

New Hampshire Bar Foundation Diversity Survey

Parker Analytics, LLC

February 2022

In June of 2021, the New Hampshire Bar Foundation (“the Foundation”) brought together a coalition of stakeholders to design the first of its kind, data-driven statewide diversity survey. The Foundation engaged Parker Analytics (PA), a nationally recognized consulting firm, to guide the coalition’s efforts. PA’s proprietary industry data set—the largest of its kind—and reliance on statistical models and sophisticated data analytics direct focused initiatives predicted to have the greatest impact. The anonymized survey data contributed by almost 2,000 members of the New Hampshire Bar Association (NHBA) provides ongoing research opportunities for the Foundation, the Bar, and the New Hampshire Court System, among others.

New Hampshire Bar Foundation Diversity and Inclusion Survey Summary and Recommendations

Parker Analytics compiled this memorandum to (1) summarize the Diversity & Inclusion Survey (“the Survey”) of NHBA members undertaken by the Foundation, (2) elaborate on survey analysis and outcomes as reported in the accompanying slide deck, and (3) recommend initiatives most likely to increase member engagement and advance diversity in the New Hampshire legal profession.

Survey Objectives and Overview

In the summer of 2021, the New Hampshire Bar Foundation undertook a first-of-its-kind statewide survey to analyze, understand, and benchmark the status quo with respect to D&I, and to develop forward-thinking initiatives based on survey data. The New Hampshire Bar Foundation engaged Parker Analytics to:

- Survey members of the NHBA to assess engagement with the profession and levels of support for D&I priorities.
- Provide data-driven insight into these priorities including CLE, D&I initiatives, and recruiting, among others.
- Identify areas of strength and inform next steps for stakeholders including the Bar Association, the New Hampshire legal community, and the New Hampshire Court System.
- Support equitable access to justice for an increasingly diverse New Hampshire population.

In preparing for this pivotal project, the Foundation brought together representatives from across the New Hampshire legal community to direct project goals and inform survey design. The Foundation would like to acknowledge the following members of this working group for generously contributing their time and invaluable insight to the project:

- Gordon MacDonald, Chief Justice, New Hampshire Supreme Court
- John Formella, New Hampshire Attorney General
- James Tenn, Jr., Chair, New Hampshire Bar Foundation, Tenn and Tenn
- Marie Boggis, University of New Hampshire, Franklin Pierce School of Law
- Scott Harris, McLane Middleton
- Courtney Herz, Sheehan Phinney
- Henry Klementowicz, ACLU of New Hampshire
- George Moore, Executive Director, New Hampshire Bar Association and Bar Foundation
- Talisha Saint-Marc, Bernstein Shur
- Cathy Shanelaris, Shanelaris & Schirch
- Morgan Taggart-Hampton, New Hampshire Public Defender
- Mary Tenn, Tenn and Tenn

To provide context, the NHBA consists of approximately 6,000 members, under 2,000 of whom are out of state. Approximately 1,200 New Hampshire attorneys practice in a one-person firm, and there are only three private law firms in the state with over 50 lawyers, representing 6% of NHBA membership.

Across the state, 50.4% of residents are female, and 18.7% of residents are over the age of 65. 89.8% of residents are white. For the remaining 10% of residents from diverse race/ethnic backgrounds, 0.3% identify as American Indian/Alaskan Native, 3% as Asian, 1.8% as Black, 4% as Hispanic/Latinx, and 1.8% as Two or More Races. English is a second language for 8% of New Hampshire residents over five years of age, and 6% of residents are foreign born.

The Survey was sent to 5,648 NHBA Members and 1,725 members responded. The survey was designed to engage a broad range of stakeholders and constituents and, despite its comprehensive nature, the response rate of 31% exceeds the response rate of prior NHBA surveys and is well within the accepted range for unsolicited research/media surveys, which can range from as low as 5% to about 40%. Among those who provided answers to the demographic questions (about 450 opted out):

- 571 are women (44%) and 725 are men (56%).
- 76 are diverse race/ethnicity (6%) and 1,189 (94%) are white.
- 509 are below the age of 50 (42%) and 713 (58%) are older than 50.
- 271 participants (22%) are over the age of 65.
- 78% of men are satisfied with diversity in the workplace versus 59% of women.

