THE LEGAL PROFESSION IN 2010: MORE DIVERSE THAN EVER OR EXPERIENCING DIVERSITY FATIGUE?

Diversity Forum
Special Events Program

Moderator:
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Panelists:
Linda Bray Chanow, D’Arcy Kemnitz,
Hon. J. Dale Wainwright, Gaines West

Thursday, June 10, 2010
9:50 a.m. – 10:35 a.m. and
10:45 a.m. – 12:00 p.m.
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Areas of Practice: Public Finance, Business Transactions, Employment, and Commercial and General Civil Litigation

Biography

Lisa was admitted to the State Bar of Texas in 1995 after receiving her Bachelor of Arts Degree from Smith College, Northampton, Massachusetts, in 1991 and her Juris Doctorate Degree from Santa Clara University School of Law in 1994.

Lisa's legal experience includes serving as a Bexar County Assistant Criminal District Attorney and as an attorney for Escamilla & Poneck, Inc. prior to joining the Firm. She manages the San Antonio Office, a nice compliment to our Dallas-based Firm, further enabling West & Associates, L.L.P. to serve our clients in the more southern region of the state.

Her practice areas over the years has consisted of corporate formation and operation, criminal law, general civil litigation, labor and employment, public finance, and school law. Today, Lisa's primary focus areas are corporate operations, public finance and school law concentrating heavily on the financing and development of municipal and quasi-municipal corporations as Bond Counsel and Underwriters' Counsel.

Lisa is admitted to practice law before all courts of the state of Texas, the United States District Court of the Western District, and the United States Court of Appeals for the Fifth Circuit. She is a member of the American Bar Association, National Bar Association, National Association of Bond Lawyers, Federal Bar Association, San Antonio Bar Association, San Antonio Black Lawyers Association and the Bexar County Women’s Bar Association.

Lisa is an active participant in her church and her community serving on the Greater San Antonio YMCA Board of Directors and as leader among her classmates of Leadership San Antonio. Lisa is very active in the legal community serving on a number of organizational boards to include the State Bar of Texas Board of Directors, The Fellows of the American Bar Foundation and the Texas Bar Foundation Fellows. Lisa recently served as a Commissioner on the San Antonio Housing Authority Board of Commissioners.
Linda Bray Chanow is the Executive Director of the Center for Women in Law at the University of Texas School of Law. A frequent author and speaker, Linda has worked to advance women lawyers and promote greater workplace flexibility in law firms since 1997. Prior to joining the Center for Women in Law, Linda served as the Assistant Director of the Project for Attorney Retention an initiative of The Center for WorkLife Law of the University of California Hastings College of the Law. At PAR, Linda conducted research, assessed law firm programs and policies on flexible work schedules, and provided implementation guidance. Linda was also the head of the Women’s Career Development practice at Shannon & Manch, L.L.P. Linda began her legal career as a commercial litigator and bankruptcy lawyer at WilmerHale. Linda graduated from American University’s Washington College of Law in 1999. While in law school, Linda focused on employment law and worked with Distinguished Professor of Law Joan Williams on the development of Professor Williams’ book, UnBending Gender. Linda serves as a liaison to the ABA Commission on Women in the Profession and as a member of the Women’s Bar Association of the District of Columbia Initiative on Advancement and Retention of Women Task Force. Her recent publications include: Reduced Hours, Full Success: Part-Time Partners in U.S. Law Firms (2009); Actions for Advancing Women Into Law Firm Leadership: Report of the National Association of Women Lawyers National Leadership Summit (2008); and Creating Pathways to Success: Advancing and Retaining Women in Today’s Law Firms (2006) (chaired Reporters’ Committee).
D'Arcy Kemnitz has more than 20 years experience working in the nonprofit arena and the social justice movement. In her present position as Executive Director of the LGBT Bar, she organizes the only national, annual lesbian, gay, bisexual and transgender (LGBT) law student Career Fair and Continuing Legal Education Conference. The National Association for Law Placement presented the Career Fair with its prestigious 2008 Award of Distinction for Diversity. Additionally, Ms. Kemnitz orchestrates collaboration between over 25 affiliated local, state and regional voluntary LGBT bar associations and dozens of LGBT law student associations. The LGBT Bar features eight formal LGBT diversity liaisons to various entities within the American Bar Association, including a position in the House of Delegates. Ms. Kemnitz has spoken at numerous law schools and bar associations across the country and has published in the University of Baltimore Journal of Environmental Law, MCCA’s Diversity & the Bar Magazine, various ABA publications and, most recently, the GP/Solo Magazine on LGBT issues. She has appeared in the media presenting issues of LGBT diversity in the profession at ABC News, The Advocate Magazine, and Time Magazine, among others. Before leading the NLGLA, Ms. Kemnitz was the Executive Director of the Wildlife Advocacy Project and a staff attorney at the Center for Food Safety. Ms. Kemnitz is a distinguished graduate of the University of Wisconsin and the Hamline University School of Law.
Justice Dale Wainwright was elected to the Supreme Court of Texas on November 5, 2002, and re-elected in 2008. He previously served as presiding judge of the 334th Civil District Court in Harris County.

