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Diversity Matters

Valuing Race and Gender

The Diversity Newsletter of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC

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Diversity: To Be or Not To Be? There is No Question: It's Got to Be – And It's Up to You and Me!

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In the beginning, they came to the Ark, two by two, animals of every species: lions, camels, antelope, cattle, birds and reptiles. The great flood came. The animals remained in the Ark until the flood receded. Yes, it was Noah's Ark, and the diversity of its passengers was mandated by God, as the story goes. They were all in it together, just as we all are.

It was the diversity among Noah's passengers that makes the legend of the Ark so special. Despite their differences, they got along with one another because their leader knew that survival depended upon it.

While the story of Noah's Ark may be no more than a legend of the Bible,



Maurice Wexler

there are lessons to be learned from it. In the light of day, each of us looks different from the other. We are tall and short, wide and thin, male, female; our skin is black, white and other colors, too. Some are disabled, some are not. Some are younger or older than others.

In darkness, however, our visible differences disappear and our invisible similarities become manifest. Our hearts and minds are not that different. In fact, with the human genome, science can prove we are 99% alike

under the skin. We yearn for many of the same things: health and happiness for our loved ones, friends, and self; peaceful, trouble-free lives; a decent home; food on the table; and clothes on our backs. If we are to survive and thrive as a nation, we must recognize and respect our unique physical and cultural differences. But, perhaps it is even more important to respect and recognize our similarities. Capitalizing on both differences and similarities is not only the best way to achieve our individual as well as group goals, but it is also the only way we can nurture a society of decent human beings who are solid citizens. If Noah's passengers had not respected one another, imagine what it would have been like on the Ark. It would have been a real zoo and they would have been sunk, both literally and figuratively.

What happens to humankind when our differences are disrespected? The Holocaust, where six million Jews perished, and ethnic cleansing in the Balkans, Darfur and Sudan, where thousands have been persecuted because of their race and cultural differences. In our own country, the inhumanity and indignity of slavery persisted long after the end of the Civil War, leading to *Brown v. Topeka Board of Education* in 1954 and the sweeping

Civil Rights Act of 1964.

Before that, public places were racially segregated, as were schools, hotels, theaters, busses, lunch counters, public water fountains and workforces. Even our sacred institution of the ballot box was off limits to many because of their race. "Separate but equal" was the enabling code. Respect is so fundamental to individual dignity that today in some cities, one can be killed for "dissin" another person.

Among our citizens who were victims of racial, ethnic and religious stereotyping, frustration with societal segregation grew, as did resistance to efforts to integrate. Failure to recognize, respect and value the differences between and among us stoked the fire of civil unrest marked by anger and violence amongst us.

Do you remember the forced racial integration of Little Rock Central High School; the senseless racially-motivated murders of Medgar Evers, as well as Andrew Goodman, James Chaney and Michael Schwerner; Bull Connor and his vicious police dogs and fire hoses turned on peaceful protestors; Rosa Parks and her refusal to move to the back of the bus? Do you remember segregated lunch counters where black and white patrons could not sit together, and the often violent responses to

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sit-ins? What about the defiance of Alabama Governor George Wallace to the efforts to racially integrate the University of Alabama, and the senseless assassination of Dr. Martin Luther King who was in Memphis to support the striking city sanitation workers? The streets in many of our cities, Memphis included, were aflame. They were like war zones: windows smashed; fires set; tear gassing of citizens. National Guard troops patrolled the streets of Memphis in armored vehicles, and the city was under a strict curfew. I remember, because I saw all of it. All were the product of a woeful lack of respect for the physical and cultural differences of the victims of those malicious events.

In 1964, following the longest filibuster in Congressional history, the far reaching and perhaps most noble social legislation in the history of our nation was enacted by Congress. The Civil Rights Act of 1964 became the law of the land. It came in the context of a titanic and often violent struggle for equality during what we now know as the Civil Rights Movement.

