



A Career in the Courtroom:
*A Different Model for the
Success of Women Who Try Cases*

THE DRI TASK FORCE ON WOMEN WHO TRY CASES

Chair



SHELLEY HAMMOND PROVOSTY
Montgomery Barnett Brown Read Hammond & Mintz LLP
New Orleans, Louisiana

Members



KERI LYNN BUSH
*Lewis Brisbois Bisgaard
& Smith LLP*
Costa Mesa, California



STEPHEN S. GEALY
*Baylor Evnen Curtiss
Grimit & Witt LLP*
Lincoln, Nebraska



CATHY HAVENER GREER
Wells Anderson & Race LLC
Denver, Colorado



CHRISTY D. JONES
*Butler Snow O'Mara
Stevens & Cannada PLLC*
Jackson, Mississippi



JANICE D. LAI
Halloran & Sage
Hartford, Connecticut



AMY S. LEMLEY
Foulston Siefkin LLP
Wichita, Kansas



LARA MONROE-SAMPSON
*Rakoczy Molino
Mazzochi LLP*
Chicago, Illinois



CHRISTOPHER W.
TOMPKINS
Betts Patterson & Mines
Seattle, Washington



SHERYL J. WILLERT
*Williams Kastner &
Gibbs PLLC*
Seattle, Washington

A NOTE FROM THE CHAIR

In March 2004, a group of DRI members actively engaged in defense practice was given a unique opportunity by DRI President William R. Sampson. President Sampson asked the group to form a task force that would undertake a ground-breaking DRI project on the subject of challenges facing women defense attorneys, a subject many of us in the task force know well, having been practicing defense attorneys for a number of years. As chair of the Task Force, I had the good fortune to work with a group of talented defense attorneys who are well respected in the legal community. The work of the Task Force in designing and conducting the interviews, sharing other research on the subject, and writing this report was a truly collaborative effort.

The findings and recommendations contained in this report were formulated by the Task Force after compiling and analyzing a substantial amount of interview and survey data, with the invaluable assistance of the DRI staff. The Task Force is grateful to the women defense attorneys we interviewed for candidly sharing their experiences and their views on how we can implement policies and practices for the mutual benefit of women defense trial lawyers and law firms. The Task Force also appreciates the participation of the judges, in-house corporate counsel, clients, and managing partners who gave up their time to answer our questions and give their perspective on the subject. We found the interviews to be very interesting, thought provoking, and fun; it was also interesting to discover similarities between what we each heard from our interviewees. We also thank the women who took the time to respond to the survey developed by the Task Force.

SHELLEY HAMMOND PROVOSTY
Chair, The DRI Task Force on Women Who Try Cases
Montgomery Barnett Brown Read Hammond & Mintz LLP
New Orleans, Louisiana



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FOREWORD

The idea for this Task Force, and this splendid paper, did not spring from a single episode in a single trial. Our Task Force members have many stories. But I want to share several of mine.

The first involves a conversation I had years ago. We were speaking, proudly, of the success we were having in recruiting and nurturing women to try jury cases in Kansas. Too few years after that, we found ourselves wondering why so few were left, and what had happened.

The second story involves a good friend, Betsy Collins, of Atlanta, Georgia. I have had the pleasure of trying two jury cases with her, one in Birmingham, Alabama, and one in Kansas City, Kansas. I will tell you, because I have seen it so clearly in both cities, that Betsy communicates with women jurors differently than I do! And her communication is powerful and effective.

The third is not a story at all, but a challenge and a strong dose of reality. Our clients want trial teams who look like the communities where they try cases. In my most recent trial in federal court, seven women sat on a jury of eight. If we want to communicate in the most effective way... if we truly want to represent the clients and communities we serve... we need women trying our cases.

This paper reflects the thinking and research and analysis of people who try cases. Women from around the country, women who try cases regularly, were surveyed and have contributed. So have men. Our Task Force—A Career In The Courtroom: DRI's Task Force on Women Who Try Cases, led by Shelley Provosty, has done important work at an important time. Much of their focus has been on the creation of "recommended practices" for both women in the profession and the law firms whose clients need their talent. We hope these recommendations prove useful.

This DRI Task Force will continue to receive all the DRI support it needs to achieve its goals. We welcome your reaction to this paper; and we welcome your support of DRI and its nearly 5,000 women members whose courtroom work is so important to our clients' success.



WILLIAM R. SAMPSON
DRI President
Shook Hardy & Bacon LLP
Overland Park, Kansas

EXECUTIVE SUMMARY



A DRI Task Force was formed to identify professional challenges unique to women who are defense trial lawyers and to suggest ways to meet those challenges.

To gather facts and viewpoints, the Task Force conducted in-depth interviews with over 100 affected persons, mostly women in the private practice of law. In addition, an electronically transmitted survey was completed by 765 women lawyers from all parts of the nation. The Task Force also researched studies done by other organizations regarding challenges facing women lawyers.

The Task Force found that, while the number of practicing lawyers continues to rise, women are often underrepresented in the ranks of law firm partnership—a goal that often indicates success in the practice of law. Too many of them leave their firms before being promoted, even though the firm has made a long-term investment of time, effort, and money in their training and development.

The premise of the Task Force report is that many defense law firms, by not providing equal opportunities to women lawyers, or by not taking into account their needs and desires, are not reaping full benefit from their investment.

When they leave the firm, many women become in-house corporate counsel, government lawyers, judges, or take other positions, all of which are perceived as more hospitable to women lawyers. Or, they leave the field of law completely.

The Task Force identified and analyzed gender-based challenges and difficulties faced by women lawyers that often lead to their early departure from many law firms. The challenges include:

- advancing in firms—and in a professional field—dominated by men
- allowing women litigators to be as aggressive and confrontational as male litigators
- developing a clientele—a “book of business”—for the firm
- balancing the time demands of a private law trial practice with family life

Women lawyers believe that there is a “glass ceiling” that inhibits their advancement. They are expected to work harder than male trial lawyers, yet receive less professional respect from clients and male lawyers. They also report gender bias in work assignments, in the courtroom, from opposing counsel, and among their male colleagues in the firm.

Difficulties encountered by women in finding new clients include inadequate training by the firm and many women's discomfort in participating in male-oriented social and recreational activities.

American society continues to expect the woman to manage and bear the heaviest responsibility for her family life, including child rearing, regardless of the demands of a law practice. Women with young children are often viewed as less committed to the practice of law. Some accommodation between domestic responsibilities and law practice must be found if law firms are serious about retaining their highly capable and valuable women.

In suggesting strategies to meet the challenges, the Task Force looked at practices in law firms that have successfully incorporated aspiring women trial lawyers into the practice and retained their services. These include:

- flexible full-time work schedules
- part-time work
- day care facilities at the firm's location
- providing trial opportunities for young female associates, as a "second chair" or mere observer
- allowing associates to volunteer for *pro bono* litigation work outside the firm
- effective mentoring relationships with senior lawyers in the firm
- including women on the committees that manage the firm—the "power structure"
- more expert guidance on how to market oneself more aggressively
- less insistence on requiring that the lawyer personally find new clients

Many law firms (90 percent) *do* allow their lawyers to work part-time. The Task Force found many sources describing the advantages of such arrangement to the firm and to women lawyers. Yet, very few lawyers actually take advantage of part-time work opportunities, reflecting a negative attitude within firms toward working less than full time.

Responsibilities
BALANCE
accommodation
FLEXIBILITY

INTRODUCTION



The DRI Task Force on Women Who Try Cases was formed to identify the challenges facing women attorneys as defense trial counsel and to provide a set of recommended practices for women attorneys and law firms. DRI President Sampson appointed ten DRI members to the Task Force, eight women and two men. They were charged with the mission of conducting interviews to explore the challenges facing women attorneys and effective strategies for dealing with those challenges. Interviews were conducted by the Task Force members with women in private practice, women who had left the practice to become in-house counsel, judges, full-time moms, along with women who practiced part-time or had done so in the past. Additionally, Task Force members interviewed both male and female managing partners of firms and men who are practicing attorneys, judges or clients. The majority of the interviews conducted were of practicing women attorneys whose years of practice range from 2–29 years. In addition to conducting over 100 interviews, a survey was sent electronically to women DRI members, to which 765 women attorneys responded.

The Task Force also undertook research of studies done by other bar organizations regarding challenges facing women attorneys and retention. Recent information suggests that while substantial progress has been made in the last two decades, women remain under-represented in the ranks of partnership in law firms, accounting for only 16 percent of law firm partners. This is despite the fact that for the last 20 years the number of women graduating from law school ranged from 39 percent to 49 percent of the total number of graduates. In the past, firms have attributed the low percentage of women partners to under-representation in law schools, and have reasoned that the number of women partners would increase over time as more women joined the ranks of law firms. This is no longer a viable explanation. The statistics indicate that issues exist regarding retention of women attorneys by law firms and/or the advancement of women attorneys within the firms. These are significant issues for both women attorneys and law firms: if 40 percent to 50 percent of a firm's hires are women, and only 15 percent end up becoming partners, the firm has invested a great deal of its resources without success. Therefore, the Task Force also looked at the reasons for departure of women attorneys from law firms and from the litigation practice.

This report sets forth the Task Force's findings regarding challenges facing women who try cases. The challenges include those related to advancement in law firms, challenges in balancing practice demands and family life, and challenges in business development. The Task Force also examined perceptions regarding gender-based difficulties for women that are inherent in the litigation practice and culture. Practicing women attorneys who were interviewed talked about the challenges of working in a male-dominated field, including the delicate balance of being assertive while not being labeled as "aggressive," and the general feeling that women have to work harder than

men to get ahead in law firms. They also voiced their frustration with the difficulties in balancing a litigation practice and family demands, lack of flexibility in the workplace, fewer opportunities for mentoring, the “old boys’ network” and exclusion from law firm marketing opportunities.

Although women have made great strides in obtaining equality in the legal profession in the last 20 years, today 65.3 percent of the women surveyed believe that there is a “glass ceiling” for women defense attorneys, 61.6 percent have considered leaving the practice of law due to issues related to their gender, and 70.4 percent have experienced gender bias in the courtroom. Even among women attorneys who have been successful in law firms, battles are still being fought on the front lines of firms to promote women into the ranks of first chair trial lawyers, rainmakers, and senior law firm managers.

The Task Force recognizes that women attorneys have found a way to excellence, despite the difficulties expressed, with the assistance of law firms that have enhanced and enabled their success. The legal profession now offers a number of models of women defense attorneys who have been successful in breaking through the “glass ceiling” and/or in finding work environments that are “user friendly.” Women attorneys have entered the law firm ranks in great numbers in the past two decades, with many defense law firms reporting that more than 50 percent of their recent hires have been women. The majority of law firms have successfully incorporated women attorneys into their practice and into their culture. Also, many firms have put into effect policies and practices that have allowed women attorneys to remain in litigation defense while devoting time to raising their children. Therefore, Task Force members also focused on “best practices” of women defense attorneys and law firms that have led to the progress made to date.

This report sets forth the Task Force’s recommendations resulting from its research for the advancement of women attorneys in their practice and for management and retention strategies of law firms. The recommended practices for women attorneys include using effective strategies for law firm politics, developing mentor relationships, becoming experienced trial lawyers, and improving business development. Calling upon the experience of successful female defense attorneys, the Task Force has identified best practices for enhancing opportunities and potential for success for women attorneys in litigation, in firms, and in balancing work and life. The recommended practices for law firms include retention strategies, flexible work schedules, workable part-time policies, law firm culture considerations, the promotion of women attorneys within the firm, and business development assistance. The Task Force believes that these goals can be achieved through the continued partnering of male and female defense trial attorneys in order to ensure the long term good health and success of law firms, their members, and the legal profession.

Equality
SACRIFICE
no obstacles
Expectations
Advancement

CHALLENGES FACING WOMEN WHO TRY CASES

Gender Stereotypes in the Litigation Practice

In an ideal world, we would all be equal. There would be no stereotypes, no perceptions, no presumptions. It is not yet an ideal world.

Many would say that justice is an ideal. Logic would dictate that litigators are charged with promoting this ideal. But litigation is akin to war. War involves taking sides. Once you take sides, perceptions and stereotypes naturally follow. These perceptions apply to the litigators themselves. In our study, we have found we have not overcome gender stereotypes. Of the women surveyed by the DRI Task Force, 61.6 percent have considered leaving the practice because of issues related to their gender.

Although outright comments related to gender are not as frequent as they were 10–20 years ago, such comments do still occur. More problematic are comments and actions not directly related to gender that seemingly were addressed only to women and not men. For example, an interviewee offered that when she brought two male attorneys to a meeting with a female client, the client addressed only the male attorneys and treated her as irrelevant for the duration of the meeting. Other interviewees reported that whereas opposing counsel could be condescending or bullying in an effort to intimidate them, these opposing counsel did not interact with male attorneys in the same manner.

A majority of those interviewed for this study indicated that when a woman litigator strenuously advocates her point she is more often than not viewed as overly aggressive, whereas a male litigator acting in the same way is perceived to be zealously representing his client. Many of the women interviewed related the difficulty of straddling the fine line between being assertive, but not being labeled as “aggressive.” They also advised that there is a much narrower range of acceptable behavior for female attorneys as compared with their male counterparts. The female voice is different from the male voice, and some women attorneys believe that they are not heard or taken seriously until they use a more aggressive tone. Some of the negative perceptions arising out of the efforts of women attorneys as warriors on their client’s behalf have to do with the stereotype that women are nonconfrontational by nature. Experience indicates that women attorneys have to find their own style to effectively fit into the litigation arena without being labeled as “unfeminine,” something most women want to avoid.

This view also carries over and dictates acceptable courtroom behavior for women attorneys in dealing with opposing counsel or witnesses. Often this makes it difficult for women to aggressively advocate on behalf of their clients. For example, in one interview, a woman reported that when she raised her voice in court to argue on behalf of her client, she was told not to be shrill. This perception was echoed by several judges interviewed who related that raising their voice in court was a problem for women because they came across as shrill, but not for men who were simply seen as being aggressive. Among the male judges interviewed, dealing with male aggression in the

courtroom and entrenched bias against women when they act aggressively were among the biggest challenges cited.

Another common perception is that women must work twice as hard as men to be taken as seriously. It is often harder for women to earn the respect of clients, colleagues, and opposing counsel. One woman attorney interviewed stated that she felt she had to be a better lawyer than everybody else in an effort to set an example for other women lawyers. Another felt she had to work hard to earn the respect men walk in with from “old school” clients.

Some women reported a lack of respect from firm clients whose cases they were handling. Examples include situations where the client did not trust the opinion of the female litigator and requested that the male partner be consulted. As another example, the female litigator was responsible for the day-to-day management of a file; when it came time for trial or a court hearing, however, the client requested the male partner to make the appearance. Despite these perceptions, the judges interviewed offered that they often found women litigators better prepared and more likely to follow the rules of the courtroom than their male counterparts.

Those women who are also mothers often feel that others believe that they no longer view litigation as a priority. As one interviewee reported, her male partners as well as her female partners without children seemed to think that her career was “tossed out with the placenta” after she had her baby. Another woman attorney reported that after she had her child she was placed under greater scrutiny at her firm by some partners to ensure that she was working the appropriate number of hours. Another woman voiced concern that she did not want the partners to think she would probably “get pregnant and quit.” One female corporate counsel interviewed noted that male attorneys have the view that women cannot be relied upon because their professional calling will be overwhelmed by their calling as a mother. Although there is no doubt that some women choose to work reduced hours after having children and while their children are young, this does not mean that they are any less committed to their practice or that they should be viewed as second class lawyers. Unfortunately, such assumptions are still prevalent, according to the women interviewed.

Finally, there is a widespread perception that women are not treated fairly in the courtroom. In fact, 70.4 percent of women surveyed said that they had experienced gender bias in the courtroom. Judges still sometimes call women attorneys “dear” and “honey” and comment on the way they dress. A number of older male attorneys, clients, and judges—including some female judges, do not believe women should wear pants in the courtroom, and that may be an issue with juries as well. Several women reported sexist or inappropriate comments by male judges or inappropriate behavior by opposing counsel that was not addressed by judges. These issues are perceived to be more of a problem in certain regions, particularly in less populous areas. One woman in-house counsel reported that in certain areas of the

“Although unspoken, it is not too difficult to tell if you are being given the same consideration as your male counterparts.”

—Survey respondent

country she will not retain a woman attorney because of entrenched gender biases that she perceived still exist in the court system in those areas. In contrast, many women attorneys felt the courtroom was the one place where they would receive equal treatment and being female often worked to their advantage.

These perceptions, and many others, were pervasive among those surveyed and interviewed, both male and female. Although the legal profession has come a long way in trying to eliminate gender-based inequality, if continued progress is to be made, perceptions and stereotypes that create obstacles for women litigators must be acknowledged and addressed. In the litigation practice, the differences between men and women may be amplified because of the adversarial nature of the practice and the pressures of the workplace. However, to truly achieve equality in the profession and level the playing field, gender differences must be respected, accepted, and not demeaned.

Challenges Faced by Women Advancing in Law Firms

Despite an ever-increasing number of women entering law schools and the private practice of law, they continue to be a small percentage of law firm partners and an even smaller percentage of law firm upper management. Although the DRI Task Force survey and interviews did not specifically ask women what they believed to be the cause of this phenomenon, the survey and interview results shed light on the reasons why women continue to experience so little progress in this area.

The first and foremost reason articulated by many was a lack of effective mentoring relationships, not only in learning legal skills but on other issues that have an impact on one's ability to advance, such as marketing and balancing lifestyles. Addressing issues of mentoring, one interviewee commented that "many firms assign mentors based on gender," even though those assignments are not the best for and are not necessarily conducive to the development of the attorney.¹ The net effect of such assignments is that poor relationships develop and the female attorney is not positively viewed or received by the other partners in the firm.

However, it is not just the inappropriate assignment of mentors that impacts advancement in the firm. The very absence of female role models causes insecurity among men and women. Women would like to have them, and do not. Men worry about what to expect if there are too many.

Many survey participants expressed their belief that lack of flexibility—a resistance to change—was an impediment to advancement in law firms. The lack of flexibility was not only reflected in issues related to balancing family and the practice of law but also in partnership selection criteria. Law firms could significantly increase the number of women in their partnership and management ranks by re-examining the firm's criteria for partnership. For example, in law firms where trial work is the life's blood of the firm, it is not unusual to expect that those who aspire to partnership must first

¹ Several interviewees commented that the assignment of young female attorneys to female mentors may in some way be counter-productive because many females who have moved into the ranks of partnership and management have had to endure significant sacrifice in order to attain these goals. Having made such sacrifices, these individuals were perceived to be less empathetic to the struggles and issues with which many younger female trial lawyers are grappling.

have significant “first chair” trial experience. Reliance on standards such as the “first chair” criterion persist even though fewer cases are actually being tried—either as a result of mandatory alternative dispute resolution or concern about the risk of unreasonable verdicts.

Another practice with a negative impact on advancement is the failure to provide female associates the opportunity to view the entire case and instead ask them only to complete only discrete assignments. Limiting associate’s involvement to discrete aspects of the case lessens the opportunity for the developing lawyer to understand how her assignment affects the overall lawsuit. Without this perspective, many attorneys do not learn how to evaluate litigation and are therefore rendered unsuitable for the greater responsibilities attendant to partnership.

Insistence on trial experience and the need to view the big picture are not the only criteria that have created obstacles for advancement of women in law firms. Because the practice of law has become increasingly focused on the bottom line and increasingly more business-like, many law firms have adopted a requirement that those who wish to be partners must have their own “book of business,” *i.e.*, develop their own clientele for the firm’s benefit. Although many who are presently partners were the beneficiaries of existing long-time client relationships, the decreasing number of clients, the increasing number of lawyers, and fading client loyalty has made it difficult for established partners to develop and/or retain clients. Requiring a book of business prior to consideration for partnership creates a greater burden on many in the profession, particularly women. Several interviewees, including judges, corporate counsel, and those in private practice, expressed frustration that law firms failed to take into account the difficulty of finding and developing clientele without neglecting other equally important personal priorities such as attending school functions for children and providing necessary support and nurturing to the family. Others reported that they were hindered in the development of business because they did not have the opportunity to develop close relationships with senior partners because of divergent personal interests. Many women believe that they were not able to “inherit” established clientele because they didn’t talk or play sports on a daily basis with the partners, but were more interested in other cultural activities.