Justice Wainwright was appointed to the civil district court in 1999 by then-Gov. George W. Bush. Lawyers in the Houston Bar Association gave Judge Wainwright a 90 percent approval rating in the judicial-evaluation poll, with almost two-thirds rating him "outstanding." He resolved over 3,000 cases and reduced his docket by approximately 20 percent. He was responsible for supervising the ancillary docket and scheduling trials of mass tort cases for the 25 civil district courts in Harris County. In 2001, Gov. Rick Perry appointed Wainwright to a temporary commission to serve as justice on the Supreme Court for a case from which a sitting justice recused.

From 2004 through 2008 Justice Wainwright served as the Supreme Court’s liaison to the State Bar of Texas to oversee the 85,000-member organization. State Bar Resolution Honoring Justice Wainwright’s Service as Liaison [PDF].

Before his appointment to the bench, Justice Wainwright practiced in the trial sections of the firms of Haynes and Boone and Andrews & Kurth in Houston. He earned his law degree from the University of Chicago Law School, studied at the London School of Economics and earned his undergraduate degree from Howard University, summa cum laude, and was valedictorian of his high school graduating class. He served on the Visiting Committees of the University of Chicago Law School and South Texas College of Law. Justice Wainwright is a member of the American Law Institute.

Justice Wainwright has a long history of leadership and public service, having co-founded the Aspiring Youth Program, a national program to assist inner-city youth; served on the board of directors of the Houston Bar Association, the Houston Volunteer Lawyers Program and the Texas Young Lawyers Association; and served as president of the Houston Young Lawyers Association. He received the Legal Excellence Award in 2000 from the NAACP and was recognized for outstanding legal service by the Houston Lawyers Association. In 1995, Chief Justice Tom Phillips appointed him to a task force of the Texas Commission on Judicial Efficiency. He has also volunteered at the YMCA and coached Little League baseball. He and his wife, Debbie, have three sons – Jeremy, Phillip and Joshua – and are members of the Second Baptist Church.

His term ends December 31, 2014.
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EDUCATION
Baylor University – J.D. 1973, Order of the Barristers
Baylor University – B.B.A. 1968

LEGAL EXPERIENCE
1982 – present West, Webb, Allbritton & Gentry, P.C., Shareholder,
General Civil Litigation Practice and Higher Education Law
1978-1982 Texas A&M University, Student Legal Advisor, Staff
Attorney, Associate General Counsel
1976-1978 Private Civil Practice, Sherman, Texas, General Civil and
Criminal Practice
1975-1976 Texas Health Facilities Commission, Hearings Officer,
Administrative Law Judge
1973-1975 Texas Secretary of State Elections Division, Staff Attorney
assisting election officials across Texas

STATE BAR OF TEXAS
Member, Disciplinary Review Committee, 1991-1992
Member, Disciplinary Rules of Professional Conduct Committee, 1993-1996
President, Texas Indian Bar Association, 1994-1995
Chairman, Administrative and Public Law Section, 1997-1998
Vice Chairman, American Indian Law Section, 2002-2003; 2007-
Chairman, American Indian Law Section, 2001-2002; 2003-2004; 2005-2006;
2009-2010
Member, Board of Disciplinary Appeals, 1992-1996; 1997-2003
Vice Chairman, Board of Disciplinary Appeals, 1994-1996; 1998; 2000
Chairman, Board of Disciplinary Appeals, 2001-2003
Member, Grievance Oversight Committee, 2004-2010
Chair, Grievance Oversight Committee, 2007-2010
Vice Chair, Council of Chairs, 2005-2006

OTHER PROFESSIONAL APPOINTMENTS AND ACHIEVEMENTS
Licensed Real Estate Broker, 1981-present
Private Panel Chapter 7 Trustee, Western District of Texas, 1996-1999

CIVIC ACTIVITIES

Deacon, First Baptist Church of Bryan  
Board of Directors, Camp Tejas, Christian Camp, Giddings, Texas  
Co-Director, Mack Kidd Administrative Law Moot Court Competition  
Treasurer, Oakwood Neighborhood Association, College Station, Texas

ADMITTED TO PRACTICE

State Bar of Texas 1973  
United States District Court  
Northern, Southern, Eastern and Western Districts of Texas  
United States Court of Appeals for the Fifth Circuit  
Supreme Court of the United States

MEMBERSHIPS

Fellow, Texas Bar Foundation  
Brazos County Bar Association  
State Bar of Texas  
Christian Legal Society
LGBT DIVERSITY “BEST PRACTICES”

A. Employment Policies and Benefits

1. Including sexual orientation and/or gender expression in the firm’s non-discrimination policy.

   • A non-discrimination policy specifically setting out protected characteristics is preferable to a more general “we comply with all applicable laws” statement.

   • The term “sexual preference” is considered offensive to some and should not be used.

2. Offering same-sex domestic partners the same benefits as married individuals, including health insurance.

   • Rather than requiring complicated and intrusive affidavits to establish the validity of a same-sex relationship for the purpose of providing benefits, it is preferable to accept a valid governmental recognition of a domestic partnership as an alternative. The City of New York and the State of New Jersey both offer same-sex couples the opportunity to register officially as domestic partners, and such registration should be accepted as conclusive proof of eligibility for domestic partnership benefits.

