

Women Trapped Under the Same Glass Ceiling

Compensation Report Highlights Increasing Disparity

By Hannah Hayes

For the fifth year in a row, a survey conducted by the National Association of Women Lawyers (NAWL), based in Chicago, indicates that the relatively low percentage of women equity partners in law firms remains unchanged at about 15 percent. More disturbing, however, is that the data in the October 2010 report, *Report of the Fifth Annual National Survey of the Retention and Promotion of Women in Law Firms* (www.nawl.timberlakepublishing.com), also show the compensation gap between men and women is widening.

This came as no surprise to Joan Williams, cofounder of the Project for Attorney Retention (PAR) and director of the Center for WorkLife Law at the University of California Hastings College of the Law in San Francisco, or to Veta Richardson, executive director of the Minority Corporate Counsel Association (MCCA) in Washington, D.C.

Last year the two partnered with the Commission on Women in the Profession and coauthored a long-awaited report involving surveys of 700 women in medium- to large-size law firms. Published in July 2010, *New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women* revealed that existing compensation systems in law firms were rank with subjectivity, lacked transparency, and left large openings for inherent gender bias, particularly in the way origination credit and succession are handled.

And, shocking to even Williams and Richardson, nearly one-third of the women surveyed reported they had been bullied, threatened, or intim-

idated when it came to the issue of origination credit, a key factor in setting compensation.

“The focus for quite a long time has been on getting a critical mass of women into these leadership positions,” reports Williams, who says she was “taken aback” after reading comments that showed the extent of discrimination and intimidation. “On the other hand, once they get there, they face serious, serious problems even if they do everything right. What we saw were depressingly, tightly documented patterns of gender bias.”

The study was conducted at the urging of Bobbi Liebenberg, Chair of the Commission on Women in the Profession, and Catherine Lambole, former general counsel for Shell Oil Company. “Given the fact that the number of women equity partners has been stuck for years, we felt it was really critical to examine where things were failing, how women were perceived, and how they were treated,” Liebenberg says.

The study highlighted the lack of women and minorities on compensation committees. Further, more than half the women reported being denied their fair share of origination credit. Women are still not given the networking opportunities that lead to landing new clients, and time spent on mentoring and increasing diversity does not add up to billable hours.

“The tendency is to reward originations, revenues generated, hours worked, and all of those individual metrics that measure how much cash flow an individual brings to a firm rather than investments that sustain business in the long term,” Williams explains.

Williams points out that women are often asked to sit on diversity committees, nurture associates, work pro bono, and take on other teamwork assignments that are important to a firm’s long-term health but provide little in the way of concrete financial rewards. This puts them in a double bind because if they refuse, they are perceived as someone who is not a team player.

Because most compensation systems take a short-term view, they award rainmakers and billing hours instead of other roles and responsibilities that have to do with maintaining a firm’s long-term health.

“People tend to work toward what will be more beneficial to them from a compensation perspective,” says Lauren Rikle, executive director of the Bowditch Institute for Women’s Success in Framingham, Massachusetts, and visiting scholar at Boston College’s Center for Work and Family. Rikle’s book *Ending the*

BEST PRACTICES: WORKING TOWARD FAIRNESS AND EQUITY

A fair compensation system should reward the correct combination of factors that keep a firm healthy in the long term. Recommendations for restructuring systems can be found on the Project for Attorney Retention (PAR) website (www.pardc.org). The following should be considered by partners, associates, and general counsel (GC).

In Every Law Firm

Improve transparency. Compensation systems should be clearly explained and formally provided. When the compensation system is changed, this also needs to be clearly explained. Committees should develop written materials, and partners should ask (and expect) to see them.

Measure for success. Establish baseline information on the percentage of revenues/profits generated by and credited to women lawyers and lawyers of color. Regular monitoring and analysis of compensation systems for all groups, including women and people of color, should be required.

Make diversity matter. Many women and minorities claim they are “trotted out” for client pitches to highlight a firm’s diversity but do not receive credit for the work. If a woman or person of color is invited on a client pitch, that lawyer needs to be given part of any origination credit

that results from the pitch—and part of the work. Women and minorities need to be represented on compensation committees.

