

A Guide to

# Diversity and Inclusion

in the 21st Century Workplace

**Professor Michael L. Fox**



NEW YORK STATE  
BAR ASSOCIATION

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### **Dedication**

*To my family, friends and colleagues—  
particularly my parents, Hon. Mark D. and Jean Amatucci Fox  
for their unfailing support and encouragement.*

*And to the New York State Bar Association:  
the mission is vital, the calling unequalled, never tire.*

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## FOREWORD

The summer of 2019 marked the 50th anniversary of the Stonewall uprising, a series of violent demonstrations against discriminatory police tactics outside a gay bar in the Greenwich Village neighborhood of Manhattan. The protests lasted for six days, following a police raid that occurred in the early morning hours of June 28, 1969. The event is widely heralded as the start of what is today known as the LGBTQ+ rights movement, which has achieved far reaching legal victories over the ensuing half century.

The success and strength of this movement represents one of the most extraordinary chapters in American legal history. It also demonstrates the power of lawyers to safeguard liberty, eliminate discrimination, and achieve social justice. When I attended law school in the mid-1980s, it would have required prophetic powers to envision a society that viewed sexual orientation as a legal irrelevancy and same-sex marriage as a constitutional right. The AIDS epidemic was raging, taking the lives of 46,344 people by 1989, and three out of four cases were gay men. Fear gripped the nation. Homophobia was rampant. Moreover, the law of the land was *Bowers v. Hardwick*, a 1986 U.S. Supreme Court decision that upheld a ban on sodomy in Georgia after a gay man was criminally charged for having consensual sexual relations with another male in the bedroom of his home. Undaunted, lawyers continued to battle for equality in the courts. In 1989, the New York Court of Appeals handed down *Braschi v. Stahl Associates*, which held that the surviving partner of a same-sex relationship was “family” and therefore had the right to remain in a rent-regulated New York City apartment even though his name was not on the lease. At the time, legal acknowledgement of same-sex relationships was almost nonexistent. In 2003, 17 years after the *Bowers* decision, the Supreme Court righted its wrong in *Lawrence v. Texas*, by striking down a Texas law that criminalized homosexual sex. The Court declared: “*Bowers* was not correct when it was decided [and] is not correct today.”

More Supreme Court victories followed. In 2013, *United States v. Windsor* compelled the federal government to recognize same-sex marriage. Two years later, in *Obergefell v. Hodges*, the Court ruled that same-sex couples had a constitutional right to marry, legalizing same-sex marriage across the country. These transformational changes in American jurisprudence tell an inspiring story of how lawyers can help create a more just and diverse society. Now, the time has come for the legal profession to apply the same determination to diversify itself.

The hard truth is that law is one of the least diverse professions in the nation. Our clients are women and men, straight and gay, of every race, color, ethnicity, national origin, and religion. Yet, the legal profession is not nearly as inclusive as the people we represent. Indeed, a diversity imbalance plagues law firms, the judiciary, and every other sphere where lawyers work. Consider these facts:

- According to a recent survey, only 5 percent of active attorneys self-identified as black or African American and 5 percent identified as Hispanic or Latino, notwithstanding that 13.3 percent of the U.S. population is black or African American and 17.8 percent Hispanic or Latino.
- Minority attorneys made up just 16 percent of law firms in 2017, with only 9 percent of the partners being people of color.
- Men comprise 47 percent of all law firm associates, yet only 20 percent of partners in law firms are women.
- Women make up only 25 percent of firm governance roles, 22 percent of firm-wide managing partners, 20 percent of office-level managing partners, and 22 percent of practice group leaders.
- Less than one-third of state judges in the country are women and only about 20 percent are people of color.

This state of affairs is unacceptable. It is a moral imperative that our profession better reflects the diversity of our clients and communities, and we can no longer accept empty rhetoric or half-measures to realize that goal. As Stanford Law Professor Deborah Rhode has aptly observed, “Leaders must not simply acknowledge the importance of diversity, but also hold individuals accountable for the results.” It’s the right thing to do, it’s the smart thing to do, and clients are increasingly demanding it.

On diversity, the New York State Bar Association is leading by example. This year, through the presidential appointment process, all 59 NYSBA standing committees will have a chair, co-chair or vice-chair who is a woman, person of color, or otherwise represents diversity. We will also develop and implement an association-wide diversity and inclusion plan. In short, NYSBA is walking the walk on diversity. For us, it is no mere aspiration, but rather, a living working reality. Let our example be one that the entire legal profession takes pride in and seeks to emulate.

