

LAW WEEK

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Filling in the Gaps

Diversity bar presidents discuss merits of tracking demographics in state judiciary

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For a community to have trust in the credibility of its judicial system, it is important for the bench to reflect the makeup of the community.

Demographic statistics on Colorado's judiciary are difficult to find, but the diversity bars say tracking them is important to addressing representation gaps.

"The judiciary depends a lot on the public perception of it being a neutral arbitrator," said John McHugh, president of the Colorado LGBT Bar Association. "And I think the more a community sees itself in the judiciary, the stronger that perception is."

According to 2017 self-reported data provided by the Colorado judiciary's public information office, the average age of the state's judiciary is just over 55 years old. Women make up 40 percent of the bench and men 59.5 percent. And the bench has the following racial and ethnic makeup:

- White/Caucasian: 88.1 percent
- American Indian/Alaskan: 0.5 percent
- Black/African American: 1.2 percent
- Hispanic/Latino: 8.7 percent
- Asian: 0.7 percent
- Two or more races: 0.3 percent

The data includes all justices, judges, magistrates and water referees, with the exception of Denver County Court judges.

Wendy Weigler, the Colorado Women's Bar Association president, said because the women's bar does due diligence on judicial nominees to the governor, the CWBA keeps records of who gets nominated and who is appointed from the district court level up. But she said the bar would like to see further tracking of the judiciary's demographics in two ways: data kept on applicants, so the CWBA can see if the problem lies in women not applying for judgeships, and on those who get nominated, to help determine if there's a discrep-

ancy in women applying but not having their names sent to the governor.

"That would definitely be something helpful to us narrowing down our efforts to keep the bench diverse," Weigler said.

According to 2017 data from the American Bar Association, women make up 36 percent of the legal profession. But Weigler said she believes Colorado's judiciary should aim for a 50-50 gender split because it should reflect the makeup of the population rather than the legal landscape.

"It shouldn't matter how many men or women are in the legal profession," she said. "What should matter is: Is the judiciary representative of the population and the community that they're in? ... It just seems like to achieve the goals of having a diverse bench, that you would want close to equal men and women."

Vanessa Devereaux, president of the Sam Cary Bar Association, also said she believes tracking the bench's demographics is important, and that the number of African American judges in Colorado has declined or remained stagnant over the past few decades.

"When you take into account the number of African American attorneys in Colorado, that's not representative of the legal community, and it's certainly not representative of the demographics that they're serving in (each) community," she said. "And I think by having actual numbers and statistics [available], that will help us to address this in a more meaningful way."

McHugh acknowledged that it would be more difficult to track statistics on judges who identify as LGBTQ than it is to track other demographics because that is a subset that relies entirely on self-identification. Although he said he believes Colorado has a decent number of LGBTQ judges, he added that as important as LGBTQ representation on the bench, is knowledge and respect from judges who might not carry those identities. McHugh explained

he doesn't believe LGBTQ rights necessarily require LGBTQ judges to secure them.

"To me, litigation over gay rights issues has less to do with the need for representation on the court than it does just basic views of fairness and public perception of fairness," he said.

LEAKS IN THE PIPELINE

In its 2015-2016 report about diversity in the legal profession, the Center for Legal Inclusiveness lists barriers for diverse legal professionals as implicit bias, limited networking opportunities, lack of mentors, lack of sponsorships for advancement and partnerships, and lower-profile work and inadequate evaluation. While many diversity initiatives focus on law firms, some argue demographic data should be tracked throughout the legal profession in order to identify where the discrepancies in diversity have their roots, whether they begin at the law school level or much later.

According to Devereaux, the judicial nominating commissions would benefit from increased diversity as well. Diverse members can educate other members about the importance of the bench reflecting the community as a whole, she said. S

he said she believes a low number of African Americans going into the legal profession also contributes to low diversity in the judiciary.

According to 2015 data from the Institute for Inclusion in the Legal Profession, African Americans made up 4.6 percent of lawyers nationally.

"I think it's a pipeline issue," Devereaux said. "And I think once you get attorneys who are of color going through the pipeline, it becomes an issue of availability and networking too. Do you have a support system specifically to get people of color, African Americans, ready for the position?"

She said to encourage increased diversity on the bench, the Sam Cary Bar Association puts on a presenta-



JOHN MCHUGH

tion to educate members about the process of applying for a judgeship, such as what the judicial nominating commissions look for and how to participate in mock interviews.

McHugh said he believes the judiciary and governor's office are taking good steps to promote diversity. He pointed to the three women nominated to replace now-Judge Allison Eid: Marcy Glenn, Judge Pattie Swift and now-Justice Melissa Hart.

"I think that was an indication that people are taking this very, very, very seriously," he said.

Colorado's various diversity bars also supported the Colorado Supreme Court in making a recently released training video for judicial nominating commission members.

The video in part addresses diversity and inclusiveness and how to recognize biases in the selection process.

"I think it needs to be a constant conversation," Weigler said. "It's not going to be easy by any means to achieve diversity in many areas related to the legal profession or the judiciary. So it's a lot of work, but it's something that myself and my colleagues on the other diversity bars just need to understand that it's a long-term project, and we just have to keep at it." •

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