



AMERICAN
BANKRUPTCY
INSTITUTE

2022 Winter Leadership Conference

Diversity Panel

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ABI Winter Leadership Conference

Diversity & Inclusion Session

December 9, 2022

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THERE'S NO
"I" IN TEAM,
BUT THERE IS
IN "INCLUSION"

*Are you prepared for an
increasingly complex
and diverse world?*

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Agenda

- Introduction
- Silent Impressions
- Culture and Cultural Awareness/Competence/Intelligence
- Navigating with intent
- Q&A and Wrap-up

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Silent Impressions

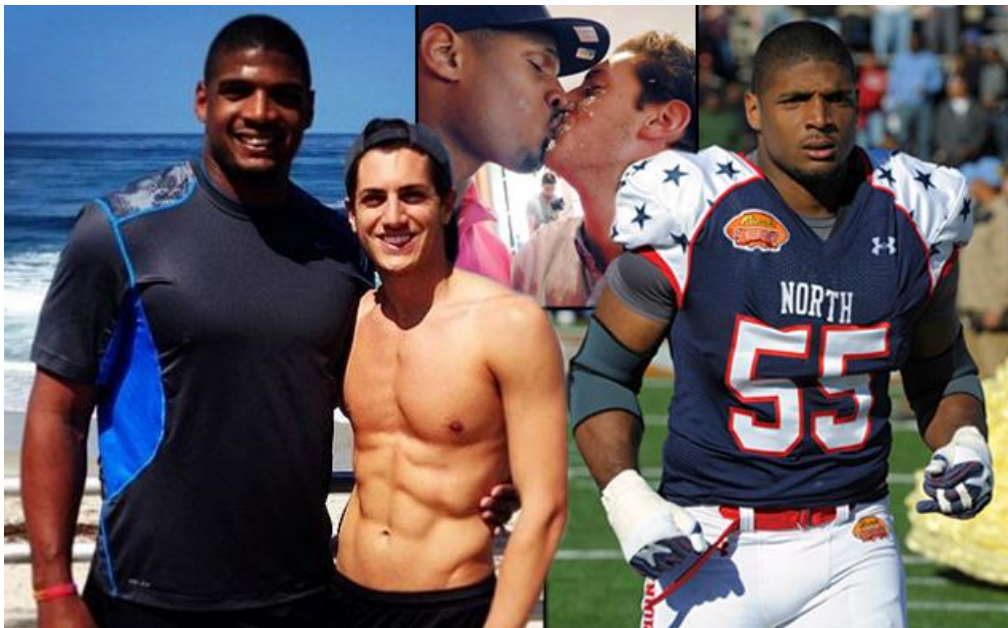


- Prepare to review images on the next three slides
- Take 30 seconds (NO TALKING) to write down **2 one-word adjectives** describing your thoughts and impressions associated with the picture or image
- Turn your sticky notes in. DO NOT INCLUDE YOUR NAME ON YOUR SUBMISSION
- Remember...NO TALKING/SHARING

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Defining culture through multiple stages



What is culture?

What is cultural awareness?

What is cultural competence?

What is cultural intelligence?

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Defining culture through multiple stages

- **Cultural Awareness**
 - Acknowledgment of cultural differences
- **Cultural Competence**
 - Refers to one's ability to understand, appreciate, and interact with people from different cultural backgrounds
- **Cultural Intelligence**
 - Ability to *interact effectively* with people of different cultures

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Leading with Cultural Intelligence: The Real Secret to Success – Dr. David Livermore