The requirement of having and maintaining a “book of business” was a factor in the decision of many successful women trial attorneys to leave trial practice and pursue careers that had what one might describe as a built-in clientele. Several interviewees indicated that their measure of success was different than many of their male partners. Success should not necessarily be judged by the size or value of one’s book of business, but instead should be measured by a variety of factors. Yet, in many law firms, the primary criterion for measuring success is the length of the client list the lawyer has developed.

Among the other challenges faced by women attempting to advance in law firms include perceptions and behaviors of those in positions of power. Because women, by

“Women are much more restricted in marketing due to social and moral expectations.”

—Survey respondent

and large, continue to have the primary familial responsibilities, they continue to be plagued by the perception that they may not be as committed to the practice as their male counterparts. One male interviewee opined that women were either leaving trial practice or unable to succeed in trial practice because they “don’t like the demands on their time.” This opinion may very well manifest itself in the manner and opportunities afforded to female trial lawyers in law firms. It may lead to a perception by women of a generalized bias against their moving up the law firm ladder and actually discourage those who might otherwise be motivated to advance. A study found that while male associates were no more likely to be satisfied with long hours or inability to balance work and personal responsibilities, most women associates felt that their male colleagues had most to gain from the *status quo* of private law firms.² One interviewee described the attitudes of the men in the firm as, “why bring you along when you’re just going to leave anyway or work will no longer be a priority?” Of course, this woman no longer works for the firm in question, which lost the opportunity to have a well-qualified woman attorney among its ranks.

Women lawyers also face challenges in earning respect from firm colleagues as they attempt to advance within the firm. As women are sometimes perceived as “aggressively” advocating for their clients, they may be seen as being overly aggressive by the men in the firm. This perception can, at times, make their male counterparts uncomfortable and therefore unwilling to support their advancement. Moreover, because women view and handle matters from a different, less traditional perspective, many men do not believe that they possess the qualities to be good business people and therefore, are less likely to consider them for firm management positions. Also, many women interviewed by the Task Force believe that the “good ole boy” network is still alive and well such that it creates a stumbling block to their advancement within the firm. They believe that men tend to promote other men, instead of women, both within the firm and with clients.

In sum, women lawyers see multiple stumbling blocks to their advancement within defense law firms. These stumbling blocks contribute to many women’s belief that there is a “glass ceiling.” Although significant progress has been made over the years, the glass ceiling is tougher to crack than the overt discrimination of the past. The Task Force believes the obstacles to advancement of women attorneys can and must be addressed by thoughtful and informed actions on the part of those who manage what has now become the business of the practice of law. The key to removing the glass ceiling is education first and action thereafter.

Balancing the Demands of the Practice with Family Life

The most commonly cited challenge facing women defense attorneys by those interviewed by the DRI Task Force, male and female, was the challenge of balancing heavy workloads and unpredictable hours that make up the litigation practice with the demands of raising a family. There is no doubt that each woman makes her own decision to have children; the reality is that most women who enter the legal profes-

² Minority Corporate Counsel Association, *Creating Pathways to Diversity: A Set of Recommended Practices for Law Firms* (2000) (“MCCA Report”).

sion will have and raise children at some point during their career. This presents a difficult balancing act for most of them, particularly those who have the ambition to be a success in a law firm and as a trial lawyer. Women attorneys have to meet the demands of their firm for billable hours, and meet the demands of clients that they be readily available to handle their needs. At the same time, they are expected to handle most of the day-to-day domestic responsibilities that come with raising children or other family duties, such as caring for elderly parents. As any woman lawyer with children knows, these responsibilities present a very heavy load that can be overwhelming at times.

Although many women have successfully met the challenge of both a litigation defense practice and raising children, there are consequences from doing so. Because a person can only put energy into so many places, women are at risk if they do not take the time to take care of themselves. One woman interviewed stated that women must care for themselves both physically and psychologically in order to be able to balance their responsibilities effectively. If they do not, then it will be harder for them to take care of the needs of their clients and families. However, often it is impossible for a woman attorney to find time for herself—and that can lead to stress in the workplace and at home. As a defense trial practice is already very stressful, the combined stresses can take a heavy toll, a toll that some women said affects their family life more than their practice.

Often, women's expectations of themselves are higher than can realistically be achieved and they find it difficult to accomplish everything they wish. One woman reported that after getting legal work done and tending to home responsibilities, she had no time for professional and law firm social events. This can diminish the woman's perception that she is part of her peer group at the firm; one woman stated that she was able to fit in as "one of the guys" because she did not have children. Moreover, it is harder to find the time to read new materials and keep abreast of recent developments in the law. The combined responsibilities can also cut the time available for participating in marketing events or attending out-of-town seminars. Such absences can adversely impact the lawyer's ability to network and develop business.

The difficulty of balancing professional and family responsibilities is one of the leading reasons why women leave firms or decide to work part-time. It is also a factor for some women in the timing of having children or whether to have children at all. Of the lawyers surveyed, 52 percent responded that the practice of law influenced their personal decision on the timing of motherhood. Several stated that they postponed having children until after they were made a partner so that they could meet demands necessary to be considered for partnership, demands that they perceived to be in conflict with child rearing. Others who made the decision to have children, and attempted to return to the partnership track, eventually decided to cut back their hours and get off the track because they could not meet the demands of their practice without negatively impacting their family. As one women attorney put it, "I came to the conclusion that I could not be the 110 percent lawyer I had always been and also be the 110 percent mother and wife I wanted to be." Her desire to spend more time with her husband and children was such that she made the decision to cut back to 80 percent part-time.



For women who decide that they want to be at home with their children as much as possible while they are young, that will mean an inevitable decision to reduce practice time or get out of the litigation practice altogether. The realities of being a defense trial lawyer are such that it is not possible to structure a part-time practice with set hours in light of the unpredictable nature of the time required on any given day or week. So in certain respects the issue of how to accommodate a woman's desire to have a successful career in a law firm with her desire to be a good mother is a conundrum. The balancing act is difficult under the best of circumstances and usually something is going to be sacrificed—either the career or the time with the kids, or maybe the marriage. However, from the comments of the women interviewed, it appears that most of them believed that if firms offered greater flexibility, their chances for success in their career would be enhanced. Trying to achieve such flexibility in their work arrangement with the firm was one of the challenges most frequently mentioned by the women interviewed. Therefore, it is critical for law firms to offer flexible work schedules if they are going to support the careers of the women attorneys who are trying to move up the firm's ladder, but who also place a high priority on their role as the family caretakers.

Of the women interviewed who had gone to a corporate house counsel position or otherwise left private practice, a majority of them made the change because of lifestyle issues. Those with children left because they could not balance trial work with their desire to spend more time with their children. One of the female in-house lawyers interviewed by the Task Force left her firm after her daughter was born because she found that the job was too time-consuming. Also, the hours were too unpredictable, and she wanted to work at a place where she could leave at a decent hour each night. Women attorneys who opt for a part-time practice usually do so for child-rearing reasons. They may leave the practice altogether, often to spend more time with their children than even a part-time litigation practice would allow. One woman attorney who had been part-time stated that she left because she found that she was not doing the kind of job she wanted to do as a trial lawyer, nor was she getting the quality of life that she wanted with her family. Many women who go part-time find that they are spending more hours than called for in their agreement with the firm, just to keep up with their responsibilities, but being compensated less. This is another deterrent to staying in private practice.

The pressures of a litigation practice affect both men and women, but women appear to be more likely to leave the practice because of their desire to have a change in lifestyle. A number of women stated that they got tired of the billable hours, tired of the constant fighting, and tired of having to spend time on client development on top of all of the other demands. In short, these women wanted a life that they found more satisfying. This was also true for the women who chose to stay in the profession but took an in-house counsel position. Even though most of those in the latter group continued to put in long hours at work, they felt that they had a better quality of life than they did while in private practice.

The DRI Task Force realizes that changing the pressures and demands of litigation practice such that defense lawyers can achieve a balanced life is a tall order and one that is beyond the scope of this project. However, it should be recognized that those of us

who are in the trenches every day have forgotten what it is like to have a life that is not dominated by the pressures of the workplace. Full-time lawyers sometimes do not appreciate just how stressful the litigation practice is because they get used to being in the pressure cooker environment. Although the practice of law can be very gratifying and provide great rewards, we should not lose sight of the importance of maintaining balanced lives, particularly in the context of giving women defense attorneys the flexibility to practice law and devote time to the important task of raising the next generation.

In today's practice of law, being a good attorney is not enough to become a law firm equity partner. The practice has become a business, with a larger number of attorneys competing for fewer clients. Long-standing clients or institutional clients upon whom firms traditionally counted to provide a steady flow of legal work are becoming fewer due to corporate mergers, bankruptcies, and the ups and downs of the economy. Today, attorneys who want to be considered for equity partner must go out and find their own "book of business." Developing business for any attorney is difficult and a challenge; but, women attorneys face additional challenges in marketing that are unique to them.

As all effective marketers know, obtaining and developing business takes time. Women attorneys with children have little time for this activity, given the demands of raising a family, caring for elderly or infirm parents, maintaining a household, and their daily work schedule. Often, female attorneys take on a greater role in raising a family (caring for infants and small children) than their spouses—or they may be single parents—leaving little time for marketing. Other reasons that cut down the time available for business development may include the inherent nurturing aspect, attitudes of society, and the lawyer's spouse's inability or unwillingness to take on a greater caretaking role.

Because of the demands on women attorneys' time, it is more difficult for them to develop a practice comparable to their male counterparts. The success in developing business increases exponentially with the amount of time devoted to the task. One author on rainmaking suggests spending three hours a week getting involved in community activities, business luncheons and service organizations.³ A consistent flow of new business is not created overnight but requires consistent effort over time.

Some women attorneys are not comfortable or do not enjoy pursuing marketing activities that have traditionally been done by men for obtaining business. One senior attorney interviewed by the DRI Task Force remarked that she does not enjoy playing golf and has no desire to go to a gentlemen's club, so she avoids these potentially fruitful activities in her marketing efforts. A potential client's choice of social/business activities can preclude female attorneys from marketing activities. These personal preferences may have nothing to do with gender or race. Yet, when a woman lawyer turns down an invitation for a golf outing, she may miss out on a marketing oppor-

Challenges in Business Development for Women Litigators

³ Tobin Eason, *Women Lawyers Can Be Superb Rainmakers*, 9 (Lawyers Research Publishing Co., 1999).



tunity with a client. However, this should not deter the female attorney from finding other common social/recreational interests she can share with the client.

Women litigators also face the challenge of having their behavior misconstrued when marketing to male clients. Although the majority of female attorneys strive to cultivate professionalism, sometimes underlying sexual overtones are present by virtue of the nature of the male-female relationship. While she may be an attorney, she is also a woman in the eyes of her male client. Some female attorneys make a conscious effort to avoid one-on-one marketing events such as going to dinner or events at night that may be misconstrued by male clients. They reported that they felt more comfortable if others were invited along, creating a group and enabling a mix of males and females.

Although there were no sexual overtones involved, one female attorney interviewed by the Task Force reported that when she invited a male client to a basketball game, the client's wife reacted negatively. In another instance, a male partner thought that he was doing his single female partner a favor by encouraging her client's interest in her as a woman. The client then proceeded to ask the female partner for a date. She refused. When she conveyed her misgivings regarding the ethical propriety of the situation and her feelings of discomfort to her male partner, he did not understand her concerns.

Since 1984, 39 percent to 49 percent of students graduating from law school have been women.⁴ Despite their representation in law firms, the majority of female attorneys the Task Force surveyed expressed frustration over their exclusion from certain firm marketing activities due to what they perceived as the "good ole boy" mind set. One female attorney interviewed stated that when a team was put together to solicit new business, she was never included even though her qualifications and expertise may have greatly benefited the prospective client. Another female attorney stated that despite her good relationship with her male partners, when a new case arrived at the firm that was within her expertise, the managing partner would give it to one of his buddies even though she may have been more qualified to handle the case.

While some of what may be gender bias has a foundation in active exclusion by the male attorneys, other times the behavior could be innocent and attributable to insensitivity. One study noted that men are most comfortable with others like themselves⁵ whether it is junior male partners or male associates. This comfort level may be fostered by either a common interest in sports, similar backgrounds, or some intangibles. These informal relationships form the basis for mentors to pass on their "book of business" to their protégés, a key factor in attaining partner status.

One senior woman associate reported that although she was highly valued by her supervising partner, when he retired he passed on his more valuable clients to a male associate who was junior to her and not more qualified. In retrospect, she believed that this occurred because of the close personal relationship the partner and the young man developed from their mutual interest in playing basketball. In some instances, female associates face self-protective barriers erected by female partners. One reported that a

⁴ Wendy Werner, "Where Have the Women Attorneys Gone?" in *Law Practice Today* (American Bar Association Law Practice Management Section, May 2004).

⁵ MCCA Report, *supra* note 2.

woman partner at her firm would not delegate any work to associates, whether male or female, because of her fear of losing clients.

There are few women rainmakers in the area of litigation defense; thus, there are few role models for other female attorneys to look to for guidance in effective marketing techniques that work for women. As discussed in this section, some women contend with the barriers of the “good ole boy” mind set or choose not to engage in traditional “male marketing activities” for a variety of reasons. Many female attorneys market on their own and learn through trial and error. However, it has been observed that women are not as comfortable as men in promoting themselves. Men are better at tooting their own horns, whereas women are more conditioned to work hard and think that they will get business by the recognition of how good their work product is.⁶ However, in today’s competitive climate, a more aggressive approach to marketing is usually required.

One woman partner interviewed by the Task Force advised that because the male partners at her firm did not involve her in any marketing opportunities, she was required to develop business on her own. This view was also expressed by other women who felt that they were not included in cross-marketing by their male partners. Several related that they had difficulty being included in law firm team presentations to prospective clients. Again, this situation was reported by interviewees with surprising consistency and similarity, even among senior women partners who were experienced and successful litigators.

The lack of women rainmaker role models in litigation defense affects the development of female associates who do not have mentors and who want to be partners. They have little guidance in developing profiles that would make them strong candidates for partnership. They lack role models to provide advice on career choices, opportunities to have client contact to develop rainmaking skills, intervention on their behalf with other partners, and delegation of challenging work to develop their skills as effective litigators. This often puts them at a disadvantage in comparison to their male counterparts.

Despite the challenges faced by women litigators in developing business, they continue to strive forward, blazing a path for other female lawyers to follow. Law firms’ commitment to include women as equal marketing partners with their male counterparts is essential to break through the barriers that are real or perceived. The women attorneys who were successful early in their careers in developing client relationships had mentors, primarily male, who allowed them to work directly with the clients. As a result of doing good work and being given opportunities in the courtroom, they were able to gain the confidence of the clients and then build on that to find other clients. It is still necessary for law firms to make sure that women attorneys are given opportunities for business development and are not excluded because of a traditional male-oriented approach to marketing.

“It is more difficult for a woman to participate in traditional rain-making activities. The challenge is to find new avenues... it can be accomplished.”

—Survey respondent

⁶ Tom McCann, 2004 *Diversity Survey: Women Struggle to Reach the Highest Ranks*, in Chicago Lawyer, July 2004.

RECOMMENDED PRACTICES

Strategies for Women Attorneys for Advancement in Their Practice

There is no substitute for competence. Across the board, respondents to the DRI Task Force survey in private practice, in the judiciary, and in corporate practice, cite “good work, good work and good work,” “be responsive and do solid, helpful work for the client,” “do high quality legal work” as prerequisites for women attorneys to advance in the practice of law. Even as women attorneys develop competence in the substantive areas in which they practice, their progress as trial lawyers and advancement in the profession hinge upon developing competence in the courtroom, in marketing and client development, and in traversing the office politics of their law firms.

Developing Competence as a Trial Lawyer

Young lawyers, female and male, rarely have the same opportunities to try civil cases early in their careers as did lawyers who entered the practice 20 or more years ago.⁷ That said, women who have a strong interest in litigation can find numerous opportunities to train and practice litigation skills so that they can develop into competent and worthy trial lawyers.

One of the most obvious opportunities, and, according to judges, one of the most overlooked, is for women lawyers to go to court “even if it is just to come along to watch and learn,” as one judge said, “take them into the courtroom as often as possible.” Another judge reports, “it does not appear that there is any mentoring in most firms—senior lawyers should invite younger attorneys to come to court even if they can’t bill time.” Women who aspire to be trial lawyers should ask when attorneys in their firms are going to court—whether to argue motions, participate in pre-trial conferences, or try a case—and go along even if they cannot sit at counsel’s table.

In addition, many state and federal courts post their dockets and trial calendars on the Internet. Young lawyers can, and should, take advantage of opportunities to sit in on civil and criminal cases to see how it is done, which procedures or behaviors are favored in a given judge’s courtroom, and to evaluate whether the lawyer she is observing is effective.

Women attorneys interested in litigation should pursue opportunities to serve as second chair in depositions and trials, and then through demonstrated competence, move to first-chairing depositions and trying cases with the help of experienced second-chair counsel. As the younger attorney becomes more competent, her partners should commend her to clients so that the clients know that the young woman assigned to their case is up to the task.

⁷ A January 2004 report prepared for the American Bar Association Section of Litigation found that from 1962 to 2002 the number of federal civil cases resolved by trial plunged from 11 percent of the total to 1.8 percent. Marc Galanter, *The Vanishing Trial*. The report will also appear in the *Journal of Empirical Legal Studies* in November 2004.

Many women who choose to become trial attorneys come to a law firm with a background in public speaking through debate, undergraduate leadership positions, internships, or volunteer work. Law firms should continue to offer their young female litigators public speaking opportunities through in-house client seminars, and local or national continuing legal education programs, so that they can improve the skills that enhance their experience and presence in a courtroom.

A woman lawyer interested in litigation should ask her firm to send her to a trial training course, such as the Defense Counsel Trial Academy of the International Association of Defense Counsel, or to trial practice seminars. Specialized seminars on how to take a deposition, such as those organized by the National Institute of Trial Advocacy also provide excellent training.

Although many law firms do not allow junior lawyers to select the area of practice in which their time will be focused, there are alternative routes to learn hands-on courtroom skills. A female associate who wants to pursue a career in litigation can volunteer for *pro bono* work through the local bar association. *Pro bono* work offers an associate courtroom experiences sooner than she would find in the law firm. Judges acknowledge that certain practice areas have a high percentage of cases going to trial, or entail frequent court appearances. Domestic relations is one such area. Another is employment litigation, which has a higher concentration of women litigators than some other areas of civil litigation.

Older, more experienced litigators recognize that their trial skills are honed by trying cases. Women who want to develop as trial attorneys should seek out opportunities and take advantage of every experience offered to critically observe other litigators in action. Each should ask what the litigator is trying to accomplish, whether the litigator is effective, and what she would do if this was her case to challenge that witness, make that argument or pursue that position.

Developing Competence in Marketing

Doing solid legal work and being responsive to clients are still the keystone of the marketing efforts of most women litigators. Women interviewed by the Task Force emphasized that good communication skills, frequent contact with clients, listening to clients, and paying attention to their concerns and questions are all critical to retaining and developing business. Many reported that public speaking at CLE seminars, industry-wide seminars, or in-house programs was an important part of their marketing; it provided an opportunity to demonstrate competence in a specific field and to show good communication skills. Survey respondents also recommended active participation in DRI and other professional organizations to “get your name out”; this includes speaking at seminars, writing articles about a niche area of practice and “networking” with others. As one woman attorney noted, “being a speaker at a DRI conference reinforces your credentials.”

Leadership
Training
development
COMMUNICATION
COMPETENCE



Another suggestion is to focus on becoming known in the lawyer's own community by speaking, writing, or serving on non-legal boards or commissions or civic organizations. As one female partner said, "do what you like to do and recognize that business development opportunities could show up in surprising ways when you are not looking for them." Women attorneys need to become comfortable with the idea of promoting themselves. Some respondents found that a marketing consultant hired by the firm helped them learn how to market their practice effectively.

Several lawyers recognized that the focus on having "a book of business" in order to make partner in a firm can cause younger female attorneys to overlook opportunities to develop business one-on-one by establishing relationships with existing clients. Too often the attorneys may believe that the successful marketer (and a partner candidate) is someone who brings in a large institutional client. The challenge of delivering an institutional client can be so overwhelming that a female associate overlooks the very realistic marketing opportunities before her with individual client representatives or insurance adjusters.

The Role of the Mentor

No action has figured as prominently in the advancement of women attorneys in their law firms as establishing and nurturing an effective mentoring relationship with a more senior lawyer in the firm. Women lawyers in private practice, judges, lawyers who have left private practice, managing partners and male defense lawyers single out effective mentoring as critical to the development and retention of women litigators in private practice. As one judge interviewed stated, "mentoring is probably the most important consideration for law firms to develop female litigators."