Henry M. Greenberg  
President, New York State Bar Association



## **How NYSBA is Putting Words Into Action on Diversity**

In keeping with President Hank Greenberg's stated goal of increasing diversity within the legal profession, NYSBA's Committee on Diversity and Inclusion has committed itself to fostering these objectives by adopting the following Mission Statement:

The objectives of the Committee on Diversity and Inclusion are to promote and advance the full and equal participation of attorneys of color and other diverse attorneys in the New York State Bar Association and in all sectors and at every level of the legal profession through research, education, fostering involvement and leadership development in NYSBA and other professional activities, and to promote knowledge of and respect for the profession in communities that historically have been excluded from the practice of law.

The Committee shall also foster the development of, monitor progress of and report on diversity initiatives of the Association, as well as partner with the Sections to continue to pursue enhanced diversity and inclusion in the Association, including among the leadership of the Association.

In conducting its work, the Committee shall consult with and engage Association leaders, other entities and individuals, including Sections of the New York State Bar Association; the New York State Conference of Bar Leaders; the Committee on Leadership Development; the Committee on Women in the Law; the Committee on Civil Rights; the Committee on Disability Rights; the Committee on LGBT People and the Law; the Law, Youth & Citizenship Program; minority and women's bar associations; and others with an interest in the Committee's mission and activities.

Mirna M. Santiago, Esq.  
Chair

Violet E. Samuels, Esq.  
Chair

## ABOUT THE AUTHOR

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Michael L. Fox is Assistant Professor of Business Law in the School of Business at Mount Saint Mary College, in Orange County, New York. He teaches in the undergraduate business program and Masters of Business Administration program. He also serves as the College's Pre-Law Advisor. In addition, he is Assistant Adjunct Professor of Law in Professional Responsibility at Columbia University School of Law in New York City. Before this book, he authored the book *Primer for an Evolving eWorld* (Kendall Hunt Publ. Co. 2019).

Professor Fox received his Bachelor of Arts degree, Phi Beta Kappa and *summa cum laude*, from Bucknell University, with a major in Economics and minor in Biology. He was elected to Phi Beta Kappa in his junior year. At graduation, he received the award for highest standing among those in the major field of Economics. Professor Fox received his Doctor of Law degree from Columbia University School of Law, where he was a Harlan Fiske Stone Scholar and an Articles Editor on the *Columbia Business Law Review*.

Professor Fox is a former law clerk to Hon. Lawrence E. Kahn, U.S. District Judge, Northern District of New York, in Albany. He has been rated AV-Preeminent by Martindale-Hubbell since 2015, and was selected to the Upstate New York Super Lawyers list from 2013 through 2016, when engaged in the active practice of law. He is admitted to practice in New York State, as well as the U.S. District Courts for the Southern, Eastern and Northern Districts of New York (*N.D.N.Y. is currently inactive*), the Second Circuit U.S. Court of Appeals, and the Supreme Court of the United States. He has been a litigation associate with Stroock & Stroock & Lavan LLP, in Manhattan; and, sequentially, an associate, senior counsel, and partner and litigation managing attorney at Jacobowitz & Gubits, LLP, in New York's Hudson Valley. At Jacobowitz & Gubits his primary practice areas included Federal Practice, Electronic Discovery, Estates Litigation, Employment and Discrimination Law, and Business Entity Disputes. From February 2014 to November 2016, he served as Deputy Corporation Counsel and special labor counsel for the City of Port Jervis. Just prior to entering full-time academia, he was special counsel with the Hudson Valley law firm Catania, Mahon, Milligram & Rider, PLLC.

Professor Fox is a former Vice President for the Ninth Judicial District of the New York State Bar Association, and former member of the NYSBA Executive Committee. He previously served as a Delegate in the American Bar Association House of Delegates from 2008 through 2014, and as a Delegate in the NYSBA House of Delegates from 2008 to 2014. He is currently again serving in the NYSBA House of Delegates, 2015 to

## **A GUIDE TO DIVERSITY & INCLUSION IN THE WORKPLACE**

present. He is a member of the Commercial and Federal Litigation Section, and a past Chairperson of the Young Lawyers Section (one of NYSBA's largest Sections). He also serves on the NYSBA Committee on Professional Discipline and Committee on Legal Education and Admission to the Bar, among others; and Chairs NYSBA's Standing Committee on Communications and Publications. Professor Fox has served as a member of critique faculty and co-chair of the Committee on the NYSBA YLS Trial Academy program, at Cornell Law School, since 2013. In 2017 and 2018 he served as a team leader and lecturer at Trial Academy; and in 2019, he served as a lecturer and critique faculty at the 10th Anniversary Trial Academy. Professor Fox serves on the Board of Directors of the Orange County Bar Association and the Advisory Board of the Food Bank of the Hudson Valley.

Professor Fox has authored or co-authored numerous articles and CLE materials, and has spoken at approximately 100 conferences, programs and symposia, concerning federal civil procedure, attorney-client privilege and work product, electronic discovery and social media, evidence, professional ethics, employment/anti-discrimination law, and pre-law advice.