing an applicant’s answers and how the exam is graded with a board member could be very helpful in understanding why one did not pass and identifying factors under their control that might increase their likelihood of success the next time.

The board noted that such an assessment of past performance, coupled with a desire to make changes, as needed, in the way the bar exam is approached, may serve as a positive and solid foundation on which to build for the next bar exam. These applicants were required to sign up in advance for a 30-minute scheduled appointment to allow the board members to preview those essays selected for discussion by the applicant. The first tutorial was held on October 25, 2008 from 9:00 a.m. to 1:00 p.m. Participants included three board members and the board’s executive director and seven unsuccessful applicants. Significantly, six of these seven individuals took the next bar exam and four passed. From their collective experiences and knowledge, the board also began developing a list of general strategies for bar exam passage for use in counseling unsuccessful applicants. The second Performance Review Tutorial, held on May 30, 2009, was conducted by the board’s executive director and two board members. Besides the board’s updated letter announcing the availability of appointments to review bar examination performance, unsuccessful applicants also received an offer by Assistant Dean for Student Services Bonnie Stepleton at the University of New Mexico School of Law to work with any UNM graduate who had been unsuccessful on the bar examination. Three applicants participated in the board’s Performance Review Tutorial; however, four unsuccessful applicants contacted Ms. Stapleton and arranged for her personal assistance. Importantly, all three applicants who participated in the May 2009 tutorial passed the July 2009 Bar Examination. The board will continue to offer the Performance Review Tutorial and to track the success of participants in taking a subsequent bar examination. As in the past, the board continues to be available for individual appointments with unsuccessful applicants at any time.

In December 2008, then Board of Bar Examiners Chair, Raymond Hamilton, along with the board’s executive director and members of its Bar Exam Passage Committee, met with Interim Dean of the University of New Mexico School of Law, Leo Romero, to discuss the development and offering at the law school of: (i) a for-credit bar exam preparation course, as now authorized by the American Bar Association, including ways to ensure that at-risk third-year law students participate; and (ii) an intensive additional second-year law student course or other program in legal writing also geared towards bar exam preparation, including ways to ensure that at least the bottom 10% of the 1st year class participate. The board invited new Dean Kevin Washburn to its board meeting on August 22, 2009 to discuss these matters, particularly the offering of a for-credit Bar Exam preparation course and the current efforts of the law school to assist at-risk students and any graduate who has been unsuccessful on the bar examination. The board continues to be available to make presentations to the law students at appropriate times about bar admission and preparing for the bar exam.

The board also has expanded its efforts outside state boundaries by identifying and contacting the sponsors of appropriate national annual law conferences that are attended by minority law students and suggesting inclusion of a general Bar Exam preparation breakout session for these students. By letter dated March 15, 2009, to the Federal Bar Association (“FBA”) President-Elect, Lawrence R. Baca, and FBA Indian Law Section Chair, Allie Greenleaf Maldonado, the board described its Strategic Plan and urged the FBA with its New Mexico-based Annual Indian Law Conference to include a breakout session for all attending students on bar exam preparation and strategies. The board also contacted Roxie De Santiago, Student Track Coordinator for the National Hispanic Bar Association’s 2009 Annual Conference, which was held in New Mexico, urging inclusion of a general bar exam preparation breakout session for students. At the request of Ms. De Santiago, in June 2009, the Board developed and provided a list of suggested breakout session topics. The board also plans to contact other national groups such as the National Bar Association, regarding inclusion of a student bar exam preparation breakout session during its national meeting.

b. Activities Implementing the Bar Exam Passage Mentoring Program

In October 2008 the board sent a letter to bar leaders seeking to organize a joint forum of representatives and/or leadership of the specialty bars to discuss the board’s Strategic Plan and initiatives to improve bar exam passage, particularly among African American, Native American, Hispanic, and repeater applicants. Besides beginning the conversation, the board hoped that the joint forum would be a platform for developing a model bar exam passage mentoring program to help applicants overcome challenges in being admitted to the State Bar. The first Joint Forum was held on January 31, 2009, and some twenty bar leaders and bar examiners attended. Justice Patricio M. Serna, New Mexico Supreme Court, also attended. Mentoring by the New Mexico Black Lawyers Association was presented as an example of how such efforts can benefit both first-time applicants as well repeat applicants in preparing for the Bar Examination. Representatives from the UNM School of Law attended and discussed the law school’s tutoring efforts for at-risk students. The board sent out a follow-up letter, dated February 27, 2009, to those attending the Joint Forum summarizing the results of the meeting. The board held a second Joint Forum on August 29, 2009, and made an effort to contact the specialty bars that were not able to attend the first Joint Forum such as the Navajo Nation Bar Association, Indian Law Section and American Indian Law Center, Inc.

On May 15, 2009, representatives of the board appeared before the State Bar Board of Commissioners to provide an update on the Strategic Plan and initiatives to improve bar examination passage. To further promote the support and development of an effective bar exam passage mentoring program by the specialty bars, including State Bar sections and divisions, the board will use articles in the *Bar Bulletin* to encourage participation in mentoring programs. The board also plans to follow up with each specialty bar regarding the effectiveness of the bar exam passage mentoring programs and ways to improve the programs.

c. Activities Implementing the Information Access Project

The board continues to improve its website for applicants. The Board’s webpage, <http://www.nmexam.org>, now provides easy links to some previous New Mexico Bar Examinations in PDF format and to additional digitized bar examinations and answers. Though expressly not endorsed by the Board, to help applicants, the website also provides a listing of available commercial bar review courses. Eventually, as further resources develop within the legal community, the board also plans to provide more website links for applicants to resources, including but not limited to available mentoring programs, applicant study groups, financial aid, and other support. Towards that end, in October 2008, the board mailed out a short survey to specialty bar leaders asking them to identify available bar exam preparation courses, mentoring programs, and sources of scholarships and financial aid to support and prepare applicants during bar exam study. The board learned that some specialty bars and entities were meeting with students or mentoring applicants on bar exam preparation such as the Young Lawyers Division and the New Mexico Black Lawyers Association, while others provided scholarships for bar exam preparation, including the Indian Law Section. In February 2009, Joe Conte, Executive Director of the State Bar of New Mexico, also provided the Board and the UNM School of Law a compilation of potential sections and divisions that might offer financial aid and support to applicants taking the bar exam. The board recognizes that the economic downturn has dried up many sources of private financing for bar exam preparation courses.

3. Annual Reports

As part of its Strategic Plan, beginning in December 2009, the board will prepare an annual report on implementation of activities under the three goals to be distributed to the New Mexico Supreme Court, State Bar Board of Commissioners, Committee on Diversity, and participating specialty bars.

E. Observations and Recommendations of the Board of Bar Examiners

1. The board should continue with the general development and implementation of its Strategic Plan to address continuing disparities in bar exam passage rates among ethnic/racial minorities, particularly among Native American, African American and Hispanic applicants, and repeat applicants.
2. The University of New Mexico School of Law should offer a for-credit bar exam preparation course, as now authorized by the American Bar Association, for all students, including ways to ensure that at-risk third-year law students participate, and continue to build on its existing efforts to assist at-risk students and any unsuccessful applicant who is a graduate with essay writing and preparation for the bar exam.
3. The board, along with specialty bars and other interested entities, should continue to collaborate through periodic joint forums, surveys, and other meetings on finding additional effective ways to improve bar exam passage among minorities and repeat takers of the exam.
4. Specialty bars and other interested entities should be encouraged to develop bar exam preparation mentoring programs, and the board should help with such efforts to develop a model program.
5. The board should continue to offer individual counseling to unsuccessful applicants, either by appointment or through its Performance Review Tutorial, to review their performance on the bar exam and to develop new strategies for passage.
6. The board should continue to urge national annual bar conferences to include breakout sessions for attending law students on bar exam passage preparation and strategies.
7. The board should continue to attend and participate in national conferences on the bar examination, including impacts on minority applicants.
8. The board, UNM School of Law, American Indian Law Center, and specialty bars, including but not limited to the Indian Bar Association, Navajo Nation Bar Association, Indian Law Section, the State Bar, and the Federal Bar Association, should collaborate and develop ways to improve passage rates of Native Americans on the bar exam.
9. The board should continue to assess and monitor the effectiveness of the current format of the bar exam and the list of testable subjects to ensure that the exam continues to be a valid and reliable means to test for competency to practice law.