Eight respondents expressed disappointment about the omission of differently-abled as a diversity category and one respondent focused on age.

Survey Takeaways

- There is broad support for the New Hampshire Bar Foundation overall and for the NHBA to prioritize efforts to create an inclusive climate, increase diversity and provide D&I education to members.
- NHBA Members from diverse backgrounds, however, are generally less satisfied with their work, and more likely to experience discrimination. Both women and diverse ethnicity members express skepticism about New Hampshire's welcoming nature and openness to differences.
- Current recruiting practices invite opportunities to broaden efforts, especially among Private Practice and Corporate employers.
- Creating Social impact is a top professional priority, which should be a strategic focus for the NHBA as it develops programming. There are opportunities to collaborate with gender, race/ethnicity, sexual orientation and socio-economic diversity as a focus.
- There is a significant opportunity to address the gap in perceptions and experiences of men and women practicing law in New Hampshire.

Climate and General Engagement

Questions relating to workplace satisfaction cover culture, workplace tasks, collegiality, etc. Overall, respondents reported the most satisfaction on aspects relating to the substance and nature of the legal work.

More than half (57%) of NHBA Members report being satisfied with practicing law in New Hampshire. Yet significantly fewer women (33%) than men (41%) report being extremely satisfied. Diverse lawyers report being less satisfied overall than white lawyers. Lawyers in Private Practice lead overall satisfaction and members working in the field of education are significantly less satisfied practicing in New Hampshire.

The 5 factors where satisfaction is highest among NHBA Members are:

1. Substance of Work
2. Intellectual Challenge
3. Control Over Work
4. Responsibility

5. Colleagues

The 5 factors where satisfaction is lowest among members are:

1. Control of Workflow
2. Business Development Skills
3. Pro Bono Opportunities
4. Compensation Structure
5. Compensation

Workplace satisfaction breaks across gender lines. The five areas of greatest difference in reported satisfaction between women and men are:

1. Advancement Opportunities
2. Control Over Workflow
3. Compensation Structure
4. Compensation
5. Pro Bono Opportunities

Analysis of satisfaction by ethnicity reveals consistently lower satisfaction among diverse members. The 5 areas of greatest difference in reported satisfaction between white and diverse members are:

1. Responsibility
2. Intellectual Challenge
3. Substance of Work
4. Recognition
5. Control of Workflow

Diverse women report facing significantly greater discrimination based on race than both diverse men and white women.

Workplace Engagement Analysis

Parker Analytics used a statistical model to identify top drivers of engagement among NHBA Members. Members who report being satisfied with top drivers are significantly more satisfied practicing law in New Hampshire.

Recognition is the top driver of engagement among NHBA Members. Respondents who report being satisfied with the recognition they receive at work are significantly more satisfied practicing law in the state. Both women and diverse lawyers report being less satisfied with recognition than their white male counterparts. Top 5 drivers of engagement are:

1. Recognition

-
2. Colleagues
 3. Substance of Work
 4. Technical Work
 5. Intellectual Challenge

All else equal, the group who is least likely to be engaged at work are respondents who have a diverse race/ethnicity background.

State of Diversity Analysis

Parker Analytics uses a statistical model to identify predictive factors that separate members who are more and less satisfied with diversity in the workplace. The strongest driver of workplace satisfaction with respect to diversity is age, meaning the older NHBA Members are most satisfied. Diverse respondents and those who report being treated with respect at work are also more satisfied with workplace diversity. Lawyers who follow news about race report the lowest satisfaction with workplace diversity.

Overall, respondents agree they are treated with respect, opportunities for advancement are equitable, they can bring their authentic selves to work, and their opinion matters. Yet, diverse ethnicity and women respondents report greater skepticism about New Hampshire welcoming diverse talent and valuing differences. Specifically, on two survey questions “New Hampshire welcomes diverse talent” (2.91/4.0) and “New Hampshire values differences” (2.87/4.0), the averages were significantly lower than on the five other questions relating to Workplace D&I Climate (3.38 to 3.13/4.0). Women are significantly more skeptical than men that “New Hampshire welcomes diverse talent” (2.77 vs 3.07) and “New Hampshire values differences” (2.74 vs. 2.97).

