Toward Effective Attorney Evaluations

Second Edition

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In collaboration with members of the ABA Section of Labor and Employment Law
Since its inception in 1987, the American Bar Association Commission on Women in the Profession has focused on promoting women’s full and equal participation in the legal profession. The Commission has conducted studies and written reports on topics such as career paths, the glass ceiling, the experience of women in law school, women lawyers, alternative work schedules, the advancement and retention of women lawyers of color, parental leave policies, and sex-based harassment.

The Commission’s work to date, as well as recent studies conducted by other organizations, demonstrates that advancement opportunities for women lawyers are artificially limited. Women have comprised 40% or more of law school graduates for the past two decades, yet only 17% of law firm partners are women.

Despite the efforts of the Commission, bar associations, consultants, and researchers, gender bias still prevents women from achieving parity with their male counterparts. Although overt gender bias is less common than it once was, social psychology research shows that hidden bias still inhibits women’s progress in the workplace.

Although stereotypes are triggered automatically, the actions individuals take in response to those stereotypes can be controlled. Developing an evaluation system that controls for hidden bias is crucial if legal employers are to retain proportionate numbers of women—a business imperative given that half of law school graduates are women. The first step is to make sure attorneys are on the watch for patterns of stereotyping documented by social psychologists. Chapter II, which reflects a comprehensive review of the psychological literature on stereotyping (much of which was published after the first edition of *Fair Measure* appeared in April 1997), begins the process of raising awareness among attorneys of the various stereotyping patterns that affect performance evaluations.

An objective, job-related evaluation system ensures that development and advancement opportunities for every lawyer are determined by qualifications and merit and not gender. Chapters III and IV outline a step-by-step guide to implementing and conducting performance evaluations that are free from bias and that will lead to higher productivity, lower attrition costs, greater client satisfaction, and increased profits.

While reading this manual and implementing its recommendations, law firms should keep in mind that the performance evaluation process is only one component of the employment relationship. Although the specific focus of this manual is the performance evaluation process, law firms should not lose sight of the fact that, to truly have an impact on the retention and advancement of women.
women lawyers, firms must consider the bigger picture—the entire employment relationship from hire to termination. One phase of the employment relationship drives the next. The backbone of a bias-free evaluation process is objective, job-related, and detailed performance criteria or competencies. Competencies (and hiring criteria) flow directly from the firm’s job descriptions. In turn, the competencies drive promotion, compensation, and termination decisions. Because of the interlocking steps in the employment relationship, correcting bias in the evaluation process necessitates correcting gender bias in all components of the employment process.

For ease of implementation, many of the recommendations contained in this manual are condensed into checklists, sample forms, and summaries in the Appendices. Additionally, included in this manual is a packet of materials, “Instructions for Supervising Attorneys for Completing Performance Evaluations,” which can be distributed to supervising attorneys at the outset of the evaluation period as a reminder of the firm’s expectations with respect to their role in the evaluation process and best practices for conducting evaluations. A separate packet, “Performance Evaluation Training Materials for Supervising Attorneys,” is attached to assist firms in educating supervising attorneys about the components of the evaluation process, pitfalls to watch out for, their role in the process, and the firm’s expectations and standards.

The Commission on Women chose to focus on the evaluation process because performance scores have a direct impact on the advancement and retention of women in law firms. However, much of the information and recommendations contained in this manual can and should be applied to other decision-making processes in the employment relationship.

This manual focuses on evaluation processes in law firms because most of the research regarding the advancement of women in the legal profession focuses on the law firm environment. However, the issues of bias and barriers to women’s success discussed here permeate other legal workplaces, including the public sector and corporate counsel offices. Much of the information presented here, including common patterns of gender bias, writing an evaluation, common evaluation errors, and conducting an evaluation meeting, apply across the board to all legal workplaces.