

Information

TO: NACUA Board of Directors

FROM: Beverly Ledbetter, Chair, Board Advisory Council on
Diversity and Inclusivity

DATE: May 29, 2008

SUBJECT: June 2008 Report

The Board Advisory Council on Diversity and Inclusivity (charge and list of members attached) met on January 11 and April 14 (notes from both meetings attached). In addition to reports from each committee representative on the Council and discussion about those reports, the Council had discussions about two key issues:

- 1) The Council prepared "Higher Education Law at a Glance" (attached) to provide information about the practice for those who might be interested in the field. Prior suggestions of the Subcommittee on Diversity and Inclusivity included outreach to groups that serve attorneys of color and this year's Council agreed that a short piece describing higher education law would be a valuable form of outreach. NACUA plans to provide this piece to organizations that include the National Bar Association, Minority Corporate Counsel Association, and National Asian Pacific American Bar Association, among others). In addition, members who speak to groups outside of NACUA would have a document that describes the work of higher education attorneys to distribute as needed. Special thanks to Nancy Washington-Vaughn and Paul Tanaka for their work on drafting the document.
- 2) The Council discussed the diversity of Annual Conference and CLE workshop speakers and session topics. We were pleased with the number of sessions related to diversity on the agenda of the 2008 Annual Conference and the March 2008 CLE workshop on discrimination law (attached). The Annual Conference topics are not only represented as part of the Diversity/Civil Rights track but are also integrated into other tracks as well, and are represented in forums, special interest group sessions and pre-conference workshops and roundtables.

On the topic of gathering speaker diversity data, a few members of the Council wondered whether gathering of speaker diversity data might be helpful to allow NACUA to further institutionalize diversity. Other members indicated they were not certain how the data would be gathered or used and that other helpful strategic indicators were already in use (one diversity-related indicator the board reviews each year is the number of committee volunteers broken down by race compared to numbers in the full membership, and the other is the list of all diversity initiatives). In addition, members indicated that the Committees on Program and Legal Education were actively committed to ensuring diversity among speakers.

The makeup of the Council has proved valuable in that all of the committee representatives are now meeting as a group so that NACUA can have a more complete sense of the work NACUA is doing to support its key value of diversity. I look forward to providing a final report to you at the board meeting and would be happy to respond to any questions.

ATTACHMENT I & II: Board Charge and Members

Board Advisory Council on Diversity and Inclusivity

RESOLVED, NACUA will form an ongoing Board Advisory Council on Diversity and Inclusivity, appointed by the President. The Council will use the diversity chart to guide its annual review of NACUA's progress on diversity and will be comprised of representatives from various NACUA Committees (each year it need not be the same Committees), including but not limited to, the Committees on Legal Education, Program, Membership, Strategic Planning, Nominations & Elections, and Honors & Awards, and other members of the Board or of NACUA, as the President deems appropriate. The Council will review the progress of the chart's activities relative to each committee on which the individuals serve, review and monitor the Organization's overall progress, and may assist the President and the Board in reviewing and analyzing current or new ideas and activities or additional opportunities to enhance diversity and inclusivity of NACUA and of its constituent institutions.

The Board Advisory Group will provide a written report to the NACUA Board by June of each year. The report should not be written in a way to suggest that success is measured by the number of new activities but instead by the effectiveness of the activities already identified and implemented at the committee level and in the continuation and maintenance by the Organization of participation in keeping with the twin goals of diversity and inclusivity.

Policy Approved: June 27, 2007

FY 2007-08 Members: Board Advisory Council on Diversity and Inclusivity

- Chair: Beverly Ledbetter, Brown University
- Robert Bienstock, Yale University
At-large Member
- Henry Cuthbert, Duke University (*ex officio*)
- Harold J. Evans, University of Arkansas [Williams & Anderson]
Representative from Nominations and Elections
- Melinda Grier, Oregon University System (University of Oregon)
Representative from Honors and Awards
- Mary Kennard, American University (*ex officio*)
- Loretta Martinez, Colorado State University System
At-large Member
- Miles Postema, Ferris State University
Representative from Legal Education
- Kathleen Santora, NACUA (*ex officio*)
- Marianne Schimelfenig, Saint Mary's College of California
Representative from Program
- Paul Tanaka, Iowa State University
Representative from Strategic Planning
- Nancy Washington-Vaughn, Tennessee Board of Regents
Representative from Membership and Member Services