3. Maintaining a gender-neutral parental leave policy that specifically covers adoption.

   • Certain parental leave policies differentiate between the amount of time available for maternity leave versus the amount of time available for paternity leave. In some firms, the disparity may be significant (e.g., a three month paid maternity leave versus a two week paid paternity leave). These policies are at best confusing for same-sex couples planning the birth or adoption of a child, and are at worst inequitable.

B. Creating a Comfortable Work Environment

1. Encouraging the development of peer groups or mentoring groups for self-identified LGBT lawyers, and ensuring that incoming attorneys are aware of the groups. These
groups are especially important in firms where other minority groups (e.g., African American and Latino/a attorneys) have established peer / mentoring programs.

2. Taking concrete steps to increase the total number of self-identified LGBT attorneys employed at the firm.
   - One way to accomplish this is to re-circulate on an annual basis an invitation to all attorneys to self-identify as a member of a minority group for purposes of the firm’s NALP reporting.

3. Making personnel directory entries for attorneys’ spouses more general, such as “Spouse / Significant Other.”
   - Note that if this information is used to prepare invitations to firm functions, same-sex significant others should be given parity with spouses. That is, if invitations to an annual dinner are mailed to “Mr. & Mrs. Attorney X,” they should also be mailed to “Mr. Attorney Y and Mr. Significant Other Z.”

4. Including LGBT-related organizations in its charitable and community service work.
   - This may include financial contributions to LGBT organizations, pro bono representation of LGBT clients and participation in LGBT law conferences and community events.

C. Recruiting a Diverse Group of Attorneys

1. Using self-identified LGBT attorneys to conduct legal employment interviews and ensuring that potential LGBT candidates have the opportunity to meet with self-identified LGBT lawyers if they so desire.

2. Regularly communicating with LGBT student organizations at law schools and hosting recruiting events in conjunction with those organizations where student have an opportunity to meet with the firm’s LGBT attorneys.
DIVERSITY AND FLEXIBILITY CONNECTION
BEST PRACTICES

THE PROJECT for ATTORNEY RETENTION

OCTOBER 29, 2009

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DIVERSITY AND FLEXIBILITY CONNECTION

BEST PRACTICES

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BEST PRACTICES

The Diversity and Flexibility Connection of the Project for Attorney Retention (PAR) consists of 12 general counsel of major U.S. companies, and 12 chairs of PAR member law firms. The general counsel were chosen because of their history of demonstrated commitment to issues of diversity. The law firms were chosen based on objective metrics designed to identify firms that have made the most progress towards flexibility without stigma, i.e., workplace flexibility programs that do not derail the careers of lawyers who use them.

The Connection was designed to facilitate a conversation about how in-house and outside counsel could work together more effectively to support balanced hours programs,¹ with the ultimate goal of making the legal profession more inclusive. The Connection seeks to tear down the wall between diversity and work/life initiatives in order to address the complex issue of attorney retention more holistically. Sustained long hours affect all lawyers, regardless of gender, race, or age. When combined with the advancement hurdles women and minority lawyers often face, the high hours can be the final straw leading to departure when no viable alternatives exist. The Connection’s goal is to bring balanced hours into diversity initiatives, thereby accelerating the elimination of structural and cultural biases that create advantages and disadvantages for certain lawyers.

The Meetings

PAR convened two day-long, in-person meetings of Connection participants at the Chicago office of Schiff Hardin on March 27, 2009 and July 1, 2009. General counsel and law firm chairs engaged in a frank, moderated discussion about their shared goals and how each can support the other in making progress toward those goals. Topics included the reasons diversity and flexibility are good for business, why diversity programs need to include an effective work/life component, client service on a reduced-hours schedule, how to implement nonstigmatized flexible work programs in house, how clients can support law firms’ flexible work programs, and whether everyone’s interests are better served if clients are aware that their outside counsel is working reduced hours.²

The sense of the group was that widespread agreement on basic principles needs to be accompanied by an initiative to identify, and commit to, best practices and pilot programs that change everyday incentives in ways that produce sustained organizational change. These are set forth below. As another outgrowth of the Connection, PAR has created the Flex Success Award. The award will be given to one or more law firm partners who have been highly successful working a reduced-hours schedule, along with a client who has been instrumental in developing that attorney’s career. The inaugural recipient of PAR’s Flex Success Award will be announced at PAR’s Connection conference on October 29, 2009 in Washington, DC.
The Connection between Diversity and Flexibility

PAR presented information about the connection between diversity and flexibility. Although discussions about these issues traditionally have occurred apart, in fact, achieving diversity is inextricably linked to an effective flexibility program that includes reduced-hours schedules.

**Why Flexibility Matters to Clients.** In normal economic times, attrition rates in large law firms are 20%—more than double those in most industries. Clients find high attrition disruptive and expensive, and continue to insist that law firms bring attrition levels under greater control. The Association of Corporate Counsel’s (ACC) Value Challenge summarizes clients’ concern over uncontrolled attrition.