VII. Career Preferences and Employment Opportunities of Minority Attorneys

It should be noted that the study of this area was narrow due to the lack of data available, since questions on this topic were not included in this update. Information on career patterns for this update on the status of minority attorneys in New Mexico is drawn for the most part from annual Salary Summary Reports prepared by University of New Mexico School of Law for NALP, The Association for Legal Career Professionals. It tracks employment status of students at, and six months after, graduation. The original report and the first update both used survey instruments directed at a wide pool of New Mexico lawyers that asked specific questions about ethnic/racial minority and women lawyers that differ from the more general questions in the NALP instrument. In addition, earlier reports surveyed some employers as well as lawyers who were graduates of various law schools, while the NALP surveys are limited to UNM graduates. For most of the past decade, more non-UNM graduates have taken the New Mexico Bar Examination than have UNM graduates. It would be hard to make firm assessments about the career status of lawyers in New Mexico like those made in the earlier reports without a survey regimen similar to those used in the past.

According to the most recent NALP survey for the nation as a whole, of the 41,833 graduates of the Class of 2008, 47% were women and almost 23% were ethnic/racial minority graduates. The median starting salary for women graduates was \$67,500 in comparison with \$75,000 for men (continuing a pattern of lower salaries for women), and with the median for ethnic/racial minority graduates higher than that for non- ethnic/racial minority graduates. In 2008, the median starting salary was \$85,000 for minority graduates and \$70,000 for non-minority graduates. National salaries for attorneys are always considerably higher than those for New Mexico lawyers.

This 2009 update reflects economic conditions through 2008, a period of stability and growth in employment for attorneys in the United States, in contrast with an unprecedented downturn in employment prospects facing lawyers starting in 2008 and continuing into 2009. Observations about career patterns for the past may not hold in the current economy where there has been such severe dislocation and uncertainty in lawyer employment.

Based on NALP surveys for UNM graduates from 2002-2008, there were no statistically-significant differences in obtaining legal employment for female and ethnic/racial minority lawyers and non-minority and male UNM graduates, and the gaps in terms of salaries between minority and non-minority lawyers narrowed and, in some cases, closed. The disparity in salaries between women and men seen nationally was also present in New Mexico. In 2002, the average starting salary for all UNM graduates was \$44,075 (\$42,879 for women, \$46,524 for men), with an average salary for minority lawyers of \$41,314 and \$45,680 for non-minority lawyers. By 2006, the gender gap narrowed, and minority average salaries (\$53,205) surpassed those for non-minority graduates (\$48,565). For the UNM Class of 2008, the average starting salary was \$53,078, \$50,336 for women (44% of the class) and \$56,078 for men. Minority grads, representing 40% of the class, had an average salary of \$49,893, in contrast with \$56,270 for non- ethnic/racial minority lawyers.

For the Class of 2008, approximately 11% of women were employed in business, in contrast with 16% of men; 7% of women had judicial clerkships, in contrast with 18% of the men; 30% of women were in private practice and 38% of men were in firms; 20% of the women were in government jobs, and 14% of men were in government employment; and 27% of women were in public interest positions, in contrast with 7% of the men. Of those in private practice, 76% of the women were in firms of two-to-ten attorneys in size, while 52% of the men were in firms of that size.

In 2004, the NALP Foundation and the ABA published the results of the first-ever national survey of legal careers based on following 5000 lawyers over the first ten years of their law practice. This study, called “After the JD,” gives the most detailed insight the profession has ever had into where young attorneys practice law and how satisfied they are in their work. The study also looks at ethnic/racial minority and gender differences with great precision. A copy of this study is available at the Career and Student Services Office at the UNM School of Law and can be purchased directly from the NALP Foundation.

VIII. Disciplinary Sanctions and Minority Attorneys

Both the 1990 and 1999 reports found that Hispanics received a disproportionate rate of sanctions when compared to their overall membership numbers in the State Bar of New Mexico. The task force concluded that the disparity was explained at least in part by the fact that solo-practitioners and those from small firms were far more likely than others to receive sanctions and that Hispanics were more likely to work as a solo practitioner or in a small firm.

Hispanic Sanctions – Trending Analysis

Type of Sanction	1988 – 1997 Sanctions Received By Hispanics	2000-2007 Sanctions Received By Hispanics
Disbarment	25%	26%
Suspension	27%	27%
Formal Reprimand	14%	31%
Informal Admonition	23%	19%
Probation	13%	25%

The trends observed in the 1990 and 1999 studies hold true when looking at the disciplinary actions between 2000 and 2007. As shown above, between 2000 and 2007, Hispanics received 27% of the major sanctions compared to 21% observed in the period between 1988 and 1997. Holding all things equal, one would expect such an increase given that Hispanics now constitute a higher percentage of overall State Bar members than was observed in previous decades.

Unfortunately, there is no hard data in terms of practice setting among those disciplined between 2000 and 2007. This is due to the fact that the forms do not require attorneys to report their practice setting when they received a disciplinary action. While an assumption could be made that that little has changed in that solo-practitioners and those from small practices are more likely to received disciplinary actions, it cannot be verified by the data available.

Current Bar Membership Compared to Sanctions Received 2000-2007

	Active In-State Members (2009)	% of Sanctions Given 2000-2007
White	77%	59%
Hispanic	18%	27%
Black/African American	1%	2%
Native American	3%	2%
Asian	1%	>1%

The table above shows the ethnic/racial demographic profile of active in-state State Bar members in addition to the breakout of sanctions given between 2000 and 2007. It should be noted that ethnic/racial makeup of State Bar members has been relatively stable over the past 10 years.

The table above shows that Hispanics have received a disproportionate number of sanctions based on their State Bar membership levels. Hispanics received 27% of the sanctions imposed between 2000 and 2007, yet only 18% of the State Bar is comprised of Hispanic members. Other ethnic/racial minority groups have received sanctions at a level that is consistent with their membership numbers, while White non-Hispanic members have received fewer sanctions relative to their membership level.

