

Request for Comment on Preliminary Draft “Inclusivity and Diversity in Litigation Work Assignments Questionnaire”

George Washington James F. Humphreys
Complex Litigation Center
October 24, 2021

Best Practice 3A of the Complex Litigation Center’s *Inclusivity and Excellence: Guidelines and Best Practices for Judges Appointing Lawyers to Leadership Positions in MDL and Class-Action Litigation* recommends that “[t]he transferee or presiding judge should remain vigilant that appointments and work assignments made throughout the litigation take diversity into account.”

As guidance, the best practice urges a judge to “rely on a dependable process to monitor the litigation, gain accurate information about its progress, and ensure that the appointed leaders are assigned and actually perform meaningful, substantive work.”

At the request of several judges, the center developed a questionnaire to implement the best practice. The questionnaire can be adopted as part of a case-management order governing monthly common-benefits expense timekeeping that is typically entered in most cases. It is intended to identify the diversity of the next level of leadership positions below lead counsel and plaintiff steering committee members, whose diversity is known.

The center seeks public comment. Please submit comments, favorable, unfavorable, or otherwise on the preliminary draft questionnaire no later than **Friday, December 31, 2021**, to humphreyscenter@law.gwu.edu.

We are especially interested in feedback on whether the questionnaire should remain succinct or be expanded to identify the specific type of work assignments often associated with leadership positions, along the lines of the ABA’s Uniform Task-Based Management System, which contains L100-L500 series of tasks.

A detailed list of types of assignments raise concerns because: (1) enumerating 20-25 specific types of work assignments would add confusion; (2) it would impose greater reporting burdens both on lawyers submitting information and those compiling it; (3) individuals nominally assigned responsible tasks may not actually be performing them; and (4) analyzing the results of multiple tasks, some overlapping, would be fraught with ambiguity.

Instead of relying on self-defined and ambiguous categories of work assignments, the decision was made to “follow the money” on the assumption that the highest compensated lawyers likely hold the most responsible leadership positions. And it is with these positions that identifying diversity is most crucial.

Compensation can be calculated by the number of monthly hours and the hourly rate. But mandating disclosure of lawyers' hourly rates may raise concerns and the actual compensation is not determined until the end of litigation, when a steering committee typically apportions the common benefit fund among many law firms.

As a fallback position, the number of monthly hours reported by lawyers at the partner level can serve as a rough indicator of the ultimate compensation and in turn the importance of the work assignments. The questionnaire breaks out the number of reported hours spent on document review separately, because it usually represents a majority of the reported time and although it is an important function, it usually is assigned to lawyers at the associate level.

Inclusivity and Diversity in Work Assignments Questionnaire

JAMES F. HUMPHREYS COMPLEX LITIGATION CENTER
GEORGE WASHINGTON LAW SCHOOL
October 24, 2021

The purpose of the questionnaire is to collect information about lawyers who are assigned work in _____, (MDL # _____) to ensure that assignments are free of invidious discrimination and bias. The information collected will better inform the court's commitment to fulfill its duties fairly and equitably, including avoiding appointments based on favoritism or improper considerations.

INSTRUCTIONS

(Reporting Period _____ 1, 2021- _____ 31, 2021)

Every attorney who is entitled compensation for work assigned in _____ (MDL # _____) must complete and forward the questionnaire **no later than** _____. Completion time is approximately three minutes. After completing the questionnaire, click the **Submit** button.

1. Firm Name *

Response required

2. Gender *

Female Male Non-binary

Response required

3. Are you of Hispanic, Latino, or Spanish origin, including Mexican, Mexican American, Chicano, Puerto Rican, Cuban? *

Yes No

Response required

4. What is your race? *

- American Indian or Alaska Native
- Asian
- Black or African American
- White
- Other

Response required

5. Are you a person with a disability? *

- Yes
- No

Response required

6. Do you identify as LGBTQ? *

- Yes
- No

Response required

7. What is your position within your law firm as it relates to your work in the litigation? *

- Partner
- Associate
- Of Counsel
- Contract Attorney

Response required

8. Do you hold a leadership position in the litigation (e.g., steering committee member, committee or subcommittee chair)? *

- Yes
- No

Response required

9. Please indicate the number of compensable hours performed during this reporting period:

- Hours Performed on Document Review
- Hours Performed on All Other Matters

Survey developed by the GW James F. Humphreys Complex Litigation Center.