The curtain of inequality based upon stereotypical assumptions began to yield to state and federal law, as well as the social and economic pressure of a rapidly changing world. Our own national demographics were changing dramatically, and continue to change. This year, Hispanic workers are expected to comprise 13.3% of the workforce and African-Americans 12.7% – or 26% when taken together. In comparison, Hispanics represented approximately 6.4% of our nation's work force in

the late 1980s, and African Americans, approximately 10%. That is 16.4% in the aggregate. Women will comprise 50% of the work force, compared to approximately 46% in the late 1980s. The complexion of our nation's workforce is in transition. This data

As the poet Maya Angelou said so well in her poem, "The Human Family":

*The variety of our skin tones
can confuse, bemuse, delight
brown and pink and beige and purple,
tan and blue and white.*

*I've sailed upon the seven seas
and stopped in every land,
I've seen the wonders of the world
not yet one common man.*

*I know ten thousand women
called Jane and Mary Jane,
but I've not seen any two
who really were the same.*

*I note the obvious differences
between each sort and type,
but we are more alike, my friends,
than we are unlike.*

*We are more alike my friend
Than we are unlike.*

speaks eloquently about the importance of diversity and inclusiveness in our own lives, and makes a solid case for diversity and inclusion in any business plan.

The differences that once divided us have now become the mortar that binds us together. It is this diversity

that enables us to use the strength, talent, ambition and vision that is nurtured by our various backgrounds and life experiences. As our business and social connections broaden and bring us into contact with others who might not look like us, understanding the value of diversity to our individual and collective success becomes an easy sell. At the end of the day, ignoring diversity and its social and business benefits is simply not an option in the world in which we now live. Doing so is a recipe for failure. Diversity is both a business and social necessity.

Diversity: To be or not to be? There is no question. It has "got to be," or we will fall short of our business and societal goals, individually and collectively; our nation's promise of equality of opportunity, liberty, justice and the pursuit of happiness for all will be broken. We cannot and will not permit that to happen.

Maurice Wexler is a shareholder in the Memphis office. He primarily focuses on labor and employment and general corporate law, representing employers in a broad variety of issues relating to labor and employment. Mr. Wexler was honored by the Equal Employment Opportunity Committee of the American Bar Association, Labor and Employment Section, with the establishment of the Maurice Wexler Fund at the National Civil Rights Museum in Memphis, Tennessee. Mr. Wexler is also a member of the Board of Directors for the National Civil Rights Museum.



Nancy Johnson

Mentors Pave the Way for Former Congresswoman Nancy Johnson's Success

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Baker Donelson Shareholder

Donna Thiel sat down recently with Senior Public Policy Advisor Nancy Johnson for a conversation about

Ms. Johnson's 24 years in Congress

and her philosophy on the importance of mentoring and doing your homework.

Although her father was a politician, Nancy Johnson certainly didn't expect to grow up to spend 24 years representing her Connecticut district in the U.S. House of Representatives. She thought she'd become a teacher like her mother.

But a funny thing happened along the way to that teaching career. The mentors she found along the way – including her parents and her teachers – and the small-group learning environment she encountered in her schools, ignited a lifelong ability to actively question – a skill she calls the most important tool she acquired during her formative years.

Her parents and grandparents were her early mentors. Her grandfather founded John Marshal Law School in Chicago and her father succeeded him as dean. For 10 years her father led a national coalition of evening law schools to protect them against the ever more burdensome ABA requirements that threatened the law schools' very existence. Her father had joined the French forces before America ever joined in on World War I, and he was keenly aware of the important role the night schools played in providing opportunity to Chicago's immigrant and minority populations. He also knew night programs made law schools accessible to a much wider segment of society. Ultimately John Marshal produced the first black judge and the first Italian judge in Chicago. Dinner table conversation about this effort and her mother's many community activities provided a strong foundation for Nancy's future in public service.

Her early habit of asking questions helped inform her first political campaign. When she was asked to run for office that first time, she initially hesitated because she didn't think she

knew enough about how things work to take on such a job. But then she decided that it didn't matter if she didn't know enough; the question was, "Can I learn?" And she answered it by developing a consistent pattern of thoroughly educating herself on the issues at hand. She quickly learned that in politics, if you know what you're talking about, you can have a great deal of influence. She had the time and the will to educate herself, and that passion has served her well in her quest to make a difference in her district.