Analysis of responses by gender reveal women are significantly less optimistic than men regarding the welcoming nature and New Hampshire valuing differences, reporting lower average scores. Further, the significant difference in scores between white and diverse NHBA Members points to areas for deliberate focus. Diverse members of the NHBA are less likely to report being treated with respect at work, being happy to work in New Hampshire, that their opinion matters, or that they can be authentic at work. They believe the lack of diversity negatively impacts their advancement, and that New Hampshire is not welcoming to diverse talent nor values differences.

Examples of the varied survey responses include:

- “The status quo works.”
- “I do not feel we should devote resources to diversity. If a diverse group of lawyers are interested in working here we should include them but I do not believe we should seek them out and offer special benefits, opportunities, etc.”

-
- “Race and diversity have been co-opted and weaponized by power players in recent years as political dynamite, used to explode otherwise rational discourse and civil behavior.”
 - “This survey seems focused on race and sexual orientation ignoring the fact that female lawyers still face sexual harassment regularly, that judges still treat us differently, that male bar members exclude us or are openly rude, that our pay rates are lower than males in the exact same position.”
 - “I have not found the NH Bar to be knowledgeable about matters of racial or ethnic diversity. People of color are treated as novelties whose life experiences and perspectives are not considered central to any narrative.”
 - “Our legislature passed a budget rider intended to mute conversations about POC. This is a clear message to BIPOC [Black, Indigenous, People of Color] people they are not welcome in NH.”
 - “I think minorities leave the practice of law here because while everyone says outwardly that they are inclusive and non-judgmental, they don’t show those feelings with their actions. This state has a small bar and a lot of people know each other already and I think some older attorneys are implicitly biased without realizing it - so when someone who is new to the NH bar, whose parents weren’t lawyers or well-known, or who didn’t practice with the judge or the attorney at a firm, and those connections are discussed in front of that new person, it can be intimidating and can make you feel like you’re the outsider.”

Recruiting Outcomes

Survey responses point to an opportunity to increase the number of diverse candidates considered for legal employment in the state. Overall, only 38% of employers recruit at diversity job fairs, 32% recruit at New Hampshire University Franklin Pierce School of Law (“UNH Law”), and 10% recruit at Historically Black Colleges and Universities. 69% of public interest employers and 63% of corporations recruit at diversity job fairs versus 32% of private practice.

These outcomes demonstrate significant opportunity to collaborate and expand the pool of diverse candidates considered for job opportunities in the state.

Examples of the varied survey responses include:

- “I am concerned affirmative efforts at inclusion will result in recruiting people based on their status as a minority as opposed to their ability.”
- “We must be careful to maintain a meritocracy and not lower our standards to achieve the vague goal of diversity and inclusion.”

-
- “My professor wife is on the college diversity group, and is the only non white on the committee. She is often disappointed by the inability of the members to notice the injustice in the treatment of colored students and faculty by the community and college personnel.”
 - “I grew up and love NH. I hope to retire back to my home state. However, after graduating from law school in 1995, I had an incredibly difficult time getting a job. After giving up, I had a successful career in Boston and eventually Active Duty JAG Corps. I cannot help but feel some of the challenges I experienced finding employment in NH was because of my race.”
 - “There will never be inclusion and diversity if attorneys do not feel welcomed. Also, firms in New Hampshire are mostly very white. It does not seem that there is any attempt to diversify. I went to a top notch Law School and I was turned down by private firms. The most diverse firm in NH is the Public Defender Program and even it is not diverse enough, especially considering the high percentages of ethnic and racial minorities involved in the criminal justice system. Saying nice things does not translate into attorneys of color actually getting jobs with NH firms.”
 - “Recruitment outside of UNH. There are so many law schools in New England with widely diverse populations and we should be targeting for top entry level jobs in the state.”

Mentoring

The Top 5 overall professional priorities reported by NH Bar members are:

1. Work Life Balance
2. Practice Area Interest
3. Culture
4. Geography
5. Practice Expansion

While women and men agree on these priorities, women place greater importance than men on all but practice area expansion. Women place significantly greater priority than men on the importance of a shared mission and social justice work.