The ACC Value Challenge includes the business case for nonstigmatized part-time programs. PAR’s research on the business case over the past decade shows the following: it makes little business sense for legal employers to pay large sums to hire and train women, only to lose one after another due to insufficient flexibility in work schedules and commitments. High turnover is an inevitable—and expensive—consequence of a rigid and outdated model. For a full exploration of the business case for workplace flexibility, see PAR’s *The Business Case for a Balanced Hours Program for Attorneys,* and the Association of Corporate Counsel’s *Value Challenge.*

A major cause of attrition is the requirement for sustained high billable hours, with reduced hours programs that are unworkable, stigmatized, or both. PAR’s research shows that many male as well as female attorneys want to work fewer hours, and many associates say they would prefer to sacrifice money for time. Yet many are reluctant to reduce their hours if doing so is stigmatized and stalls upward career progression.

**Why Flexibility Matters to Women.** The lack of a meaningful alternative to long hours has a particularly damaging effect on female lawyers. Law firms hire and train women lawyers, only to lose them as they find it unnecessarily difficult to combine long hours and motherhood. Given that 82% of American women have children, and that 95% of mothers aged 25-44 work fewer than 50 hours a week, it is highly improbable that law firms will have a sufficient pool of women eligible for partnership until this scheduling tension is effectively addressed.

Long hours also have negative effects on women lawyers without children, who may work the longest hours of any group of lawyers. Lawyers, particularly women without children, tell researchers that their schedules make it difficult for them to find life partners. In addition, long hours requirements put them at a disadvantage in competing with male associates, many of whom have stay-at-home wives. Said one woman of color: “The male associates all had stay-at-home wives who took care of all the everyday things. So even if they didn’t have children, their dry cleaning was picked up, their dinner was cooked, their house was cleaned. And women have to do all that stuff on top of their work.”

This background helps to explain why the proportion of women law firm partners has stalled: in the last decade it has risen from 14% to only 18% despite the fact that more than 40% of new associates entering firms have been female since at least 1991.

**Why Flexibility Matters to Diverse Attorneys.** While extensive research exists on the link between flexibility and retaining women, less research exists on the link between flexibility and racial and ethnic diversity. Programs that address attorneys’ need for work-life balance are important for attorneys of color, given that a disproportionate number are women. Women attorneys of color clearly have difficulty meeting billable hours requirements—nearly half reported they did not—although the role of work/life balance as opposed to other factors remains unclear.
Research is emerging that suggests that the conventional wisdom that attorneys of color do not work part-time is exaggerated. When PAR and the Minority Corporate Counsel Association sent an outreach requesting to speak with attorneys of color about work/life balance, one in four respondents interviewed said that they worked part-time.\(^\text{19}\)

In addition, some respondents who worked full-time hours stated that, although they would like to reduce their hours, the stigma associated with part-time at their firms made that unrealistic, when combined with challenges faced by all attorneys of color.\(^\text{20}\) Moreover, 70% of women of color attorneys are the sole or primary breadwinners in their households.\(^\text{21}\) This means that finding a job that offers an extremely flexible full-time schedule, or one in which full time is defined as shorter hours, may well be more attractive options than staying at a firm and working part time—particularly where part time is stigmatized.

Minority female lawyers have the highest attrition rate of any group of lawyers, and lack of work/life balance plays a role. To quote the ABA Commission on Women’s path-breaking report on women of color in the legal profession, Visible Invisibility, “Many women of color left firms to work in settings (especially corporations) that were lucrative, where they thought others’ decisions about their careers would be less idiosyncratic, based more on merit, and where they had more flexibility to balance personal life, family, and work.”\(^\text{22}\)

Attorneys of color who need to care for ill spouses or elderly parents also are negatively affected by long workweeks. A 2001 survey by AARP found that Asians were most likely to be caring for an elder relative (42 percent), whites were least likely (19 percent), and other groups fell somewhere in between (Latinos at 34 percent and African Americans at 28 percent).\(^\text{23}\)

The bottom line is that failing to address the issue of sustained high billable hour requirements makes it more difficult for law firms to retain women of color. Unfortunately, no studies have explored the impacts of long hours on men of color.
ISSUES AND SOLUTIONS: CONNECTION BEST PRACTICES AND PILOT PROGRAMS

1. Nonstigmatized Flexible Work

Background: When PAR was founded a decade ago, “part-time” at law firms typically meant that lawyers faced the “haircut” (e.g., 60% of a full-time salary for 80% of full-time hours), were taken off partnership track, and encountered uncontrolled “schedule creep” (where a part-time schedule creeps back up towards full time). Due to the work of PAR and others, today many firms have moved away from old-fashioned “part time” towards best-practice balanced hours programs that differ in significant ways.24

Participants in the Connection have adopted many of PAR’s best practices recommendations from its Model Balanced Hours Policy (available at www.attorneyretention.org). PAR’s recommendations recognize that, for reduced hours programs to be effective, they have to allow for professional advancement and provide checks on schedule creep. As indicated in the best practice below, careful implementation and monitoring to prevent stigma are key.