Also informing her early political career was a deep commitment to community service. She cites the large number of women who'd been educated "to be the educated wives of educated men." In other words, they didn't have jobs, and in addition to raising families and taking care of their homes, they were expected to use their time to contribute to their communities. Those women had a huge impact; Nancy says they often developed programs that rivaled those of established non-profit organizations.

That commitment is one of the reasons Nancy was drawn to Baker Donelson; the Firm's dedication to providing pro bono service to the community as the right thing to do and not just lip service were evidence of a culture she was excited to join.

When she was first elected to the House there were very few women members, and among her male counterparts she often encountered a paternal attitude that – thankfully – she doesn't see much anymore. According to Nancy, "There's a certain amount of equality in politics because every person gets one equal vote."

When asked if being a woman has helped or hindered her career, Nancy notes that it has been a little of both. Although the paternalism was a little frustrating – as demonstrated by an early instance in which she and Barbara Boxer encountered resistance as they tried to secure updated gym equipment for the women members of Congress to equal that of the men's gym – generally she points to qualities like having substance, being prepared, and being organized as much more important than gender.

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Mentors Pave the Way for Former Congresswoman Nancy Johnson's Success, *continued*

Along the way she had political mentors as well, individuals who didn't try to mold her too much but were there when she needed them. In mentoring her own staff members, Nancy made a point of ensuring that opposing sides of any issue were represented in internal discussions. She wanted to make sure they were exposed to all points of view, and says both creativity and discipline are necessary in successful mentoring. She notes that there is real value in helping people understand how they are creative, since creativity shows itself in many forms. She also cites inspiration, loyalty and providing guidance when needed as key mentoring traits.

Now that she's working behind the scenes instead of in the political spotlight, Nancy is learning how to maneuver

in a different environment. But in both worlds, in the end, it all comes down to relationships. These days Nancy uses the relationships she's worked so hard to build to act as a powerful advocate for her clients on critical policy issues.

After serving 24 years in the U.S. Congress, Nancy Johnson joined Baker Donelson because she shares the Firm's commitment to service excellence. She served 18 years on the House Ways and Means Committee and played an integral role in the passage of every major tax, trade and health care initiative during years of rapid technological and political change and the globalization of the economy. Ms. Johnson is widely recognized for her acumen and sound analyses of health care, tax and trade policies.

Barrister's Breakfast Receives Outstanding Project of the Year Award



The Firm's Barrister's Pancake Breakfast, which benefits the Memphis branch of Susan G. Komen for the Cure, was named Outstanding Project of the Year by the Corporate Volunteer Council (CVC). The CVC says, "This project gives special meaning to the phrase 'Competitors in the Marketplace – Partners in the Community.' It brought together a typically adversarial crowd to help raise funds and awareness for a cure. Employees from all levels are heavily involved in the planning and execution of this project."



Leo Bearman and Judy Birchler, who lead this effort each year, accepted the award on behalf of the Firm at the Corporate Neighbor Awards on Thursday, November 5. Also in attendance at the ceremony were Richard Mattern, who was nominated for the Employee Spirit Award; Liz McKee, chairperson of this year's awards; Callaway Bain, who gave the invocation; Ben Adams, Jim Hughes, Jeff Hirka and Joyce Rhodes.

The Barrister's Breakfast raised more than \$10,000 for Komen for the Cure this year. Baker Donelson has helped raise \$125,000 during the past 10 years through this event.



Photos at left: 1. Leo Bearman and Judy Birchler led the effort. 2. Christy Brackey, Memphis catering coordinator, whips up a batch of pancake batter. 3. A large and diverse crowd took advantage of the tasty offerings, served in the basement dining room of Calvary Episcopal Church in downtown Memphis.

Minority-Owned Enterprises: An Overview

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Over the past decade, the number of minority-owned businesses has increased by 35%, due in large part to public and private programs available to assist certified minority business enterprises (MBE). This article discusses the requirements for certification as an MBE and provides an overview of the certification process and the advantages to becoming certified as an MBE.