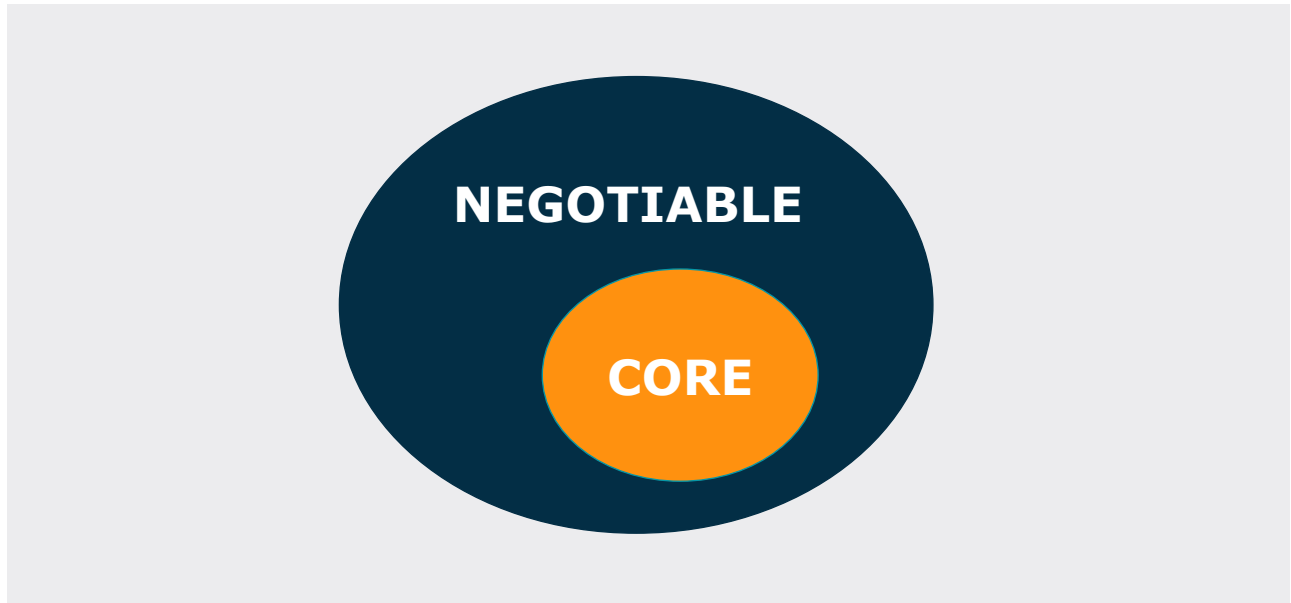
Developing Cultural Intelligence



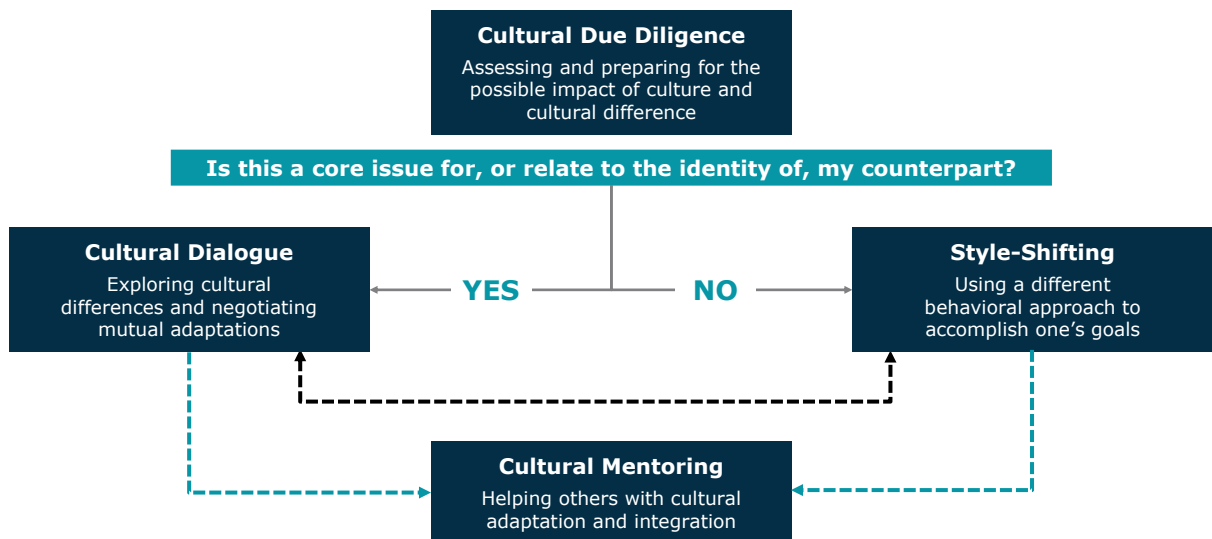
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Adapted from TMC Cultural Orientations Indicator

Core vs. Negotiable



The Four Key Cultural Skills



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Case study / scenario

- Luisa Perez is a new counsel who works in the New York office.
- Luisa is 36-year-old native Puerto Rican but was raised in New York most of her life. Luisa has been added to a complicated bankruptcy matter led by a partner and a few junior associates in the Pacific Northwest (PNW) office.
- The PNW partner and associates have found Luisa to be quite assertive with her positions on the matter and expresses them often.
- Luisa is frustrated with the slow pace, pushed deadlines, and multiple rounds of discussions about the same topics to try and get consensus.
- Discuss the team dynamics and how both Luisa and the PNW team members could be more culturally intelligent.

GROUP EXERCISE

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Case study / scenario

- What are some of the cultural challenges both Luisa and the PNW folks need to address?
- What other dynamics are in play between the PNW team members and Luisa?
- Putting yourself in the Luisa's or the PNW folks' places, what would you do to try and be more culturally intelligent?
- What are the risks if nothing is done, or if the difficulties are mismanaged by either party?
- What are the benefits if the parties work to resolve the issues?
- What are the implications to either the individuals, group, and/or the organization?

GROUP EXERCISE

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Learning points and key takeaways



Culture is defined by
OUR SHARED ATTITUDES AND BEHAVIORS



Success of our business begins with
OPENNESS, AND A WILLINGNESS TO BUILD RELATIONSHIPS



Cultural Competency is derived from
BUILDING FOUR KEY SKILLS



Style shifting can be difficult. Continue to evaluate your
CORE VALUES AND AREAS OF FLEXIBILITY



Leverage resources:
DIVERSITY TEAM | ERGS

Competency development is much less an outcome than it is a process that seeks to continually improve and adapt interactions and relationships

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Exploring a key set of questions

Cultural due diligence

- What underlying issues, values and beliefs may be at play (for you...for the others involved)?
- What do I need to know about the dynamics of difference in this situation (e.g., group identity, style/conflict difference, bias and assumptions, etc.)?

Style-shifting

- What cultural norms (similar and different) might be at play?
- How will those norms impact my approach?

Cultural dialogue

- What is the best approach for me to take to ensure something undesired does not occur

Cultural mentoring

- What can I do or say that will offer resolution as well as a teachable moment?

Remember...

- ✓ What we have learned as "appropriate" and expect as "normal" is culture- and context-bound, and highly unreliable otherwise.
- ✓ It is riskier to assume similarity and later find out that significant differences exist than to assume differences until similarity is proven.
- ✓ Understanding the "Other" requires the willingness to understand ourselves first, particularly how our habits, expectations, and behaviors are formed by the cultural systems in which we partake.

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There's no "I" in Team, but There is in "Inclusion"

FACILITATORS:

- Elton Ndoma-Ogar, Managing Director, Global Head of D&I, AlixPartners
- Peter Salib, Senior D&I Manager, Perkins Coie LLP

DURATION: 60 minutes

OBJECTIVES:

- Developing cultural intelligence begins by understanding the dynamics of cultural differences. Post-pandemic, our ability to leverage these differences as strengths will directly impact our growth, our handling of conflict, and the development/retention of talent.

By the end of the session, participants will:

- Have a more thorough understanding/appreciation of the sensitivity to cultural issues and be able to skillfully navigate from cultural awareness to demonstrating cultural intelligence in difficult situations
- Through provocative conversation and case study activities, be able to apply four practical, easy-to-understand, and use cultural intelligence skills to (1) build/solidify trusting relationships with colleagues and clients, and (2) maximize the opportunities to be more culturally intelligent and inclusive.

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DURATION: 60 minutes

TOPIC, OBJECTIVES, AND FLOW:

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- Have a more thorough understanding/appreciation of the sensitivity to cultural issues and be able to skillfully navigate from cultural awareness to demonstrating cultural intelligence in difficult situations
- Through provocative conversation and case study activities, be able to apply four practical, easy-to-understand, and use cultural intelligence skills to (1) build/solidify trusting relationships with colleagues and clients, and (2) maximize the opportunities to be more culturally intelligent and inclusive.