Diverse lawyers also agree on the overall priorities but place less importance on practice area interest and expansion than white lawyers. Diverse lawyers prioritize the importance of Mentorship over their white counterparts.

Examples of the varied survey responses include:

- “I find that all the diversity and inclusion programs I had attended were not sufficient. It is treated like an academic venture rather than a life course. Being made aware of something in a class room or course setting is different than living it in real life. I believe meaningful

lasting awareness in this area comes from actual personal interaction. Separately, I attended law school here in NH but there was no attempt to provide me with a mentor whom understood what it was like to be different and to try to break into the NH legal practice.”

- “The Bar Association and the Supreme Court should consider adopting a formal mentoring program for newly-admitted lawyers, especially minority group lawyers.”

Recommended Initiatives

Embarking on systemic change is most effective when led by a group of invested stakeholders with differing perspectives, and responsibility for varied constituents. The working group that informed survey development represents such a group.

The NHBA should look to add members who work in-house to round out the oversight team. In addition, three white women, one diverse and two white males self-identified to volunteer. The current remote work environment has the potential to fast-track and reduce costs associated with recommended initiatives.

Member Education (CLE) and Outreach

There is broad support for the New Hampshire Bar Foundation overall and for the Bar prioritizing efforts to create an inclusive climate and increase diversity through education for members. With almost 60% of respondents over 50 years of age, and 22% over 65, others point to the need to “modernize the aging legal profession,” and support the NHBA prioritizing these efforts.

Examples of the varied survey responses include:

- “I believe Bar members should satisfy some of their annual CLE requirement by training in racial and gender equity.”
- “All diversity programs have failed in NH Bar, because they are developed and approved by the same establishment lawyers that promulgate discrimination.”

Possible first steps to introduce D&I resources and education to a broad range of constituents include:

Marketing and Member Outreach:

Update NHBA website to include D&I tab and links:

- Updated NHBA Diversity commitment and statement of goals
- Separate tab for D&I
- Curated D&I news feed

-
- D&I related CLE and bias interruption programs
 - Upcoming NHBA, regional, ABA and national events
 - D&I resources including links to industry wide initiatives (i.e., Mansfield Rule Certification, ABA Resolution 113)
 - Recruiting resources including links to calendar of job fairs and HSBCU recruiting opportunities

The NHBA Registration Card currently collects data on gender and ethnicity which will contribute to managing future NHBA diversity initiatives.

D&I Focused CLE Curriculum

- Add a permanent Diversity Committee to the NHBA. Consider aligning with an established NHBA Committee to oversee D&I education and outreach
- Implement NHBA three year D&I CLE program goals
- Recognize members for meeting annual CLE goals and completing three year plan

Community Outreach

- Work with NHBA Member law firms and corporations to extend current gender diversity initiatives to include race/ethnicity
- Collaborate with affinity bar(s) (New Hampshire Woman's Bar Association) and the New Hampshire Diversity Workforce Coalition to develop CLE and website content

Member Engagement

- Provide Business Development training opportunities
- Publish relevant Pro Bono opportunities on the NHBA website
- Educate members on the tight connection between recognition and engagement
- Provide best practice guidelines for providing regular and meaningful feedback

Recruiting

Survey responses point to an opportunity to increase the number of diverse candidates considered for jobs in the state. NHBA Members in private practice fall short on diversity recruiting initiatives and narrative comments point to an interest in being educated by the Bar on how to do better. It is worth noting, The University of New Hampshire Franklin Pierce School of Law welcomed its largest, most diverse class in nearly two decades, with 22.6% of students reporting being a minority. Students in this class also boast a higher median GPA than the prior year.

The Law School hired a Chief Diversity Officer in 2020 cementing their commitment to attract diverse lawyers to the state which provides a unique opportunity for the NHBA to collaborate with UNH Law School on recruiting education and initiatives.