ATTACHMENT III: Conference Call Notes

**National Association of College and University Attorneys
Notes of the Conference Call Meeting
Board Advisory Council on Diversity and Inclusivity
Friday, January 11, 2008**

Roster of Participants:

Chair: Beverly Ledbetter	Melinda Grier	Miles Postema
Robert Bienstock	Mary Kennard	Kathleen Santora
Henry Cuthbert	Derek Langhauser ¹	Paul Tanaka
Harold J. Evans	Loretta Martinez	Nancy Washington-Vaughn

Chair Beverly Ledbetter convened the Board Advisory Council on Diversity and Inclusivity. She noted the importance of looking at diversity broadly in terms of demographics, institutional type, and range of expertise of members. She asked each committee representative to provide a brief report on his or her committee's work, to complement the written reports submitted in advance of the Council's call (written reports are attached).

Honors and Awards

Melinda Grier, chair of the Committee on Honors and Awards, noted the particular efforts to focus on diversity in the First Decade award that is targeted toward newer members, but added that the committee is focused on diversity for all awards.

Committee on Legal Education

Miles Postema, chair of the Committee on Legal Education, noted that in addition to the processes described in the written report, there were several sessions related to diversity at the March 2008 CLE workshop in Seattle and he provided a list of those sessions (attached). He noted that the Committee reviews a broad list of diversity factors to consider when speakers are identified and recruited to speak.

Committee on Membership and Member Services

Nancy Washington-Vaughn, vice chair of the Committee, provided an overview of the written committee bullets on gathering data from members from minority backgrounds; reviewing uses of such data; seeking participation of minority members in NACUA; recruiting and retaining members from underrepresented institutions; and gathering biographical information about members through affinity groups.

The report led to a discussion of a NACUA one-pager on higher education law that could be used in describing NACUA and the practice to external groups, including those who might want to consider higher education law as a profession. Nancy Washington-Vaughn and Paul Tanaka agreed to work with Kathleen Santora to prepare such a document and will report back to the Council during its next call.

¹ *Derek Langhauser substituted for Marianne Schimelfenig on behalf of the Program Committee.*

Committee on Nominations and Elections

Harold Evans provided an overview of the work of the Committee on Nominations and Elections, stressing the importance of ensuring that members actually nominate individuals for the board in order to ensure diversity. He noted that he has served on the Committee and that the process works well and the members of the committee ensure diversity and look at all kinds of demographic data.

Committee on Program

Derek Langhauser, Chair of the Committee on Program, reported on behalf of Marianne Schimelfenig, who was unable to be on the call. He described the various ways that the committee has focused its attention on diversity efforts, both for topics and presenters, and described those conversations that took place at the first meeting of the Committee last June and the Work Group Leaders meeting in September. He also noted that the Program Committee itself was diverse and that at least a dozen of the 60 session topics slated for the 2008 Annual Conference speak to diversity issues, and he provided several examples.

Beverly Ledbetter praised the committee for its attention to diversity, both in terms of speakers and topics. A member of the Council asked whether NACUA keeps statistics on the individual diversity characteristics of conference speakers. NACUA does not keep such statistics and chose not to do so when the Board discussed the possibility several years ago. It was suggested that the Board Advisory Council discuss this topic further on its next call and consider whether it wants to make a recommendation to the Board. Members of the Board Advisory Council suggested that when members are interested in speaking, they should be referred to the Program or CLE Chair or staff to express their interest.

In addition, the Council noted that it would be valuable to encourage as many NACUA members as possible to participate in the demographic survey so that we have an even higher level of participation (currently, a little more than half of NACUA's members provide race and gender information).