Mentoring takes different forms. Learning the "nuts and bolts" of the law office and office policies and procedures is one area in which a mentor can be of great assistance. Equally important is the advice and assistance given in balancing the firm's reasonable demands with the young lawyer's desire for a personal life. Women attorneys must feel that the firm will support them not only as trial lawyers, but as people with families and personal concerns. Several Task Force survey respondents suggested that young female attorneys have two mentors: one for professional development and one for personal development. One advantage to having several mentors simultaneously, or to have a rotating system within the law firm, is that the female associate is then exposed to different perspectives on the practice of law, on marketing and on the firm itself.⁸

Many of the respondents recognize that not all law firm partners are very helpful in bringing associates and junior partners up through the ranks. Some partners have neither the time nor the necessary interpersonal skills to be good mentors. Moreover, not all law firms provide mentoring for young attorneys, female or male. Women associates and junior partners may need to look outside the firm to find career coaches or mentors who can offer feedback as well as guidance in the office politics that the woman lawyer may be encountering.

⁸ See *Empowerment in Leadership: Tried and True Methods for Women Lawyers* (American Bar Association Commission on Women in the Profession, 2003).

Women lawyers must understand that although their experience in a firm may be different from that of male associates, one of the most successful strategies is to be a team member rather than to compete against their male colleagues. In most firms, doing your best and teaming with others, male and female, will enhance everyone's opportunity to advance and progress in the firm.

One male defense lawyer spoke of "huge advances in leveling the playing field for women in litigation" during the 24 years he has been in practice. He acknowledges, however, that "core values" in traditional law firms are still based on a man's experience and a man's perspective. He spoke of "aggressive self-promotion, success measured by competition and high productivity" as the male model, and noted that "women lawyers, particularly those with children, often lack the external support systems that male attorneys have." These core values create a subtle obstacle that can be tough for women attorneys to hurdle.

An effective mentor can help level the playing field for a woman in the traditional male-dominated law firm. The mentor can ensure that the young woman does not become isolated from the others in the firm, and can help her establish interpersonal professional relationships with her peers and the more senior partners. Those relationships then can, over time, transform the culture of the firm and the hiring committees can feel more comfortable in recruiting women lawyers.

In the past, too many defense law firms have largely avoided equal treatment for minority and women lawyers by a system of "tokenism." That is, they believed that hiring one lawyer of color and a couple of women would satisfy any demands for diversity in the firm's professional ranks. However, with so many minority persons and women graduating from law school these days, it is neither fair nor good business to limit hires to a few tokens.

Although the issue is not just one of numbers, the presence of women in significant numbers in a law firm can alleviate concerns about tokenism. In a 2004 book, *Closing the Leadership Gap*, the author discusses why the number of women in positions of responsibility or visibility matters:

A single woman leader or a few women in a larger group are tokens; Each token has to prove she is man enough for the job.... In the '70s women and minorities were scattered throughout corporations—one here and one there—isolated as stereotypes, often unable to speak their minds unless they agreed with the dominant conclusion.... Until there are enough diverse females in authority so that a chosen few are not expected to speak for an entire race or gender, those few will continue to carry the burden for us all. It is a fact that the more people like *you* in a working group, the more likely *you* are to be yourself.⁹

In a telling anecdote, the author cites a 2003 interview with Sandra Day O'Connor in which Justice O'Connor described how she felt when Ruth Bader Ginsberg was

Diversity and Numbers— A Benefit for All

⁹ Marie C. Wilson, *Closing the Leadership Gap: Why Women Can and Must Help Run the World*, xiii (Viking Press, 2004).

appointed to the Supreme Court: "...the minute Justice Ginsberg came to the Court, we were nine justices. It wasn't seven and then 'the women.' We became nine. And it was a great relief to me..."¹⁰ If a woman at the pinnacle of the legal profession feels the pressure of being the sole female voice, is it that difficult to appreciate the isolation and pressure of a single woman associate in her law firm?

Isolation and pressure are common situations for women lawyers. The risk of an associate being isolated can be particularly acute for women attorneys of color. A report by the Minority Corporate Counsel Association notes that "for women attorneys of color, the acute stress of being isolated at work as a person of color and the pressures of balancing family demands as working mother can lead to early burnout and high attrition rates, even for 'high performers.'" ¹¹

Firms that are friendly and open to hiring and promoting young women litigators do exist. Women interested in litigation should look for these firms, should talk to their colleagues and identify law firms that are committed to the development, progression and advancement of women litigators. Recognition that some types of practice are more accommodating to a balance between work and family life offers women lawyers the option to remain in the profession even if not in private practice. If a woman attorney finds herself in a firm that is not honestly committed to the advancement of women litigators, she has several choices: (1) stay the course and try to change the culture; (2) do good work and hope the partners recognize and acknowledge her value; or (3) move to a more accepting and inviting firm or environment. Such opportunities do exist and the liberating experience they offer is exhilarating. If a woman lawyer does choose to change law firms or move into a governmental or in-house position, she should maintain the best possible relationship that she can with colleagues in the organization she is leaving. Don't burn bridges. Many lawyers get a substantial part of their business from referrals by other lawyers, often from the old firm.

Finally, one step toward success for women in the practice of law is to recognize that their careers may not be linear. A woman can choose to sequence her career, *i.e.*, to work for the government or in a public interest legal group when she has young children, and later enter or return to private practice when the balance between work and family life so allows.

Management and Retention Strategies for Law Firms

Women trial lawyers bring to their firms and to their clients a wealth of talent, intelligence, drive, tenacity, and creativity. In many respects, the qualities female trial lawyers bring to their work differ insignificantly from the qualities of their male counterparts.¹² Their clients are well served, as are their firms.

Today, women litigators are viewed as a hot commodity, and most firms recognize their value. Women attorneys who have been in litigation for 20 to 30 years are now reaping the rewards of their hard work and are earning respect for their impressive

¹⁰ *Id.* at xiv.

¹¹ See MCCA Report, *supra* note 2.

¹² Deborah L. Rhode, *The Unfinished Agenda: Women and the Legal Profession*, 9 (American Bar Association Commission on Women in the Profession, 2001).

track records.¹³ Still, they do not forget that they faced substantial adversity over the years in reaching positions of leadership and power within their firms and the profession. It is clearly in the best interest of law firms to take steps necessary to recruit and retain talented women as trial lawyers. This section will discuss strategies designed to assist with the attainment of this goal.

Of the nation's approximately 1,000,000 practicing lawyers, nearly 400,000 are women.¹⁴ In 2003 they accounted for 43 percent of law firm associates, yet only 16 percent of law firm partners and only 5 percent of managing partners.¹⁵ Women are making steady progress, albeit slowly, as the following chart prepared by the National Association of Law Placement demonstrates.¹⁶

| | Female Partners | Female Associates |
|------|------------------------|--------------------------|
| 1999 | 15.04% | 41.39% |
| 2000 | 15.63% | 41.69% |
| 2001 | 15.80% | 41.94% |
| 2002 | 16.30% | 42.42% |
| 2003 | 16.81% | 43.02% |

As law schools graduate more women, firms will often find that the best possible candidates for associate positions are women. To attract, retain, and motivate the best qualified individuals, the firms must ensure equal opportunity to climb the firm's ladder. To maximize the return on training time and dollars, they must adopt and implement policies that will foster loyalty among all associates and develop the best possible future partners. This means that in the years to come law firms will have to implement more "user friendly" policies and practices for women attorneys in order to retain them. They will need to track the progress of the women attorneys within the firm to ensure that they are being promoted to partnership in sufficient numbers and given the same access as their male counterparts to professional and business development opportunities. It is important for law firms in today's competitive and socially diverse environment to reflect similar diversity at all levels of the firm, particularly as an increasing number of women attorneys become judges and general counsel of corporations.

Advancement of Women Attorneys Within Firms

Surveys conducted in recent years have suggested that the majority of lawyers—men and women—felt that women were treated equally in the legal profession. An *ABA Journal* survey in the year 2000 concluded that 60 percent of men and 52 percent of

¹³ Elisabeth Frater, "A Woman's Place is in the Courtroom," in *Diversity and the Bar*, 34 (Minority Corporate Counsel Association, March/April 2004).

¹⁴ Deborah L. Rhode, *Balanced Lives for Lawyers*, 70 Fordham L.Rev. 2207 (2002).

¹⁵ *The Unfinished Agenda*, *supra* note 12, at 5.

¹⁶ See NALP Research, *Women and Attorneys of Color* (charts for 1999, 2000, 2001, 2002, and 2003).



women believed that women were treated equally in the profession, while a National Association of Law Placement study found that this belief was held by 83 percent of male respondents and 58 percent of female respondents.¹⁷ These surveys notwithstanding, the legal profession still has ground to cover before there is true equality in law firms. While most firms have successfully incorporated women attorneys into their culture over the last 20 years, women attorneys still hold a small percentage of leadership positions. Firms have been successful in recruiting top female law students, training them and utilizing their talents. In recent years, firms have been hiring women in equal numbers as men; EEOC statistics indicate that the percentage of law firm associates is the same for men and women.¹⁸ The question then becomes how firms should promote and advance women within the firm to retain them in order to achieve more equality in the partnership ranks and at the upper echelons of the practice.

Of those women surveyed by the DRI Task Force, 65.3 percent believe there is a “glass ceiling” that prevents female trial lawyers from reaching positions of leadership and power within their firms. This perception has been cited as one of the reasons that women have left firms. Most of the women who leave do not drop out of the legal profession entirely, but rather choose to go in-house, into government service, or into the court system.¹⁹ If firms are to retain the women attorneys in whom they have invested time and money, they must make sure that the women are given equal opportunities for advancement to partnership, to appropriate compensation, and to participation in firm management. They must also be given opportunities to try cases so that they can develop into first-chair trial lawyers. If women attorneys are given quality assignments and feel that they are of value to the firm, they will be more likely to be loyal and to stay with the firm.

In defense trial practice today, it is more difficult for associates, male and female, to obtain trial experience because most clients want partners to try their cases and because there are far fewer “low risk” cases to be used as a training ground. It is suggested that women associates be sent to court even if it is simply to observe and learn as a first step toward trial practice training. They should also be given opportunities to second-chair trials and to take depositions. One judge recommended hands-on mentoring for law firms to develop women litigators and first-chair trial attorneys. “Send associates to court not only on routine matters, but also on more substantial matters, even if it is just to bring them along to watch and learn. It is important that the younger lawyers observe and have the opportunity to ask questions, regardless of whether the client will pay for the extra lawyer’s time. The cost of this training should be absorbed by the firm.” A partner who brings a young female litigator to court should make

¹⁷ Hope V. Samborn, *Higher Hurdles for Women*, A.B.A.J. 30, 33 (Sept. 2000); Abbie F. Willard & Paula A. Patton, *Perceptions of Partnership: The Allure and Accessibility of the Brass Ring*, 33 (National Association of Law Placement Foundation for Education and Research, 1999).

¹⁸ *Diversity in Law Firms* (United States Equal Employment Opportunity Commission, 2003).

¹⁹ *Making Change: Advancing Women in Law Firms* (Catalyst [a research organization], 2002).

sure that she is introduced to the court personnel, not just the judge, including employees in the clerk's office.

Women should have the same opportunities to try cases that men have. Many judges seem to believe that the courtroom is still primarily a male domain. Law firms should consider establishing an exchange program or internship with local district attorney's offices or litigation sections within state attorneys general offices so that associates in private practice can obtain real trial experience. Such internships or exchange programs provide opportunities unequalled in private practice for young litigators to assume first-chair responsibilities. For example, New York City's Corporation Counsel's Office has a program in which about 30 firms "donate" associates to try civil cases for the city.²⁰ Firms should also consider sending their women attorneys to trial academies for training.

Law firms can further enhance the development of young female attorneys by including them in meetings with clients, on conference calls and on the distribution list of relevant memos and correspondence. These actions "demonstrate that the firm has confidence in the attorney and will lead to a greater level of confidence on behalf of the client," according to a district court judge. Too often an experienced attorney overlooks these obvious and relatively simple actions that can enhance the profile of his or her associates.

In addition to assuring that women attorneys obtain sufficient trial experience, firms must consider them for partnership and compensate them on the same basis as men.²¹ Once promoted to partnership, women attorneys should also be given the opportunity, when appropriate, to assume positions on their firms' management committees. Firms should try to incorporate women attorneys into leadership positions that are substantive, not just stereotypical (such as serving on the recruiting committee). One survey of law firms found that men dominated committees geared toward business management and firm growth: they occupied 86 percent of the seats on partnership committees, 87 percent of compensation committees, 81 percent of executive committees, and 80 percent of marketing committees.²² This male dominance of firm management results in women being excluded from the power structure of firms.

It is important to incorporate women attorneys into the power structures of firms if real equality is going to be achieved. One of the judges interviewed by the Task Force made the insightful observation that men in firms must be willing to share partnership power and recognize that there is more than one model for suc-

Sharing
POWER
opportunity
EXPERIENCE
BREAKTHROUGH

²⁰ Nat'l L.J., Aug. 16, 2004, at 4.

²¹ It should be noted that 75 percent of those women in private practice who were interviewed by the DRI Task Force believe that women are compensated equally with men at similar levels.

²² Northwest Research Group, Inc., *Final Report: 2001 Self-Audit for Gender and Racial Equality: A Survey of Washington (state) Law Firms*.



cess—not just the traditional male model. A variety of models will enable women attorneys who are coming up the ladder to select their own pattern or model. The continued and consistent success of women in the firm will cause it to recruit top women law students, as well as retain the women attorneys in whom they have made an investment. Their success will also likely have positive consequences on the firm's business development, as the women who leave firms to assume corporate positions may be more inclined to send business to firms with diverse partnership, rather than to firms that perpetuate the kinds of practices that may have caused them to leave private practice.

A number of firms have put into effect programs to promote their female attorneys. One managing partner who was interviewed by the Task Force described his firm's efforts to systematically promote its women. It has a quarterly symposium for its women attorneys to develop professional relationships with women clients and women attorneys in other firms. It has an official mentoring program and established part-time work policies that offer flexibility. The firm also restructured so that there are smaller practice groups, which helped to better address the individual needs of the attorneys in each group.

One of the reasons for the initiatives by this firm was its recognition that it costs between \$250,000 and \$400,000 to replace an attorney. Thus, it made business sense to try to retain its women attorneys. There was also a belief that there was a growing trend among clients, particularly the larger corporations, to request women attorneys on their trial teams. The experience of the managing partner mentioned above is just one example of progressive policies that firms are putting into place to promote their women attorneys, policies that have been successful both for the women attorneys and the firm. These are policies that the DRI Task Force believes will serve the best long-term interest of law firms and their trial practices.

If a firm decides to make a commitment to retain and promote its women attorneys, senior partners in the firm must communicate such commitment from the top down and put into place focused diversity efforts. These efforts include consciously considering overall diversity when assembling trial teams and, when appropriate, designating a diversity partner or committee. There must be an eventual shift in firm culture such that diversity is truly embraced by the firm as a whole. One firm that made such a conscious commitment found that its diversity initiatives paid off. The firm now boasts that 48 percent of its attorneys are women, and 43 percent of the equity partners are women. Additionally, women hold key management roles in the firm.²³ These are impressive statistics that should be an inspiration to other firms.

Mentoring and Business Development

Mentoring and training are often confused, or used synonymously. Training, as used here, refers generally to familiarizing new lawyers with the logistics of the practice. How do I draft a Rule 12(b)(6) motion? When do we serve our initial set of interroga-

²³ Alea Jasmin Mitchell, "Above the Cut," in *Diversity and the Bar* (Minority Corporate Counsel Association, July/August 2003).

tories? Where do I find the paper clips? Mentoring, on the other hand, refers to the process of advising and counseling young lawyers in the more esoteric aspects of the law—and indeed of life. A mentor-protégée relationship is one that can last a lifetime. Therefore, while a firm can and should appoint a training attorney for each new associate, the mentoring relationship is much less formalized, and more difficult to direct. The relationship between mentor and protégée may be one better left to develop on its own. It is, however, critical for the firm's more senior partners, male and female, to make themselves available to less experienced female attorneys for mentoring. It is through relationships with open-minded, experienced, successful female attorneys that young women learn the “inside secrets” of trial practice and how the practice can be made to co-exist peacefully with one's personal life. As such, these mentor-protégée relationships should be encouraged by firm management and fostered by firm culture.

Mentoring is more than training. A mentor is a trusted adviser. The relationship between a mentor and a mentee dates back to the 13th century when judges “provide[d] for the apprenticeship of lawyers.... [A]t its most basic level, mentoring is the passing on of skills, knowledge and wisdom from one person to another.... Mentors... impart lessons on the art and science of living, and, in the case of lawyers, the art and science of the practice of law.”²⁴

The form and structure of the mentoring relationship vary from person to person. It can be informal, spontaneous, and unstructured, or it can be formal, scheduled, and with a set agenda and format. The style is less important than the content and quality of the communication between mentor and mentee.²⁵

Mentoring was cited frequently by the women and men interviewed by the DRI Task Force as one of the most effective ways that firms can retain their women lawyers and help develop them into first-chair trial lawyers. Of the women surveyed, 62.5 percent responded that they had a mentor and, interestingly, 74.8 percent of their mentors were male. Now that there are more senior women litigators in firms, it is important that these women step up to mentoring roles. One woman attorney interviewed said that a firm needs a “queen bee,” a senior level woman who has faced the same issues previously and succeeded. She, thereafter, serves as a quiet example for younger female attorneys as they progress within the firm structure.

Marketing and client development are significant factors in advancement within one's firm. As the volume of any lawyer's “book of business” increases, the more indispensable to the firm that lawyer becomes. Many of the women interviewed commented that their opportunities for marketing were restricted by the “good ole boys”

Protégée
MENTOR
guidance
KNOWLEDGE
Communication

²⁴ Dan Pinnington, “Mentoring: Its Time Has Come Again,” in *Law Practice Today* (American Bar Association Law Practice Management Section, August 2004).

²⁵ See also “Mentoring Associates: It's Simply Good for Business,” in *LAWPRO* magazine, reprinted in *Law Practice Today* (American Bar Association Law Practice Management Section, August 2004).



club. Other women felt that they needed advice and assistance on how to market. Firms should consider retaining professionals to work with their women attorneys in developing marketing skills and plans. Many lawyers, male and female alike, believe that success in public speaking can lead to success in client development. Most firms encourage, or even require, participation in professional and service organizations, an activity that many women have found to be helpful in developing their practices.

There are numerous business development activities that many women find more appealing than traditional male-oriented activities. These alternatives include taking prospective clients to musical performances, art exhibits and other cultural events, fundraisers for women's groups at which the firm has purchased one or more tables, and dining out. One member of the Task Force offered anecdotally that she had recently taken prospective clients to a performance of *Cirque de Soleil* and had received a very positive response.

Law firms should be creative in promoting marketing events and opportunities that will be of interest to both male and female attorneys. This is particularly important today as the percentage of women who are general counsel at Fortune 500 companies increased from 8.4 percent to 12.4 percent in two years.²⁶ This trend is expected to continue in the years to come and will necessarily impact the ways firms market their practice. While the female in-house corporate counsel interviewed did not necessarily favor retaining women attorneys over men, they did look at a firm's overall treatment of its women attorneys when deciding whether to retain a particular firm.

A number of women interviewed by the Task Force mentioned situations in which they have been placed in tenuous positions when partners at their firms have included them in marketing activities only because of their gender. One interviewee commented:

A firm should not try to portray itself as diverse simply by employing "window dressing." I have been included by my firm on marketing teams with clients who have certain diversity requirements. As a woman and an ethnic minority, it has been my distinct impression that I have been included solely for the purpose of demonstrating to the client that the firm's makeup complies with the client's requirements. This impression has later proved accurate when I have not been allowed to handle any of the work ultimately given to the firm by this particular client.

Law firms should seek diversity in their trial teams because it benefits the firms and their clients. Women attorneys should not, as a general rule, be used as "bait" or "window dressing" in an effort to lure a prospective client's business unless that attorney is likely to handle legal work for the client. Instead, firms should strive to incorporate women attorneys into their trial teams in a meaningful way and truly utilize their talents in representing their clients. Some of the in-house counsel interviewed by the DRI Task Force reported that they noticed when a firm paraded a woman attorney in front of them while trying to win business, but that female attorney never seemed

²⁶ Hope E. Ferguson, "Women General Counsel: Beyond the Glass Ceiling," in *Diversity and the Bar* (Minority Corporate Counsel Association, March 2002).

to work on files subsequently sent to the firm. This type of marketing practice creates a negative impression and may lead to the client not using the firm in the future. If a woman attorney asked to be a part of team marketing presentations is truly incorporated into the work for the client, this will enhance the woman attorney's prospects for future client development, which will ultimately benefit the firm.