The flow of show:

- 0 – 5 min.: facilitators intro; Peter & Elton
- 5 – 15 min.: individual activity and debrief; Silent Impressions
- 16 – 25 min.: define culture and cultural differences; methods for developing cultural competence
- 26 – 40 min.: introduce the four cultural skills and real-world discussion, challenges, and opportunities
(Cultural Due Diligence, Cultural Dialogue, Style-Shifting, and Cultural-Mentoring)
- 41 – 56 min.: group (table) hypothetical activity and debrief
- 57 – 60 min.: Q&A and wrap-up

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Strength in Diversity

BY GREGORY BURRELL

Eliminating Implicit Bias in the Bankruptcy Process

Over the years, there has been research conducted and countless articles written on how to eliminate implicit bias. Businesses recognize the value in pursuing efforts to create a more inclusive working environment through the elimination of implicit biases. The world is becoming more diverse every day, but the thinking that welcomes all individuals into the work environment is not changing at the same pace as the demographics. For this reason and others, it is important that we adapt and determine ways to change our thinking about people and cultures, and how it influences the practice of bankruptcy law. We should examine our thinking from all different perspectives.

The debtor's attorney, trustee, creditor's attorney, U.S. Trustee's Office and the judge have a responsibility to be conscious that implicit biases exist and learn how to deal with those biases. According to one commentator, implicit or unconscious bias is defined as attitudes or stereotypes that affect our understanding, actions and decisions in an unconscious way.¹ It is important that all actors involved in the bankruptcy process not allow their decision-making to be guided by anything other than sound reasoning. In order to take this journey, one must always be conscious of their actions and examine oneself. This article briefly examines implicit bias from the debtor's attorney and trustee perspectives.

Eliminating Implicit Bias from the Debtor's Attorney Perspective

As a practicing debtor's attorney, some things became apparent early in my career. Figuring out how to maintain a healthy balance between zealously representing clients to meet their needs and receiving adequate compensation for services provided was a challenge. This is a reality with which many consumer bankruptcy attorneys are faced. There is the chapter 7 bankruptcy that allows for a debtor in a "clean" case to receive a discharge in under six months. In chapter 7 cases where a creditor demands a judgment of nondischargeability under § 523 or denial of discharge under § 727, discharge can be substantially delayed. A chapter 7 discharge is generally issued substantially sooner than in a chapter 13 case, in which a debtor will not receive

a discharge until they complete plan payments over a 36-to-60-month period, unless the court grants a motion requesting a hardship discharge. For some practicing consumer bankruptcy attorneys, the decision is easy and they place the debtor in the chapter that best suits the client's needs. However, for some attorneys, this process can be challenging.

As much as some consumer bankruptcy attorneys may not want to hear this, they might have an implicit bias toward the chapter choice they are making for their clients. For example, the decision to place a debtor in a chapter 13 bankruptcy versus a chapter 7 bankruptcy is sometimes based on the debtor's attorney's ability to utilize chapter 13 to pay attorneys' fees in installments.

If the decision to file a chapter 13 over a chapter 7 bankruptcy is made without giving any thought to the fact that the client is being committed to a 36-to-60-month plan that might accomplish the same outcome in under six months in a chapter 7, then there may be an implicit bias toward chapter 7. Of course, sometimes a client's needs will require stopping a garnishment and other circumstances that may warrant a chapter 13. However, to eliminate what may appear to be an implicit bias toward one particular chapter of bankruptcy, the attorney should carefully consider the impact of the chapter selection.

To examine and deal with the fact that debtor's counsel may have an implicit bias toward chapter 7, consider the following questions: (1) Does the attorney ask their clients to consider waiting until they can save enough money to file a chapter 7 bankruptcy; (2) does the attorney explain to the client the shorter time frame within which the debtor might receive their discharge by filing a chapter 7 versus a chapter 13; and/or (3) if no garnishment exists, there is no need to save a home or vehicle from foreclosure or repossession, and the debtor is current on all secured payments and would not benefit significantly from cramming down the value and/or interest rate on a vehicle, should the attorney encourage the debtor to save their money until they can file a chapter 7? If the answer to these questions is "no" and the client is still placed in a chapter 13, the attorney may have a bias toward chapter 7 (or the debtor).

One article² cited prior research stating that "African-Americans are statistically significantly more likely to file under chapter 13 than other similarly situated debtors, a result which one of this [a]rticle's authors linked to attitudes of bank-



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Minneapolis

Gregory Burrell has been a chapter 13 trustee for the District of Minnesota since Oct. 1, 2013, and had previously worked as counsel to a chapter 7 panel trustee, handling consumer chapter 7 and 13 cases.

¹ Charlotte Ruhl, "Implicit or Unconscious Bias," *Simply Psychology* (July 1, 2020), available at simplypsychology.org/implicit-bias.html (unless otherwise specified, all links in this article were last visited on Sept. 20, 2022).

ruptcy attorneys.” How do we explain this phenomenon? Could implicit bias be playing a role in the attorney’s decision to place an African-American debtor in chapter 13 over chapter 7? This is an important question that needs to be examined. If there does exist an implicit bias toward African-Americans when it comes to chapter selection, practicing consumer bankruptcy attorneys should be aware. As a practicing consumer attorney, some of the things you should take time to consider are whether you utilize the same standard and have the same consistency with all of your clients, regardless of their race. The following questions will be helpful in evaluating whether implicit bias exists:

1. If a non-African-American client comes into the office and cannot afford to pay attorneys’ fees, are they encouraged to come back after saving enough money to pay the attorneys’ fees for a chapter 7 bankruptcy?
2. Does it make it easier to place African-Americans or minority clients into a chapter 13 to pay attorneys’ fees due to a lack of connection versus with clients of other races?
3. Are African-Americans or minority clients provided the same advice as clients that are non-African-American?