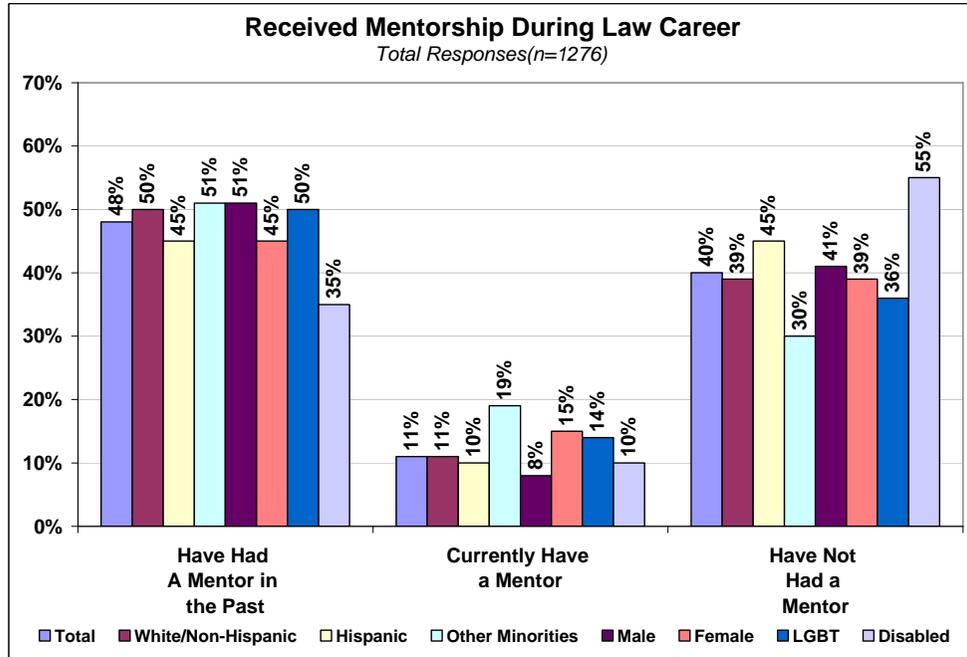
**Ethnic/racial and Gender Differences in Sanction
Received 2000-2007**

Type of Sanction	# of Sanctions	Hispanics Sanctioned	Anglo/Whites Sanctioned	Male	Female
Disbarment	23	6 (26%)	15 (65%)	19 (83%)	4 (17%)
Suspension	63	17 (27%)	36 (57%)	46 (78%)	17 (22%)
Formal Reprimand	13	4 (31%)	6 (50%)	11 (88%)	2 (15%)
Informal Admonition	68	13 (19%)	48 (71%)	61 (89%)	7 (10%)
Probation	63	16 (25%)	39 (61%)	52 (82%)	12 (19%)
Letter Caution	310	89 (29%)	175 (56%)	253 (82%)	57 (18%)
Total	540	145 (27%)	319 (59%)	442 (82%)	115 (18%)

The table above shows the breakdown of major sanctions given between 2000 and 2007. As previously noted Hispanics received 27% of all major sanctions, while white attorneys received 59% of all sanctions.

It is also interesting to note that male attorneys received 82% of the sanctions issued while female attorneys received just 18% of the sanctions. Although women make up 37% of the State Bar membership, they only account for 18% of the major sanctions imposed.

IX. Mentorship/Participation by Minorities in Leadership Roles and the State Bar

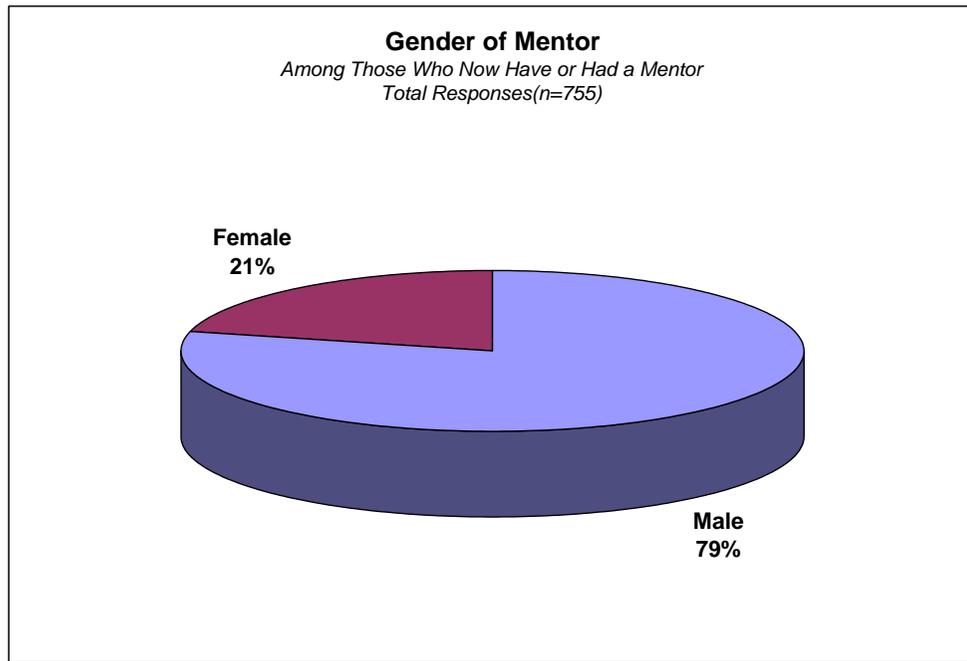


Approximately three-in-five survey respondents say they have had a mentor during their law career, either sometime in the past (48%) or presently (11%). The only significant finding when looking at the various demographic groups is that members who have a disability are less inclined than those who do not have a disability to say they have/had a mentor (45% and 60%, respectively).

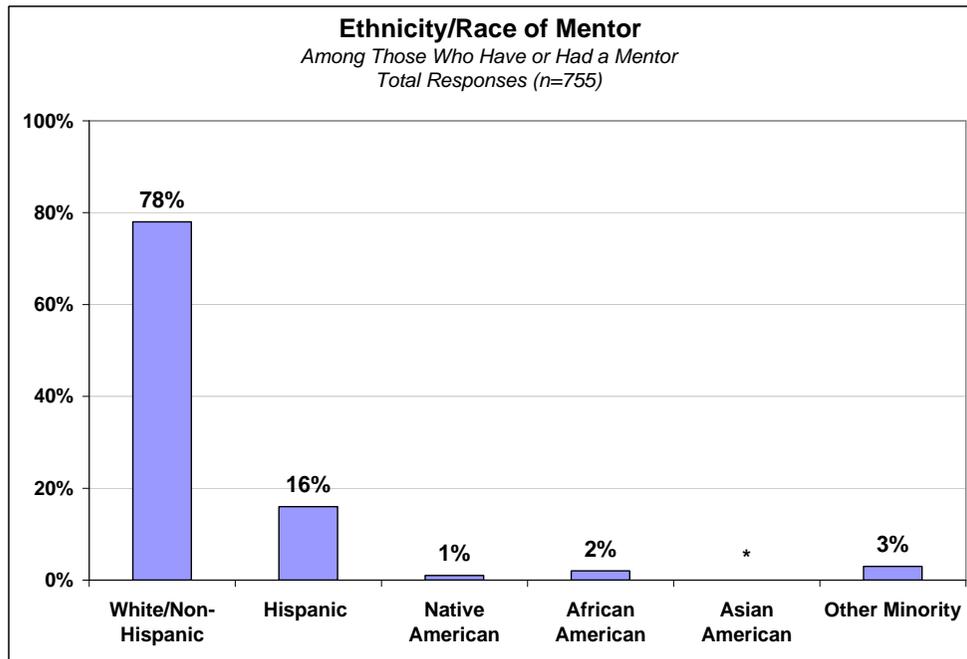
It should also be noted that older attorneys are less apt than younger attorneys to have, or have had a mentor.