For Managers and Partners

Reevaluate what is rewarded. Law firms often fail to link compensation to contributions toward a firm’s long-term viability. Committees related to recruitment, associate development, and diversity all help develop a firm’s human capital and should be linked to compensation. If a given type of contribution is not important enough to recognize when compensation is set, perhaps it is not important enough to be required.

Restructure origination and succession. Origination credit should not be inheritable, and teamwork should be rewarded. Credit should be divided among the lawyer who brought in the work, the billing partner, and the partner who manages the client relationship, as well as the partners who actually do the work. Succession should be done on a formal basis and not solely left to the discretion of any one partner.

Address the hidden bias. Eliminating bias is impossible, and everyone has assumptions they need to double-check. Law firms should undergo regular training for performance evaluation to introduce and address the basic patterns of gender stereotyping discussed in the report and elsewhere. Women are often sanctioned for self-advocacy. Written guidelines should delineate what is expected, encouraged, and acceptable in self-advocacy.

For General Counsel

In today’s economic climate especially, clients wield power and shouldn’t be afraid to use it to ensure that lawyers doing the work are treated fairly. “In-house counsel need to understand how influential they are,” says Veta Richardson, executive director of the Minority Corporate Counsel Association. “They need to be proactive to be sure those who are doing the work receive the credit.”

Ask the tough questions. Everyone assumes a client wants to see diversity in the law firms they hire. Ask how deep it goes and whether any women or minorities sit on the compensation committee.

Find out who is getting the credit. Many GCs assume the person doing the work is the one receiving credit. This is not always so. “Women may be the worker bees, but they’re not sharing the financial success with men,” Richardson says. GCs can inquire about origination credit and how it is determined.

Plan for succession. As a client, you should have a say in who will be working with you in the long term. Ask how succession is determined and demand to have a say in who inherits the work in the event someone retires or leaves the firm.

Adapted from New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women, www.pardc.org/Publications/SameGlassCeiling.pdf. For more information on how to affect change, contact the Project for Attorney Retention or the Minority Corporate Counsel Association (MCCA) at mcca.com.

Gauntlet: Removing Barriers to Women’s Success in the Law addresses the institutional impediments to retention and advancement of women in the legal profession. “Nothing in the [PAR] report is surprising because it’s consistent with so much of the research and analysis, but it’s disappointing that the situation remains,” she says.

Another issue where systems failed was succession. Thirty percent of survey responders indicated that lawyers in charge of matters select their successors. “It’s basically white male lawyers giving their clients to their male protégés,” says Liebenberg, pointing out that with so many baby boomers set to retire, changing the way succession is handled is key to women’s progress.

While the study’s findings may seem discouraging, both Williams and Richardson see the report as a wake-up call and an opportunity to turn things around. “The value added is that the

report combines 10 years of studying gender bias with the typical methodology of counting up the numbers of women in various leadership positions or, in this case, compensation,” Williams says. “This explains in a plain way the day-to-day social interactions that create the problem and what has to change in order to solve the problem.”

Richardson says the study has been tremendously well received, noting that she has been asked to speak to dozens of corporate in-house retreats across the country about the findings.

Kathryn Fritz is a managing partner at Fenwick & West LLP in San Francisco and a member of the firm’s compensation committee. Fritz and members of her firm participated in a webinar sponsored by PAR to discuss the various ways gender bias can manifest. “It provoked discussion, and we had an opportunity to talk about the short-term cash perspective versus the long term.

“It’s a process,” Fritz continues, “and reports like this help to reinforce the importance of always assessing and cross-checking what you’re doing.”

“I think you need a commitment from top leadership that this is important,” Liebenberg says. “You want to make sure that women advancing toward equity partnership, equity credit, and named to important committees is not just given lip service,” Liebenberg says.

Rikleem agrees. “It has a lot to do with the type of culture that exists in the firm,” she says. “If a compensation system rewarded a positive team culture and collegiality, then I suspect people would move toward behavior that reflects collegiality and things more closely aligned with what makes a healthy workplace. You would see dramatic changes.” 📌

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