

Attrition of Senior Women Lawyers: The Leaky Pipeline ©

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(Special Thank You to the Philadelphia Bar Association for its assistance in conducting a wide reaching survey of women in the Bar.)*

Women face special challenges advancing in the legal profession presented by overt and subtle discrimination at work and traditional responsibilities at home. The combination of work without limit and inequitable family responsibilities often leaves women with little time for marketing, networking, extra curricular bar association activities, let alone time for personal pursuits and fitness. Women lawyers' inability to make partner, achieve parity in compensation, secure clients and negotiate the politics of their law firms has proved immensely discouraging. Senior women attorneys who have surpassed the challenges of balancing work with young children now find that they are engaged in a new balancing act as primary caregivers to senior parents. By following the advice and example of other women lawyers who made it through challenging times in a variety of creative ways women lawyers can hope to enjoy long and rewarding careers in the law.

In a survey which I recently conducted, 562 women of the Philadelphia Bar Association responded to a host of questions aimed at learning: Were certain practice settings more conducive to longevity and happiness? What was an ideal employment situation? What trade offs would women make to achieve the right situation of employment? Was it was personal health, unequal pay, or care for aging parents that cut short or altered their professional careers? What made women feel compelled to quit?

The Leaky Pipeline

In an article appearing in the February 2007 issue of the Philadelphia Bar Reporter which I co-authored with Roberta Leibenberg, Esquire, now Co-Chair of the ABA's Commission on Women, we concluded:

“There has been a consistent large number of younger women entering the legal profession yet those numbers are not resulting in similar increases in representation of women lawyers in the next age groups although nationally there are increases overall. In Philadelphia there seems to be a decline in the number of women lawyers at the critical 10-20 year period of time after practice. There is also a decline in the number of women promoted to equity partner or partner in any category.”

The progress of women in the profession has sprung so many leaks that few women make it to senior positions. One New York survey conducted in 2004 found that the average number of years for women in private practice was 9.5 years while for men it was 19.5. One NALP study found that in larger firms, 73 percent of entry-level female associates left by the 5th year as compared to 69 percent of men. Both figures are staggering.

Women continue to represent a minority in the legal profession (30%) and the number of women attending law school has been in steady retreat. The rate of increase in the number of women lawyers from 2006-2007 was less than 1%. Within private law firms, particularly the largest law firms in the country, women are slow to rise to positions of equity ownership and influence. While women's representation as partner in all categories in “major” law firms has increased Catalyst concludes that at the present rate “women will not achieve parity with men in law firm partnerships until 2088.”

Issues Facing Women Attorneys that Contribute to Attrition

There are a variety of issues that impact the careers of women attorneys contributing to lateral moves, part-time, and attrition. The predominant reason found by our survey was *care for young children*. A few of the adjectives women used to describe the impact of family on their careers: “Enormous, Tremendous, Huge, Significant, Incredibly difficult, Dramatic.” But close behind and also overwhelmingly elected were these causes: *seeking more control over life*; *seeking less stressful work*; and *seeking more regular work hours*.

Our survey revealed what may be obvious: senior women attorneys continue to have pressures that cause them to “retire” or cut back on their work such as *taking care of aging parents*, *personal health*, *opportunity to travel* and *caring for a spouse*. Women departing as general corporate counsel cited *retirement*, *moving to other positions within the company*, and *other personal reasons* as factors in departing their positions.

The NALP Update on Attrition found that most women who leave their firms relocate within the profession; 39% to other law firms, 19% to corporate in-house counsel, 7% to government, 5% to judicial clerkships or non-profits, 2% to non-legal or business. A 2007 report from MIT [4] reached a similar conclusion: “Most do not even leave the legal profession. Over 50% move to work as lawyers in corporate law offices, government or non-profit organizations, which, according to survey comments, provide better arrangements for combining work and time for families.”

Our survey results confirmed that over time women attorneys do not necessarily retire from practicing law but instead move to different arenas in which to practice law. Our Philadelphia survey found that most women born in the 1960s, 1970s and 1980s (ranging in ages from 18-47) are employed in extra large law firms. For women born in the 1940s and 1950s

(women who are 48-67), there is an increase in the numbers of solo practitioners and in-house counsel. Many women also become judges. Women born in the 1920s and 1930s (women who are between ages 68 and 87) in our survey, a small representative group of eleven, were employed as judges (5), solo practitioners (3), in extra large law firms (2) and in federal government (1).