These are important questions one must take into consideration. It is important to note that if the answers to the first two questions are “yes” and the answer to the third question is “no,” there may be implicit biases impacting one’s actions. This is exactly what having implicit biases is all about, and everyone has them in some shape or form. “We all have biases, and they manifest very early in life,” says Hon. Bernice Donald.³ According to the Kirwan Institute, “everyone is susceptible” to implicit biases, and those biases can be “either positive or negative.”⁴ The good news is that the impact of implicit biases can be minimized and eliminated. However, the issues created by implicit biases cannot be resolved until they are recognized or acknowledged as causing inconsistent and illogical thoughts and actions.

Eliminating Implicit Bias from the Trustee’s Perspective

Trustees serve a unique role in the bankruptcy process. It is important that trustees take into consideration that there sometimes exist implicit biases in the way they may analyze a particular case. A trustee must always be willing to examine his/her thinking and challenge certain thoughts to protect against implicit bias. For example, when it comes to challenging certain expenses as reasonable versus others, chapter 13 trustees should be aware that blind spots exist. A classic example would be a trustee who never owned a pet not being aware of the expenses associated with pet ownership, so they object to a debtor spending a certain amount per month on a pet. Such a bias could be further enhanced based on the trustee’s unwillingness to accept most pet expenses as reasonable. An implicit bias toward pet owners by the trustee

would look something like a strong objection to such expenses associated with a pet without the trustee understanding that pets, to most people, are family members who need to be cared for with the same level of love and support. If the trustee cannot get around seeing the pet as just a dog, then they will almost never agree to a reasonable expenditure for the care and maintenance of the pet.

As a trustee, it is important to understand different cultures in order to be effective and eliminate any implicit biases one may have because of lack of knowledge or exposure to a certain group of individuals. For example, trustees preside over § 341(a) hearings in places where the population is very diverse. It is not uncommon for a debtor to appear for a § 341(a) hearing with a hijab or in full body covering. This may sometimes create challenges for trustees trying to verify the identity of the debtor. It helps to understand the significance of the coverings and what they mean to the debtor before just asking them to remove them in an insensitive manner. Sure, the trustee has a job to do, and verifying the debtor’s identity is important. However, not understanding the details about the body coverings could lead to an insensitive attitude based on a split-second decision with a lack of knowledge as to how the request may impact a debtor’s thought process or beliefs. Understanding that the coverings for some women represent modesty and privacy from unrelated males may change how the trustee chooses to conduct the § 341(a) hearing. Trustees should consider options to accommodate and respect cultural differences, beliefs and observations.

Chapter 13 trustees also interview potential new employees for job openings in their offices. It is important to ensure that hiring practices are conducive to a fair and equitable process for all potential new employees interviewed. If an individual interviewing for a job in a trustee’s office is the leading candidate based on their application and considering their level of experience, references and phone screening, but has pink hair, which is discovered at the in-person interview, and the interviewer decides to not select the candidate after discovering the hair color, then the interviewer may have an implicit bias against people with pink hair. To examine this idea, the interviewer should consider why they did not select the person with the pink hair. If the answer is, “I just couldn’t get over the fact that the candidate had pink hair,” then the interviewer may have an implicit bias against people with pink hair. This example seems simple, but for most people, identifying and accepting the presence of implicit biases can be a challenge.

Debtors’ attorneys, trustees and judges come into contact with debtors who are at a point in their lives where they are facing financial challenges. It is important that debtors are treated with a high level of respect and dignity irrespective of their financial circumstances. Implicit biases should never play a role in decision-making on how to treat or interact with a debtor. The debtor’s attorneys’ decision to place them in a particular chapter of bankruptcy should be guided by sound reasoning. When making the chapter choice decision for a client, always consider the desired treatment of an individual in this situation, including oneself. Chapter 13 trustees should always be willing to examine their reasoning when it comes to making decisions about what are reasonable or necessary expenses. They should be open to learning about the culture and practices of the people they serve. **abi**

² See Pamela Foohey, Robert M. Lawless, Katherine Porter & Deborah Thorne, “No Money Down” Bankruptcy,” 90 S. Cal. Law Rev. 1055 (2017) (citing Jean Braucher, Dov Cohen & Robert M. Lawless, “Race, Attorney Influence, and Bankruptcy Chapter Choice,” 9 J. Empirical L. Studies 393, 396-97 (2012)).
³ Hon. Bernice Donald, “Judges on Race: Reducing Implicit Bias in Courtrooms,” *Law360* (Dec. 6, 2020). See also Hon. Bernice B. Donald, “Implicit Bias: The Science, Influence, and Impact on Justice,” 22 *Sedona Conf. J.* 583 (2021).
⁴ Cheryl Staats, Kelly Capatosto, Robin A. Wright & Victoria W. Jackson, “State of the Science: Implicit Bias Review,” Kirwan Inst. for the Study of Race and Ethnicity (2016), available at kirwaninstitute.osu.edu/wp-content/uploads/2016/07/implicit-bias-2016.pdf.

Strength in Diversity

BY MICHAEL A. SABELLA¹

Best Practices to Address Disability Inclusion in the Legal Profession



Michael A. Sabella
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New York

Michael Sabella is counsel at BakerHostetler in New York and practices in creditors' rights and restructuring, securities and corporate governance liability defense, and complex commercial litigation. He is also a 2021 ABI "40 Under 40" honoree.

According to current statistics, 61 million adults in the U.S. have a disability,² yet only 19.1 percent of that group is employed.³ Of that percentage, the legal profession's share of disability employment is staggeringly low. A report from the National Association for Law Placement noted that 1.22 percent of all lawyers "identified" as having a disability, including 1.07 percent of partners and 1.25 percent of associates.⁴ The American Bar Association's (ABA) 2021 Model Diversity Survey reinforces these low percentages, with less than 1 percent of law firm equity partners, non-equity partners and associates identifying as being disabled.⁵

Why are these percentages so low, both for the overall employment market and for law firms? They are driven, or are rather undone, by a key factor: self-identification.⁶ Attorneys with disabilities are not self-identifying, or disclosing their disabilities to others, and are therefore not being accurately accounted for in these surveys. This article considers potential barriers to self-identification/self-reporting and provides a few best practices law firms and companies can take to help foster it.