Reasons for Not Having a Mentor <i>Top 7 Unaided Responses</i>	Total Responses <i>(n=516)</i>
No mentors/programs were available	34%
Never thought about it	34%
Did not need one/not interested	29%
Not aware	22%
Did not have time	9%
Apprehensive about the implications of having a mentor	5%
Other, didn't specify	4%

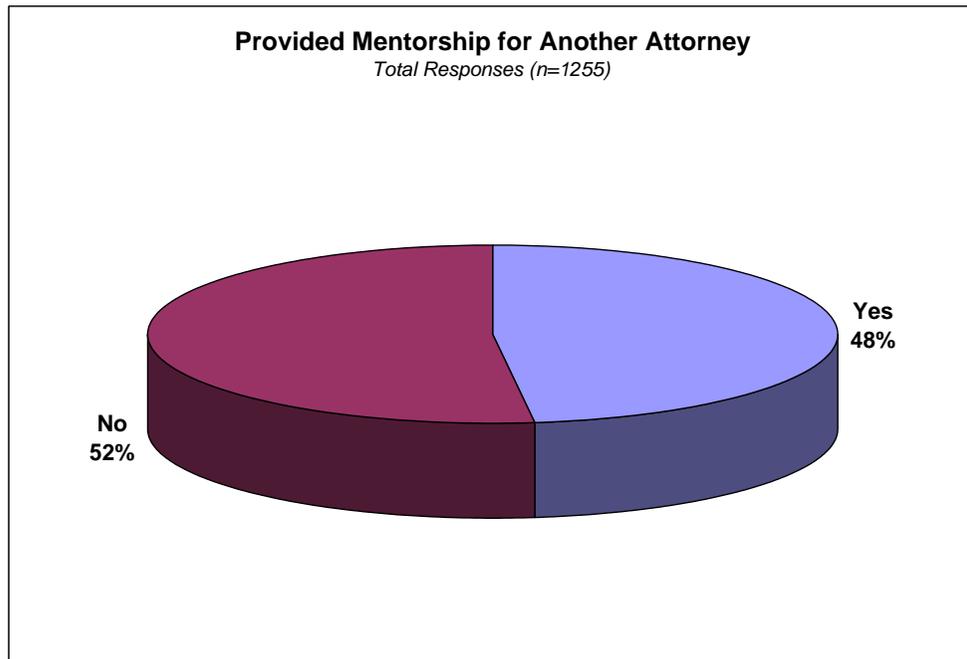
The primary reasons for not having a mentor include not having any mentors/programs available (34%), never having thought about it (34%), not having the need/interest (29%), and not being aware of a mentorship program (22%).



Nearly four-fifths (79%) of the respondents report that their mentor was/is male, while 21% have/had a female mentor. Sixty-six percent of female respondents had a male mentor, while 34% had a female mentor. In comparison, 88% of males had a male mentor.



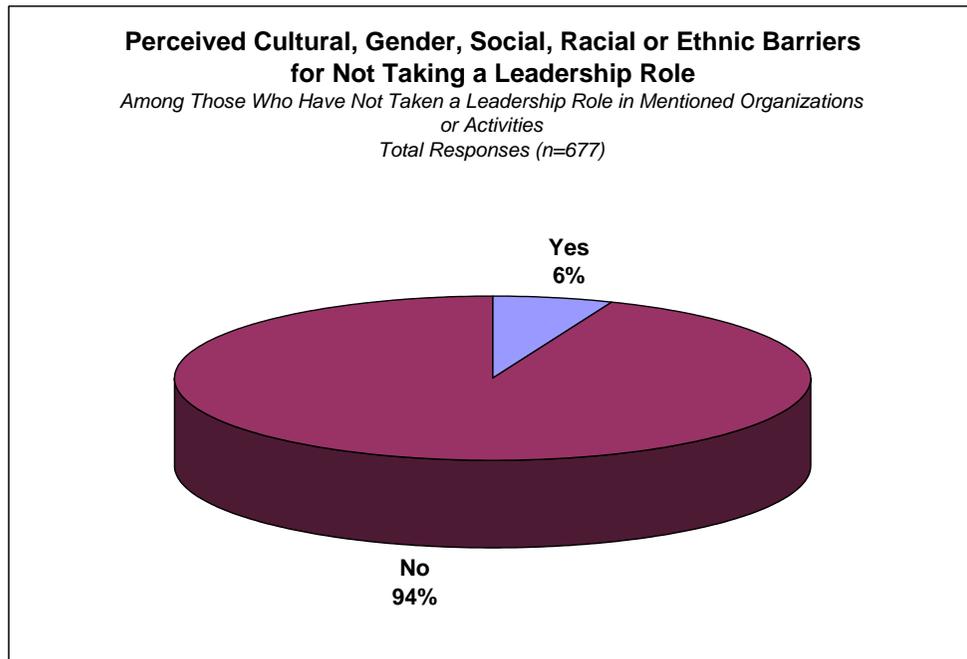
Over three-quarters (78%) of the mentors were White non-Hispanic, while 16% were Hispanic. Among the Hispanic members, 37% had a Hispanic mentor, while 60% say their mentor is/was White.



Nearly half (48%) of survey respondents say they have been a mentor for another attorney. Forty-nine percent of both Hispanic and White non-Hispanics say they have been a mentor compared to 38% of other ethnic/racial minority attorneys.

Participation in Leadership Roles Top 9 Unaided Responses	Total Responses (n=1259)
No, have not served in a leadership role	55%
CLE presenter	32%
NM Bar Association	7%
American Bar Association	6%
Albuquerque Bar Association	4%
NM Trial Lawyers	3%
NM Hispanic Bar	3%
NM Criminal Defense Lawyers	3%
NM Women's Bar	3%

Over two-fifths (45%) of the survey respondents say they are either currently in a leadership role within the State Bar or have taken a leadership position in the past. Being a CLE presenter is the most common role taken (32%), while 7% have served in the State Bar of New Mexico, 6% served in the American Bar Association, and 4% served in the Albuquerque Bar. No significant differences are found in leadership participation between Hispanics and other ethnic/racial minority members when compared to White non-Hispanics. Men (48%) are somewhat more inclined than women (41%) to have participated in a leadership role.



Though slightly more than half of the attorneys have not participated in leadership positions, race, gender, or cultural barriers do not appear to play a major role for the lack of involvement. As shown above, just 6% of respondents say that these are barriers to their participation. However, Hispanics (8%) and other ethnic/racial minority members (15%) are more apt than White non-Hispanic members (4%) to say they have experienced barriers. Women (8%) are also twice as likely as men to say there are barriers (4%).

**State Bar Data of Participation by Minorities in State Bar Sections, Committees, Divisions,
and Board of Bar Commissioners**

Section Members											
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Minority Members	41	43	41	33	30	32	36	36	33	41	35
Total Members	196	202	195	194	184	223	206	213	213	204	217
% Ethnic/Racial Minority Participation	21%	21%	21%	17%	16%	14%	17%	17%	15%	20%	16%
Committee & Task Force Members											
Minority Members	92	63	74	82	91	122	130	109	110	134	118
Total Members	428	431	433	502	548	618	658	720	651	709	678
% Ethnic/Racial Minority Participation	21%	15%	17%	16%	17%	20%	20%	15%	17%	19%	17%
Division Board Members											
Minority Members	10	11	8	6	7	10	9	10	10	9	9
Total Members	43	34	41	46	47	41	42	42	42	48	47
% Ethnic/Racial Minority Participation	23%	32%	20%	13%	15%	24%	21%	24%	24%	19%	19%
Board of Bar Commissioners											
Women Members	7	8	8	7	8	6	8	8	9	8	7
% Ethnic/Racial Minority Members	7	7	6	5	7	8	11	9	7	7	6

X. Minorities in the Judiciary

As of this writing in 2009, the New Mexico Judiciary is comprised of 166 lawyer judges. This does not include magistrate and probate judges who are not required to have had the benefit of law school. Of the 166 judges, 63 or 38% are ethnic/racial minorities. Considering that the overall ethnic/racial minority attorney population in the State of New Mexico is at 23%, this indicates a substantial presence of minority representation in the judiciary.

In 1990, ethnic/racial minorities represented 27% of the judiciary. In 1999, that number was 26%. As the New Mexico population is approximately 54% ethnic/racial minority among adults, it appears the judicial branch is more in balance with the overall population in terms of the percentage of ethnic/racial minority members (38%) than is the lawyer population in which only 23% are ethnic/racial minorities.

