

SOLUTIONS FOR THE CONTINUED RETENTION AND PROMOTION OF WOMEN ATTORNEYS

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I. Associates

A. Ensuring Equal Assignment Opportunities

- It is critical that women associates be afforded equal opportunities to work on high-profile, high-revenue matters that will expose them to influential partners within the firm and help them develop client relationships. The ABA Commission on Women in the Profession has found in its research that women attorneys of color, in particular, are often denied meaningful work assignments. Thus, in order to ensure the retention, promotion and success of women associates, steps must be taken to ensure that they are provided with equal opportunities to work on important matters.

B. Developing and Implementing Policies to Track Assignments

- In order to determine whether women attorneys are being provided equal opportunities to work on complex matters, firms must collect data regarding assignments, such as:
 - Tracking the number of women included in business generation pitches.
 - Analyzing "Top Clients" and tracking the assignment of work for those clients' matters by gender.

C. Instituting Gender-Neutral Evaluation Systems

- One of the key impediments to the advancement of women attorneys is implicit bias, which often infects performance evaluations. This is even more important today in light of numerous layoffs during the economic downturn. Many firms have claimed that their decisions as to who should be laid off are based on poor "performance." To assist firms in preparing bias-free evaluations, the ABA Commission on Women in the Profession recently published a revised and expanded edition of *Fair Measure: Toward Effective Attorney Evaluations*. This ground-breaking manual outlines a step-by-step process for creating and implementing an effective gender-neutral evaluation system. This manual includes training for

supervising lawyers, as well as lawyers who sit on associate evaluation committees, so that hidden bias which may affect evaluations can be recognized and eliminated. It is also important that firm committees charged with evaluating associates be diverse and comprised of both male and female partners.

D. Implementing Elective Mentoring Programs

- Finding one or more mentors is invaluable to achieving success. Firm leaders must recognize the importance of mentoring systems that can help develop legal skills and provide networking and other business opportunities. Firms can also increase the number of attorneys willing to mentor women attorneys by rewarding such activity. For example, firms can implement a system whereby associates vote on the best partner mentors, and those partners can be compensated for their efforts.

E. Making Partnership and Compensation Criteria Transparent

- Firms must make criteria clear so that associates have an understanding of what they need to do to advance to partnership.
- Firms must track the percentage of women advancing to partnership, and particularly equity partnership and other leadership positions in the firm and within practice groups.

F. Revamping Billing Systems To De-Emphasize Billable Hours

- Many clients are now looking to their firms to provide creative billing arrangements which emphasize quality and efficiency rather than billable hours. Such arrangements can benefit women lawyers, as their family obligations often make it difficult for them to meet onerous billable hour quotas.

G. De-Stigmatizing Part-Time And Other Flexible Work Arrangements

- While most firms have written policies for reduced hour arrangements, less than 6% of attorneys actually avail themselves of these options. Significantly, 75% of those who opt for such reduced schedules are women. Firms need to commit that if an attorney elects to utilize a part-time or flex-time work arrangement, she will still be afforded equal opportunities for advancement.
- Firms must develop metrics to track the usage of reduced hour schedules and the effect of such schedules on the retention and promotion of women lawyers.

II. Partners

A. Revamping Compensation Systems and Practices

1. Ensuring Fair Billing and Origination Credit

- A key to achieving equity partnership status and subsequent advancement within the partnership is the development of a significant "book of business."
- The ABA Commission on Women is co-sponsoring a research project with MCCA and PAR to examine how various law firms approach the distribution of billing credit for client engagements and how such distribution impacts compensation and advancement of women lawyers to income or equity partnership. The Commission is putting on a Presidential Showcase Program at the ABA Annual Meeting in Chicago on July 31, 2009 that will focus on this research.

2. Compensation Criteria Should Not Be Limited To Business Development and Hours Billed

- Compensation systems should reward quality and efficiency.
- Reward partners who create business opportunities for the firm's women attorneys.
- Revamp compensation systems to reward teamwork and creation of "firm clients."
- Reward women partners who help to expand and grow the work of existing clients or participate in pitches for new clients.

3. Eliminating Bias In Compensation Systems

- Firms must analyze whether women and women lawyers of color are disproportionately receiving less compensation, and address the discrepancies.
- Firms must correct for hidden biases in partner compensation evaluations. For example, women who tout their own achievements may be perceived as overly aggressive, while similar actions by male partners may be considered appropriate.

B. Implementing Transparent and Fair Client Succession Policies

- Approximately 400,000 baby boomer attorneys will be retiring in the next 10 years. It is imperative that firms implement fair and equitable client succession systems so that when a senior lawyer retires, the women attorneys who have helped to maintain and develop that client relationship are given the opportunity to succeed that departing lawyer as the partner in charge of that client, rather than have the male protégé automatically take over the client responsibility.

C. Measuring The Fairness of Compensation, Credit Origination and Client Succession Policies

- Firms must establish procedures for measuring the implementation of the gender and diversity goals set forth above.
- Firms must track whether women partners are receiving equal opportunities to handle high-profile matters for major firm clients and must also track whether women partners are receiving credit for such work.
- Firms need to track the participation of women partners in presentations to clients and other firm business development opportunities.
- Performance should be considered over a 2-3 year period, rather than each year, so that business development efforts can be assessed in their proper context.

D. Focusing on Ways to Increase Meaningful Participation by Women in Firm Management, Governance and Compensation Committees

- Firms need to ensure that a significant number of women are appointed to management, governance and compensation committees, and other leadership positions.
- Firms should provide training to help prepare women attorneys to assume these leadership positions.

E. Increasing Business Development Opportunities For Women Lawyers

- Firms need to provide business development training.
- Firms should reward individuals and practice groups that promote their women lawyers and refer business to them.