Becoming a solo practitioner is often a second career. Of the 45 solo practitioners in our study, 33 were born in either the 1940s or 1950s. Our solo practitioners who had left larger law firms did so because of the pressures of billable hours and need for greater work/life balance options. One woman who left a large law firm commented that the money she had made was not worth it. Having worked for a number of years with enormous time demands and the lack of power within their firms, these women have opted to work in a setting where they can improvise their own ideal working situation.

Eighteen of forty-three in-house counsel respondents also reported that they had transitioned from large law firms, their primary reasons being billable hours, the reality that part time work isn't really part time, and the desire for greater flexibility.

1. Billable Hours versus Flexibility

For lack of a better system, law firms charge their clients on an hourly basis and compensate their attorneys on the basis of billable hours. Criticized by some as rewarding inefficiency, the demands of billable hours motivate many attorneys to leave their firms. In the NAWL 2007 [10] survey, 79% of firms studied had minimum hour requirements for associates with a range of hours required from 1750 to 2100. The survey found that median hours for of-counsel positions was 1900, median hours for non-equity partners was 1825 and median hours requirement for equity partners was 1800. Further, 21% of one tier firms have minimum hour

requirements at all levels and 51% of two tier firms have minimum hour requirements at all levels.

Women who believe that putting in the long hours required by their firms is a guarantee of promotion often find that they have “no greater or lesser chance of progressing into senior positions.” Not surprisingly, NAWL concluded that “Many believe that ever-increasing hours have a disproportionate impact on women attorneys because of the tensions between the time required for work and family responsibilities.” The women in our survey who work in extra large firms and large firms complained less of the number of hours they had to bill and more of the inflexibility in their schedules. Said one banking officer – and she was not alone: “I would never work in an environment within billable hours again.” A vice-president/senior trust officer in the banking industry remarked that large law firms allowed “no flexibility in working hours to take care of ‘life’.” Similar responses were offered by women who were in-house counsel, in federal government jobs, law clerks, judges, public interest attorneys and small law firm attorneys. Said one public interest attorney: “Although I do not have children, the law firm culture with its billing pressure is incompatible with my needs for a well-rounded balanced life with time for relationships and interests outside of work.”

2. Large Law Firms Don't Work. The women in our survey who worked at extra large (100+) and large (51-100) law firms and even a few in medium size firms (16-50) complained they had no time for sleep, family, pets, marriage, dating, professional development or marketing. Said one woman, her work was “all consuming with little benefit other than financial.” Some commented that having children brought about a loss in status and resulted in not being considered for certain assignments jeopardizing promotion regardless of the time they devoted to the firm’s billable hours. The women in the largest law firms complained of unpredictable

schedules, sexism, lack of flexibility, and frustration with attaining promotion. Said one in-house counsel attorney, formerly of a large law firm, there was “no way to make partner and then have children.” The reverse seems true as well for many.

3. Part-Time Dysfunction. The most controversial and burgeoning placement of women lawyers these past years has been in part-time employment (defined by NAWL 2007 summary Report as less than 80% of full-time). Only 5.4% of all lawyers work part-time. Of all part-time lawyers 75% are women. [9] Conceived as a way of accommodating women lawyers in their child bearing and child-rearing years, part-time employment has been hailed as both a great solution and a terrible exploitation of labor. Part-time employment is frequently defined as a 40-hour work week (which many perceive as a full-time schedule) most often without the opportunity for advancement within the firm, and with a decline in status. Several respondents to our survey complained that part-time status resulted in having a reduced hourly rate, loss of promotion opportunities, loss of bonuses, transfer from salary to hourly wages, and revocation of employment benefits. Attrition among part-time attorneys may be a result of these negative factors. The NAWL 2007 Summary Report concluded that most part-time positions are held by women with families to raise.

Recently “of-counsel” has become synonymous with part-time for young associates. NAWL reported that of-counsel opportunities may be “a detour for women lawyers who have moved off the traditional partnership track with no “on-ramp” back from a lower-paying and lower-prestige law firm rank.” Of-counsel for women usually equates with a reduction in promotion opportunity while for men it is a prelude to retirement.

An MIT Study conducted in June of 2007 [4] reached similar conclusions.