Defining "Disability"

It is necessary to understand how broad the definition of "disability" is to appreciate the importance of self-identification. The Americans with Disabilities Act defines disability as "(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in paragraph (3))."⁷ "Major life activities" include,

but are not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working."⁸ Thus, the scope of disability reaches across all aspects of society, regardless of race, ethnicity, age, gender, religion, sexual orientation, gender identity, gender expression or economic status.

There are two categories of disabilities: apparent and non-apparent. Apparent disabilities are visible to an observer, such as someone using a wheelchair or other mobility device, wearing hearing aids or glasses, or using a service animal. Non-apparent disabilities are "not visible from the outside, yet can limit or challenge a person's movements, senses, or activities."⁹ A few examples are cancer, diabetes, epilepsy, heart disease, autism, attention-deficit/hyperactivity disorder, depression, anxiety and post-traumatic stress disorder. Stated simply, until a coworker self-identifies, you do not know whether he/she has a disability.

Fear of Discrimination

Self-identification in this context means informing others, such as employers and coworkers, that one has a disability or disabilities. In doing so, employees can (1) discuss accommodations that will assist in their performance of the job, (2) connect with others who have disabilities and form a support network or affinity group at work, and (3) help foster an inclusive culture in the workplace. They also can be a resource for someone who is struggling with disclosing a disability. By being their "authentic" or "complete" selves in the workplace, employees who self-identify as disabled can be more comfortable, can avoid feeling like they need to diminish themselves or their experiences by not disclosing their disability, and can focus on their work.

However, some individuals prefer to remain silent out of a fear of discrimination, which can be either overt or hidden. For example, employers may minimize a disabled person's interactions with clients, assign them lower-level projects, or reduce their workload altogether based on assumptions

¹ The author is also a commissioner on the ABA's Commission on Disability Rights and chair of the ABA's Business Law Section's Attorneys with Disabilities Affinity Subcommittee.

² "Disability Impacts All of Us," Ctrs. for Disease Control and Prevention, available at [cdc.gov/nceh/od/odhpn/infographic-disability-impacts-all.html](https://www.cdc.gov/nceh/od/odhpn/infographic-disability-impacts-all.html) (unless otherwise specified, all links in this article were last visited on June 27, 2022).

³ "Persons with a Disability: Labor Force Statistics — 2021," U.S. Dep't of Labor (Feb. 24, 2022), available at www.bls.gov/news.release/pdf/disabl.pdf.

⁴ "2021 Report on Diversity in U.S. Law Firms," Nat'l Ass'n for Law Placement Inc. (January 2022), p. 10, available at naalp.org/uploads/2021NALPReportonDiversity.pdf.

⁵ "2021 ABA Model Diversity Survey," Am. Bar Ass'n, pp. 23-24, 27-28, 31-32, available at americanbar.org/content/dam/aba/administrative/diversity-inclusion-center/2021-md-survey-2nd-edition.pdf.

⁶ Merriam-Webster defines "self-identification" as "identification with someone or something outside oneself," available at [merriam-webster.com/dictionary/self-identification](https://www.merriam-webster.com/dictionary/self-identification).

⁷ Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (1990). The Act prohibits discrimination against individuals with disabilities in all areas of public life, including employment.

⁸ *Id.* at § 12102(2)(A), et seq.

⁹ See "What Is an Invisible Disability?," Invisible Disabilities Ass'n, available at invisibledisabilities.org/what-is-an-invisible-disability.

about what they cannot do. For example, because I am hard of hearing, an employer may assume that I cannot effectively litigate, even though I have done so throughout my career. People with disabilities have likely encountered these misassumptions, biases and stigmas throughout their lives or have seen them applied to others.¹⁰

Employees with disabilities also may prefer not to disclose them because they fear harassment and ridicule from colleagues. This may include derogatory remarks made directly to the employee or derogatory jokes made by other coworkers about the employee. Such remarks might be about the disability itself, accommodations that the employee uses, or perceived advantages or preferential treatment the employee is receiving.

Discrimination in all forms, not just against those with a disability, may result in not only the employee suffering mental anguish and being ostracized from coworkers, but also poor work product and increased turnover. In addition to the mental health implications, increased turnover represents a loss to the employer of the training invested in that employee. Discrimination also reaches beyond the employee to other coworkers, such as those who may have an undisclosed disability, become disabled later in their careers, or have friends and/or family members with disabilities. Based on what they have observed, these coworkers may also find the workplace to be discriminatory and/or exclusionary, which can impact their own mental health and well-being.

Suggested Best Practices

By their very nature, individuals with disabilities are creative and innovative because they must adapt to, and interact with, the world in which they live. They “develop strengths such as problem-solving skills, agility, persistence, forethought and a willingness to experiment — all of which are essential for innovation.”¹¹ By excluding this group from the labor market, companies and law firms are depriving themselves of a rich talent pool.¹² A more diverse workplace can reduce staff turnover, improve employee productivity, increase awareness of diverse customer needs and company branding, enhance a company’s reputation, and expand a company’s market share/patronage to a significant section of the population.¹³ One study noted that if 1 percent more people with disabilities joined the workforce, the national gross domestic product could increase by \$25 billion.¹⁴

How can law firms and companies attract, retain and advance these individuals? They can do so by creating an inclusive and accessible environment and conveying that message of inclusivity to prospective and current employees, clients and business partners. Discussed herein are some best practices for doing so.

Accommodations

The onus is typically on employees with disabilities to request a workplace accommodation. Depending on the employer’s messaging, employees may be concerned that an accommodation request could be perceived as a complaint/request for preferential treatment or be perceived as creating more work for their employer. This is not the case, as accommodations help employees perform their job functions to the best of their ability, therefore these requests benefit coworkers, employers and clients. Some examples are remote work (for an employee with a mobility impairment), closed-captioning telephonic devices (for a hard-of-hearing or deaf employee), flexible schedules (for employees with psychiatric disabilities), or a foot mouse (for employees unable to use a desktop mouse). While employers may be concerned about the costs, a recent study concluded that nearly 60 percent of requested accommodations cost employers *nothing*, and the remaining 40 percent typically cost the employer up to \$500.¹⁵

It is important to emphasize that there is no one-size-fits-all approach to accommodations. Employers should defer to the employee about what accommodations are needed. Engaging in an open dialogue not only communicates inclusivity but also ensures that the employee is receiving the appropriate accommodations. Benefits of accommodations include increased productivity and retention, thus eliminating the need to hire and train a new employee.¹⁶ In addition, accommodations improve the employee’s ability to interact with coworkers, leading to an increase in overall positive company morale and productivity.¹⁷

A dialogue about accommodations is also critical as law firms and companies continue to navigate the COVID-19 pandemic. They should consider how to balance “return to the office” policies with remote work and teleconferencing. Employees with disabilities have requested these accommodations for years, but they were denied for various reasons, such as lack of infrastructure and preference for employer/employee “face time.” Notably, remote work and teleconferencing were used exclusively at the height of the pandemic to ensure continued client service and workflow. That should not be discounted as policies are analyzed.