Best Practice: The law firm members of the Connection pledge to adopt the core components of a balanced-hours policy. These are:

1. A written policy that provides for proportional pay (e.g., 80% pay for 80% hours), proportional bonuses, and full or proportional benefits.
2. A promotion track that is at least proportional (e.g., someone who works an 80% schedule for four or five years would take a year longer to become eligible for partnership) and a proven track record of promoting part-time attorneys to partner.
3. Consistent communication within the firm that flexibility is available to anyone who can make the case for a flexible arrangement that will enable delivery of timely and effective client service—and that such lawyers can be successful at the firm.
4. A detailed business case developed and disseminated through the firm to document that flexibility without stigma is a business-based program that helps the firm attract and retain talent and better serve clients.
5. A mechanism to ensure that balanced-hours lawyers have a proportional share of challenging work and access to business development opportunities.
6. A coordinator who provides an initial point of contact for attorneys who are considering a flexible schedule, coaches lawyers working balanced hours, monitors and controls for schedule creep, and acts as an ombudsman who seeks a long-term resolution in cases of persistent schedule creep.
7. Mechanisms to track, and hold accountable, if appropriate, practice group leaders and other partners for a persistent pattern of regretted losses among diverse attorneys, including those on balanced hours.
8. Mechanisms to destigmatize parental leave for fathers.
**2. Referring Work to Balanced Hours Attorneys**

*Background.* Client support of flexible work arrangements, particularly reduced hours work, is critical to the success of balanced hours programs. Participants discussed a variety of ways in which clients can support law firms’ efforts. One is to communicate support for flexible schedules directly to leaders in the firm: clients can have a tremendous impact by saying to a law firm relationship partner and Chair/Managing Partner “this (diverse or flex) attorney did great work—the kind that keeps me coming back to this firm.”

Participants concluded that that the single most effective thing clients can do to support flexibility is to refer work to balanced-hours attorneys.

**Best Practice:** *Pilot program to refer work to attorneys who are working reduced hours.* As a further demonstration of their commitment to diversity and flexibility, some members of the Connection have agreed to participate in a one-year pilot. Each participating law firm Connection chair will recommend several balanced-hour attorneys; each participating Connection general counsel will refer suitable work to two attorneys on flexible schedules to the extent possible, consistent with business needs and preferred provider programs. Connection members participating in the pilot, after one year, will work together to publicize success stories, both within individual firms and to the world at large—or will work to improve the pilot.

**3. Clients Need to Signal Support for Flexible Work**

*Background:* The importance of diversity to companies and to the legal profession is well-known; Connection general counsel stressed the importance of flexible work as a means to ensure continuity of service and to aid in increasing law firm diversity. Connection members stressed law departments can have a big influence on their outside counsel by signaling and communicating that flexibility without penalty is important to them.

**Best Practices:** *In-house members of the Connection will clearly signal their support for work-life balance for outside counsel.*

1. *Signaling support in written communications.* Connection general counsel will add to their RFPs, engagement letters, and/or outside counsel guidelines, language that signals that they seek to work with qualified reduced-hours attorneys and will seek, wherever possible, to support attorneys’ need for work-life balance.

2. *Signaling support in day-to-day interactions.* In face-to-face communications, Connection members will consistently communicate that they expect law firms to offer flexibility without penalty as part of their commitment to diversity. In day-to-day interactions, Connection members will consistently communicate: a) their willingness to respect outside counsel’s need for work-life balance whenever possible, b) that “being available” means that a lawyer is available when the client needs him or her—not that the lawyer guarantees 24-7 availability, and c) that outside counsel should feel free to suggest a teleconference instead of in-person meetings, both to control costs and to aid work-life balance.
4. Ensuring that Cost Controls do not Compromise Flexibility

*Background:* Clients often attempt to control costs by suggesting that law firms use only a specific number of attorneys on a given matter, *e.g.*, one partner and one associate. This widespread practice can limit law firms’ ability to offer high-quality assignments to reduced-hours attorneys.

*Best Practice:* Connection law departments will avoid approaches to controlling costs that undercut law firms’ ability to offer flexibility without penalty. Connection law departments will be thoughtful about using head count as a cost control lever. Alternative ways to control costs include setting a budget, using blended average hourly rates, asking a law firm how it intends to staff a project, or setting personnel limits by FTEs (full-time equivalents) rather than the number of attorneys (head count).

5. Effective Implementation In-House

*Background:* In most law departments, many lawyers interact with outside counsel on a daily basis and have the ability to affect outside counsel’s schedules. For this reason, *all* the lawyers in law departments need to be aware of the general counsel’s commitment to diversity and flexibility to ensure effective and consistent support for outside counsel seeking work/life balance consistent with client needs.

*Best Practice:* Connection law departments will take steps to implement their commitment to diversity and flexibility, including:

1. *Leadership from the top.* Connection general counsel will clearly state their expectation that all lawyers in their departments will support outside counsel’s need for work-life balance, consistent with business needs. Such statements are particularly effective at meetings where both in-house and outside counsel are present, *e.g.*, a department’s annual meeting for outside counsel.

2. *Training and communication in house.* In view of their departments’ need to control costs and their commitment to diversity and flexibility:
   - Connection general counsel will include, in law department trainings and communication, information explaining why support of flexible schedules and work-life balance for outside counsel is important to control costs, to ensure continuity of outside counsel, and to support diversity. The information should include suggestions for how outside counsel’s schedules can be supported.
   - Connection general counsel will communicate to their departments that, absent a concrete deadline or specific business need, it is inappropriate for in-house lawyers to wait to give outside counsel an assignment at the last minute, *e.g.*, at 5 p.m. on Friday.
6. Better Business Communications

**Background:** Connection participants spent considerable time discussing the need for better business communications.

**Best Practices:** Both inside and outside counsel need to implement a series of steps to improve business communication.

