

ABA Loosens Diversity Requirements Amid Legal Challenges



The American Bar Association (ABA) has revised its diversity, equity, and inclusion (DEI) requirements for a clerkship program, following accusations of bias from a nonprofit group. This shift reflects broader changes in how institutions are handling diversity policies, especially in light of recent legal and societal pressures.

ABA's Revised Diversity Program Guidelines

The ABA previously mandated that participating schools select a certain number of students from underrepresented racial and ethnic groups for their clerkship program. Schools were required to choose four to six students of color, and judges participating in the program were expected to hire at least two minority clerks within five years. However, these requirements have now been relaxed. According to the Wisconsin Institute for Law and Liberty (WILL), which has criticized the ABA's recruitment practices, the new guidelines encourage schools to promote equal participation by eliminating bias without imposing strict racial or ethnic quotas.

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Broader Changes in Diversity Policies Across Sectors

This shift in the ABA's clerkship program is part of a larger trend as organizations reexamine their DEI policies. Law firms, nonprofits, and companies are increasingly under scrutiny following the U.S. Supreme Court's 2023 decision to limit the use of race in college admissions. This landmark decision has empowered conservative groups to challenge race-based diversity initiatives in various sectors.

For instance, Edward Blum's American Alliance for Equal Rights filed a complaint with the Equal Employment Opportunity Commission (EEOC) accusing Merck & Co. Inc. of excluding white and Asian employees from a diverse leadership program. These legal challenges signal a growing push against race-based DEI policies.

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Legal Challenges Against ABA's Program

In May, the Wisconsin Institute for Law and Liberty filed complaints with the U.S. Justice Department and the Department of Education, accusing the ABA of violating federal laws by allegedly targeting applicants based on race, age, and sexual orientation. The complaints also named South Texas College, the University of the Pacific, and Willamette University for their involvement in the clerkship programs.

The nonprofit argues that these programs perpetuate bias rather than eliminate it. "We will continue to challenge race-based programs and promote a colorblind society," said Skylar Croy, an attorney for the group. The organization has been successful in the past, notably prompting changes in the State Bar of Wisconsin's diversity fellowship program after filing a lawsuit in 2022.

Growing Opposition from State Attorneys General

More than 20 Republican state attorneys general have also raised concerns about the ABA's DEI policies. In June, they warned the ABA of potential violations of anti-discrimination laws tied to its law school accreditation standards. In response to these pressures, the ABA's accrediting body has proposed broader language that encourages access for "all persons," rather than focusing solely on racial and ethnic minorities.

This new language emphasizes inclusion for individuals disadvantaged based on race, color, ethnicity, religion, gender, sexual orientation, disability, and socioeconomic status, among other factors. The proposed revisions reflect a shift away from race-specific mandates toward a more comprehensive, inclusive approach.

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