Affinity Groups

As previously noted, affinity groups for attorneys and employees with disabilities provide a venue for similarly situated individuals to gather, along with allies, to discuss issues and questions that may impact their lives. They also provide an immediate resource for employees with disabilities starting their careers, as well as for those who become disabled later in life.

Data Collection

Law firms and companies should collect voluntary demographic data, including disability, on an ongoing basis, and

10 “Diversity and Inclusion in the American Legal Profession: First Phase Findings from a National Study of Lawyers with Disabilities and Lawyers Who Identify as LGBTQ+,” Am. Bar Ass’n, p. 47, available at americanbar.org/content/dam/aba/administrative/commission-disability-rights/bbi-survey-accessible.pdf (reporting that “people with a health condition or impairment, and who identify as a person with a disability, reported experiencing proportionately more overt forms of discrimination, such as bullying and harassment, as compared to people who do not have such conditions”).

11 “Getting to Equal: The Disability Inclusion Advantage,” Disability:IN/Am. Ass’n of People with Disabilities (2018), p. 12, available at accenture.com/_acnmedia/PDF-89/Accenture-Disability-Inclusion-Research-Report.pdf.

12 *Id.* at 4.

13 *Id.* at 13-14.

14 *Id.* at 4.

15 “Workplace Accommodations: Low Cost, High Impact,” Job Accommodation Network, p. 2, available at askjan.org/publications/Topic-Downloads.cfm?pubid=962628&action=download&pubtype=pdf.

16 “Disability Employment and Inclusion: Your Guide to Success,” Workplace Initiative (2017), p. 3, available at askjan.org/training/Handouts/upload/Disability-Employment-and-Inclusion_Your-Guide-to-Success.pdf (“Business Case” section).

17 *Id.* at 3-4.

continued on page 45

Strength in Diversity: Best Practices to Address Disability Inclusion

from page 25

not solely at the time of hiring. Doing so sends the message that they are open to and inclusive of employees with disabilities. This data allows law firms and companies to measure their progress regarding disability diversity and to create a strategic plan with action steps.

Accessibility

Accessibility is essential to creating and fostering an environment where attorneys and staff with disabilities feel acknowledged, accepted and empowered. Law firms and companies should examine how they connect with their employees, clients, potential clients and the public, and whether those methods are accessible to persons with disabilities. The following are examples of questions that employers should consider:

- Are your emails in a format accessible by screen readers?
- Are your billing forms and tables readable by screen readers?
- Are your videoconferencing systems automatically set up to display closed captions?
- Is your website accessible¹⁸ (e.g., videos or podcasts include transcripts, headings properly tagged for screened readers, alternate text for images on websites and social media, etc.)?
- What steps, if any, have you taken to address employee mental health and wellness?
- Do you include disability when you collect demographic data, host diversity, equity and inclusion programs, and plan meetings and events?

Public Statements of Support

Employers can also use public messages to express support for individuals with disabilities. This can be done through pledges, external events, mentorships, sponsorships and internships. Some examples include the ABA's "Disability Diversity in the Legal Profession: A Pledge for Change,"¹⁹ Disability:IN's Disability Equality Index,²⁰ Diversity Lab's Mansfield Rule Certification,²¹ and an open

letter to general counsel and chief compliance officers.²² All of these are public commitments by law firms and companies to do the work and take the necessary steps to create an inclusive workspace for employees with disabilities. Employers can also sponsor disability rights organizations, promote mentor and pipeline opportunities for those considering or entering the profession, host summer internship programs, and celebrate National Disability Awareness Month and National Disability Employment Awareness Month. These activities send a strong supportive message to disabled employees, potential employees, allies, teenagers and young adults that the profession is accessible to them.

Conclusion

The discussion about disability inclusion in the profession is an ongoing one. It is vital that law firms and companies address this issue and ensure that disability inclusion is integrated with their diversity, equity and inclusion initiatives. Such efforts will create inclusive environments in which individuals with disabilities feel comfortable self-identifying and bringing their true, authentic selves to the workplace, as well as ensure that they have a seat at the table. As the 2020 Disability Equality Index concluded, "Being a disability-inclusive employer is good for recruitment, retention, engagement and — ultimately — the bottom line."²³ **abi**

¹⁹ "Disability Diversity in the Legal Profession: A Pledge for Change," Commission on Disability Rights, Am. Bar Ass'n, available at americanbar.org/content/dam/aba/administrative/commission-disability-rights/pledge-for-change-form.pdf. Law firms, corporations, courts, law schools, bar associations and other legal employers have affirmed their commitments to disability diversity.

²⁰ "CEOs are 'IN' for the Disability Equality Index," Disability:IN, available at disabilityin.org/ceos-are-in. CEOs for companies such as Best Buy, Moderna, The Boeing Company and Dick's Sporting Goods Inc. have committed to building "inclusive, accessible, and equitable workplaces" and were provided tools to analyze and measure their progress.