“the findings of the MIT survey confirm issues of work-family as a set of unsolved problems for women and the central reason for women leaving rather than advancing in

law firms. Both women and men cite long work hours, work load pressures and difficulty integrating work and family as their top three reasons for leaving firms but women, far more than men, cite the work-family time squeeze as primary. The reason for this discrepancy, again borne out by survey numbers, is that a high majority of men in firm practice have spouses or partners with a lesser commitment to their own careers and in a position to provide time for family care. But this source of time for families is less available to women in firms because a high percent of their spouses or partners have an equal or greater commitment to their own careers. Women, therefore, are less able than their male colleagues to rely on family structures to provide time for families, and seek time in alternative work structures-part-time or flexible hours. But here they encounter the opposition or ambivalence and possible professional penalties that attend less than full-time practice in many firms. *See: Women Lawyers and Obstacles to Leadership, A Report of MIT Workplace Center Surveys on Comparative Career Decisions and Attrition Rates of Women and Men in Massachusetts Law Firms (Spring 2007)*”

4. Problems with Re-entry. Once women leave for any amount of time for whatever the reason, it is extremely difficult to return to the same firm or at the same level. There has been renewed attention to this specific problem of “off-ramping” and “on-ramping.” The NAWL 2007 Summary Report remarked:

“[T]he marked decrease in the number of women lawyers generally beyond 10 years in practice also suggests there are substantial obstacles to women returning to full-time or part-time practice in their potentially most experienced years.”

5. Retention and “non-advancement”. Retention and non-advancement go hand in hand. The failure to promote women to positions of greater authority and responsibility within their firms will ultimately lead to greater attrition. One respondent to our survey from a medium size law firm (16-50) complained: “I have not advanced past non-equity shareholder and have not been given the guidance and assistance I’ve requested with respect to marketing.”

Since longevity is no guarantee of partnership, partnership is elusive, which works to the disadvantage of associates and more so for women associates. Women suffer from lack of mentoring within the largest of the firms to the extent that it would offer them insight into the

rules of the game where they work. Doing a good job in and of itself is rarely the path to partnership and large bonuses: a valuable lesson women often learn too late.

6. Discrimination in the form of bias. Very few women in our survey offered racial inequality as a reason for part-time status or attrition although statistically, minority women are overwhelmingly underrepresented in the profession. This is a subject of a much larger study conducted by the ABA's Commission on Women in the Profession. [19] Minority women account for 1.65% of law firm partners in the country (1.07% in Philadelphia) and 2.06% of women partners in firms with over 700 attorneys. Minority women account for ten percent of associate positions (7.46% in Philadelphia). These figures vary according to geographic area. [8] Racial discrimination which inhibits an attorney's advancement in the profession cannot be discounted as a reason for mid-career attrition.

7. Compensation Women's compensation remains significantly below that of their male counterparts. According to the 2007 U.S. Census Bureau Report women in the legal profession in all venues of employment earn 51.1% of men, the lowest discrepancy for any of the 26 occupational categories examined. [17, Table 8] For women lawyers in private practice, the compensation differentiation is 77.8%, a statistic echoed by the Bureau of Labor Statistics (77.5% of men in 2007). The NAWL 2008 Summary Report [19] provides greater discouraging details.

On average men "of-counsels" earn approximately \$14,000 more than women; men non-equity partners earn \$23,000 more than women; and men who are equity partners earn \$87,000 more than women who are equity partners. (Average median compensation for male of counsels in all firms is \$220,000 (women \$205,000); Average median compensation for male non-equity partners is \$292,000 (\$269,000 for women); Average median compensation for male equity

partners is \$660,000 (women \$573,000)). As levels of seniority increase, the percentage income gap grows wider.

In Pennsylvania, census bureau statistics indicate that male lawyer median compensation in 2004 was \$98,120/year while for women lawyers the median compensation was \$47,231/year, a difference of 48.1 percent. [14] The frustration of working without comparable pay, or the opportunity to work for comparable pay, can only be a disincentive to continue in the same firm environment.

Given that most law students enter the profession weighed down by student debt, it is no wonder that most seek high paying positions in large firms at the outset. It is likely that many have no intention of pursuing their full careers in these settings. But the disturbing prospect for women of not earning the equivalent of men will also lead them to other places of employment.

8. Rainmaking. Ultimately, the law is a business and the most secure and most well compensated attorneys are those who generate new revenues for the firm by bringing in clients as opposed to those who simply do the work. The difficulties faced by women in marketing and “rainmaking” are legion and the lack of mentoring in this area should not be overlooked.