1. Connection general counsel will institute a policy that assignments to outside counsel should be accompanied by a specific deadline to prevent law firms from treating all assignments as needing immediate turnaround.

2. If an in-house lawyer does not specify a deadline, outside counsel will ask when the deadline is, instead of assuming it is needed as soon as possible. Outside counsel’s request for clarification will be viewed as a component of excellent service.

3. Many of the deadlines communicated by in-house lawyers stem from pressures from their in-house clients and supervisors. Connection general counsel will encourage in-house lawyers’ clients and supervisors, to set real deadlines.

4. Connection general counsel want to support flexible schedules—but cannot do so if they do not know about them. They therefore encourage outside counsel to be open about their schedules—they consider this part of effective business communication. That said, they respect the privacy right of every attorney to decide if and when to discuss this matter with clients.

5. Connection general counsel will set up channels of communication to enable outside counsel to provide feedback about whether lawyers in their departments are supporting flexibility and work-life balance, consistent with business needs. Promising approaches include:
   - An annual meeting between the general counsel or designee and the managing or relationship partner, at which the general counsel asks whether the department has met its goals of supporting diversity and flexibility.
   - For legal departments that conduct periodic surveys of law firms, questions about whether their departments have met the goal of supporting diversity and flexibility will be included.

6. Connection general counsel who track whether outside counsel is assigning matters to diverse attorneys will also track whether matters are being assigned to flex- and part-time attorneys.
7. Walking the Talk

_Beckground:_ Concern was expressed at the meetings about a perceived disconnect between words and action, such that law firms hear clients say that they are committed to diversity but do not necessarily see clients awarding or withdrawing work as a result of specific law firms’ progress or lack of progress toward diversity goals. A key sticking point is that general counsel who cease to work with a law firm because of its failure to make progress on diversity typically remain discreet about their decision out of professional courtesy for the firm involved. Another source of confusion arises when law firms that feel they have made significant progress on diversity are not awarded work they believe they are eminently qualified to do. In response to this concern, general counsel pointed out that often the firm in question is being measured against other firms that also have made progress on diversity and also are well qualified. Thus when a law firm is not awarded work, it should not conclude that its diversity efforts have gone un-noticed: it may well not have been in the pool of finalists were it not for its diversity efforts. All in all, general counsel pointed out that progress on diversity does not guarantee that any particular firm will be awarded any particular piece of work, but that lack of progress on diversity does have consequences, even if the general counsel chooses, out of respect and the desire to preserve business relationships, to remain discreet.

_Best Practice:_ Connection general counsel commit to having a direct conversation with the Chair, Managing Partner or relationship partner of a law firm when they decide to move work away from the firm due to lack of progress in retaining talented, diverse attorneys through flexible work arrangements and meaningful career paths—and to tell a firm when its progress toward diversity and flexibility goals tips the balance in its favor.
CONCLUSION

PAR would like to thank members for their thoughtful, candid, and committed participation in the Connection. Now, it is time to widen the circle. The initial members of the Connection were chosen based on their ability to aid in the development of best practices. Connection members now seek to widen the circle to include additional general counsel and law firm leaders interested in joining with the Connection founders to commit to best practices to achieve diversity and flexibility. If you are interested in learning more about the Connection, please contact PAR at www.attorneyretention.org.
As of the date of this report, the following members of PAR's Diversity and Flexibility Connection endorse and will take steps to implement the foregoing best practices.

Catherine A. Lamboley,
Senior Vice President, General Counsel & Corporate Secretary (retired), Shell Oil Company

Jeffrey J. Gearhart,
Executive Vice President and General Counsel, Wal-Mart Stores, Inc.

Michele Coleman Mayes,
Senior Vice President & General Counsel, Allstate Insurance Company

Teri Plummer McClure,
Senior Vice President of Legal Compliance and Public Affairs, General Counsel & Secretary, United Parcel Service

Roderick A. Palmore,
Executive Vice President, General Counsel & Secretary, General Mills Inc.

James Potter,
Senior Vice President, General Counsel & Secretary, Del Monte Foods Company

Thomas L. Sager,
Senior Vice President & General Counsel, DuPont Company

Douglas G. Scrivner,
General Counsel, Secretary & Compliance Officer, Accenture

Laura Stein,
Senior Vice President & General Counsel, The Clorox Company

Danette Wineberg,
Vice President, General Counsel & Secretary, The Timberland Company

Thomas Milch,
Chair, Arnold & Porter LLP

Kent Gardiner,
Chairman, Crowell & Moring, LLP

Michael Nannes,
Chairman/Firmwide Managing Partner, Dickstein Shapiro LLP

Lee Miller,
Joint Chief Executive Officer, DLA Piper

Steven Lowenthal,
Chairman, Farella Braun + Martel LLP

Gordon Davidson,
Chairman, Fenwick & West LLP

Steven B. Pfeiffer,
Chair, Fulbright & Jaworski LLP

Patrick Duncan,
Chairman & Managing Director, Gibbons P.C.