Between 1998 and 2008, the New Mexico judiciary saw the appointment of 100 judges to Bernalillo County Metro Court, the 13 Judicial Districts, the Court of Appeals and the Supreme Court. The appointees were recommended to the Governor from 90 Judicial Nominating Commissions (some commissions appointed more than one position).

A total of 920 lawyers and judges made application to the JNCs for these 100 positions. Of the 920, 596 (65%) were men and 324 (35%) were women; 228 (25%) of the 920 were ethnic/racial minority applicants, both male and female.

Of the 228 ethnic/racial minority applicants, 100 (44%) were recommended to the Governor for appointment. Of the 100, 40 were appointed to judicial positions. Of the 100 appointments, 70 were male and 30 were female. Of the 40 ethnic/racial minority appointments, 23 were male and 17 were female.

The Constitution of New Mexico mandates conduction of judicial selection by Judicial Nominating Commissions, boards comprised of New Mexico judges, attorneys and citizens, chaired by the Dean of the UNM School of Law. The Commissions are appointed on a partisan basis to be balanced politically and have generally been thought to be a fair approach to the process. The Commissions solicit applications, conduct interviews and recommend candidates to the Governor of New Mexico for each judicial vacancy. Ultimately, the Governor makes appointments to the bench, and the appointed judge must run for one partisan election before then running for retention. A study of the Judicial Nominating Commissions themselves for the 1999-2009 period reveals as one might expect. Just as was pointed out in the 1990 Task Force Report, the differential will undoubtedly vary from administration to administration, depending upon the particular nominees and the level of commitment by each governor to appoint qualified minorities to judicial office. While applicants have little control over decision-making by the governor, the unique partisan election feature of New Mexico's Judicial Selection Amendment has proven to be highly advantageous to minority applicants seeking judicial office, including some candidates who had not been successful in seeking judicial appointment.

The first study of minorities in the profession described the historical diversity of the judiciary in New Mexico and considered the potential impact of the 1988 Judicial Reform Amendment upon minorities seeking appointment to judicial positions. A brief summary of that discussion provides an appropriate context for updating the impact of the Judicial Reform Amendment on the diversity of the Judiciary in New Mexico over the last ten years.

For many decades prior to the 1988 Judicial Reform Amendment, ethnic/racial minority attorneys had been highly successful in obtaining appointments to judicial positions or in being elected to judicial office in partisan elections. By 1988, of the 81 justices and judges then comprising the New Mexico Supreme Court, Court of Appeals, District Court and Bernalillo County Metropolitan Court, 22 or 27% were of minority descent. At that time, ethnic/racial minorities represented only about 17% of the State Bar of New Mexico. Under the electoral system, minority attorneys were very well represented in the State's judiciary.

The "Fiscal Year 1996-1997 Report on Judicial Nomination," prepared by Leo M. Romero, Chair of the Judicial Nominating Commissions, summarizes the decisions of various Judicial Nominating Commissions with respect to the 18 judicial vacancies occurring between July 1, 1996 and June 30, 1997.

Of those 18 vacancies, one was on the Court of Appeals, 13 were on the District Courts and four were on the Bernalillo County Metropolitan Court. A total of 189 candidates applied for the 18 vacancies and 63 were nominated. Nominations

were made by 17 Judicial Nominating Commissions for 17 of the 18 vacancies (no nomination was made for a temporary vacancy in the Third Judicial District).

The statistics compiled for the entire period from 1989 to 1997 present a similar picture. The “Comprehensive Annual Report” of the Judicial Nominating Commission, prepared by the Chair of the Judicial Nominating Commissions, provided the task force with data for a nearly nine-year period, from January 1989 to November 1997.

As seen in these data, while the rate of ethnic/racial minority applicants and nominees is about the same in the 1996-1997 fiscal year as it has been over the entire nine-year period, the rate of ethnic/racial minorities appointed in the 1996-1997 fiscal year (19%) is significantly smaller than over the nine-year period (26%), especially with respect to Hispanics (20.2% vs. 12.5%). As pointed out in the 1990 Task Force Report, this differential will undoubtedly vary from administration to administration, depending upon the particular nominees and the level of commitment by each succeeding governor to appoint qualified minorities to judicial office.

On the other hand, ethnic/racial minority applicants have been very successful over the last nine years in being nominated for judicial positions by the various nominating commissions. The ratio of minority applicants (26.6% of all applicants) compared with the percentage of ethnic/racial minorities nominated for judicial positions (33.7% of all nominees) clearly suggests: (1) minorities fare very well in the application and interview process with the nominating commissions, and (2) there is no shortage of qualified minority candidates for judicial office. The intangible factor that impacts minorities most in the appointment process is the discretion of the governor.

As the original task force anticipated in 1990, the one-time partisan election component of the Judicial Selection Amendment has been an advantageous feature that has been effectively used by minority attorneys to maintain and increase their traditional role in the State’s judiciary. The present task force has every reason to believe that minority attorneys will continue to benefit in the years ahead from this important aspect of the State’s judicial selection process.

XI. Recommendations of the Committee on Diversity in the Legal Profession

The Committee on Diversity in the Legal Profession recommends that the following recommendations be considered by the Board of Bar Commissioners of the State Bar of New Mexico in addressing the issues described in this report:

1. To better understand the demographics of minorities in the legal profession and increase awareness by the legal profession of the issues and challenges faced by traditional and non-traditional minority groups, the State Bar, utilizing the annual dues form, should request and maintain statistical demographic information on practice type, length of practice, ethnic/racial identity, sexual orientation/gender identity, disability and enrolled tribal membership. The State Bar should also recommend that the Board of Bar Examiners, the Disciplinary Board, MCLE and CLE, Inc., collect and maintain comprehensive statistical demographic information on applicants seeking admission to the State Bar, lawyers who are subject to disciplinary actions or who are sanctioned for failure to meet MCLE requirements, and lawyers who participate as instructors and presenters in CLE programs.
2. The State Bar should reach out to and collaborate with the state's minority bar associations to promote increased and equitable minority participation and leadership in State Bar sections, committees, divisions, the Board of Bar Commissioners, and its public service projects and programs, including but not limited to those introducing the legal profession to high school students. The State Bar should also take appropriate steps to increase and ensure that lawyers serving as presenters, instructors and moderators for its CLE programs reflect the diversity within and desired by our State Bar.
3. The State Bar should confer and collaborate with the UNM School of Law to understand why minority law graduates are leaving the state to practice law in order for the State Bar and law school to cooperate in developing approaches to encourage minority law graduates to practice law in New Mexico and to encourage continuation of the law school's excellent history of appointing minority faculty.
4. The State Bar should request the support of the New Mexico Supreme Court for developing and institutionalizing a mentor program for new or recent admittees to the State Bar and collaborate with the UNM School of Law to establish a mentor program as an adjunct to its curriculum.
5. The State Bar should encourage law firms throughout New Mexico to increase the diversity of their employment applicant pools and enhance career advancement opportunities for minorities and women.
6. The survey results indicate that only 18% of LGBT members believe the State Bar is doing a good or excellent job in addressing issues that relate to them while 24% rate the State Bar as fair and 31% give a poor or very poor rating. The State Bar should reach out to LGBT lawyers and offer workshops and focus groups to determine how the State Bar can better serve the interests of LGBT members.
7. Since there is the Indian Law Section, Navajo Bar Association and the New Mexico Indian Bar Association in the state, the State Bar should reach out to these groups and offer workshops and focus groups to determine how the State Bar can better serve the interests of Native American attorneys who practice law, including but not limited to Indian law, and to learn about the differences and similarities of the section and associations.
8. The survey results suggest there is a high incidence of female attorneys experiencing demeaning comments or actions and the work of female attorneys being judged differently than the work of male peers. All of the focus groups revealed the female quandary—whether they were being demeaned or receiving unprofessional behavior because of their minority status or for being female. The State Bar's Committee on Women in the Legal Profession and the New Mexico Women's Bar Association should be invited to collaborate with the State Bar in addressing these issues and possibly cosponsoring professionalism programs to increase gender bias awareness and reduce discriminatory words or actions in the practice of our profession.
9. The survey results indicate there is a significant perception among minority lawyers that ethnic/racial minority clients receive less favorable treatment in the judicial system compared to non-minority clients. The State Bar should encourage the New Mexico Supreme Court and the Administrative Office of the Courts to collect information on litigant gender, race and ethnicity and case outcome (guilt/innocence,

probation/incarceration, and length of sentence in criminal cases, and at a minimum when a judgment is entered on the merits in a general civil case whether it is rendered by a judge or a jury and which party prevailed) so that the courts, the bar, and the public can know whether minority group members receive equal justice from the courts.