Flexibility in the Workplace

One of the primary concerns voiced by those interviewed by the DRI Task Force was an unwillingness by leaders of law firms to consider any modification in the firms' traditional culture. Most significantly, this attitude results in a lack of proper balance between work life and personal life responsibilities and aspirations. While there appears to be a trend in society as a whole toward more sharing of parental responsibility between spouses or partners, those with families must often make difficult choices as they attempt to balance their personal and professional lives. Although mothers continue to assume the lion's share of responsibility for nurturing young children and caring for the home, it has become more common for fathers to share parental duties. In addition to parental responsibilities, many people have obligations to aging or infirm parents.

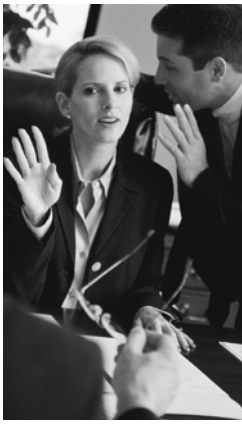
In view of the trend toward greater personal and family obligations, a more flexible attitude toward working arrangements by the law firm has become increasingly important for all lawyers regardless of their gender. Although concerns about family issues as they relate to work issues are certainly not unique to women, such issues are more likely to affect women than men. Most notable among such issues is that of child bearing and child rearing. Modern societal attitudes still assign to mothers the role of primary caregiver for young children. When a mother happens also to be a trial lawyer, flexibility in her firm can mean that she need not necessarily choose between her children and her career. Such flexibility, in many respects, equates to equal opportunity for female lawyers.

As firms recruit female lawyers, they must recognize the need to offer flexible work schedules in order to attract and retain the best and the brightest. They must allow them to pursue family or other personal responsibilities should they so desire. It has been noted that the retention of women in law firms is difficult because of the lack of flexibility stemming from ingrained notions of women's roles.²⁷ Because so many women leave, there are fewer who have the power to change things at the firm for future generations of women. As women become partners and acquire more power within their firms and within the profession, and as firms become more "family friendly" in their cultures, improved recruitment and retention of quality female lawyers will likely follow.

"I have decided to work in-house, despite my great love of actual trial work, because of the difficulties of practicing law in a law firm and being a mother."

—Survey respondent

²⁷ Ferguson, *supra* note 26 (quoting Rachel Solar, "Why Women Leave Law Firms," in *Appeal*, 36 (Part 1, Sept. 2002)).



While the law may indeed be a jealous mistress, there is a life outside the law. Enjoyment of interpersonal relationships is a significant key to a happy and healthy life. This report is not intended to delve into the medical domain, but it is common knowledge that high levels of stress endured over extended time periods can be severely detrimental to one's health. Lawyers with lower stress levels are likely to perform more efficiently. Therefore, provisions by law firms for personal lifestyle accommodations are likely to have a very positive effect on the firm's work product and the health and well-being of its lawyers. Law firms should actively attempt to provide a work place that is conducive to the outside needs of its lawyers, regardless of their gender. In so doing, the culture within the firm and the firm's outside reputation as a quality employer will gradually evolve to support the environment desired.

Part-time arrangements, discussed in detail in the next section, certainly provide one alternative for a mother aspiring to be a defense trial lawyer. On the other hand, the firm's willingness to allow her to work different, rather than shorter, hours may provide the time management tools needed to survive this period in her life. Unlike part-time, this is a full-time alternative, but with many of those hours spent at home or otherwise away from the office, and with the expectation that the lawyer will accomplish as much as other full-time lawyers. With the ready availability of technological assistance such as computers, fax machines, Internet connections, electronic mail, and cell phones, there is no reason that a mother cannot work as efficiently at home as she does in her office. Indeed, with the reduction of outside interruptions, she may work more efficiently at home than at the office. Firms must abandon the notion that if a lawyer is not in the office, in court, or in a deposition, she must not be working. Many of the women interviewed by the Task Force recognized that it was difficult to work a formal part-time schedule and manage a successful litigation practice. So, they preferred that a firm offer flexibility in their full-time work schedule in order to maintain their practice while devoting time to raising their family. This will also benefit the firm's clients that have made an investment in the women attorneys who are handling their work, and who they would like to see the firm accommodate such that they do not leave.

Child care issues often create severe difficulties for parents of young children. Parents in general, and mothers in particular, feel a bond with and responsibility toward their children that is virtually impossible for anyone who has not experienced parenthood to understand. When work obligations conflict with a parent's obligation to his or her children, the resulting stress level is astronomical. On those occasions when something goes awry at the last minute with a child care agency or a nanny, only a mother who has experienced such a situation can appreciate the stress level. While it may not be practical for all law firms to do so, some firms provide daycare for the children of their lawyers and staff members. In some instances, firms have worked together with other firms to form a daycare cooperative in a particular building. Providing an atmosphere in which a mother can take her child to work with her, leave the child in the on-site daycare facility and retrieve the child at the end of the day, is an enormous benefit. When she is in the office, such a facility may even allow a parent to enjoy

lunch with her child, thus contributing to the emotional health and stability of both parent and child.

Finally, when women trial lawyers seek from their firms temporary schedule alterations, whether flexible alternatives or more formalized part-time arrangements, it is imperative that, once they return to full-time practice, they are not stigmatized for the balance of their careers. If partnership decisions, for example, are delayed during the course of a woman's part-time employment, she should immediately be returned to the standard partnership track upon her return to full-time status.

The Case for Part-Time Arrangements

The vast majority of American law firms provide arrangements for its employees—and its lawyers—to work on a reduced hours, or part-time, schedule. The following table illustrates the percentage of firms surveyed by the National Association for Law Placement that offer part-time arrangements for their attorneys.²⁸ The survey results also indicate the percentage of partners and associates (without mention of gender) who have availed themselves of such arrangements. Note the steady increase (with the exception of 2003) in the percentage of surveyed firms that provide part-time policies, and of those lawyers making use of this alternative.

Recommended Part-Time Policies and Practices

| | Percent of firms with part-time arrangements | Total part-time lawyers | Part-time partners | Part-time associates |
|------|---|--|-------------------------------|---------------------------------|
| 1999 | 93.8 | 2.9 | 1.6 | 4.1 |
| 2000 | 94.5 | 3.2 | 1.9 | 4.4 |
| 2001 | 95.9 | 3.5 | 2.0 | 4.8 |
| 2002 | 96.3 | 3.7 | 2.4 | 4.8 |
| 2003 | 96.0 | 4.1 | 2.6 | 5.4 |

While more than 9 of 10 surveyed firms make available part-time arrangements for their lawyers, there may be significant differences between the availability of such arrangements and their actual utilization. “Although over 90 percent of surveyed law firms allow part-time schedules, only about three to four percent of lawyers actually use them. Most women surveyed believe that any reduction in the number of hours they practice law hours or make themselves available to clients and senior lawyers in the firm would jeopardize their prospects for advancement.”²⁹

Law firm policies that allow lawyers, whether associates or partners, to work on a part-time basis are critical to the development of a firm culture that recognizes and embraces the importance of family obligations and the diversity in lawyers' priorities.

²⁸ See NALP Research, *Availability and Use of Part-Time Provisions in Law Firms* (charts for 1999, 2000, 2001, 2002, and 2003).

²⁹ *The Unfinished Agenda*, *supra* note 12, at 6.



Recognition of the existence of a life outside the law is of paramount importance to the psychological well-being of practicing attorneys. Lawyers who are satisfied with their personal lives are generally more productive in the workplace. Fewer distractions in a lawyer's personal life often translate into more professional efficiency and enthusiasm. A supportive firm culture, with real opportunities for advancement notwithstanding obligations outside the office, is likely to reduce the attrition rate among lawyers. The reduction in attrition, in turn, serves to bolster the firm's profitability since these lawyers, in whom the firm has invested thousands of training dollars, tend to feel a genuine sense of loyalty and remain members of the firm. Loyalty is, after all, generally a reciprocal response.

The results of a study conducted on behalf of the Women's Bar Association of Massachusetts in 2000 tend to refute the notion that limiting part-time work opportunities or making them relatively undesirable will bring about a more profitable work force. In the absence of a supportive environment, attorneys leave—they do not become long-term, full-time attorneys. Most attorneys with a reduced-hours arrangement choose that arrangement because of family responsibilities and other commitments. These responsibilities and commitments do not vanish because their firm would prefer that all attorneys bill more hours. In fact, over 90 percent of respondents who had a reduced-hours arrangement at the time of the survey stated that they would not be at their firm in the absence of part-time opportunities. Thus, rather than helping firms financially, ineffective part-time policies alienate a significant portion of the potential talent pool in an era when firms increasingly need attorneys to handle their workload. In contrast, effective part-time policies help firms develop more committed, long-term attorneys.³⁰

Another study, by the Atlanta Bar Association, examined the profitability of part-time lawyers and took issue with the common perception that overhead for each lawyer is fixed, whether that lawyer works part-time or full-time.³¹ The Atlanta study suggests that actual expense incurred for part-time attorneys is lower than that for full-time attorneys because they use fewer firm resources (*e.g.*, support staff, conference rooms, library resources), and part-time policies improve retention, thus reducing attrition costs. Perhaps more compelling still,

[a] wide array of research indicates that part time employees are more productive than their full time counterparts, particularly those working extended hours. Bleary burned-out lawyers seldom provide cost-effective services, and they are disproportionately prone to stress, substance abuse, and other health-related disorders. Moreover, full-time employees are not necessarily more accessible than those on reduced or flexible schedules.

³⁰ *More Than Part-Time: The Effect of Reduced Hours Arrangements on the Retention, Recruitment, and Success of Women Attorneys in Law Firms*, 22 (Employment Issues Committee, Women's Bar Association of Massachusetts, 2004).

³¹ *It's About Time: Part-Time Policies and Practices in Atlanta Law Firms*, 22 (Georgia Association for Women Lawyers, Atlanta Bar Association Women in the Profession Committee, Georgia Commission on Women, 2004).

Lawyers at a deposition for another client are less available than women at home with cell phones, emails, and fax machines. The limited research available finds no negative impact on client relations from reduced or flexible schedules.³²

The larger a firm's investment in its attorneys, the higher the cost to the firm if and when an attorney leaves.

According to a study by the National Association for Law Placement called "Keeping the Keepers," we already know that approximately 50 percent of attorneys leave large law firms within the first three years of employment, and that they make that decision within the first year of work. But the cost to a firm of losing employees after three years is even more significant. Client relationships, skill sets, and efficiencies grow significantly after the first three years of practice. If an employer is unable to keep employees after four or five years, the financial and relationship costs continue to grow.³³

Toward the end of providing attorneys with meaningful part-time arrangements, the firm must create a culture in which part-time attorneys are welcomed and viewed as an integral component of the firm's overall structure. Firms should adopt and adhere to written policies that govern their arrangements with part-time attorneys. "Firms that lack written policies, or fail to publicize those policies, convey a lack of institutional support of part-time arrangements, which can hamper the success of such arrangements."³⁴ The Atlanta study further concluded that part-time policies should be adequately publicized within the firm in order to avoid the appearance that part-time arrangements are discouraged, or that "secret deals" have been struck with certain part-time attorneys. The latter may cause the unintended consequence of envy and distrust among other lawyers within the firm.³⁵

Challenges for Firms in Part-Time Arrangements

Part-time arrangements undertaken with the best of intentions often fail as the result of "schedule creep," the phenomenon that occurs when a part-time lawyer is assigned more work than can reasonably be handled in the time frame contemplated by the part-time arrangement. Where an associate, for example, receives assignments from several partners within the firm or practice group, it is critical that the assignments be carefully monitored in order to avoid unintentionally overloading the part-time law-

"I think it is extraordinarily difficult to fulfill the expectations I have for myself and others have for me as a trial lawyer, a mother, a wife, a sister, a daughter and a friend."

—Survey respondent

³² *The Unfinished Agenda*, *supra* note 12, at 7.

³³ "Where Have the Women Attorneys Gone?" *supra* note 4.

³⁴ *The Unfinished Agenda*, *supra* note 12, at 27.

³⁵ *Id.* (citing Joan C. Williams and Cynthia Thomas Calvert (for the Project for Attorney Retention), *Balanced Hours: Part-Time Policies for Washington (D.C.) Law Firms*, 27, 30–31 (2d ed. 2001) ("PAR Study")); *More Than Part-Time*, *supra* note 30, at 43.



yer who receives the assignments. Conscientious associates are quite reluctant to refuse assignments from partners, as well they should be. But when partners making assignments are unaware of other assignments made to a particular associate, the potential exists to overburden the associate when the firm has otherwise committed to the associate a part-time schedule.

Schedule creep is almost always caused by the failure to adjust the part-timer's case load to match the shorter work hours. There is often an unspoken expectation on the part of the firm that the attorney will continue to do the same amount of work, and a corresponding desire on the part of the attorney to prove that he or she is still a valuable team member who can pull his or her own weight.³⁶

A number of respondents in the Women's Bar Association of Massachusetts study who worked on part-time schedules feared that certain partners avoided working with them. They further indicated that their availability was regularly tested by some partners and that their part-time arrangement was completely ignored by others. Certain respondents in the Massachusetts study complained that they were continually on call during their non-scheduled hours even though they were not paid for doing so.

In its 2000 study on attrition, retention incentives and departure destinations, NALP noted that the traditional law firm cultures equated "face time with commitment, use commitment as a measure of future potential, and expect employees to sacrifice personal life for work." The PAR Study further noted that lawyers working reduced hours are perceived as "not sufficiently committed"; moreover, it cautions that a firm culture that defines commitment as being available "24/7" does not engender family-friendly policies and further disadvantages women, who are left with the choice of staying home with their children (since most women do not have "stay-at-home husbands") or letting their children be raised in paid care.³⁷

The Project for Attorney Retention (PAR Study) concluded that schedule creep was a primary reason some attorneys left their firms rather than attempting to develop a more satisfactory part-time arrangement.³⁸ In order to avoid the schedule creep problem, each part-time attorney should be assigned a partner whose responsibility it is to monitor the part-time lawyer's work load. A commitment by the firm to a part-time arrangement must be honored by the firm. Without appropriate monitoring safeguards in place, the firm may be unable to determine that a part-time lawyer is overloaded until the lawyer's dissatisfaction with the part-time arrangement results in his or her departure from the firm.

³⁶ *It's About Time*, *supra* note 31, at 28 (citing PAR Study, *supra* note 35, at 36).

³⁷ *It's About Time*, *supra* note 31, at 31 (quoting Paula A. Patton, *Beyond the Bidding Wars: A Survey of Associate Attrition, Departure Destinations, and Workplace Incentives*, 62 (National Association of Law Placement Foundation for Education and Research, 2000)); PAR Study, *supra* note 35, at 46–47.

³⁸ PAR Study, *supra* note 35, at 18; see also *It's About Time*, *supra* note 31, at 28.

Policies and Practices That Make Part-Time Arrangements Successful

Lawyers, as well-educated professional people, must find work that is interesting and intellectually challenging. In too many circumstances, law firms have not allowed part-time lawyers to undertake challenging work assignments, thereby creating significant discouragement and professional dissatisfaction. It is critical that the partner assigned to monitor a part-time attorney's work load also be charged with monitoring the quality of work assigned to that attorney. "Eventually, one of the reasons for offering part-time arrangements—retaining good lawyers—will be undermined if quality work assignments disappear. Indeed, not only are part-timers more likely to leave, but if they stay and do not work on challenging projects, their professional development will suffer."³⁹ Critical elements of monitoring the quality of a part-time lawyer's work is the comparison of the assignments he or she had while on a full-time schedule and the analysis of billing records to compare the part-time attorney's work quality and client contact with that of his or her full-time colleagues. If schedule creep or declining quality of work assignments appear to be present, changes in the arrangement must be made in order to assure its success.

The attitudes of full-time lawyers in the firm toward those with part-time arrangements can have a critical effect on the success or failure of the part-time arrangement. Resentment by peers, or negative attitudes by partners, will almost certainly undermine the viability of the part-time arrangement. It is incumbent on firm management to implement and enforce policies that not only encourage part-time arrangements, but discourage individual lawyers from displaying negative attitudes toward such arrangements or the lawyers who utilize them. If firms are to be successful in their part-time arrangements, those attorneys who work part-time must be welcomed as an integral part of the firm. Part-time lawyers must be made to feel that their contributions are significant, that they are "real" lawyers and that their opportunities for advancement within the partnership and for leadership positions within the firm are not jeopardized by their part-time status.

Approximately one-third of women attorneys have worked part-time during some phase of their legal careers. This compares with only 9 percent of male attorneys who have, at some point, worked part-time in the legal field.⁴⁰ If firms are to successfully recruit women lawyers, they must retain and promote those among their ranks. "Often female recruits who are considering permanent offers will look to the female role models currently at that firm."⁴¹ Hence, it is critical to allow more women to advance to partnership regardless of whether they are part-time or full-time associates prior to

Development
Decisions
compromise
CHALLENGES
Opportunity

³⁹ *It's About Time*, *supra* note 31, at 29 (citing PAR Study, *supra* note 35, at 18).

⁴⁰ *Women in Law: Making the Case*, 19 (Catalyst, 2001).

⁴¹ *It's About Time*, *supra* note 31, at 25 (citing Solar, "Why Women Leave Law Firms," *supra* note 27, at 24).



their promotion. This suggestion assumes, of course, that these lawyers have made the contributions during their years as associates that otherwise justify offers of partnership. The duration of the partnership track and requirements for partnership for lawyers on part-time schedules should be carefully considered by firm management and publicized in order that part-time attorneys will know beforehand whether they are eligible for partnership. If they are eligible, this publicity will help them understand the ground rules for partnership and allow them the opportunity to plan their careers accordingly.

Firm Policies for Part-Time Lawyers

The model balanced hours policy promulgated by the Project for Attorney Retention in its 2001 final report⁴² is set forth in the Appendix. DRI gratefully acknowledges the efforts expended by PAR in its development of this report and model policy and its gracious consent to allow the model policy to be reprinted in this report. The model policy is, however, set forth in this report with the caveat that the mere adoption of a policy is insufficient, in and of itself, to create the atmosphere necessary for a successful part-time policy. Clearly, along with the adoption of a policy tailored to the unique needs of the firm, there must be an attitudinal shift that welcomes part-time lawyers and embraces the concept that accommodations for such attorneys will serve the best long-term interests of the firm and its clients.

Periodic Evaluation of Firm Policies

In order for the firm to determine the effectiveness of its part-time policy, it is crucial that the policy be periodically evaluated. Perhaps the most efficient manner in which to evaluate the policy is through periodic surveys of the firm's attorneys. "Such surveys can assess women's experience in areas such as compensation, leadership positions, promotion patterns, alternative work arrangements and satisfaction levels."⁴³ Sensitivity training for partners may be effective to assist them in understanding and accepting the issues with which part-time lawyers are faced. While no measure of sensitivity training will win over all partners, antiquated views toward external issues facing women trial lawyers will gradually fade as older male partners retire. A change in firm culture, which is required for acceptance of alternative work arrangements to accommodate lawyers' outside interests and obligations, is an evolutionary process that will likely require more than a single generation of lawyers to come to fruition.

⁴² PAR Study, *supra* note 35.

⁴³ *The Unfinished Agenda*, *supra* note 12, at 33 (citing *Women of Color in Corporate Management: Dynamics of Career Advancement*, 32–33, 66 (Catalyst, 1999)); *Advancing Women in Business: Best Practices from the Corporate Leaders*, 39–52 (Catalyst, 1998); Mary C. Mattis, "Organizational Initiatives in the USA for Advancing Managerial Women," in *Women in Management: Current Research Issues* (Davidson & Burke, eds. 1994); Deborah Graham, *Best Practices*, ch. 1 (American Bar Association Commission on Women in the Profession).

APPENDICES—Biographies of Task Force Members, Interview Questions, Survey Questions, PAR Model Balanced Hours Policy, and Selected Bibliography

Biographies of Task Force Members

SHELLEY PROVOSTY

Shelley Hammond Provosty is a partner in the New Orleans office of the law firm of Montgomery Barnett Brown Read Hammond & Mintz LLP. She is engaged in a general civil practice, concentrating on general casualty, products liability, transportation, insurance coverage, and bad faith litigation. She has broad trial and appellate experience in the state and federal courts in Louisiana.