Keith Wetmore,
Chair, Morrison & Foerster LLP

Robert Riley,
Chairman, Schiff Hardin LLP

Thomas Cole,
Chair of the Executive Committee, Sidley Austin LLP

Elliott Portnoy,
Chairman, Sonnenschein Nath & Rosenthal LLP
ENDNOTES

1. “Balanced hours” programs, unlike traditional part-time programs, allow attorneys to work individually-tailored, reduced schedules that are designed to meet the firm’s business needs while maintaining the attorney’s ability to work and to develop professionally without stigma. Balanced hours programs involve active management of workloads in proportion to reduced hours, emphasize client service, and promote the values of the firm.

2. Participants were asked not to discuss fees or alternative billing arrangements, and those topics came up only tangentially.


8. Id.


13. Janet E. Gans Epner, Visible Invisibility: Women of Color in Law Firms (ABA Commission on Women in the Profession, 2006), at 34 (“I am single and I have to do everything for myself. I work primarily with white men who are married. They view my marital status as a benefit; it allows me to work without feeling bad about neglecting anyone. What they don’t understand is that I don’t have the opportunity to form close relationships, and that’s hard.”)

14. Id. at 33.
Creating a Model Work for Environment Lesbian, Gay Bisexual and Transgender Individuals
This brochure was funded entirely by voluntary contributions. No mandatory dues paid to the State Bar were used to publish this brochure.

For additional copies of this brochure: Call 415-538-2328 or e-mail at programdevelopment@calbar.ca.gov
Creating a Model Work Environment for Lesbian, Gay, Bisexual and Transgender Individuals

This brochure is designed to provide model practices for legal employers to follow in promoting a nondiscriminatory workplace for employees who are lesbian, gay, bisexual and/or transgender (“LGBT”). The brochure has three components:

1) an introductory section of basic definitions;
2) a set of specific recommendations regarding employment policies and procedures, benefits and training; and outreach, hiring and retention; and
3) model practices or policies currently used by some employers in California.
Definitions

Substantial portions of these definitions are taken from publications of the Transgender Law Center.

**LGBT** is an umbrella term that stands for lesbian, gay, bisexual and transgender.

**Sexual Orientation** refers to a person’s emotional and sexual attraction to other people based on the gender of the other person. A person may identify his or her sexual orientation as heterosexual, lesbian, gay, bisexual or queer. It is important to understand that sexual orientation and gender identity are two different things. Not all transgender people identify as gay, lesbian, bisexual or queer. And not all gay, lesbian, bisexual and queer persons display gender non-conforming characteristics.

**Gender Identity** refers to a person’s internal, deeply felt sense of being either male, female, something other or in between.

**Gender Expression** refers to an individual’s characteristics and behaviors such as appearance, dress, manners, speech patterns and social interactions that are perceived as masculine, feminine or androgynous.

**Gender Non-Conforming** refers to someone who has or is perceived to have gender characteristics and/or behaviors that do not conform to traditional or societal expectations.
Transgender is an umbrella term that can be used to describe people whose gender expression is non-conforming and/or whose gender identity is different from their birth-assigned gender. “Trans” is often used when speaking, as an abbreviated version of “transgender.”

Transition in the transgender context often consists of a change in style of dress, selection of a new name and a request that people use the correct pronoun when referring to a transgender person. Transition may, but does not always, include necessary medical care like hormone therapy, counseling and/or surgery.

Coming out of the closet describes the voluntary public announcement of sexual orientation. Being “out” means not concealing one’s sexual orientation. Being “out” can sometimes look different for transgender employees as some will choose not to be open about the fact that they are transgender. However, this does not mean the employee is concealing his or her gender identity. For instance, someone who has transitioned from male-to-female is very “out” about being a woman; she just may not be comfortable being “out” as a transgender woman.
What should be an organization's first steps toward creating a model work environment for LGBT individuals?

- If not already present, add “sexual orientation” and “gender identity” to your organization's non-discrimination policy.

> Model Language: “This organization is committed to promoting diversity and does not discriminate based upon race, color, religion, sex, gender identity, sexual orientation, national origin, marital status, age, political affiliation or disability.”

- Prohibit derogatory statements or actions directed against LGBT individuals and communities, and quickly admonish those who make such statements.

- Do not discriminate against LGBT clients in the provision of services or agree to the discriminatory demands of clients.

- Do not wait for LGBT individuals to make a formal complaint before acting against discrimination, derogatory statements or actions.
How does an organization show its commitment to promoting LGBT equality in the workplace?

- Create and adopt policies that clearly state the organization’s commitment to promote diversity, end discrimination and prevent violence and harassment of any kind on the basis of sexual orientation or gender identity.

- On an annual basis, ensure that all policies and procedures, including those regarding complaints/grievances, are updated to include sexual orientation and gender identity when appropriate and ensure that the updated policies and procedures are distributed to all employees.

How can an organization address transgender workplace equality concerns in particular?

- Include both “gender identity” as well as “sexual orientation” in your organization’s non-discrimination policy. The inclusion of “sexual orientation” alone is insufficient, as discrimination based on sexual orientation is different from discrimination based on gender identity.

- Be sure that job descriptions are not gender-specific.

- Refrain from gender-specific dress codes. If your organization has a dress code, ensure employees may dress according to their gender identity, in compliance with professional dress codes and rules applicable to all employees.

- Create a bathroom access policy which allows access based on a person’s gender (someone who has transitioned from female-to-male has a male gender identity, for instance). In addition, installing and/or designating single-use bathrooms as gender neutral increases access for a wide variety of employees and clients.
How can an organization ensure that its work benefits provide for LGBT employees?