Possible first steps to support employers to increase the hiring, retention, and inclusion of legal professionals from diverse backgrounds include:

NHBA Member Recruiting Opportunities

- Educate employers regarding the Mansfield Rule and other industry D&I initiatives
- Provide recruiting best practice guidelines
- Publish an annual NHBA minority recruiting calendar

Talent Pipeline Initiatives

- Launch mentoring programs with NH High Schools
- Launch mentoring programs with HBCU institutions

Corporate Responsibility

- Educate corporations regarding ABA Resolution 113
- Offer annual NHBA Diversity Scorecard to corporate clients to benchmark and advance diversity on outside legal teams

Court System

Respondents point to: (1) statistically significant differences in how demographics experience interactions with the court system, (2) a system that would benefit from bias mitigation (and civility) education, and (3) opportunities to address socio-economic disparities that impact access to justice. White men express strong agreement that the Court System is welcoming to them and their clients. Diverse women report a lack of inclusion toward both them and their clients. More than 1,000 (77%) respondents report being involved in cases where parties are self-represented, and 42 (3%) report more than 75% of their clients as ESL.

Examples of the varied survey responses include:

- “Judges should have mandatory training on implicit racial bias. A rigorous analysis of the intersection between race and each step of the criminal justice process should be funded and conducted - including arrests, charging decisions, plea offers, and resolutions.”
- “Educating judges and court staff about the importance of treating people equally and kindly. When people go to court, they are experiencing something stressful and in some cases traumatizing. To be treated unfairly because you are non-conforming in some way because of the way you are dressed, or you are poor is demoralizing.”
- “I have observed Judges and Court Staff treat minority defendants and lawyers differently and sometimes worse than similarly situated/behaving white defendants and lawyers. It does

not happen every time. But it has happened enough that I noticed and felt uncomfortable.”

- “I think New Hampshire’s state government makes NH seem like a particularly unwelcoming place for people of color when compared to the other nearby states so I can understand why young people who are looking to a state to practice law might pass over New Hampshire.”

Possible first steps to ensure a legal system that is welcoming to all and supports the needs of an evolving population include:

Member Outreach

- Expand opportunities for the judiciary to interact with bar members, include diverse members at Bar Association events
- Implement Supreme Court mentoring partnerships for existing and newly admitted diverse lawyers
- Collaborate with UNH Law School to engage their increasing enrollment of diverse students

Community Outreach

- Host Town Hall meetings to understand and address community perception
- Collaborate with the NHBA to identify pro bono opportunities to increase engagement of Bar members and advance the legal needs of the community

Court System Opportunities

- Training for all court personnel with respect to implicit bias and multiculturalism
- Formal reporting and recourse process for those who witness/experience disparate treatment

We appreciate the opportunity to undertake this project with the New Hampshire Bar Foundation, and to bring a data-driven approach to identify opportunities for the Bar, Court System, private law firms and other stakeholders to advance D&I in the New Hampshire legal community.

The Foundation would like to acknowledge and thank the NHBA members who participated in the survey and those who donated to support this effort.

Leadership Level Donors

- Hon. John Maher and Skye Maher
- Sheehan Phinney

Platinum Level Donors

- Devine Millimet
- Nixon Peabody
- Primmer Piper Eggleston & Cramer PC
- Preti Flaherty Beliveau & Pachios
- Tenn And Tenn, PA

Gold Level Donors

- Hamblett & Kerrigan
- McLane Middleton
- Orr & Reno
- Scott Harris, Esq, & Karen Horsch

Silver Level Donors

- Upton & Hatfield
- Stephen Duprey, Esq.
- Douglen Porter Hill, Esq. & Alexandra Breed, Esq.
- Russell Hilliard, Esq.
- John Burwell Garvey, Esq.
- Susan Taylor Goff, Esq.
- Hon. Christopher Keating
- Susan Manchester, Esq.
- Jack Middleton, Esq.
- George Moore, Esq. & Ellen Arnold, Esq.
- Jennifer Parent, Esq.
- Lisa Wolford, Esq.

Data directs actions that are predicted to have the greatest impact, points to priorities with measurable outcomes and creates systemic accountability. We are confident that the Foundation's forward thinking approach and use of statistical models positions the New Hampshire legal community to make unprecedented progress.

Best regards,



Kathleen Fredriksen
Managing Partner
Email: kat@parkeranalytics.us
Direct (917) 733 6758



Evan Parker, PhD
Founder
Email: evan@parkeranalytics.us
Direct (919) 454 1119