9. Care for Aging Parents. What became very apparent and frequently mentioned in this survey was the role so many women come to play as daughters and caregivers to elderly parents. Many solo practitioners in our survey chose to go out on their own perhaps at first to have time for young children but then found they had a new role as parent caregiver which proved equally demanding of time. These comments were typical:

- I have been practicing law for 31 years. My 3 children are in college or graduated. But my widowed father recently moved nearby and I am spending increasing amounts of time with him.
- As a solo, I was often available (I mostly can control my hours) to assist my elderly father and mother-in-law with medical appointments and for other matters.

- I could not keep up with billable hours and help aging parents.
- I have an 89 year old mother who needs significant attention.
- I left a firm to care for elderly parents.
- I also had responsibilities with respect to my grandmother for more than a decade and now have concerns as to mother living on the West Coast.

Having control and flexibility at work is not just an issue for mothers, it is an issue that has serious impact on us all.

The “Best” Environment for Women Attorneys

The women who seem the most content with their occupations are those who have the most control over their work and their schedule. Flexibility, control and predictability are the most important qualities that women seek for which most are ready to trade compensation. Typical of comments received in this survey was this from a woman in academia: “I don’t make much money, but have actually had a life.” A chief fiduciary banking officer wrote: “I paid for this decision in both career advancement within firms and salary, but I am satisfied with that choice.” The most dissatisfied, given these criteria were the lawyers in the largest of law firms.

Judges expressed happiness with the predictability of their schedules. A law clerk was pleased with her 9-5 hours. Another in academia commented: “I have a more stable schedule in teaching and more control over my schedule.” Yet another in the federal government commented: “The federal government flex schedules were enormously helpful” to raising children and caring for an elderly parent. One in-house counsel attorney appreciated the opportunity to participate in her children’s school and athletic activities.

Solo practitioners in our survey were among the most satisfied of all respondents. Solos appreciated control over their schedules, their professional independence, absence of imposed

billable hour requirements, flexibility and opportunity to meet commitments to family, children, and elderly parents. Said once solo practitioner, her work environment offers her “freedom in my personal life that I would not trade.”

Women who achieve the elements of flexibility and autonomy are the happiest. As one small law firm attorney stated, she would willingly compromise on compensation: “Financially it has been more difficult than a regular law firm job would have been, but the freedom has been well worth it.”

The Future.

There is evidence that women are not reaching the highest levels of partnership within the largest of law firms and it seems likely that this will not change for quite some time. Given the need to bill over 2000 hours a year, requiring an attorney to put in 60 or more hours/ week, these hours are not conducive to life balance with time for family, friends, client development, professional development, and community involvement. So long as the culture of the law firm rewards such devotion, women (and perhaps men) will frequently choose to go elsewhere. So long as women remain the primary caregivers of children and parents and primary housekeepers, they will have to find other opportunities for employment or it seems forego professional advancement in their firms.

Once a woman lawyer takes time away from the profession she will have great difficulty upon re-entry. One woman respondent who became a solo practitioner after taking time away found it difficult to resume the practice of law as she “no longer had a book of business.” Had she sought employment in a large law firm, she would return in the entry level capacity of associate or of-counsel.

While this is not the place to set forth all of the proposals suggested for helping women “on-ramp” back to their careers or advance in their firms here are a few thoughts some borrowed and some new [15]:

- Offer paid at home projects
- Provide training and career planning
- Assign mentors
- Extend invitations to office meetings, CLE, and events
- Sponsor mothers’ networks
- Assign recruiters to match skills and facilitate re-entry
- Encourage women to remain active in their communities
- Encourage women to work part time and maintain relationships and skills
- Emphasize early the need for “rainmaking”
- Encourage open posting of compensation

The success or health of the profession for women can be measured in other ways. Women’s participation within small firms, as solo practitioners, and in a host of other occupations will grow as women continue to leave the largest of firms. Studies which highlight these opportunities for women and cultivate women’s skills as rainmakers and marketers would be beneficial to the many women. It has been said that the money and power of this profession lies with extra large law firms. Perhaps this is something women lawyers can change. In any event, the meaning of a successful career is being redefined by women for the better for both men and women of the legal profession.

I would hope that this report becomes the catalyst for bringing women back to the practice of law and for renewed discussion on how we structure our law firms so that as lawyers,

men and women, we can pursue the goals that make us proud of our profession: the opportunity to help others, serve our communities, and pursue justice.

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