²¹ "Mansfield Rule Boosting Diversity in Leadership," Diversity Lab, available at diversitylab.com/mansfield-rule-4-0. The Mansfield Rule "measures whether law firms have affirmatively considered at least 30 percent women, lawyers of color, LGBTQ+ lawyers, and lawyers with disabilities for leadership and governance roles, equity partner promotions, formal client pitch opportunities, and senior lateral positions." (Emphasis added.) It has been supported by 118 leading law firms. *Id.*

²² "A Call to Action for General Counsel and Chief Compliance Officers to Commit to Improve Disability Inclusion in Their Law Department," Elevate, available at elevateservices.com/a-call-to-action-for-general-counsel. The open letter asks corporate law departments to "take one concrete action toward improving the inclusion of People with Disabilities in their departments," with the aim of continuing such progress going forward. It has been signed by counsel for Coca-Cola HBC AG, Unilever, Vanderbilt University and Boise Cascade Company, among others. *Id.*

²³ "2020 Disability Equality Index," Am. Ass'n of People with Disabilities/Disability:IN, p. 4, available at disabilityin.org/wp-content/uploads/2022/05/2020DEIReport508_a11y.pdf.

¹⁸ "WCAG 2 Overview," Web Accessibility Initiative, available at w3.org/WAI/standards-guidelines/wcag (providing guidance on making web content accessible to people with disabilities).

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Strength in Diversity

BY ALLEN G. KADISH

An Interview with Bankruptcy Judge Maureen Tighe

On Dec. 9, 2021, Mr. Kadish interviewed Chief Bankruptcy Judge **Maureen A. Tighe** of the Central District of California.¹ They are members of ABI's Diversity & Inclusion Working Group.²

Mr. Kadish: Let's start at the end! What's the best thing about being a bankruptcy judge?

Judge Tighe: There are so many great things, it's hard to pick one. It's taught me so much about human beings and their frailties. It's a front-row seat to just some of the most heartfelt stories. And the other aspect I hadn't realized until I got into the job for a while is having law clerks, these wonderful young people every few years coming into my chambers. I've learned a lot from them. Also, how much you can keep learning because bankruptcy brings in every possible topic. So it's been intellectually challenging, good for the brain, and I've never been bored. It's a great, great job. I'm passionate about enhancing the diversity of the pipeline of potential applicants. We can't make them all judges, but I want to make sure we have a diverse group applying for these positions, because they're great jobs and important ones.

Mr. Kadish: So now, let's go back to the beginning. Where did you grow up, and when you were young, what did you think you would want to do as an adult?

Judge Tighe: I grew up in New Jersey. My dad was a telephone coin collector for New Jersey Bell when it existed, and my mom was a nurse. I started out wanting to be a horticulturalist on that first career paper you have to write as a kid in high school. My dad one night said, "Why don't you think about law school? Those people seem to do some interesting things." And I applied to law school. I loved it and just have had some fortunate breaks ever since then.

Mr. Kadish: From there, let's talk about your path to a federal judgeship.

Judge Tighe: I guess the first step in the path was clerking in the federal court. U.S. District Judge Howard Ackerman of the District of New Jersey had his law clerk reach out to me in law



Hon. Maureen A. Tighe

school. I hadn't even thought about applying. I clerked for two years, and due to another person reaching out to me, I spent two years at a large Wall Street firm — another option I hadn't known about and wouldn't have done if it hadn't been for somebody's help. After that, I realized that the most exciting cases I'd seen clerking were the white-collar-crime cases from the U.S. Attorney's Office, and I really wanted to be a white-collar-crime prosecutor. I applied at a time when there was a nationwide hiring freeze, but there was an opening in Los Angeles to start a bankruptcy fraud task force. I was fortunate to get that and got into bankruptcy that way doing bankruptcy fraud prosecution for 10 years. That led to becoming a U.S. Trustee, and when a bankruptcy judge opening came up, I was amazed that I got it.

Mr. Kadish: And that makes me go back to a topic you've talked about in gatherings with ABI and others, and with me, that you are openly LGBTQ+. Were you always "out" professionally? And how did that, particularly being LGBTQ+ or a member of a minority group, affect coming into a judgeship?

Judge Tighe: I've been out since right after college. I couldn't have hidden it and made it through three security clearances. That actually made the security clearances particularly difficult with the FBI at that time. I think I succeeded by just being who I was and matter-of-fact about it. I did litigate some fairly significant gay rights cases as *pro bono* matters in private practice. I was part of a team that helped start a lawsuit in New York City for domestic-partner benefits for gay employees, and I remember those discussions. I always cared about and was involved in the issue. I've become more up-front about it in the last number of years since I've learned so much about the suicide rate of young LGBTQ+ people. It's important for people in positions of power to be out as role models. The fact that I might have to deal with any awkwardness or even nastiness is nothing compared to how difficult it might be for our young people in many parts of the country and in many families. The bankruptcy community is especially open and



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¹ Judge Tighe's tenure as chief bankruptcy judge concluded on Dec. 31, 2021.

² Learn more about ABI's Diversity & Inclusion Working Group at diversity.abi.org.

welcoming to all sorts of diversity. We are used to dealing with sensitive, difficult situations.

Mr. Kadish: And you've been more public and generous of late in the bankruptcy and restructuring community, like ABI, speaking about your experience and DE&I.

Judge Tighe: I never set out to be outspoken. My main interest is mentoring young people who have not had the advantages that others in society have had. We've been involved in a lot of community college career programs for the last number of years and also bringing high schoolers in for mock trials. I like concentrating on community colleges, because those are the kids who didn't get the scholarships, didn't have the ability or the funding to go to the four-year schools. We need to get them to complete those two years, and go on to four-year colleges and to realize what the steps are that they need to take for certain careers. It's been an unbelievably satisfying, wonderful project.

Mr. Kadish: How did your LGBTQ+ identity or any other characteristic — being a woman, or having a partner, or being a parent — affect your career?

Judge Tighe: Building a career is hard for everybody. I don't know if I had it any harder than anybody else. I probably did a lot of overcompensating because of "imposter syndrome," which probably goes back more to coming from a working-class family. Besides being gay, I was trying to prove that I deserved to work in the Department of Justice. I think most junior associates at big law firms and Assistant U.S. Attorneys probably work way too hard, too, so I don't know that I was that different. Being a bit of a workaholic for that many years probably helped my path to the judgeship, because I had accomplishments to point to. But I think a lot of people work extremely hard for different reasons.

Mr. Kadish: Is there an intersection of bankruptcy and LGBTQ+ or minority rights?