10. The State Bar should support the Board of Bar Examiner's recommendations outlined in the bar exam section of the report and specifically, continue to collaborate with the BBE, along with the minority bar associations and other interested entities, through periodic joint forums, surveys, and other meetings on finding additional effective ways to improve bar exam passage among minorities and repeat takers of the exam, and to encourage minority bar associations and other interested entities to increase affordable and equitable access to bar exam preparation and mentoring programs.
11. As part of the State Bar's history project and to promote awareness of diversity efforts over the past half-century, the State Bar should encourage the minority bar associations to develop a history of their respective organizations, which would be incorporated into the State Bar history, and enlist the assistance of the Senior Lawyers Division, which is developing the oral history project, to assist the minority bar associations.
12. The State Bar should promote awareness of diversity issues by hosting forums or workshops to educate bar members on diversity and sensitivity issues, address topics of interest to various minority bar associations, and explore ways to increase awareness of and participation in mentoring opportunities.
13. In the next State Bar Compensation Survey, questions on practice type, career preferences and satisfaction and employment opportunities of minorities should be included.
14. The Board of Bar Commissioners should be provided with a periodic report of the diversity of sections, committees and divisions, and the participation of minorities, women and LGBT lawyers serving as presenters, instructors and moderators for CLE programs sponsored by the various sections, committees and divisions.
15. The State Bar should put together programs to encourage interest in the judiciary and how to successfully apply for appointment or run for election to the Bench.
16. The State Bar should collaborate with and encourage the Disciplinary Board to collect and maintain data on the practice area of attorneys when they receive a disciplinary action and obtain data from the State Bar on firm size, so that the data can be applied to disciplinary statistics.
17. The State Bar should encourage and recruit minority participation on the Committee on Diversity. Additionally, the State Bar should task the Committee on Diversity with monitoring the implementation of these recommendations, including but not limited to producing an annual report to the Board of Bar Commissioners, minority bar associations and the State Bar membership on the status of such implementation, and to assist the committee in producing further periodic updates on the status of minorities in the profession.

APPENDICES

Appendix A – Study Instrument

**State Bar of New Mexico
Committee on Diversity in the Legal Profession Study**

INSTRUCTIONS: Most of these questions can be completed either by checking a response or by filling in the blanks. Your individual responses will remain completely confidential and anonymous. Only aggregate responses will be reported. Your participation is crucial to ensure the thoroughness and accuracy of this study.

In the past 5 years, have you experienced or witnessed demeaning comments or actions in the course of dealings with opposing counsel that in your opinion were due to:			
	<i>Yes</i>		<i>No</i>
1. Race or ethnicity	<input type="checkbox"/> 1		<input type="checkbox"/> 2
2. Gender	<input type="checkbox"/> 1		<input type="checkbox"/> 2
3. Sexual orientation	<input type="checkbox"/> 1		<input type="checkbox"/> 2
4. A disability	<input type="checkbox"/> 1		<input type="checkbox"/> 2
In the past 5 years, have you experienced, or witnessed, demeaning comments or actions by a state or magistrate court judge, in or out of court, that you thought were based on:			
	<i>Yes</i>		<i>No</i>
5. Race or ethnicity	<input type="checkbox"/> 1		<input type="checkbox"/> 2
6. Gender	<input type="checkbox"/> 1		<input type="checkbox"/> 2
7. Sexual orientation	<input type="checkbox"/> 1		<input type="checkbox"/> 2
8. A disability	<input type="checkbox"/> 1		<input type="checkbox"/> 2
In the past 5 years, have you experienced or witnessed religious discrimination from:			
	<i>Yes</i>		<i>No</i>
9. Other attorneys	<input type="checkbox"/> 1		<input type="checkbox"/> 2
10. Judges	<input type="checkbox"/> 1		<input type="checkbox"/> 2
11. Court staff	<input type="checkbox"/> 1		<input type="checkbox"/> 2
Do you believe the work of female attorneys is judged differently from the work of male attorneys by:			
	<i>Yes</i>	<i>No</i>	<i>Don't know</i>
12. Clients	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3
13. Judges	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3
14. Colleagues	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3
Do you believe the work of ethnic/racial minority attorneys is judged differently from the work of non-minority attorneys by:			
	<i>Yes</i>	<i>No</i>	<i>Don't know</i>
15. Clients	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3
16. Judges	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3
17. Colleagues	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3
18. Do you believe ethnic/racial minority clients receive less favorable treatment in the judicial system compared to non-minority clients?			
<input type="checkbox"/> 1 Yes		<input type="checkbox"/> 2 No	<input type="checkbox"/> 3 Don't know

FEDERAL COURT	
19. Do you practice in Federal Court?	
<input type="checkbox"/> 1	No (<i>SKIP TO QUESTION 33</i>)
<input type="checkbox"/> 2	Yes
19a. What percentage of your practice is done in Federal Court?	
<input type="checkbox"/> 1	32% or less (<i>SKIP TO QUESTION 33</i>)
<input type="checkbox"/> 2	33% to 49%
<input type="checkbox"/> 3	50% to 74%
<input type="checkbox"/> 4	75% or more

Please answer the following questions (questions 20-32) as they pertain to your experiences in Federal Court or in federal cases over the past 5 years.

In the past 5 years, have you experienced, or witnessed, demeaning comments or actions by a Federal Court judge, in or out of court, that you thought were based on:			
	<i>Yes</i>	<i>No</i>	
20. Race or ethnicity	<input type="checkbox"/> 1	<input type="checkbox"/> 2	
21. Gender	<input type="checkbox"/> 1	<input type="checkbox"/> 2	
22. Sexual orientation	<input type="checkbox"/> 1	<input type="checkbox"/> 2	
23. A disability	<input type="checkbox"/> 1	<input type="checkbox"/> 2	
In the past 5 years, have you experienced or witnessed religious discrimination in Federal Court from:			
	<i>Yes</i>	<i>No</i>	
24. Other attorneys	<input type="checkbox"/> 1	<input type="checkbox"/> 2	
25. Judges	<input type="checkbox"/> 1	<input type="checkbox"/> 2	
26. Court staff	<input type="checkbox"/> 1	<input type="checkbox"/> 2	
Do you believe the work of female attorneys in Federal Court is judged differently from the work of male attorneys by:			
	<i>Yes</i>	<i>No</i>	<i>Don't know</i>
27. Clients	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3
28. Judges	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3
29. Colleagues	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3
Do you believe the work of ethnic/racial minority attorneys in Federal Court is judged differently from the work of non-minority attorneys by:			
	<i>Yes</i>	<i>No</i>	<i>Don't know</i>
30. Clients	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3
31. Judges	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3
32. Colleagues	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3
	<i>Yes</i>	<i>No</i>	<i>Don't know</i>
33. Do you believe non-ethnic minority attorneys attain partnership status faster than ethnic minority attorneys?	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3
34. Do you believe male attorneys attain partnership status faster than female attorneys?	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3