What is an MBE?

An MBE is a special certification for a for-profit business owned and controlled by one or more members of an ethnic or racial minority group. In general, minority groups include African Americans, Latin Americans, Native Americans and Asian Americans.

There are two main requirements for an entity to be certified as an MBE. First, the MBE must be owned by one or more members of an ethnic or racial minority group. Ownership is established where one or more minority group members own at least 51% of each class of ownership interest in the entity. For example, suppose Corporation XYZ has 100 shares of voting stock and 100 shares of non-voting stock. XYZ has two shareholders, John (a minority group member) and Jack (a non-minority group member). If John owns 51 shares of the voting stock and 51 shares of the non-voting stock, XYZ should meet the ownership requirement for certification as an MBE because a minority group member owns 51% of each class of

company stock. Now suppose that John owns 100 shares of the non-voting stock and 2 shares of the voting stock. Even though John owns 51% of all the outstanding shares of XYZ (102 out of 200), he does not own 51% of each class of stock of XYZ; therefore, XYZ should not meet the ownership requirements for certification as an MBE.

The second requirement for



certification as an MBE is that one or more minority group members must control the day-to-day operations of the entity. While ownership, for purposes of MBE certification, is fairly easy to determine, control is determined by each entity's specific facts and circumstances. In general, one or more minority group members must be capable of running most, if not all, aspects of the business and should have control over the day-to-day operations of the business. In businesses that require technical expertise, the minority group member is not required to have technical expertise; however, the minority group member must show that he or she has ultimate managerial or supervisory control over

those individuals with such technical expertise. At a minimum, a minority group member should hold the highest office of the entity; however, sporadic, inconsequential managerial tasks alone will probably not meet the control requirement for certification as an MBE.

For example, suppose Corporation XYZ manufactures widgets. John (a minority group member) is the chief executive officer of XYZ and has control over all operations of XYZ. In addition, John has 25 years of experience in the widget manufacturing industry. Jack (a non-minority group member) is the chief operations officer of XYZ and also has control over the manufacturing operations of XYZ; however, Jack reports directly to John and John may veto any decision of Jack. Under these facts, XYZ would probably meet the control requirement for certification as an MBE. Now suppose that John is the chief executive officer, but has no experience in the widget manufacturing industry. In addition, John is only in charge of the office administration and does not have managerial control over Jack. Under these facts, XYZ would probably not be classified as an MBE.

Certification

While some government agencies and private companies may allow an entity to "self-certify," most MBEs are certified by a private-certification company or through a government

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Minority-Owned Enterprises: An Overview, *continued*

agency. In general, the private-certification company (or government agency) will conduct an audit of the company to make sure it has met the ownership and control requirements for certification. The private certification company (or government agency) will review the MBE's balance sheet and financial statements, the MBE's corporate records, and agreements between the owners and the MBE (including any restrictive transfer or buy-sell agreements and employment agreements). In addition, the private certification company (or government agency) will generally conduct an on-site review of the MBE.

Which certification approach an MBE uses depends on the type of business the MBE conducts. For example, if Corporation XYZ only does subcontract work for State A agency

and State A agency conducts its own certification process, there would be no reason for XYZ to obtain private certification. However, many companies conduct business with both government agencies and private agencies and may find it beneficial to become certified through a private-certification company. There are a number of private-certification companies for MBEs; however, many private companies and state agencies may have a relationship with a specific private-certification company. Therefore, it may be wise for an MBE to talk to its customers and clients to determine which private-certification company, if any, they prefer.

Advantages

There are number of advantages to being certified as an MBE. The most

important advantage is the expanded business opportunities for MBEs. For example, many federal, state and local government agencies have special programs to encourage contracting with certain certified MBEs, and federal prime contractors are required to establish goals and plans for subcontracting with certain certified MBEs. In addition, a number of private corporations such as Wachovia, Nissan and Apple Computer have implemented supplier diversity programs to ensure a diverse supplier base. Another advantage to being classified as an MBE is that there are a number of grants and special loan programs specifically geared towards MBEs. Finally, there are a number of government-sponsored and private start-up assistance programs and other educational programs specifically for MBEs.