Ms. Provosty is a member of several organizations, including DRI, the Louisiana Association of Defense Counsel, the New Orleans Association of Defense Counsel, and the International Association of Defense Counsel. She has served as a member of the Board of Governors of the Louisiana State Bar Association and the Board of Directors of the Louisiana Association of Defense Counsel. She is currently serving as Louisiana State Representative for DRI.

KERI LYNN BUSH

Keri Lynn Bush is a partner of Lewis Brisbois Bisgaard & Smith LLP, working out of the Costa Mesa and Los Angeles offices. Ms. Bush's litigation practice focuses exclusively on representing management in employment-related matters. She also advises employers on all aspects of the employment relationship, including measures calculated to avoid litigation. Ms. Bush spoke at last year's Sexual Torts Seminar and is a contributing author to the upcoming DRI Employment Law Compendium. She also serves as the Chair of DRI's Lawyers' Professionalism and Ethics Committee.

STEPHEN S. GEALY

Mr. Gealy is an attorney at Baylor Evnen Curtiss Gemit & Witt LLP in Lincoln, Nebraska, where his primary area of practice is personal injury defense. He regularly defends individuals, businesses and governmental entities against negligence claims. Mr. Gealy has devoted significant time to monitoring the development and modification of tort law. He has testified extensively before the Judiciary Committee of the Nebraska Legislature on legislative bills which could potentially affect the defense of personal injury, products liability, and insurance claims.

CATHY HAVENER GREER

Cathy Havener Greer is a partner at Wells Anderson & Race LLC, in Denver, Colorado. After serving as an Assistant Attorney General for the State of Colorado and as an assistant prosecuting attorney in Missouri, she entered private practice in 1987, focusing her practice in the areas of employment and civil rights defense. Her practice includes the defense of public entities and officials and private employers in federal and state trial and appellate courts as well as before administrative agencies.

CHRISTY D. JONES

Christy D. Jones is a member of Butler Snow O'Mara Stevens & Cannada PLLC in Jackson, Mississippi. Ms. Jones is past chair of DRI's Drug and Medical Device Committee and has served on the Executive

Board of the IADC. She has been national, regional, and state counsel in connection with a number of drug and medical device cases.

JANICE D. LAI

Janice D. Lai, of the Hartford, Connecticut law firm Halloran & Sage, represents manufacturers, distributors and retailers in products liability litigation in state and federal courts. She also litigates a broad range of complex litigation and insurance matters. Ms. Lai is an active member of DRI. Currently, she serves as the DRI Connecticut State Representative (2003–present) and on the DRI Task Force on Women Who Try Cases. Ms. Lai is an active member of the Connecticut Defense Lawyers Association (1999–present) and currently serves as a member of its Board of Directors.

AMY S. LEMLEY

Ms. Lemley is a Partner at Foulston Siefkin LLP in Wichita, Kansas, and is the practice area leader for the firm's general litigation group. Her practice focuses primarily on the defense of professional negligence claims. She has substantial experience defending peer review matters, and in risk management. Her peer memberships include DRI, the American Board of Trial Advocates, Kansas Association of Defense Counsel, and the International Association of Defense Counsel.

LARA MONROE-SAMPSON

Lara Monroe-Sampson is an associate at Rakoczy Molino Mazzochi LLP in Chicago and is involved in all areas of the firm's patent litigation practice. She concentrates on statutory and regulatory issues arising under the Hatch-Waxman Amendments to the Food, Drug and Cosmetic Act; the Medicare Prescription Drug, Improvement and Modernization Act; and FDA's implementing regulations. Lara also has experience working with the national trade association for the generic drug industry, the Generic Pharmaceutical Association, on preparing and filing *amicus curiae* briefs in the U.S. Court of Appeals for the Federal Circuit and the U.S. Supreme Court.

CHRISTOPHER W. TOMPKINS

Christopher Tompkins is a Director with the firm of Betts Patterson & Mines in Seattle, a member of the firm's Executive Committee, and chairs the Complex Litigation Practice Group. His practice concentrates on the defense of product, environmental, and general liability claims, as well as insurance coverage and extra contractual liability. Mr. Tompkins is a sustaining member of the Product Liability Advisory Council (PLAC), and is active in the International Association of Defense Counsel (former member of the Executive Committee and past Chair, Drug Device and Biotech Committee), and DRI (Steering Committee of the Drug and Medical Device Litigation Committee).

SHERYL J. WILLERT

Sheryl J. Willert is a member and past Managing Director of the Seattle firm of Williams Kastner & Gibbs PLLC. Ms. Willert concentrates her practice on counseling, investigations and litigation. She has litigated cases involving professional negligence, contracts, personal injury and civil rights. She also has experience resolving employment-related disputes through arbitration and mediation and was named as a "Top Lawyer for Labor Law" by Seattle Magazine in 2003. Ms. Willert is the Immediate Past President of DRI and a member of the ABA and the National Bar Association.

Interview Questions

General questions for each category

1. How long have/were you been practicing?
2. What is/was the primary nature of your practice?
3. What is (has been) the primary source of business/clients/cases for you?
 - a. Senior Partner or someone else from department
 - b. Required to build on own and market
 - c. Other?

A. Specific questions for female practicing attorneys

1. What methods of building your practice have been the most successful?
 - a. Individual efforts
 - b. Team efforts
 - c. Mentors
2. Do you have a mentor at your current establishment or have you ever had a mentor?
3. Do you act as a mentor or have you ever?
4. If you answered yes to questions 2 or 3, what is the sex of your mentor or protégé?
5. What is the attitude of other women at your firm? If the attitude varies based on years in practice, please explain.
6. Have you ever considered leaving your firm based on issues surrounding your gender?
7. Have you ever felt you've been treated differently either in court or in various business activities because of your gender? Please elaborate.
8. Have you been given the same marketing opportunities in your firm as men? If not, please explain.
9. Have you been given the same opportunities for promotion and partnership within your law firm as men? If not, please explain.
10. Have family issues impacted your success within your law firm? If so, please explain.
 - a. Aging parents
 - b. Children
 - c. Deciding not to have children
 - d. Sick family member
 - e. Divorce
 - f. Other
11. What strategies do you believe law firms can implement to retain competent women trial attorneys?
12. Have you ever received inappropriate comments from opposing counsel or judges directed to the fact that you are a female lawyer?
13. Have you ever received similar comments from someone at your own firm or on your trial team?
14. Have these comments influenced the way you present yourself in court, at depositions, negotiations, or otherwise?
15. What are three (3) methods you used to develop your business? And which is the most successful?
16. How does compensation compare to males in your same position?
17. Does the same number of billable hours earn the same amount of compensation for women as men?
18. Does your firm compensate for non-billable outside activities (i.e. professional associations)? And, are outside activities appreciated or perceived differently by your firm?

19. What do you believe are the top three (3) challenges facing female trial lawyers in their practice? Please explain how you deal with those challenges.
20. What unique strengths do you feel you bring to the table as a female litigator?

B. Questions for managing partners

1. Are female attorneys treated differently at the law firm in regards to case loads and marketing efforts? Please explain.
2. Is there a perception in the firm that women with families perform differently than women without?
3. What are the top three (3) challenges you believe female attorneys are facing?
4. Are requests being made from the client to have a female attorney on their trial team?
5. Does your firm have a part-time policy? If so, please explain the policy?
6. Do you find that women partners tend to make less under your compensation system than men?
7. Are there particular types of cases predominately assigned to female attorneys?
8. Have you experienced challenges in the retention of women trial attorneys in your firm? If so, please identify the top three (3) reasons.
9. What does your firm do to develop their women attorneys into first chair trial lawyers?
10. What strengths do you believe women attorneys bring to your firm's trial teams?
11. Do you have any particular marketing that the firm does for its women attorneys?
12. Do you have any recommendations on how your women trial attorneys can market their practice?

C. Questions for corporate or insurance counsel

1. Have you ever been in private practice? If so, for how many years and what area of the law?
2. If you were in private practice, why did you leave or go in-house? Please explain.
3. Do you require a female attorney on your trial team?
4. Is it important to you to have women on your trial team? Acting as first chair? If so, why?
5. What is the best reason or your motivation to include a woman on your trial team?
6. Have you been more or less successful with women on your trial team? Please explain.
7. Is there an instance or case where you would not want a woman on your trial team?
8. Do you survey your counsel to find out what the percentage of outside counsel used are women?
9. Do you strive to achieve a certain percentage of female attorneys as outside counsel?
10. If you require that women attorney hours be reported on legal invoices, what do you do with that information?

D. Questions for judges

1. How does the number of female attorneys you see in a courtroom compare to men in the courtroom? If possible try to get a percentage.
2. How many women are serving as first chair?
3. What do you believe are the top three (3) challenges facing female attorneys?
4. What recommendations do you have for law firms to help develop their female litigators into first chair trial attorneys?
5. Is there a particular type of case handled more by women? If so, what type of cases or law is it? (Note: this should be besides female prosecutors or domestic cases; this is re: civil defense.)
6. Have you noticed whether juries react differently to female litigators than male litigators? If so, please explain how these opinions vary. Does it depend on the type of case a woman is working on?

7. Is there anything in particular (i.e. action, gesture, phrase) that is acceptable for a male attorney to do, however when a woman does the same thing, it's a turnoff?
8. Is there any particular strategy you have seen that works well for women attorneys in the courtroom that doesn't work as well for men?

E. Questions for attorneys who left the practice of law

1. What were the primary reasons for your departure?
2. Did you ever voice any of your concerns or reasons for leaving to someone at the firm? If so, what was their reaction?
3. Did you stay involved in the legal industry? What are you doing now?
4. What pressures or challenges led to your decision to leave the practice of law? Please explain.
5. What improvements would you make to the system, either inside the firm or with the profession, which would encourage women to continue practicing law?
6. What events or benefits could have enticed you to stay in practice?
7. Would a part-time or flexible work policy contribute to your decision to stay with the firm?
8. If you ever worked part-time at a law firm, please rank the following reasons why you have decided to leave your firm:
 - a. Inflexible schedule
 - b. Hours
 - c. Compensation
 - d. Partnership track is too long or nonexistent
 - e. Level of responsibility has changed
 - f. Leadership opportunities no longer available
 - g. Client contact has diminished
 - h. Type of work has changed

F. Questions for part-time female attorneys

1. Does/did your firm have a formal part-time or flexible work arrangement policy? If so, what does that policy entail?
2. How did you find out about the policy? (choose one)
 - a. Firm manual
 - b. Orientation
 - c. Self inquiry
 - d. Firm newsletter
 - e. Department meeting
 - f. Online source
 - g. Other
3. Can an attorney arrange for a customized part-time policy?
4. Did the firm management assist you in implementing this policy?
5. If so, who?
 - a. Reporting partner(s)
 - b. Other partner(s)
 - c. Department leader
 - d. Human resources
 - e. Other part-time attorneys

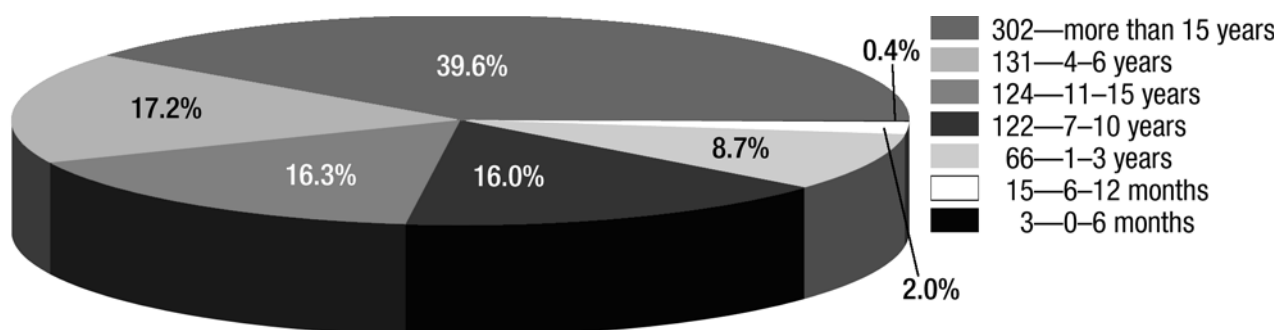
6. Do/did you have regularly scheduled meetings to discuss your part-time arrangements?
7. Does/did your firm have adequate technological capabilities to allow you to work from home?
8. Does/did your firm allow you to keep your secretary? Please explain.
9. Did your quality of work change once you became part-time? Please explain.
10. Did your type of work change once you became part-time? Please explain.
11. Did your part-time status affect your working relationship with other attorneys? Please explain.
(e.g., partners question their commitment to the firm; viewed them as “partial member” of the firm; some partners would not work with them; viewed as “marginal or problematic”; no longer considered for trial teams)
12. Are part-time associates or counsel eligible for partnership? (*Here, we may or may not want to ask about the average difference in partnership track for full-time and part-time attorneys*)
13. Are part-time attorneys eligible for end-of-year bonuses and other benefits of full-time attorneys?
14. Does the firm compensate over and above for part-time attorneys who have exceeded their agreed-upon schedule or hours?
15. Does the firm reimburse day care expenses when part-time attorneys are forced to work on non-scheduled days?
16. As a part-time employee, do you feel you are involved with the firm and presented with opportunities to participate in committees and management positions?
17. Did/does your part-time schedule affect your business development activities? Please explain.
18. Are you still working part-time in a firm?
19. If not, rank the following reasons why you have decided to leave your firm:
 - a. Inflexible schedule
 - b. Hours
 - c. Compensation
 - d. Partnership track is too long or nonexistent
 - e. Level of responsibility has changed
 - f. Leadership opportunities no longer available
 - g. Client contact has diminished
 - h. Type of work has changed

G. Interview questions for male defense trial lawyers

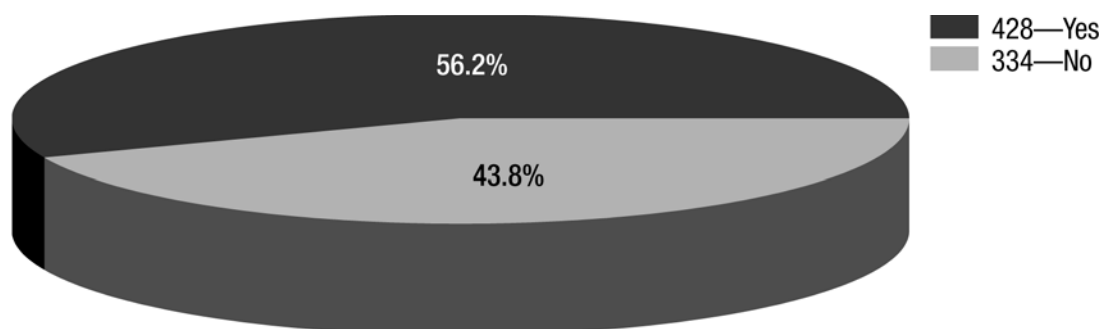
1. How many women trial attorneys in your firm are first chair trial lawyers?
 - a. What is your view about developing women attorneys into first chair trial lawyers?
2. What are the top three challenges facing women attorneys as defense trial counsel?
3. What reasons are there to make an effort for firms to put women on their trial teams?
4. What efforts does your law firm make in the promotion and partnership opportunities for women trial lawyers?
5. Do you believe that there are retention problems in your firm with women trial attorneys? If so, please explain.
6. What is your firm’s attitude about women trial attorneys working part time?
 - a. What can firms do to better accommodate women trial attorneys who want to work part time?
7. Do you believe women are given the same marketing opportunities in your firm as men?
8. Do you perceive that women attorneys are compensated less than male trial attorneys in your firm?

Survey Questions and Results

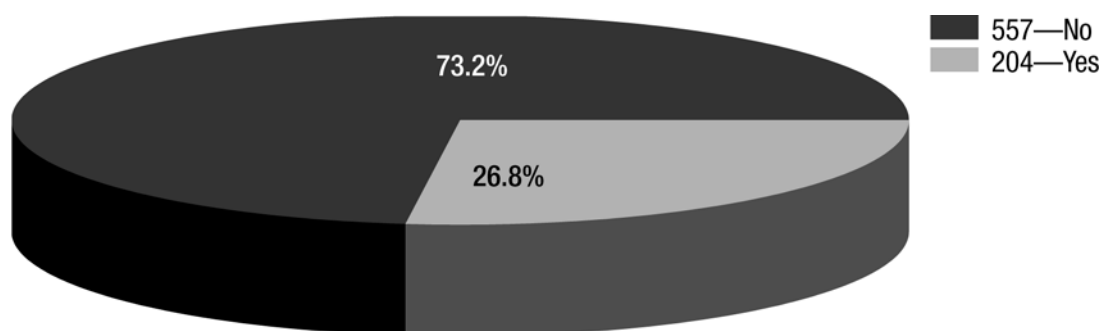
How long have you been practicing law?



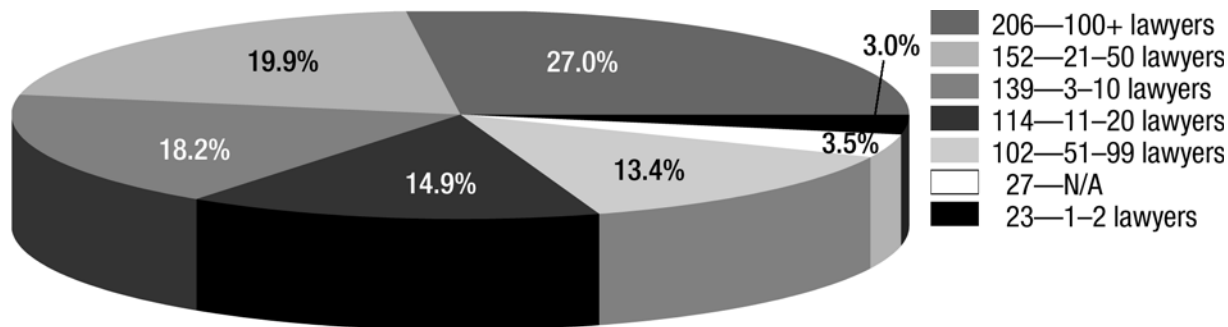
Have you ever been a partner in a law firm?



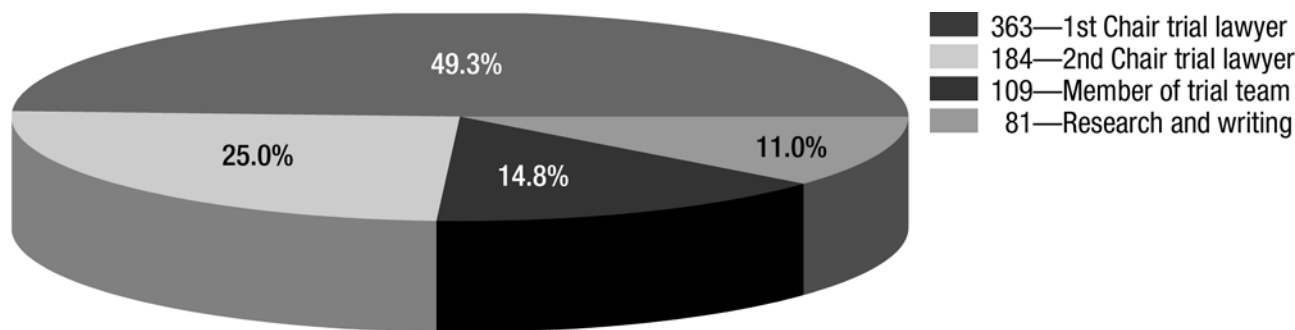
Have you ever been in government service?