F. Sending a Strong Message That Firm Leadership Supports Diversity

- None of the proposed solutions and strategies outlined above will succeed unless there is a strong commitment from top management of the firm to implement and support them.
- Firms need to hold partners accountable for achieving diversity objectives.

IDENTIFICATION OF ISSUES CONTINUING TO IMPEDE THE ADVANCEMENT OF WOMEN IN THE PROFESSION

1. Disparities in Equity Partner Status

Since 2002, approximately 50% of all law school graduates have been women, and women now account for over 45% of all associates. Despite the large number of women entering the pipeline for the past three decades, the number of women equity partners has remained static at below 20%. At this glacial pace, it is estimated that women will not achieve parity with men in law firm equity partnerships until 2088.¹

Equity partners not only have an ownership stake in the law firm, they also enjoy the highest compensation and the most prestige, power and influence. Therefore, achieving this “brass ring” is the true barometer of success at a law firm, and it is imperative that we find a way to increase the percentage of women equity partners in the future.

At many law firms, the key to achieving equity partner status is having a significant “book” of business. Therefore, business development and high visibility within a practice group are essential for women to be viewed favorably for partnership and to advance within the partnership ranks.

It is also essential that women receive attribution and full origination credit for the business they help generate for their law firm. Likewise, women are often disadvantaged in terms of inheriting clients from more senior attorneys, as male attorneys tend to bequeath their clients to their male protégés rather than the female attorneys who have also worked on the client’s matters. In light of the fact that, over the next ten years, 400,000 baby boomer attorneys will retire, firms need to implement transparent and equitable succession policies.

2. Disparities in Compensation

Equally significant for the advancement of women in the profession is that women lawyers continue to earn less than their male counterparts at every level of a law firm, from associate to equity partner, with the pay disparity increasing as lawyers become more senior.

The 2008 survey by the National Association of Women Lawyers found that, on average, women earn about 3% less than men as associates; 7% less as of counsel lawyers; 9% less as non-equity partners. The greatest disparity is for women equity partners, who earn 13% less than their male partners. (\$660,000 for male equity partners

¹ Catalyst, Women in Law, 2008 (available at <http://www.catalyst.org/publication/246/women-in-the-law-in-the-us>).

versus \$573,000 for women equity partners).²

This pay disparity is troubling on a number of different levels. First and foremost, this problem has existed ever since women have entered the legal profession and, despite the passage of time, parity is still a long way off. Second, the fact that women are disadvantaged with respect to their compensation results in greater job dissatisfaction. In fact, the Allegheny County Bar Association found that "women were twice as likely as men to be dissatisfied with their employment situation."³ Not surprisingly, the increased dissatisfaction among women attorneys leads to higher attrition rates, reducing the number of women who will ultimately be considered for partner.

In order for the longstanding problem of pay inequality to be ameliorated, women will need to achieve leadership positions in their law firms, including the all-important committees devoted to associate compensation and partner allocations. Also, as discussed earlier, it is imperative that women receive full business origination credit for the clients they have helped their firms to bring in the door and develop, as an attorney's compensation is heavily dependent on how much business is attributed to her. Pay equality will go a long way towards improving the level of job satisfaction of female attorneys. With increased job satisfaction, the attrition rate of female attorneys will presumably decline, leading to more women remaining in the pipeline for partner consideration, and more women partners achieving positions of leadership and power within their law firms.

3. The "Double Bind" Confronted By Women of Color

The various problems and inequalities experienced by women attorneys that are discussed above are felt even more acutely by women attorneys of color. Survey after survey shows that women attorneys of color have distressingly high rates of attrition,⁴ resulting in very small percentages of women of color in the ranks of equity and non-equity partners. Indeed, while women of color account for about 11% of associates, they account for only 3% of non-equity partners and about 1.4% of equity partners.⁵ Thus, according to the most recent NAWL survey, "even though there is a greater percentage of female associates of color than male associates of color, the women are less likely than

² Nat'l Ass'n of Women Lawyers ("NAWL"), Third Annual National Survey on Retention and Promotion of Women in Law Firms at 13-14 (2008) (available at <http://www.nawl.org/assets/documents/2008+survey.pdf>).

³ Report & Recommendations of the Gender Equality Task Force of the Allegheny County Bar Assn'n. at p.3 (2008) (available at http://www.acba.org/ACBA/pdf/ACBA_GenderReport_2008.pdf).

⁴ Approximately 86% of women of color leave their firms before their seventh year. Minority Corporate Counsel Association ("MCCA"), "The Myth of the Meritocracy: A Report on the Bridges and Barriers to Success in Large Law Firms, Different Experiences," at 24 ("Purple Book") (available at <http://www.mcca.com>).

⁵ NAWL, Third Annual National Survey on Retention and Promotion of Women in Law Firms at 8.

men to hold the position of non-equity partner or equity partner.”⁶

In addition, women attorneys of color occupy the lowest rung of the compensation ladder - - they earn less than white male attorneys, less than male attorneys of color and less than white female attorneys. Indeed, women attorneys of color receive only 47 cents for every dollar paid to their white male attorney counterparts.⁷ In addition to being disadvantaged in compensation, women attorneys of color experience inferior assignments; unfair performance evaluations; lack of access to clients and networking opportunities; inadequate mentoring; and a working environment permeated with acts and comments that reflect explicit or implicit bias.⁸ The challenge of being both a woman and a person of color has proven very daunting and has imposed significant hurdles that are quite difficult to overcome.

⁶ *Id.*

⁷ MCCA, Purple Book at p. 25.

⁸ ABA Commission on Women in the Profession, *Visible Invisibility: Women of Color in Law Firms* (2006).