35. Do you think the New Mexico judicial selection system has been fair to ethnic/racial minority applicants?	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3
36. Do you think the New Mexico judicial selection system has been fair to female applicants?	<input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3
37. In the past 5 years have you left a position as an attorney because of perceived discrimination?			
	<i>Yes</i>		<i>No</i>
	<input type="checkbox"/> 1		<input type="checkbox"/> 2 (SKIP TO QUESTION 39)
38. What was the basis of the discrimination in your opinion? (CHECK ALL THAT APPLY)			
Ethnicity	<input type="checkbox"/> 1		
Race	<input type="checkbox"/> 2		
Gender	<input type="checkbox"/> 3		
Sexual orientation	<input type="checkbox"/> 4		
Religion	<input type="checkbox"/> 5		
Age	<input type="checkbox"/> 6		
A disability	<input type="checkbox"/> 7		
Other (Please specify):			
39. In the past 5 years have you felt that your professional opportunities as an attorney were limited because of discrimination?			
	<i>Yes</i>		<i>No</i>
	<input type="checkbox"/> 1		<input type="checkbox"/> 2 (SKIP TO QUESTION 41)
40. What was the basis of the discrimination in your opinion? (CHECK ALL THAT APPLY)			
Ethnicity	<input type="checkbox"/> 1		
Race	<input type="checkbox"/> 2		
Gender	<input type="checkbox"/> 3		
Sexual orientation	<input type="checkbox"/> 4		
Religion	<input type="checkbox"/> 5		
Age	<input type="checkbox"/> 6		
A disability	<input type="checkbox"/> 7		
Other (Please specify):			
In the past 5 years, have you considered rejecting an expert witness over concern that the person would not be afforded appropriate credibility as another similarly situated expert based on the fact the witness was:			
	<i>Yes</i>		<i>No</i>
41. A racial or ethnic minority	<input type="checkbox"/> 1		<input type="checkbox"/> 2
42. Female	<input type="checkbox"/> 1		<input type="checkbox"/> 2
43. Gay/lesbian	<input type="checkbox"/> 1		<input type="checkbox"/> 2
44. Had a disability	<input type="checkbox"/> 1		<input type="checkbox"/> 2
In the past 5 years, do you feel you have received any preferential treatment in the legal profession based on your:			
	<i>Yes</i>		<i>No</i>
45. Race or ethnicity	<input type="checkbox"/> 1		<input type="checkbox"/> 2
46. Gender	<input type="checkbox"/> 1		<input type="checkbox"/> 2
47. Sexual orientation	<input type="checkbox"/> 1		<input type="checkbox"/> 2
48. Age	<input type="checkbox"/> 1		<input type="checkbox"/> 2

Please rate if you believe the NM State Bar is doing an excellent, good, fair, poor or very poor job of addressing issues relating to:

	<i>Excellent</i>	<i>Good</i>	<i>Fair</i>	<i>Poor</i>	<i>Very Poor</i>	<i>Don't Know</i>
49. Racial and ethnic minority members	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 6
50. Female members	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 6
51. Gay, Lesbian, and Transgender members	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 6
52. Members with disabilities	<input type="checkbox"/> 5	<input type="checkbox"/> 4	<input type="checkbox"/> 3	<input type="checkbox"/> 2	<input type="checkbox"/> 1	<input type="checkbox"/> 6

53. Why do you feel this way about the State Bar's handling of the above items?

MENTORSHIPS

54. In your law career have you had, or do you now have a mentor?

- 1 Have had mentor in past - *SKIP TO QUESTION 57*
- 2 Currently have a mentor - *SKIP TO QUESTION 57*
- 3 Have not had a mentor

55. What were the primary reasons why you have not had a mentor?
(CHECK ALL THAT APPLY)

- 1 Did not need one/not interested
- 2 Not aware of mentorship program(s)
- 3 No mentors/programs were available
- 4 Did not have time
- 5 Apprehensive about the implications of having a mentor
- 6 Never thought about it

Other (PLEASE SPECIFY)

ALL RESPONSES TO Q.56 SKIP TO QUESTION 59

56. Was your mentor male or female?

- 1 Male
- 2 Female

57. What was your mentor's race/ethnicity?

- 1 White/Anglo
- 2 Hispanic
- 3 American Indian/Native American
- 4 Black/African American
- 5 Asian American/Pacific Islander
- 6 Other

58. Have you ever been a mentor for another attorney?

- 1 Yes
- 2 No

BAR INVOLVEMENT

59. Do you serve or have you served in a leadership role (e.g. committee member/chairperson) in any of the following?

(CHECK ALL THAT APPLY)

- 01 Albuquerque Bar Association
- 02 American Bar Association
- 03 Black Lawyers Association
- 04 NM Gay & Lesbian Bar
- 05 NM Hispanic Bar
- 06 NM Indian Bar
- 07 NM Women’s Bar
- 08 Navajo Nation Bar
- 09 NM Trial Lawyers
- 10 NM Criminal Defense Lawyers
- 11 NM Defense Lawyers Association
- 12 NM District Judges Association
- 13 NM Municipal Attorneys Association
- 14 National Hispanic Bar Association
- 15 CLE presenter
- 16 No, Have not served in a leadership role

Other (PLEASE SPECIFY)

60. If you have not taken a leadership role in the organizations or activities listed in question 60, are there any cultural, gender, social, racial or ethnic considerations which keep you from doing so?

- 1 No
- 2 Yes

If yes, please specify

61. Do you have any additional recommendations or comments pertaining to any of the issues addressed in this survey?

DEMOGRAPHICS

62. What is your practice setting?

- 1 Sole practitioner
- 2 Small firm (2-5)
- 3 Medium firm (6-10)
- 4 Large firm (11+)
- 5 Judiciary
- 6 Other government
- 7 In-house counsel
- 8 Legal aid/nonprofit

Other (PLEASE SPECIFY)

63. Do you primarily practice in New Mexico or out-of-state?

64.

- 1 In New Mexico
- 2 Out-of-state

65. How long have you been a lawyer?	
<input type="checkbox"/> 1	Less than 5 years
<input type="checkbox"/> 2	5-10 years
<input type="checkbox"/> 3	11-15 years
<input type="checkbox"/> 4	16-20 years
<input type="checkbox"/> 5	Over 20 years
66. Gender:	
<input type="checkbox"/> 1	Male
<input type="checkbox"/> 2	Female
<input type="checkbox"/> 3	Transgender
67. Sexual Orientation:	
<input type="checkbox"/> 1	Heterosexual
<input type="checkbox"/> 2	Lesbian
<input type="checkbox"/> 3	Gay
<input type="checkbox"/> 4	Bi-sexual
68. Age:	
<input type="checkbox"/> 1	30 years or younger
<input type="checkbox"/> 2	31-40 years
<input type="checkbox"/> 3	41-50 years
<input type="checkbox"/> 4	51-60 years
<input type="checkbox"/> 5	61 years and over
69. Ethnicity:	
<input type="checkbox"/> 1	White (non-Hispanic)
<input type="checkbox"/> 2	Hispanic
<input type="checkbox"/> 3	Native American Indian
<input type="checkbox"/> 4	Black/African American
<input type="checkbox"/> 5	Asian/Pacific Islander
<input type="checkbox"/> 6	Other