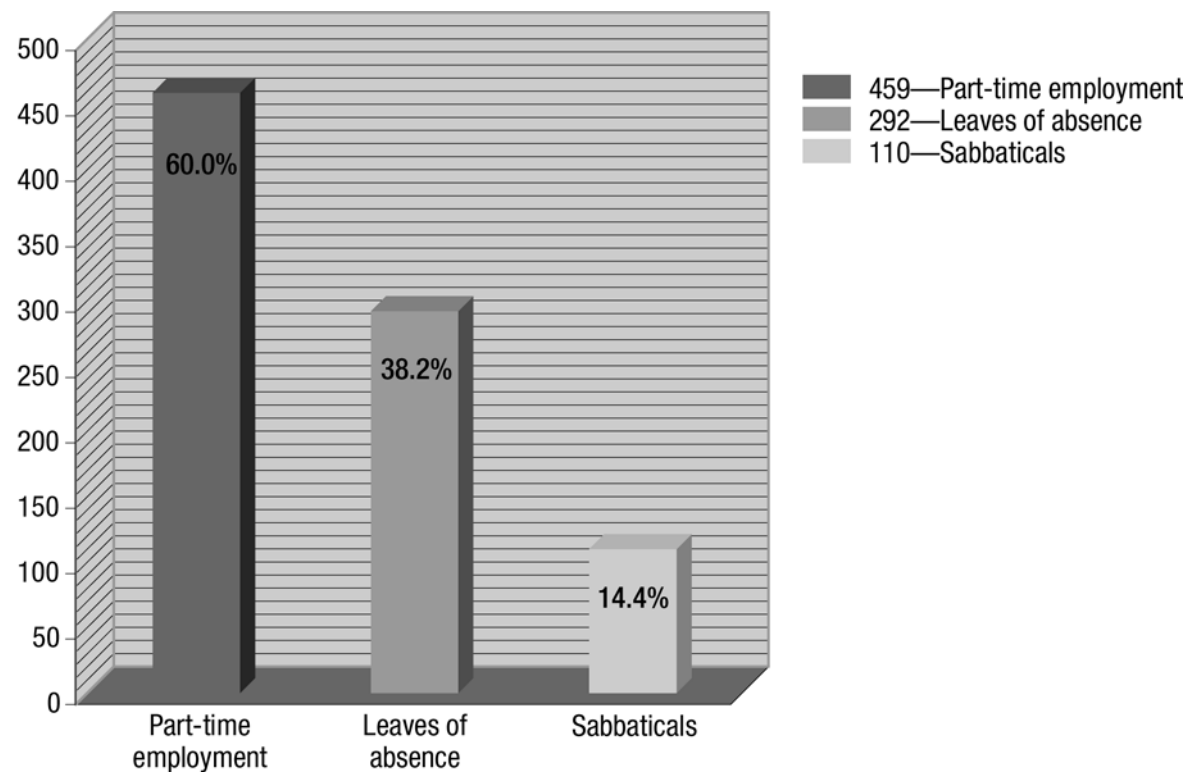
What is the size of your law firm?



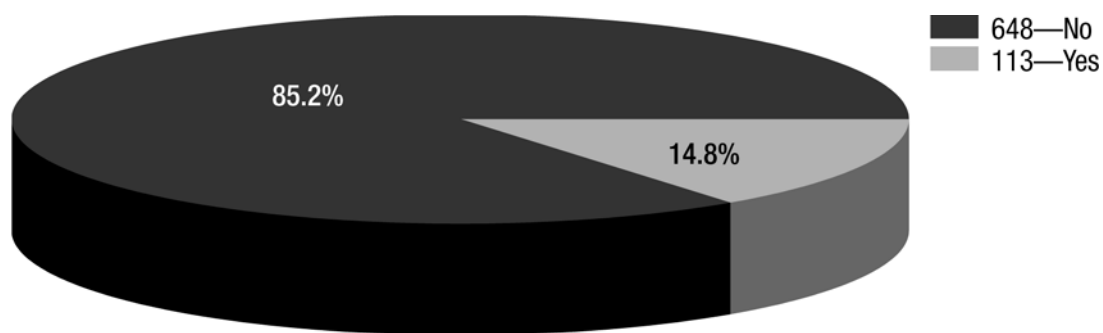
What best describes your role in the firm?



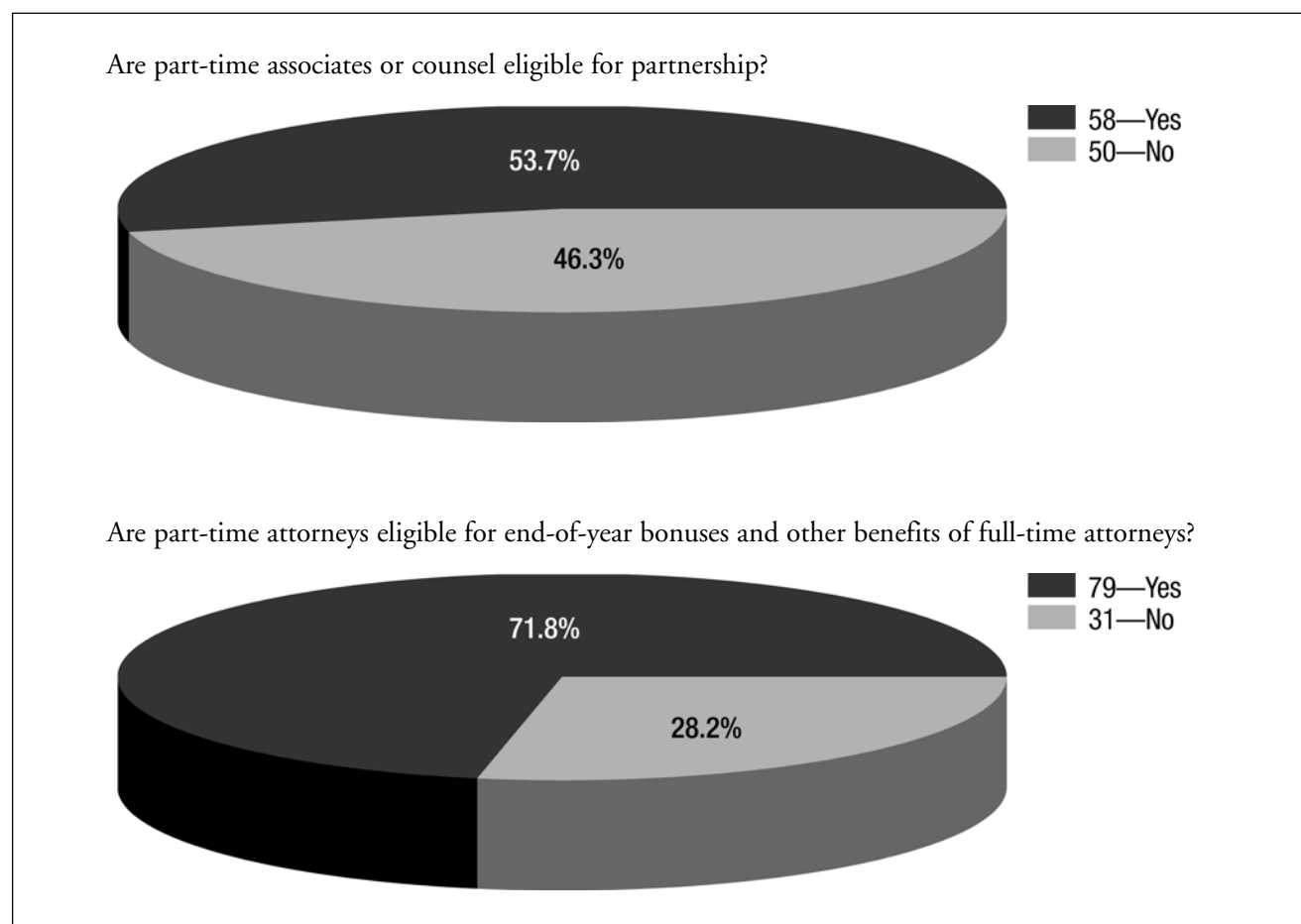
Does your firm offer the following: part-time employment, sabbaticals or leaves of absence?



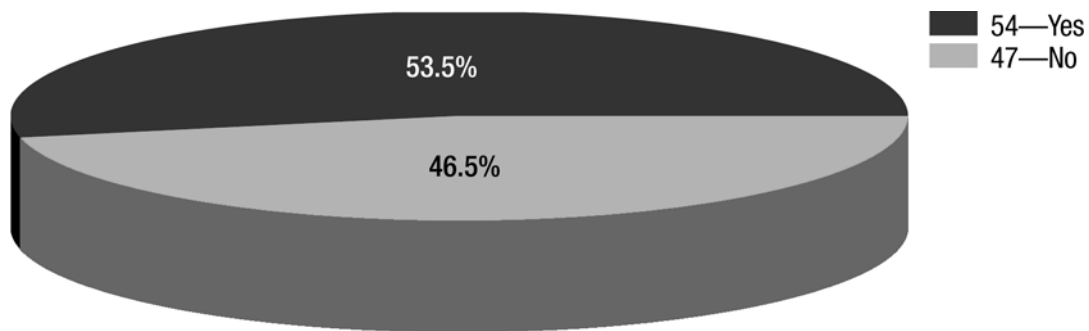
Are you or have you ever been a part-time employee at a law firm? (If you answer “no” to this question you will automatically be routed to [the next] question [resuming on page 53 of this report].)



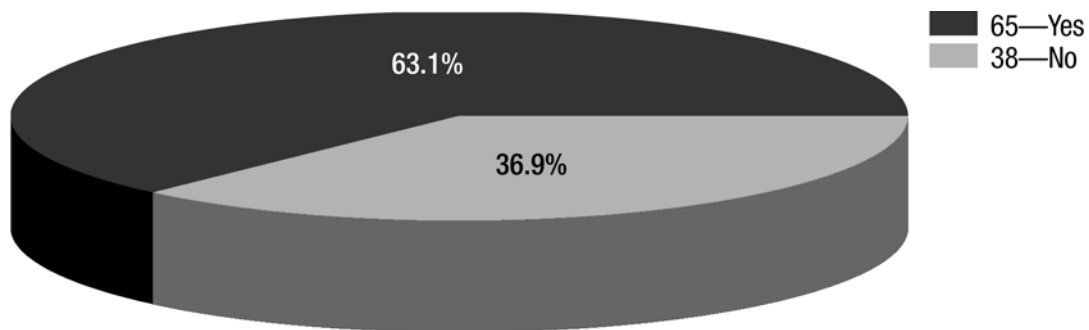
From here through page 52, the responses are from the group that answered “yes” in the previous question.



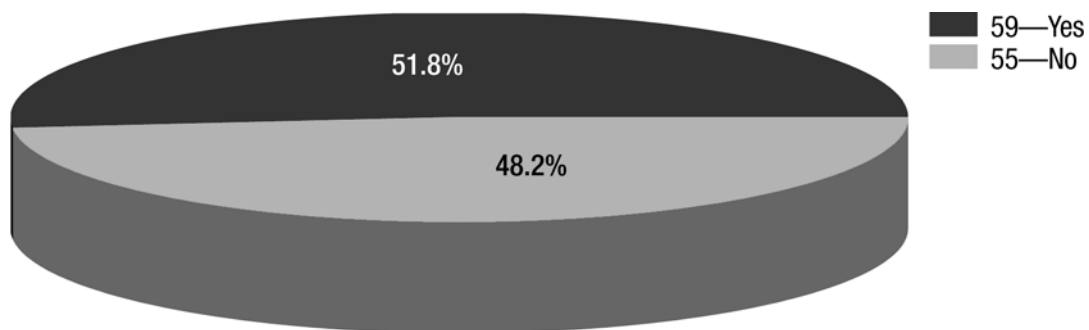
Does the firm compensate over and above for part-time attorneys who have exceeded their agreed-upon schedule of hours?



As a part-time employee, do you feel you are involved with the firm and presented with opportunities to participate in communities and management positions?

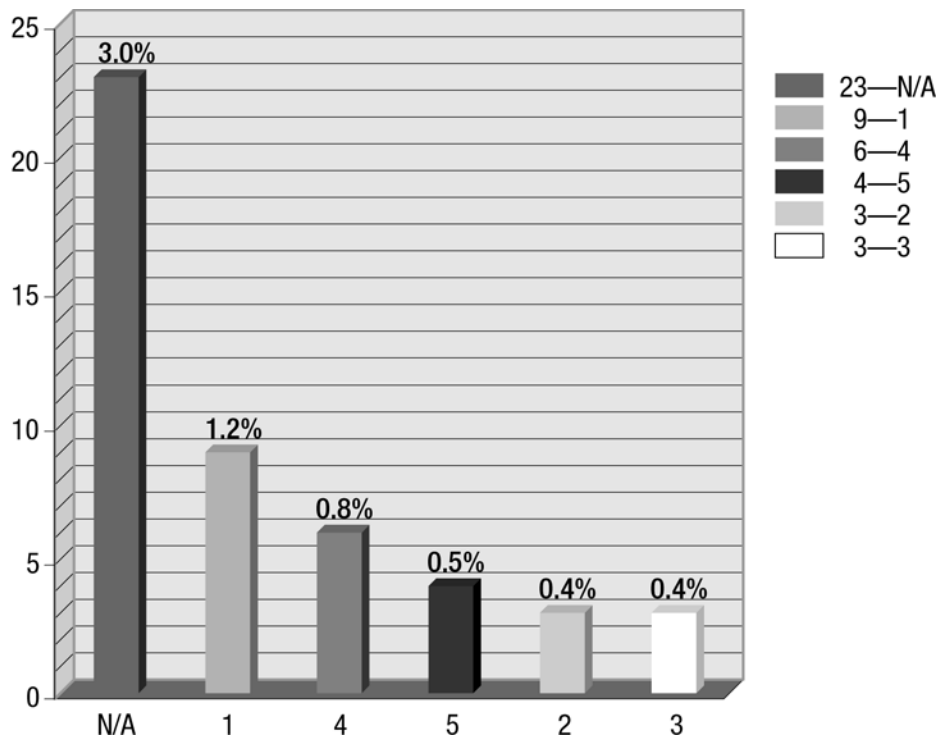


Are you still working part-time in a firm?

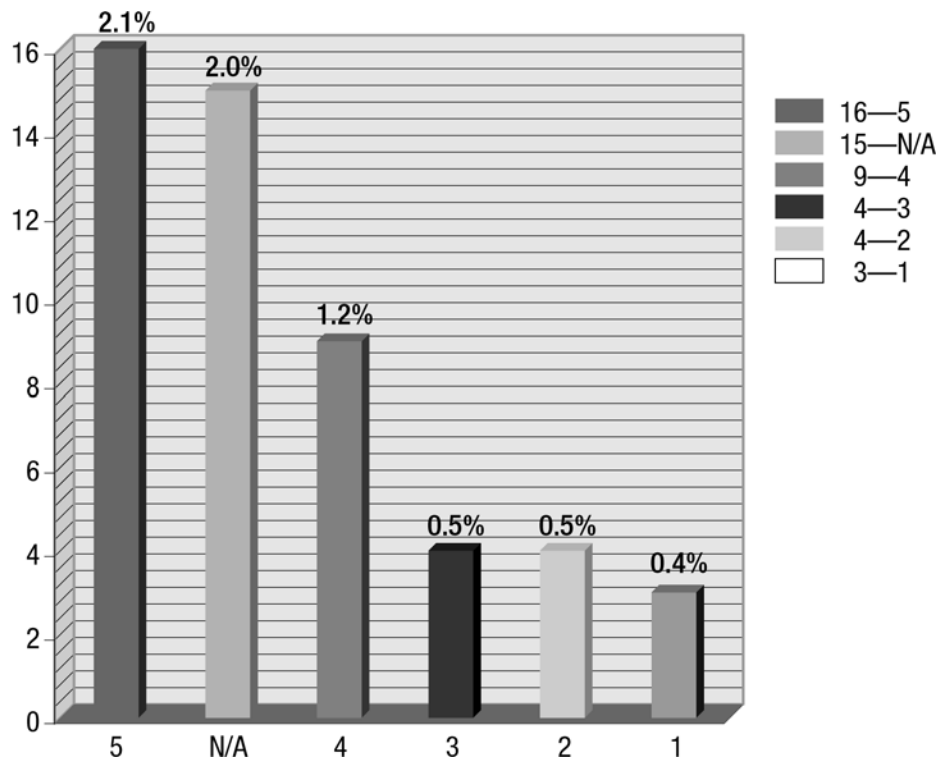


If you are no longer working part-time, please rank the following reasons why:
(1 indicates that it was a minor consideration and 5 indicates that it was a major consideration)