Committee on Strategic Planning

Paul Tanaka noted that many of the items in his areas had already been discussed (e.g. dashboard indicators) and asked Kathleen Santora to report on how she regularly updates the membership on diversity issues. She responded that she does so through NACUANNEWS stories as well as the annual State of the Association.

Beverly Ledbetter indicated that the Board Advisory Council would have another call in April to receive a report on the progress of the one-pager on higher education law, discuss further the issue of speaker diversity, and receive any updates from committee representatives. The Council will issue a final report for 2007-08 to the Board for its June 2008 meeting.

National Association of College and University Attorneys
Notes of the Conference Call Meeting
Board Advisory Council on Diversity and Inclusivity
April 14, 2008

Roster of Participants:

Chair: Beverly Ledbetter	Miles Postema
Robert Bienstock	Kathleen Santora
Henry Cuthbert	Marianne Schimelfenig
Harold J. Evans	Paul Tanaka
Melinda Grier	Nancy Washington-Vaughn

Chair Beverly Ledbetter convened the call of the Board Advisory Council on Diversity and Inclusivity at 2:05 p.m. She called on Nancy Washington-Vaughn to provide an update on the status of a "one-pager" on higher education law to distribute to those who might be interested in learning more about this practice. Nancy reported that she and Paul Tanaka, Kathleen Santora, Karl Brevitz on Miriam Miller had a conference call to discuss the content of the document and that Nancy had agreed to write a first draft. She noted that the full Council would receive a draft for their review sometime in May. Beverly thanked Nancy for her willingness to prepare the first draft and urged Council members to review it when asked for comments.

Beverly then turned to a discussion of conference and workshop speaker diversity. She began the discussion by noting that it was important to be sure that the diverse population of NACUA members is aware of opportunities to participate as speakers and moderators and also noted the importance of subject matter expertise when Program and CLE committee members choose speakers. She urged members of the Council to encourage members with particular subject matter expertise to volunteer to speak and to let members of the Program Committee or staff know of their expertise and willingness to speak at workshops or conferences. The members of the committee decide on speakers and are aware of the importance of diversity but it would be valuable for them to know about newer members who might have particular subject matter expertise.

There was a discussion among Council members about the possibility of compiling speaker diversity data, with some suggesting that it would be helpful in Program Committee deliberations and that it would cause NACUA to institutionalize the importance of diversity in its programs for future years. Others responded that they weren't sure how the data would be used and whether it would be valuable, noting that NACUA uses diversity of volunteers and diversity initiatives as two of its strategic indicators already and the board reviews those indicators each year. In addition, counting might be divisive and it is not certain that speakers would want to provide the data if they do not already provide it to NACUA, especially non-members. There are also many questions NACUA would have to address before it began compiling such data -- which types of sessions would be included, would moderators be included, etc.

Another member noted that the committee volunteer data on racial diversity shows that there is a high participation of minority groups, especially among African Americans, and that asking speakers for such data is different and it is not clear how it would be used. Others responded that it would be way to monitor speaker diversity and then NACUA would have to decide how it would use such data. Two members noted that the Board had discussed this in the past and decided against compiling speaker diversity data and instead agreed to compile such information about committee participation, concluding that it is best left to the members of the committees on Program and Legal Education to ensure that speakers are diverse. Beverly noted that prior reports from those committees described the attention to diversity that was institutionalized through handbooks and work plans and discussions during meetings.

Members from committees represented on the Council then reported on their group's work in the area of diversity:

Melinda Grier, Committee on Honors and Awards

Melinda reported that there was a rich and diverse pool of nominees, the largest ever for First Decade award. She urged members of the Council to nominate members for honors in the future.

Miles Postema, Committee on Legal Education

Miles reported on the April one-day workshop and the March two-day CLE workshop on Discrimination law, provided an overview of the many diversity sessions at the March workshop, and noted that the content, speakers and moderators were very diverse.