Judge Tighe: Consumer bankruptcy deals with people's lives, and necessarily you're going to deal with LGBTQ+ and other diverse people in that world. We did have the dilemma of how to handle same-sex spouses filing together. Judge Tom Donovan [of the U.S. Bankruptcy Court for the Central District of California], in his deep, deep wisdom, ruled in *In re Balas* that California legally married same-sex couples could file bankruptcy jointly, and I was really proud to be able to sign on to that decision.³ A few rulings around the country came up before the Supreme Court ever ruled in 2015, and I think the bankruptcy courts never got the recognition they deserve for recognizing that constitutional right long before other courts did.

³ *In re Balas*, 449 B.R. 567 (Bankr. C.D. Cal. 2011):

This case is about equality, regardless of gender or sexual orientation, for two people who filed for protection under ... the ... Bankruptcy Code. Like many struggling families during these difficult economic times, Gene Balas and Carlos Morales (Debtors) filed a joint chapter 13 petition.... Although the Debtors were legally married to each other in California ... and remain married today, the [U.S.] Trustee ... moved to dismiss this case ... asserting that the Debtors are ineligible to file a joint petition based on Bankruptcy Code § 302(a) because the Debtors are two males.... In this court's judgment, no legally married couple should be entitled to fewer bankruptcy rights than any other legally married couple.

Famously, almost every judge of the court signed on to the opinion.

Mr. Kadish: To go back, as a parent, how did you balance work and family life? In the Mentorship Program under the ABI DE&I working group umbrella, this is one of the most important questions for young professionals today.

Judge Tighe: It's fantastic that it's being discussed. We didn't dare raise it. The U.S. Attorney, when I was adopting my daughter, was amazingly progressive and allowed me four months' leave combining sick and annual leave, and that was wonderful, so I got to really be there after the birth of my daughter. But after that, I had a tough time balancing. I think the way the bankruptcy community encourages a combination of family and work is wonderful. Some of the best times I have had were bringing my daughter to bankruptcy conferences, and I can still remember some of the lawyers I know dancing with her. And it's one of her good memories, too, being a little kid getting to be in this fancy ballroom. We need to allow people to have their families as part of the workplace in certain ways, because that's a tough stage for professionals to be in with young children and still trying to make it in the profession. I love the quote from Justice Ruth Bader Ginsburg, "You can't have it all, all at once." You just do your best to balance. I didn't realize then what I do now, that life may always feel out of balance. Just do your best, because there's really no way around it.

Mr. Kadish: I have two questions on advice. What's the best advice you've ever received, and what's the best advice you've ever given?

Judge Tighe: The best advice I ever received was from Robert Brosio, chief of the Criminal Division in the U.S. Attorney's Office in Los Angeles. Before my very first trial, a jury trial, a bank robbery case, I was nervous. He said, "Just go do justice." I later realized it was some of the best advice ever, because while the mechanics are important, if your intention is in the right place, you can do so much more. And when I started as a judge, I would be nervous before I would open that door and walk into the courtroom and I started saying that same thing. It was my mantra — just do justice.

Mr. Kadish: What about the best advice you might have given?

Judge Tighe: I have advised a number of young people not to be perfectionists. Perfectionism gets in the way of getting the job done and taking necessary risks. We all are too harsh on ourselves. Strive to do your best, but don't drive yourself crazy — just get the job done.

Mr. Kadish: Here's another question that I've heard from the young folks in our ABI DE&I Mentorship Program and elsewhere. How do we advocate for diversity, equity and inclusion at our firms and in our communities without being "the diversity person?"

Judge Tighe: Let me first acknowledge how lonely that can feel. And it's important to make sure the one professional who is not like the others in whatever way you perceive that to be — for people to reach out and make sure that person is not alone. Those of us who are "different" in whatever

continued on page 90

Strength in Diversity: An Interview with Bankruptcy Judge Maureen Tighe

from page 35

way we categorize that — race, gender, class, religion — shouldn't assume people of a certain type aren't there to support us. You'd be surprised where you find allies. Put yourself out there, and you'll find those allies. As [American research professor] Brené Brown says, "stay awkward, brave and kind." It's OK to feel awkward. Just be brave, too.

Mr. Kadish: I hear this question all the time: How do I attract the right attention for my diversity? For instance, think of a young, diverse law firm associate who seeks support and recognition, but not to be tagged as "the diverse associate."

Judge Tighe: I want to recognize that for me being gay was a lot easier than, say, being Black. I could be in a meeting and get to know certain people before sexual orientation came up. You can't do that as a person of color or with many other characteristics. It may be a lot tougher for many people. You don't get a second chance to give a first impression before whatever stereotypes may get applied to you.

Mr. Kadish: They can't pass.

Judge Tighe: They can't pass. But once you're tagged and once you're that "diverse" person, it's important to talk about it and also say, "I'd also like to work on this project," and ask to work with certain people so they get to know your bankruptcy work or how great you are with clients or whatever your research and writing abilities are. Being "the diversity person" may give you some opportunities [that] you might not otherwise have, but it cuts both ways.

Mr. Kadish: Is there a vision that you have for promoting DE&I in our industry?

Judge Tighe: What we are doing is great. DE&I efforts really seem to be taking hold, and we're finally paying attention to it. My goal would be that someday we don't need these committees because we are just who we all are — all the wonderful diverse groups that we are. I hope at some point we can say we don't need to work on promoting diversity — that we will be as diverse as is our society.

Mr. Kadish: And my last question, you're in your second term. What's next for you?

Judge Tighe: I've been very, very blessed to have met the love of my life, and I want to spend more time with her. Since I'm eligible, I'm going to retire this summer and take recall. I have loved this job. I'm going to keep my cases and finish what I have, but I really want to work on other projects I care about. One of them is to be with my wife, who is the best thing in my life. We're going to travel, and I'll see what to do after that. I still want to stay involved in mentoring young people. And my pet project is working on consumer access for those who can't afford attorneys.

Mr. Kadish: It's been a joy to talk with you and get to know you and hear about your life and career, and your support for mentoring young professionals and DE&I. Thanks for speaking out on these issues for the ABI community. **abi**

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