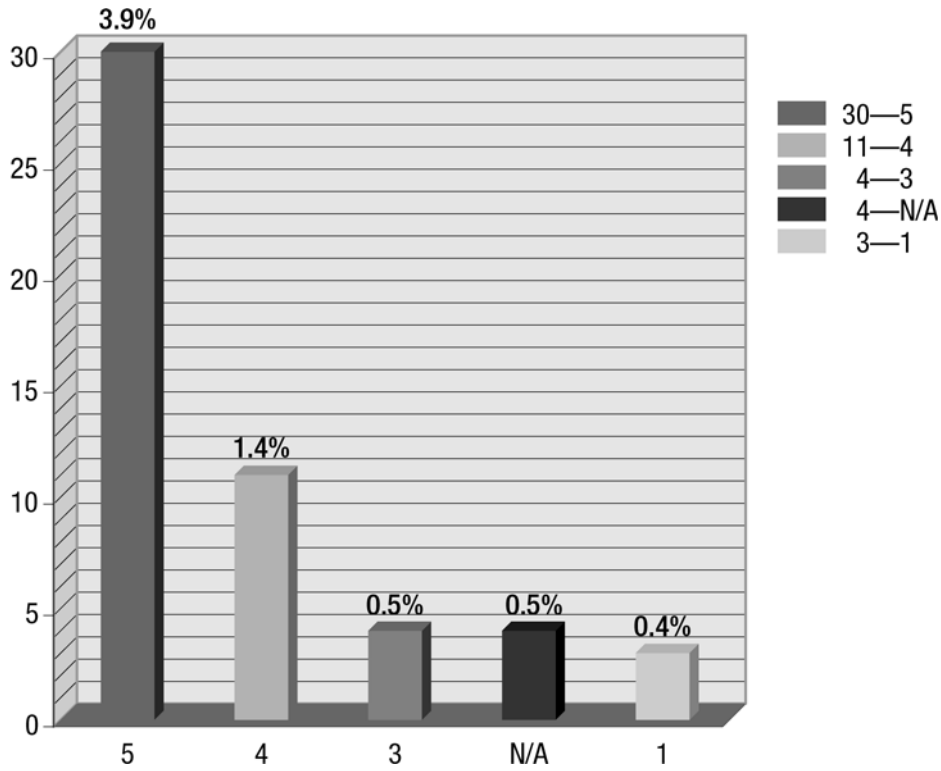
Inflexible schedule



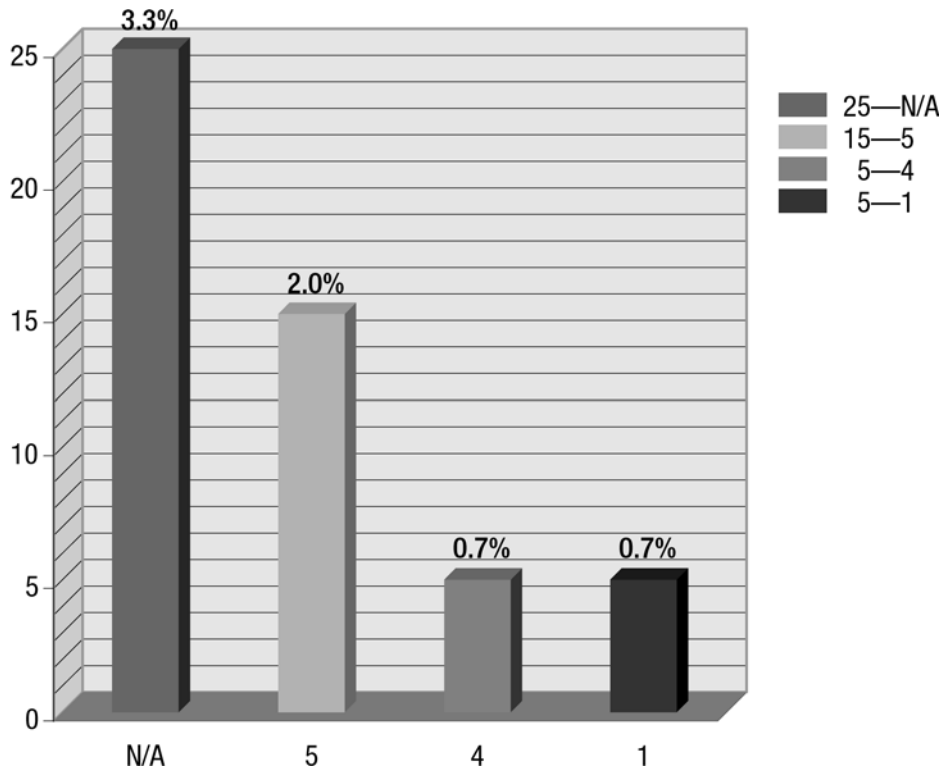
Hours



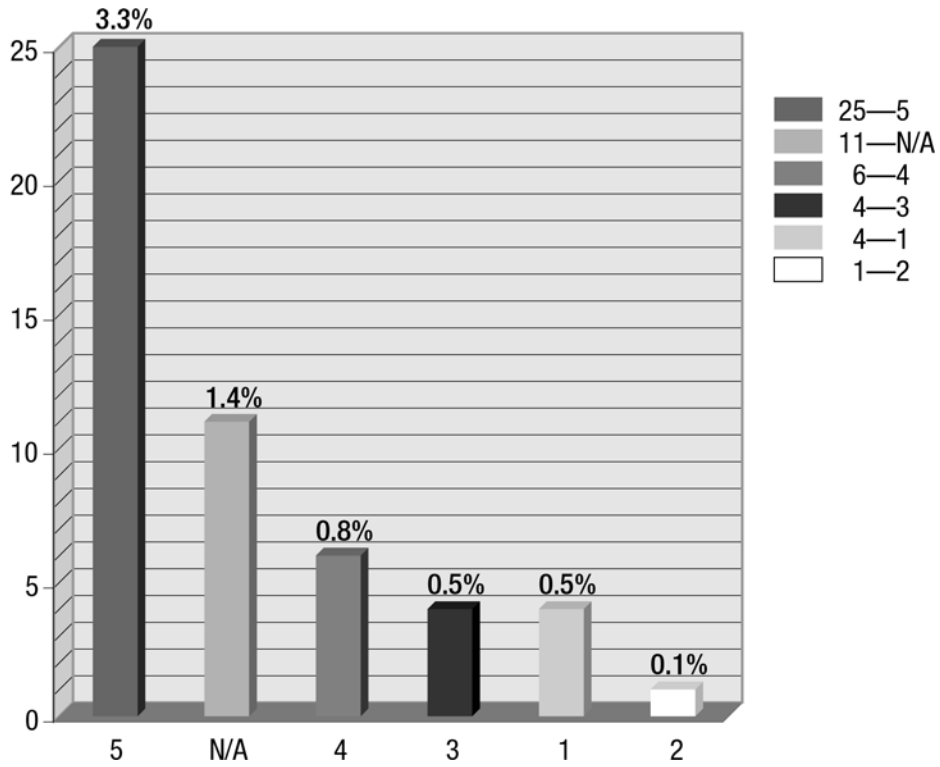
Compensation



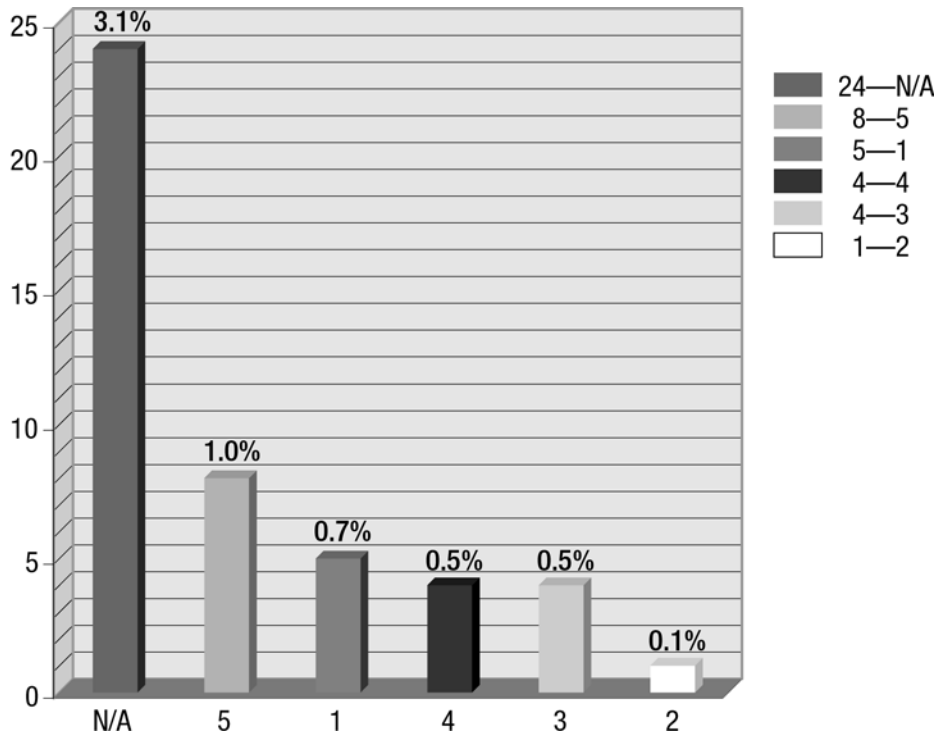
Partnership track is too long or nonexistent



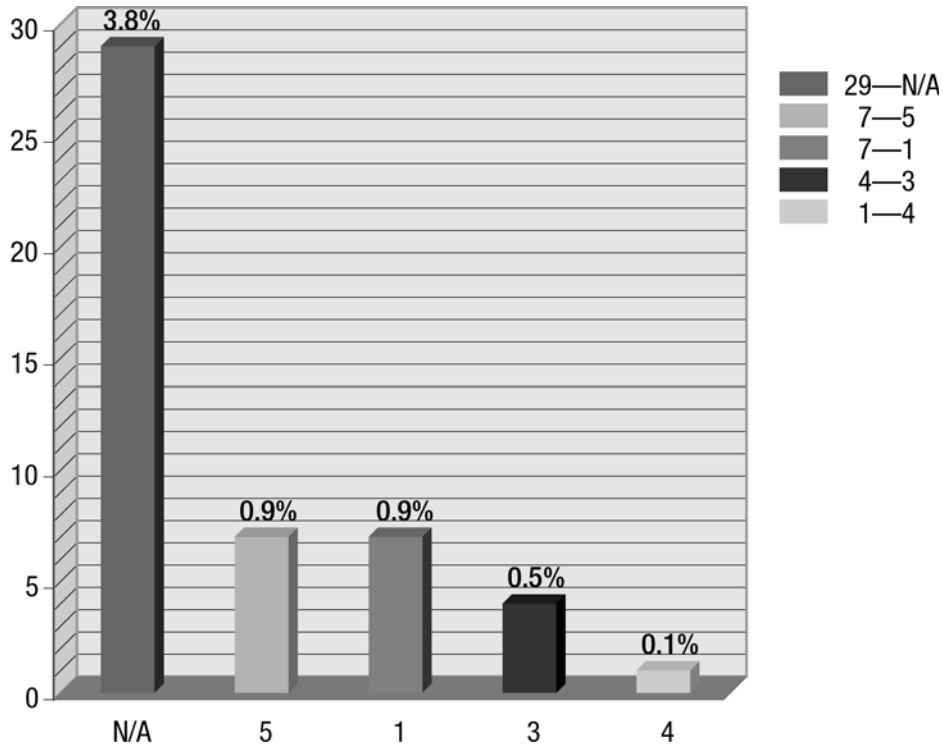
Level of responsibility has changed



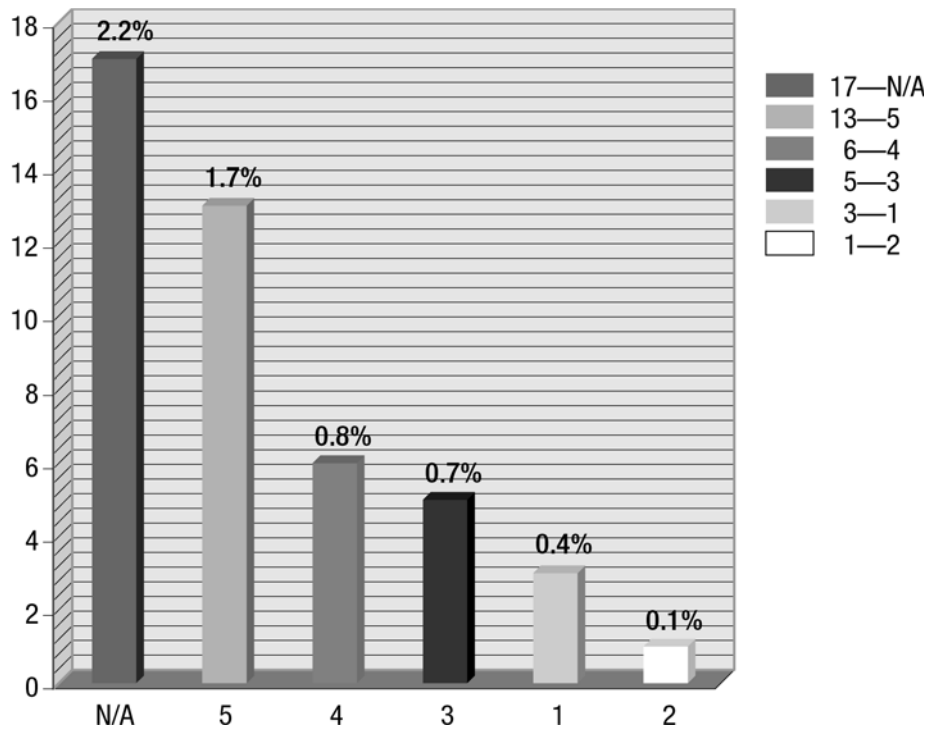
Leadership opportunities no longer available



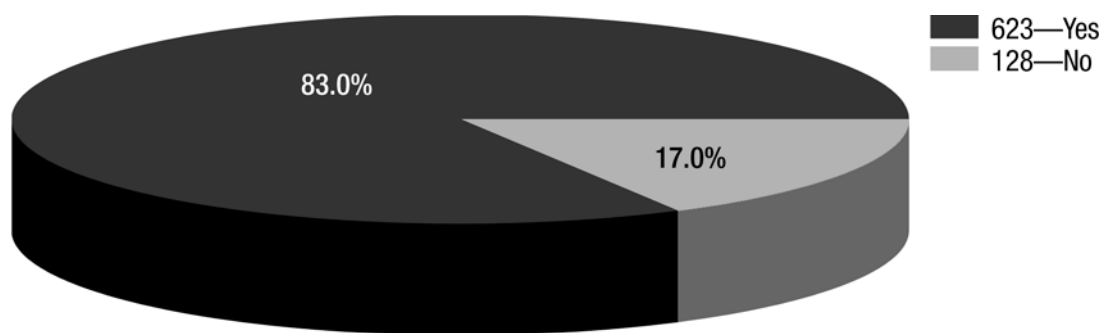
Client contact has diminished



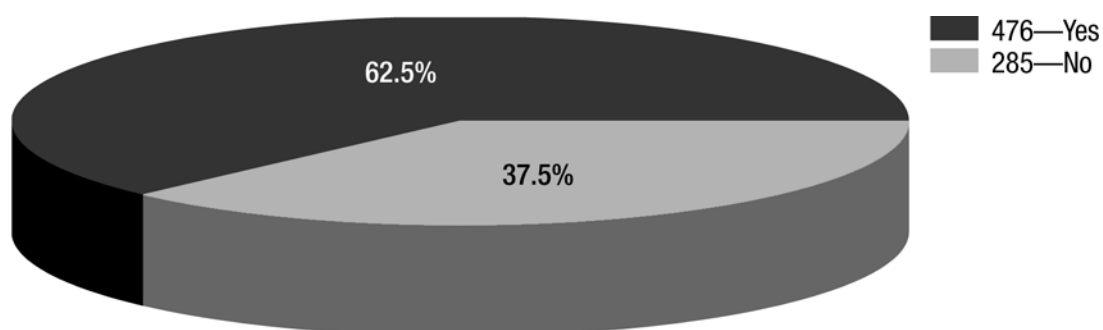
Type of work has changed



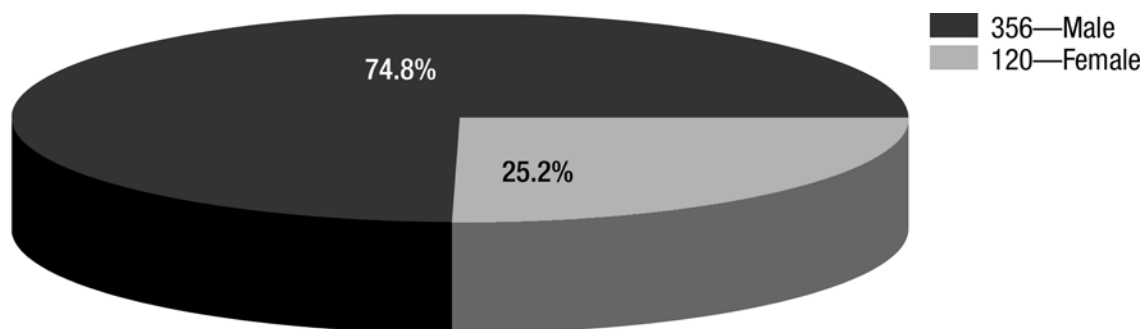
Does your firm encourage outside activities/affiliations (*i.e.*, Charity, Association and/or Professional organization or board membership)?



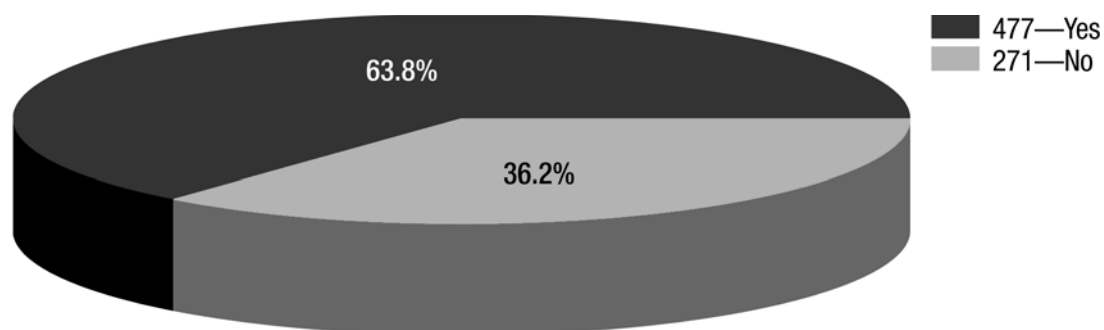
Do you have or have you had a mentor?



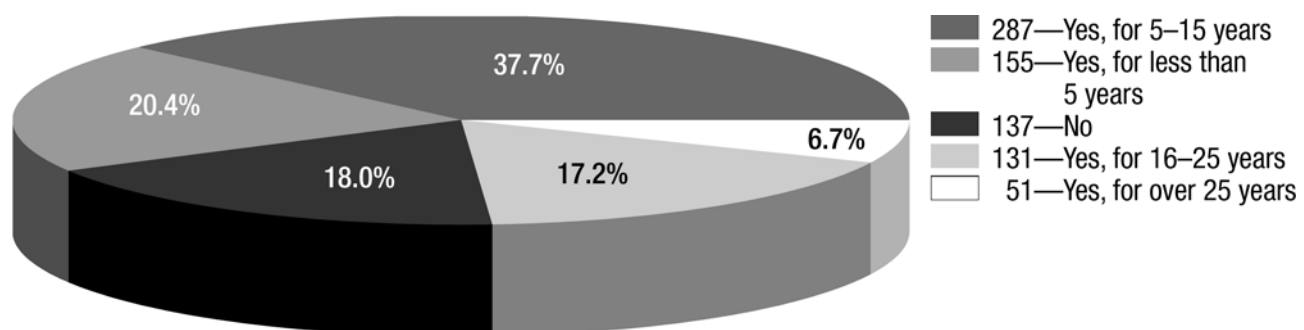
If you answered yes to [the prior question], is/was the mentor male or female?



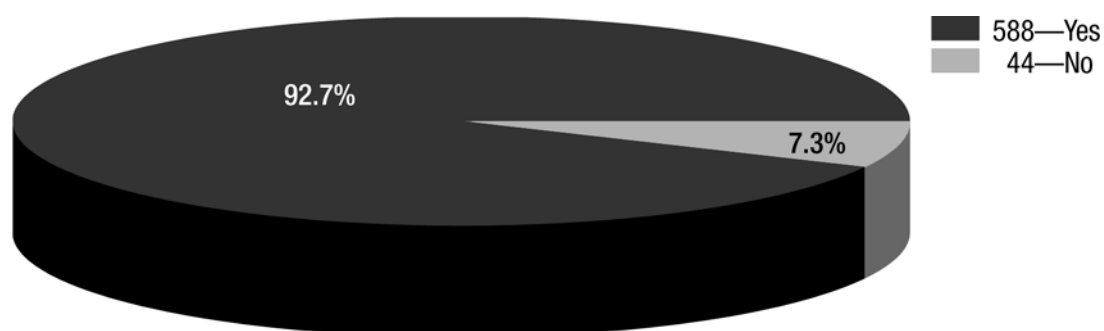
Have you ever participated on a committee inside your firm?



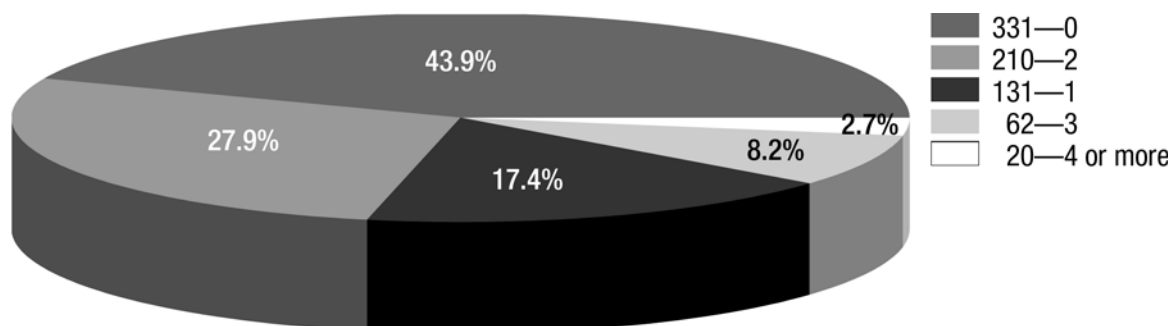
Have you ever been married?



If you answered yes to [the prior question], is your spouse employed outside the home?

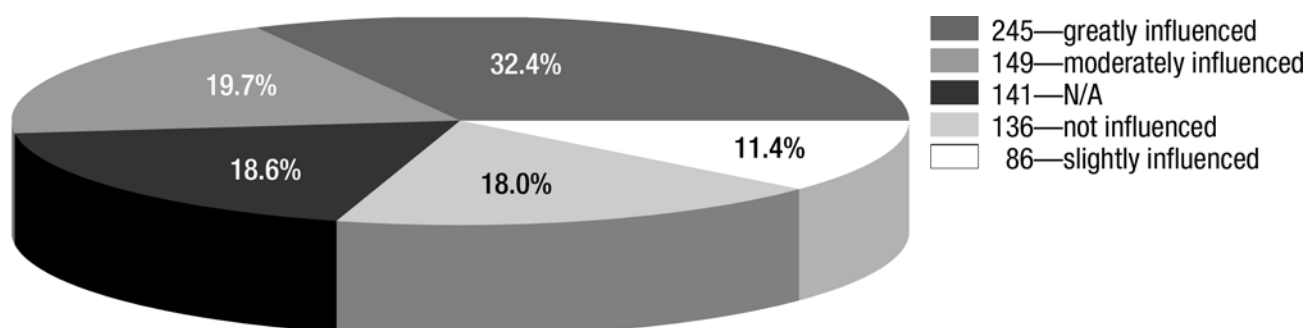


How many children do you have?