**70. In which of the following areas do you practice?
(CHECK ALL THAT APPLY)**

<input type="checkbox"/> 01	ADR/Mediation/Arbitration
<input type="checkbox"/> 02	Appeals
<input type="checkbox"/> 03	Bankruptcy/Debtor/Creditor/Consumer
<input type="checkbox"/> 04	Business/Corporations
<input type="checkbox"/> 05	Children
<input type="checkbox"/> 06	Constitutional/Civil Rights
<input type="checkbox"/> 07	Criminal
<input type="checkbox"/> 08	Elder
<input type="checkbox"/> 09	Environmental/Natural Resources/Transportation
<input type="checkbox"/> 10	Estate Planning/Taxation/Probate/Wills
<input type="checkbox"/> 11	Family/Domestic Relations
<input type="checkbox"/> 12	General Practice
<input type="checkbox"/> 13	Government/Program Eligibility
<input type="checkbox"/> 14	Health
<input type="checkbox"/> 15	Indian/Gaming
<input type="checkbox"/> 16	Intellectual Property/Patent/Entertainment
<input type="checkbox"/> 17	International/Immigration
<input type="checkbox"/> 18	Labor/Employment
<input type="checkbox"/> 19	Public
<input type="checkbox"/> 20	Real Property/Landlord-Tenant
<input type="checkbox"/> 21	Social Security
<input type="checkbox"/> 22	Sports
<input type="checkbox"/> 23	Taxation
<input type="checkbox"/> 24	Torts/PI/Property Damage
<input type="checkbox"/> 25	Trial Practice
<input type="checkbox"/> 26	Workers' Compensation

Other (PLEASE SPECIFY)

71. What is your annual income range?

<input type="checkbox"/> 1	\$35,000 or less
<input type="checkbox"/> 2	\$36,000-\$55,000
<input type="checkbox"/> 3	\$56,000-\$75,000
<input type="checkbox"/> 4	\$76,000-\$100,000
<input type="checkbox"/> 5	\$101,000 -\$200,000
<input type="checkbox"/> 6	Over \$200,000

72. Marital Status:

<input type="checkbox"/> 1	Married
<input type="checkbox"/> 2	Single, never married
<input type="checkbox"/> 3	Cohabiting/domestic partners
<input type="checkbox"/> 4	Divorced/separated
<input type="checkbox"/> 5	Widowed

73. Do you have a disability which as defined by the Americans with Disabilities Act means a physical or mental impairment that substantially limits one or more major life activities?

<input type="checkbox"/> 1	Yes
<input type="checkbox"/> 2	No

Thank you for taking time to complete this important survey. Please mail your completed survey in the pre-paid business reply envelope.

Appendix B – Members of the Committee on Diversity in the Legal Profession

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Appendix C – Focus Group Discussion Outline and Communications to Selected Groups

I. Introduction

- A. Explain focus group method.
 - 1. There are no right or wrong answers; it's an open discussion.
 - 2. Explain that participants will write things down while participants keep their opinions quiet until the moderator opens the discussion.
 - 3. Explain video taping.
 - 4. Explain importance of speaking one at a time.
 - 5. Brief introductions - name, family situation, education, job experience
 - a. Type of practice - sole practice, small firm, judiciary, in-house counsel, government, etc.
 - b. Areas of practice - appeals, children, immigration, government, etc.

II. Warm up

- A. Thinking about your educational background and professional life as an attorney, what were the biggest challenges you faced? Briefly note these issues. *(Have participants write responses prior to discussion.)*

III. General attitudes

- A. When it comes to fairness in the legal profession, where if at all, have you observed bias or prejudice? Briefly describe the circumstances. *(Have participants write responses prior to discussion.)*
- B. In the past five years have you experienced or witnessed demeaning comments or actions from either opposing counsel or a judge that in your opinion were due to....
- C. Do you believe the work of ethnic/racial minorities is judged differently from the work of other non-minority attorneys among the following groups? Please explain.
 - 1. Clients
 - 2. Judges
 - 3. Colleagues
- D. Have you left a position as an attorney because of perceived discrimination? What was the basis of this discrimination in your opinion? How long ago was this? (If no, do you have any friends or acquaintances in New Mexico who have?)
- E. Have you felt that your professional opportunities as an attorney were limited because of discrimination? What was/is the basis of the discrimination? How long ago?
- F. Have you ever received preferential treatment in the legal profession based on your gender, ethnicity, etc.?
- G. Are there any other challenges or obstacles faced specifically by (African American, Native American, LGBT) attorneys that impact their practice of law in New Mexico?

IV. Involvement

- A. Have you been involved with any of the many lawyer or bar organizations or committees?
- B. Are there any cultural, gender, social or ethnic considerations which keep attorneys from getting involved or taking leadership position within these organizations or committees?

VII. Mentoring

- A. Have you ever worked with a mentor?
- B. If not, why not?
- C. Do you feel a mentor could have been helpful to your professional development?

V. Assessing NM State Bar efforts

- A. Here in NM, have you observed improvements in fairness in the areas that have historically shown prejudice? Please explain your answer. (*Have participants write responses prior to discussion.*)
- B. What, if anything, has the State Bar done to address issues of discrimination? *Probe for discussion.*
- C. What can the State Bar do to help?

VI. Suggestions

- A. Do you have any suggestions for improving the fairness with which the NM judicial system/legal profession works?
- B. What can the State Bar do to help?

State Bar Focus Group Letter

The State Bar of New Mexico Committee on Diversity in the Legal Profession is conducting focus groups among Native American Indian, African American, and LGBT members of the State Bar. The purpose of the focus groups is to gain insights and better understand the unique experiences of important populations within the State Bar.

The focus groups are being conducted in conjunction with a survey of State Bar members throughout the state and is a continuation of 30 years of study by the State Bar of New Mexico on the Status of Minorities in the Legal Profession. The focus groups will allow the Committee on Diversity to explore issues in a more in-depth manner than is allowed by a survey.

A total of three separate focus groups are being conducted, one among Native American members of the State Bar, one among African American members, and one group among LGBT. Research & Polling, Inc. will be conducting the focus groups between July 22 and 23 in Albuquerque. Each participant will be paid a cooperative fee of \$100 for their time. During the focus group session all participants will be served a meal and refreshments.

Within the next two weeks, a representative from Research & Polling (Raymie Chavez) will be recruiting members asking if they would like to participate in the respective groups. If you are interested in participating, or know someone who would be interested, please contact Raymie Chavez (877-3678) or Holli Asselin (681-9426) at Research & Polling.

We strongly encourage your participation since it gives you an opportunity to express your opinions about issues that are important to the Committee on Diversity and the State Bar of New Mexico.

State Bar Focus Group Reminder

I am writing to the membership of _____ in my capacity both as a member of the _____ and of the State Bar of New Mexico Committee on Diversity in the Legal Profession (“Committee on Diversity”). The Committee on Diversity is conducting focus groups among Native American, African American, and LGBT members of the State Bar. The purpose of the focus groups is to gain insights and better understand the unique experiences of important populations within the State Bar.

The focus groups are being conducted in conjunction with a survey of State Bar members throughout the state and is a continuation of 30 years of study by the State Bar of New Mexico on the Status of Minorities in the Legal Profession. The focus groups will allow the Committee on Diversity to explore issues in a more in-depth manner than is allowed by a survey.

By now you should have received a call from Raymie Chavez of Research & Polling, Inc., who is recruiting participants for each focus group. Research & Polling, Inc. will be conducting each of the three focus group discussions. We strongly encourage your participation since it gives you an opportunity to express your opinions about issues that are important to the Committee on Diversity and the State Bar of New Mexico. If you are interested in participating, or know someone who would be interested, please contact Raymie Chavez (877-3678) or Holli Asselin (681-9426) at Research & Polling.

The Native American Indian group will be held on Thursday, July 23, from 5:30 p.m. to 7:30 p.m. The LGBT group will be held on Wednesday, July 22, at a time to be determined later. The African American group will be held on Thursday, July 23 at a time to be determined later.