Nancy Washington-Vaughn, Committee on Membership

Nancy reported that the NACUA staff is updating its information on demographic data from members, noting that we have information from about half of our members. She reminded the Council that one of NACUA's strategic priorities is to increase the diversity of NACUA member institutions and the staff works each year to recruit more institutions including a focus on community colleges, Historically Black Colleges and Universities (HBCU's), Hispanic Serving Institutions (HSI's), small private colleges and international institutions. NACUA staff has worked with NAFEO (National Association for Equal Opportunity in Higher Education), HACU (Hispanic Association of Colleges and Universities), and the American Association of Community Colleges (AACC). NACUA will continue its outreach to affinity groups that want to meet during the 2008 Annual Conference, another way to recruit and retain diversity in the membership.

Harold Evans, Committee on Nominations & Elections

Harold reported that the final list of board nominees was excellent and that there had been a strong pool of nominees. He urged members of the Council to encourage more members to get involved, to build up their resume of service and to enhance their member profiles in order to be strong candidates for the board in the future.

Karl Brevitz (on behalf of Marianne Schimelfenig), Committee on Program

Karl reported on the Diversity/Civil Rights track that will be part of the 2008 Annual Conference program, and described the focus on diversity in the discussions and materials that are part of the Committee on Program's discussions and deliberations. He noted that diversity topics are also part of the program in other tracks, as well as through Forums and Special Interest Groups. Beverly noted that the program looks excellent and diverse and also indicated that when affinity groups are maintained, diversity is also sustained.

Paul Tanaka, Committee on Strategic Planning

Paul provided highlights of the strategic plan, noting that in discussing the plan for 2008-09, NACUA's continued commitment to diversity is maintained and specifically identified in the values and strategic priorities.

Beverly concluded the call by indicating she would be making a report to the Board at its June meeting and that members of the Council would be sent a draft final report to the board sometime in May for comments. The meeting was adjourned at 2:55 p.m.

ATTACHMENT IV: List of Diversity Sessions from March CLE and 2008 Annual Conference

Diversity sessions from March CLE and 2008 Annual Conference

March Higher Education Employment Law Workshop

04B. Current Immigration Issues

- ◆ H-1B Visa issues
- ◆ Labor Certification/Permanent Resident Issues
- ◆ Department of Labor rule requiring employers to pay employee's PERM application and legal fees
- ◆ Policy considerations for labor certifications and related expenses
- ◆ Dealing with employee counsel
- ◆ I-9 Audits and Enforcement

06C. OFCCP Issues

- ◆ Discussion Group

07B. Searching for Diversity in Faculty and Administration

- ◆ Search Committee best practices
- ◆ What's permitted, what's prohibited, what's required
- ◆ Outreach strategies
- ◆ Role of the EEO office
- ◆ Have diversity practices exposed institutions to litigation?

08B. Faculty and Staff with Disabilities

- ◆ The nature & scope of reasonable accommodations
- ◆ The impact of disability on tenure
- ◆ Strategies for responding to mental disabilities
- ◆ Recent cases

09A. Hiring Minority Coaches and Athletic Directors

- ◆ Discussion Group

Annual Conference Diversity and Civil Rights Working Group Topics

1B. Lawyering After Ledbetter: Pay Equity Claims in Academe

- ◆ Legal update, including case law review under Equal Pay Act, Title VII, ADEA, etc.
- ◆ EEOC systemic initiatives involving pay equity
- ◆ How to manage the risk: pros and cons of doing a review of faculty salaries, composition of decision makers for faculty salaries, starting salaries and market defenses, outside offers that impact equity
- ◆ Avoiding the reverse pay equity claim

1C. Meeting the Challenges of a Diverse Student Body

- ◆ Defining diversity on our campuses
- ◆ Overview of current state of the law on admissions, financial aid and other funding, and special programs aimed at recruiting and supporting a diverse student body

- ◆ Campus issues arising from a diverse student body
- ◆ Accommodations: disabilities (physical, mental, educational, facilities), religious, and discretionary vs. legally mandated accommodations
- ◆ Tensions: free speech v. harassment, clubs and activities geared toward specific groups, health and safety of the individual vs. the whole, and privacy rights
- ◆ Other Issues: successfully bringing diverse groups together, differences between public and private universities, fostering robust discussion of diverse viewpoints, and avoiding stifling less popular or minority views