Baker Donelson Welcomes New Women and Diverse Attorneys, and Congratulates Two Elected Women Shareholders

- Sheila P. Burke
- Heather Camp
- Sarah Katherine Casey
- Kathryn B. Cooper
- Caldwell G. Collins
- Marianne H Combs
- Amy Elder
- Kelly C. Flinn
- Katherine H. Forseth
- Julia M. Kavanagh
- Juliann Keenan
- Sondra Keys
- Marcie L. Kiggans
- Carla S. Johnson
- Jennifer H. Johnson
- Nicole E. Jumper
- Whitney M. Harmon

- Joann Keisha Coston-Holloway
- Taeho Lee
- Gabe McGaha
- Rodney Moore
- Erin E. Reeves
- Courtney H. Smith
- Theresa E. Weir

New Shareholders



Amy L. Champagne (Product Liability & Mass Tort)



Emily Turner Landry (Product Liability & Mass Tort)

Activities

List Mania!

Mary Aronov, Jonell Beeler, Sheryl Bey, Angie Davis, Christopher Davis, Barry Ford, Charles Grant, Virginia Love, Jill Steinberg and Kelli Thompson were included in *Mid-South Super Lawyers*.

In addition, a number of our attorneys were named to specific subcategories, including:

- Jill Steinberg – Top 100 attorneys in Tennessee and top 50 attorneys in Memphis
- Sheryl Bey and Barry Ford – Top 50 attorneys in Mississippi
- Brigid Carpenter, Amy Champagne, Christy Crider, Beverly Gates, Courtney Gilmer, Jennifer Hall, Emily Landry and Stacie Winkler – Rising Stars

Linda Finley and Linda Klein were among the Baker Donelson attorneys recognized in the 2010 edition of *Georgia Super Lawyers*. The publication also named Erica Mason to its 2010 list of Georgia Rising Stars.

Phyllis Cancienne, Nancy Scott Degan, Donna Fraiche and Mimi Koch were

named to *Louisiana Super Lawyers*. Baker Donelson attorneys are being recognized in the 2010 edition *Chambers USA* in 19 different practice areas.

- Construction: Linda Klein
- Corporate/Commercial (Municipal Finance): Jennifer Crowson
- Health Care: Donna Thiel
- Labor and Employment: Phyllis Cancienne, Jennifer Keller, Fern Singer, Kim Vance
- Litigation (General Commercial): Nancy Degan
- Real Estate: Mary Aronov

One hundred seventy-six attorneys were selected by their peers for inclusion in *The Best Lawyers in America*® 2010 (copyright 2009 by Woodward/White, Inc. of Aiken, SC), a well-respected attorney listing that is widely regarded as a definitive guide to legal excellence. Of those, 38 women and diverse attorneys made the list, which can be viewed on the *Best Lawyers* website.

A number of Baker Donelson women attorneys were named to recent “Top 40 Under 40” lists. Elisabeth Quinn was selected by the *Baton Rouge*

Business Report; Ashley Meredith Lowe was named to the *Greater Knoxville Business Journal*’s annual list; and Angie Davis was selected for inclusion in the *Memphis Business Journal*’s annual “Top 40 under 40 list.”

Linda Crouch-McCreadie and Jennifer Keller were included in *The Business Journal of Tri-Cities Tennessee/Virginia*’s “Legal Eagles: 20 Tri-Cities Lawyers Who Are Among the Country’s Best.”

Leslie Beale, Ashley Meredith Lowe, LeAnn Mynatt, Angelia Nystrom, Melissa Stevens and Kelli Thompson were included in *Knoxville CityView* magazine’s annual list of Top Attorneys.

Jennifer Cooper and Linda Finley were named to *Georgia Trend* magazine’s 2009 Legal Elite, its annual listing of the state’s top attorneys.

Angie Davis was listed as a top Employment Law Attorney in Memphis in *Memphis Business Quarterly*.

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