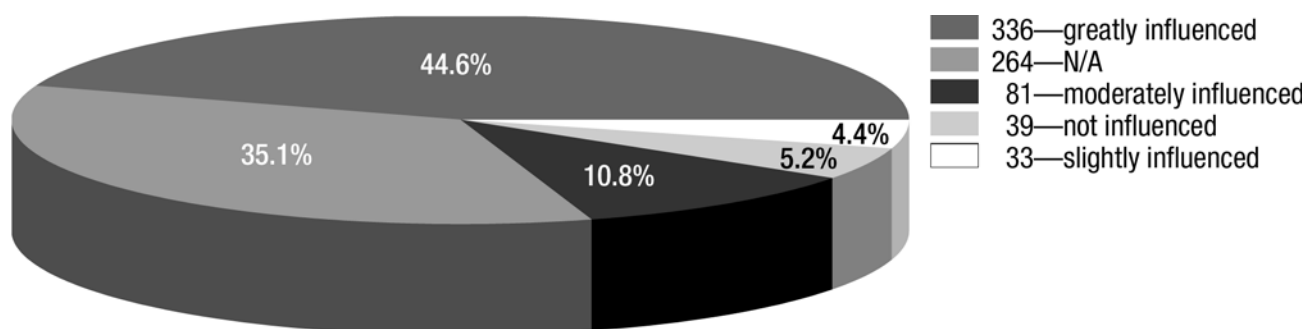


Has the practice of law influenced your personal decisions regarding the following? (Please rate below)

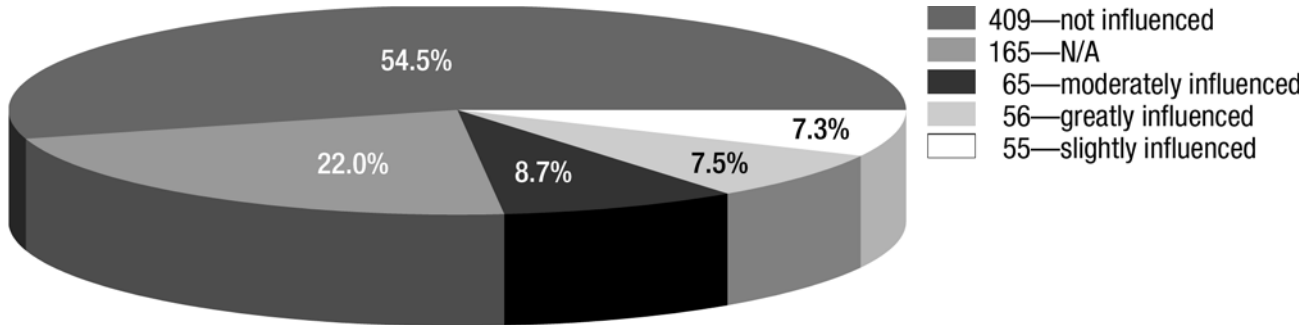
Timing of motherhood



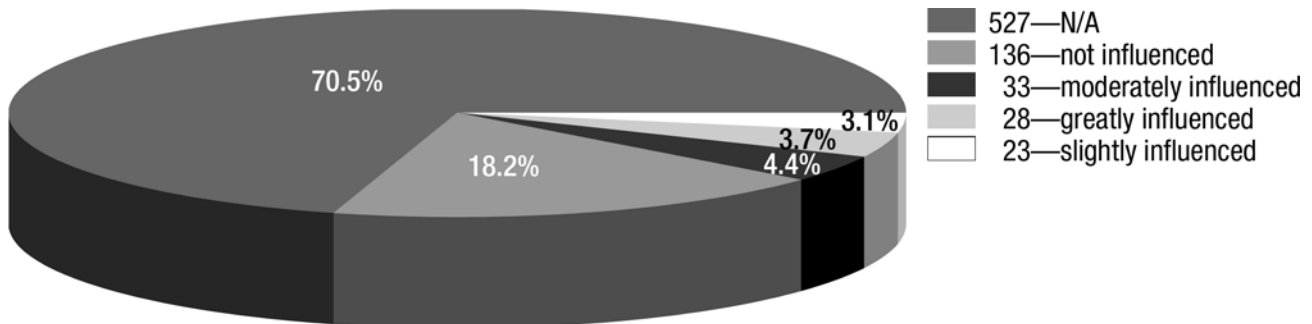
Child care



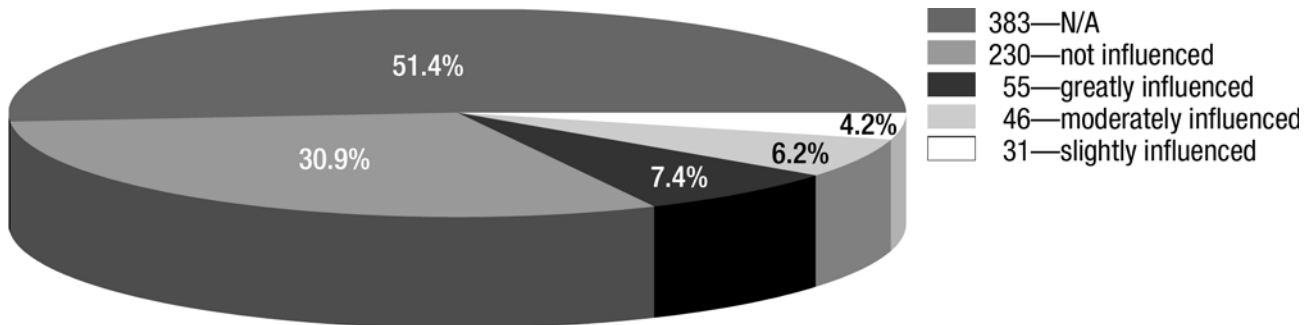
Postponing marriage



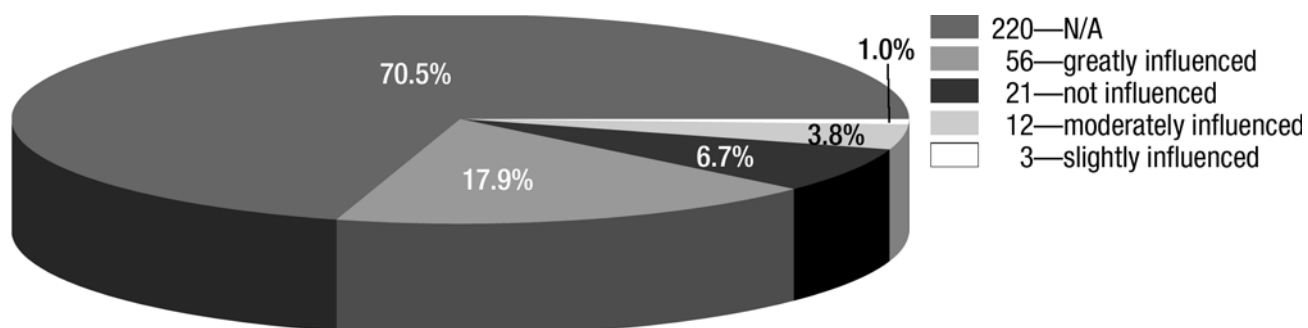
Divorce



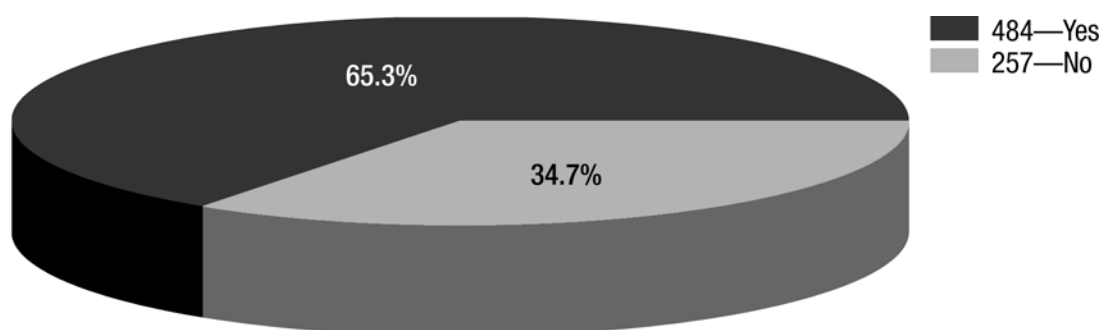
Deferring partnership



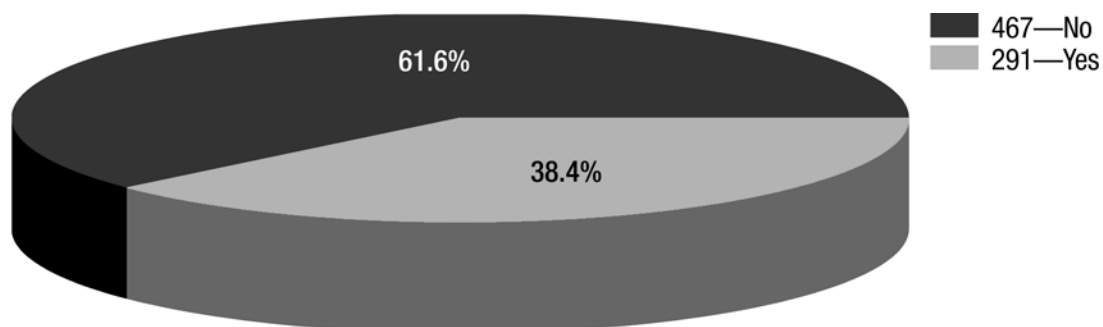
Other [Specifics were listed in comments field]



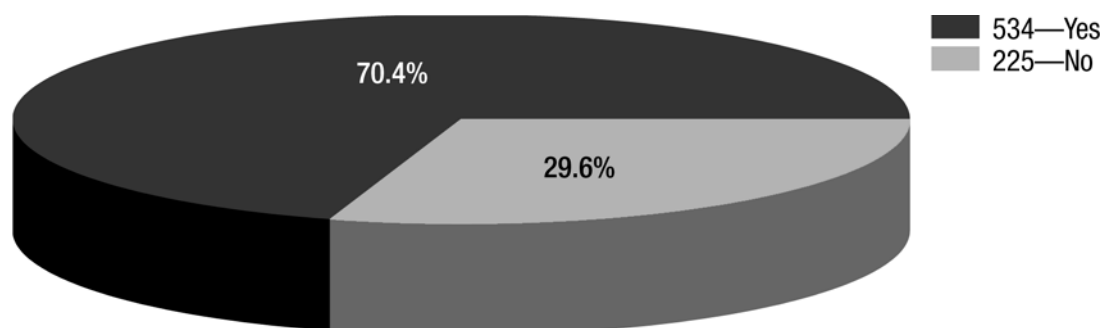
Do you believe there is a “glass ceiling” for women defense attorneys?



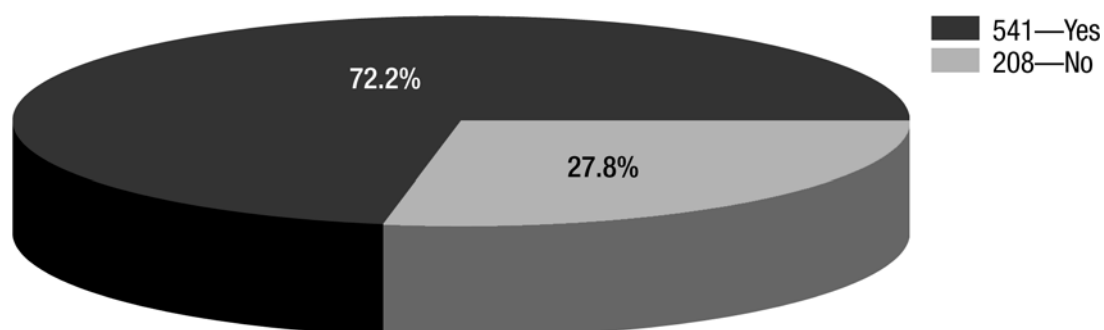
Have you ever considered leaving the practice of law due to issues relating to your gender?



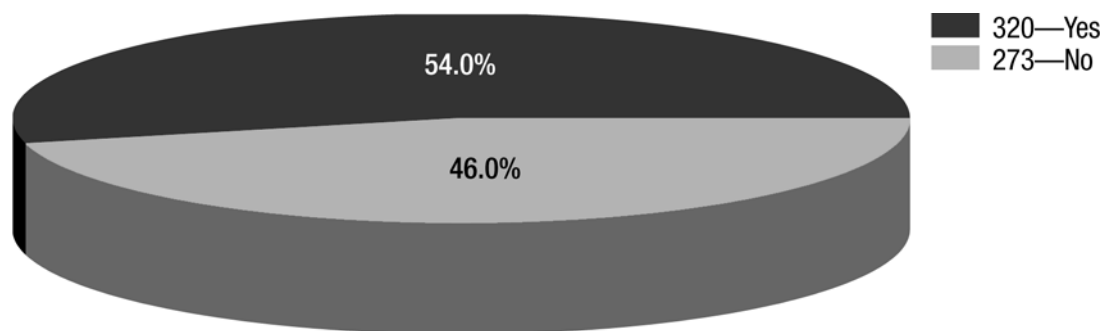
Have you ever experienced gender bias in the courtroom?



Have you ever felt social pressure regarding rain making or client relations from either inside your firm or from an outside source?



Would you be willing to be contacted by DRI for an interview pertaining to this topic?



PAR Model Balanced Hours Policy*

Introduction

Our Firm's strength is derived from its diverse and deeply talented group of attorneys. As a firm, we are committed to maintaining and promoting our diversity and talent. A key way for us to demonstrate our commitment is to recognize that our attorneys have responsibilities and interests outside the Firm that need to be supported and that these responsibilities and interests will affect our attorneys' work schedules.

Balanced hours schedules are available to our attorneys as one way of supporting their lives outside the office. (Similar schedules are available for staff, as set out in the staff manual.) Balanced hours schedules are individually tailored reduced hours schedules designed to meet the needs of the attorney and the needs of the Firm and its clients. Requests for balanced hours schedules will be considered in light of the business needs of the Firm and the Firm's clients, and will be granted whenever possible. The Firm believes that balanced hours schedules should not affect an attorney's professional development or ability to provide professional service to the Firm, clients, the bar, and the community.

This policy sets forth the procedure for proposing a balanced hours schedule, and the general guidelines applicable to balanced hours schedules. Questions about the policy or its application should be directed to the Balanced Hours Coordinator.

Expectations

The Firm expects all of its attorneys to provide professional and prompt service to clients. It also expects all of its attorneys to provide pro bono services in accordance with the Firm's policy, continue their legal education, engage in business development, participate in bar activities, and share in Firm administrative and managerial duties. Balanced hours attorneys should anticipate and meet these expectations.

Flexibility

Meeting client needs often requires flexibility in scheduling, and all attorneys are expected to be flexible in their scheduling when necessary. The Firm will not expect balanced hours attorneys to work in their off-hours on a regular basis, but it may be necessary from time to time for a balanced hours attorney to come into the office or work from another location when not scheduled to do so. When this happens, every effort will be made to provide the attorney compensatory time off within the same pay period as the non-scheduled work. If it is not possible for the attorney to take compensatory time off, the attorney will be compensated in accordance with the compensation guidelines of this policy.

Availability and Duration

Balanced hours schedules are available to all attorneys, assuming an acceptable proposal is made. There is no minimum length of time that an attorney must work full-time before a balanced hours request will be considered. The Firm recognizes that attorneys' schedules will change over time, and understands that balanced hours attorneys may wish to return to standard hours schedules or to stay on balanced hours indefinitely. Changes will be accommodated, again assuming an acceptable proposal is made. There is no minimum or maximum length of time an attorney may work a balanced hours schedule.

* Reprinted with permission of the Project for Attorney Retention, <http://www.pardc.org>.

Schedules

Balanced hours schedules are to be tailored to meet the individual needs of attorneys. The schedules may include fewer hours per week, month, or year. [The Firm finds that beneficial continuity of service to clients generally requires attorneys to work at least 50 percent of a standard hours schedule, but proposals to work less than 50 percent will be considered.] The schedules should be described in terms of percentage of a standard hours schedule, which for these purposes is defined as [1800] billable hours and [400] nonbillable hours. [Note: for firms without billable or other hourly requirements, the standard schedule can be determined by averaging the attorney's own work hours over a several-year period or over his or her entire career with the firm.] Balanced hours schedules are to include both billable and nonbillable time in proportion to the billable and nonbillable hours the attorneys worked when on standard schedules. (For new hires, the Balanced Hours Coordinator will suggest a ratio based on a typical attorney's experience at the Firm.)

Balanced Hours Proposals

An attorney wishing to work a balanced hours schedule should first explore the types of balanced hours schedules worked by other attorneys in the Firm and elsewhere, and determine what type of schedule would best suit their individual needs. Information about balanced hours schedules is kept by the Balanced Hours Coordinator and is available on the Firm's intranet. The attorney should work with the Balanced Hours Coordinator to complete the pre-proposal questionnaire, which covers topics such as how the attorney will accomplish his or her work and how the attorney will be available for emergencies, and draft the proposal. Draft proposals should be reviewed by the Balanced Hours Coordinator and submitted to the attorney's supervising attorney(s) and practice head. The supervising attorney(s) and practice head will be asked to consider various factors relating to how work will be performed under the proposed balanced hours schedule. The Firm anticipates that if the supervising attorney(s) and/or practice head have objections to the proposal, they will discuss the objections and suggest revisions to the attorney. The practice head will forward it, with his or her recommendation as to approval, to the Management Committee for final consideration.

Compensation

Associates and counsel working balanced hours schedules will be compensated proportionally to standard hours attorneys of their same class year. For example, an associate working 80 percent of a standard hours schedule will earn 80 percent of the standard hours salary for an associate in her same class. [Associates and counsel working less than 50 percent of a standard schedule may be compensated on an hourly basis, if the Balanced Hours Coordinator and their practice heads determine that hourly compensation is more feasible.] Partners will be compensated in accordance with the recommendations of the Compensation Committee, which will determine the partner share of a balanced hours attorney as if the attorney were working a standard schedule and then adjust the share amount to reflect the proportion of hours worked. Compensation based on business origination credits will be paid at full rates, and not adjusted proportionally. Balanced hours attorneys remain eligible for bonuses, which will be awarded in proportion with the attorneys' schedules. For bonuses based on the number of hours over target worked, balanced hours attorneys will receive bonuses based on the number of hours over their balanced hours schedule worked.

Benefits

Balanced hours attorneys remain eligible for the same benefits as standard hours attorneys, [except that attorneys working less than 50 percent or less than 25 hours per week are ineligible for medical, dental, life, and disability insurance as stated in the Firm's policies]. [Balanced hours attorneys are eligible for the same benefits as standard hours attorneys, prorated to reflect the proportion of a standard schedule the balanced hours attorney is working. For example, if a balanced hours attorney works 80 percent of a standard schedule, the firm will pay 80 percent of the premium for his or her health, dental, life and disability insurance and the balanced hour attorney will be responsible for the remainder of the premium.]

Technology

The Firm provides all attorneys with an annual stipend for use in purchasing work-related technology. The stipend may be used for such things as cellular telephones and service, Blackberries, fax machines, second phone lines, and computers. Balanced hours attorneys are urged to consider their needs for communicating with the office and with clients when deciding how to use their stipend. At a minimum, a fax machine and cellular telephone should be purchased. If additional stipend amounts are needed, the Firm will consider advancing the additional amounts against the next year's stipend.

Assignments

Balanced hours attorneys will receive the same types of assignments as standard hours attorneys, adjusted to take work hours into account. Balanced hours attorneys will not receive a disproportionate amount of routine work. The Balanced Hours Coordinator will review the type of work done by balanced hours attorneys to ensure compliance with this guideline.

Partnership Track

The Firm evaluates its associates and counsel regularly to ensure they are performing at a level that makes them eligible for partnership. Factors considered include, but are not limited to, quality of work, quality of relationships with clients and colleagues, skill development, and ability to attract new business. Working a balanced hours schedule does not change the evaluation process or the factors considered, and balanced hours associates and counsel remain eligible for partnership. Working a balanced hours schedule may extend the time at which an attorney is considered for partnership, depending on the proportion of standard hours worked and the duration of the balanced hours schedule. For example, an associate who works a standard schedule for six years and an 80 percent of standard schedule for two years is likely to be considered with other associates of his class, but an associate who works a 60 percent schedule for six years will likely find his partnership track extended by two or more years.

Periodic Reviews

The success of each balanced hours schedule will be reviewed with the attorney, Balanced Hours Coordinator, and the attorney's supervisor(s) every three [six] months. If changes to the schedule are necessary, they will be made in writing. In addition to the six-month reviews, the attorney and his or her supervisor(s) are encouraged to communicate with each other and/or the Balanced Hours Coordinator on an ongoing basis about issues that arise regarding the schedule. The Balanced Hours Coordinator will review the hours worked by balanced hours attorneys and will address consistent excessive hours with the attorney and the attorney's supervisor(s) on an ongoing basis.

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- _____. *Women in Law: Making the Case*. Catalyst, 2001.
- _____. "The Commitment to Equality: The No Glass Ceiling Task Force Releases Its Recommendations, 2002." *San Fran. Att'y* 57 (2002).
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151 North Michigan Avenue ■ Suite 300
Chicago, IL 60601
312.795.1101 ■ Fax: 312.795.0747
E-mail: dri@dri.org ■ Website: www.dri.org