2A. Disabilities Within Intercollegiate Athletics

- ◆ Impact of enrollment of physically disabled military veterans
- ◆ Proposed legislation re participation of disabled students in intercollegiate athletic
- ◆ Effect of ADA, Title IX and Rehabilitation Act on athletic participation by disabled students

3B. This Is Not Your Father's OFCCP: Affirmative Action and More Today

- ◆ OFCCP desk audits
- ◆ Salary assessment standards and audits
- ◆ Developments in the internet applicant rule
- ◆ Case studies
- ◆ Compensation reviews

4A. Advanced ADA and FMLA

- ◆ The proposed changes to the DOL's FMLA regulations
- ◆ Servicemember FMLA
- ◆ Recent ADA developments
- ◆ Case studies on FMLA and ADA issues
- ◆ Institutional policies and avoiding common mistakes

7B. Pitfalls in Employer Diversity Programs

- ◆ Commonly used employer diversity initiatives, including affinity groups, surveys, training programs, data collection and analysis, and incentives to achieve diversity goals
- ◆ Review of legal issues, including reverse discrimination, discoverability of diversity programs, and use of employer diversity information in litigation

9B. Conducting Effective Internal Investigations

- ◆ Best practices of conducting effective internal investigations of employee misconduct
- ◆ Selecting an investigator (in-house or external)
- ◆ Effective interview techniques
- ◆ Proper documentation
- ◆ Privacy and confidentiality issues in workplace investigations
- ◆ Elements of an effective discrimination/harassment investigation

Other Diversity-Related Annual Conference Topics

SIG6. Historically Black Institutions

- ◆ Special Interest Group

3D. Current Employment Immigration Issues Affecting Colleges and Universities

- ◆ Social Security mismatch
- ◆ Best practices in compliance: I-9, auditing, training

- ◆ Attorneys responsibility in the labor certification process: PERM
- ◆ Visa/Permanent residency processing
- ◆ National origin discrimination
- ◆ The volunteering problem
- ◆ No duty to sponsor
- ◆ Creative approaches to obtaining staff visas

4G. Undocumented Resident Aliens: Employment and Admission Issues

- ◆ Admission issues
- ◆ In-state tuition issues
- ◆ Financial aid issues
- ◆ New I-9
- ◆ DHS "No Match" program
- ◆ DHS enforcement efforts
- ◆ State and local legislation and initiatives targeting undocumented employees and students

5F. It's 2:00 pm - Do You Know What Your DSO Is Doing? What Every General Counsel Needs to Know About Its International Students Office

- ◆ Student visas-F, J, and M
- ◆ SEVIS- institutional obligations and liabilities
- ◆ Employment of foreign students- including OFAC and export rules
- ◆ Role of general counsel

6B. Out of the Closet, Onto the Campus

- ◆ Current issues in sexual orientation, gender identity and domestic partnerships
- ◆ Current legal and societal status and trends
- ◆ Impact of these changes in higher education
- ◆ Strategies in overcoming obstacles to addressing rights of employees and students

7G. Diversity Dilemmas: An update on Admissions, Financial Aid and Outreach Issues

- ◆ Use of race, national origin and other factors in light of recent court decisions
- ◆ Reiteration of OCR guidance
- ◆ Consideration of models and approaches to administering financial aid and managing outreach programs
- ◆ Ballot initiatives and other recent developments

8F. OCR Complaints and the Role of Counsel

- ◆ The role of counsel in OCR complaints and subsequent investigations
- ◆ The interaction among all counsel involved, including counsel for the institution, counsel for the complainant, and counsel for OCR
- ◆ Types of violations that can lead to an investigation
- ◆ Counsel for the institution's role in preventative measures
- ◆ Major components of an OCR investigation
- ◆ Standard operating procedures of OCR

9E. Detecting and Addressing Alcoholism, Substance Abuse and Mental Health Issues in the Workplace

- ◆ Detecting alcoholism, substance abuse and mental health problems in the workplace
- ◆ What college and university lawyers can do to help
- ◆ Trying to help without inviting litigation
- ◆ Useful resources