- Provide equitable benefits and privileges to all employees, including health benefits (medical, dental and vision), relocation benefits, care-taking and bereavement leave, access to facilities and services, access to employee assistance programs and retirement and survivor benefits.

- Ensure your organization’s health insurance plans cover transition-related care for employees who are transgender.

- If your organization has a life insurance benefit, ensure the plan will recognize a registered domestic partner as the default beneficiary.

- Provide the domestic partners, dependents and children (biological, adopted or step) of LGBT individuals and couples the same benefits as the organization grants the spouses, dependents and children of heterosexual individuals and couples.

- Recognize all employee affinity groups equally, including LGBT groups.

- Pay for employee time and fees for attending diversity awareness trainings and conferences.

- Recognize, sponsor and support involvement in LGBT professional organizations, events and pro bono efforts.
What steps can an organization take to educate all employees about LGBT workplace issues?

- Require periodic training of all employees, including appropriate training for human resources, managerial and supervisory personnel, on diversity and anti-discrimination-related issues. The training should include content specific to sexual orientation and gender identity.

- Training content on sexual orientation and gender identity should be designed to increase knowledge, awareness and sensitivity toward LGBT employees and their work-related concerns, such as coming out, health benefits, gender transition, diverse family structures, co-worker relations, information and referrals to resources in the LGBT community, and availability of materials and resources (through an in-house library if possible) for interested individuals.

- Include content on how your organization can prepare for a transgender employee’s on-the-job transition.
Outreach, Hiring & Retention

>> How can an organization attract LGBT applicants and retain LGBT employees? What should an organization do to show its commitment to LGBT diversity in the workplace?

• Promote an equal opportunity workplace culture by encouraging nondiscriminatory recruitment, hiring and promotion of openly LGBT and LGBT-sensitive managers and employees throughout the organization.

• Ensure recruitment materials include information about nondiscrimination policies, domestic partner benefits and statistics on the number of openly LGBT employees.

• If possible, include LGBT personnel on the hiring committee.

• Offer the names of LGBT and LGBT-sensitive personnel within the organization to speak to new recruits. If your organization has a mentorship program, allow a new employee to request a mentor who is LGBT or LGBT-sensitive.

• Recruit through LGBT bar associations, law student groups and career days at colleges and universities, as well as by advertising in LGBT media. Network with LGBT organizations and LGBT recruitment services.
• Provide LGBT employees equal opportunities to network and socialize, such as inviting domestic partners whenever spouses are invited and listing domestic partners when spouses are listed.

• Create career development and mentoring programs inclusive of LGBT employees.

• Not all LGBT employees will bond together simply because of their sexual orientation or gender identity. Be sensitive to the unique personalities of individual employees, mindful that sexual orientation (like gender identity) is only one aspect of a person’s personality.

• Also, not every LGBT employee will be interested in working on LGBT recruitment or personnel policies. Some LGBT employees may want to contribute to the organization in other ways and may feel tokenized if they are asked to be the “lesbian voice” or the “transgender voice” on an issue or organization effort. Avoid this dynamic by making opportunities open to everyone and by not having expectations about an LGBT employee’s desire to participate or reasons for not participating.
MODEL PRACTICES

Please visit the Human Rights Campaign's Report “Best Practices to Work for GLBT Equality” at http://www.hrc.org/placestowork/ for a listing of organizations that have model practices in place.


RESOURCES

Federal Globe (Gay, Lesbian, Bisexual, Transgender Employees of the Federal Government)
Post Office Box 23922
Washington, D.C. 20026

Human Rights Campaign
1640 Rhode Island Avenue, N.W.
Washington, D.C. 20036
(202) 628-4160
http://www.hrc.org/

Lambda Legal
3325 Wilshire Boulevard, Suite 1300
Los Angeles, CA 90010-1729
(213) 382-7600
http://www.lambdalegal.org/
Minority Corporate Counsel Association
1111 Pennsylvania Avenue N.W.
Washington, D.C. 20004
(202) 739-5901
http://www.mcca.com/

National Center for Lesbian Rights
870 Market St., Suite 370
San Francisco, CA 94102
(415) 392-6257
http://www.nclrights.org/

Out & Equal™ Workplace Advocates
155 Sansome Street, Suite 450
San Francisco, CA 94104
(415) 694-6550
http://www.outandequal.org/

Transgender Law Center
870 Market Street, Suite 823
San Francisco, CA 94102
(415) 865-0176
http://www.transgenderlawcenter.org/
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Opinions expressed herein are those of the authors. They have not been adopted or endorsed by the State Bar Board of Governors and do not necessarily constitute the official position of the State Bar of California.

The purpose of this booklet is to provide general information on the law, which is subject to change, and is not intended to provide legal advice. If you have a specific legal problem, you may want to contact a lawyer.
DIVERSITY and GENDER EQUITY in the LEGAL PROFESSION:

BEST PRACTICES GUIDE

Diversity Implementation Task Force of the Minnesota State Bar Association

June 2008
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Introduction

The work of the Diversity Implementation Task Force grows out of the deep commitment of the Minnesota State Bar Association (MSBA) to foster diversity in the legal profession. This Best Practices Guide is designed to assist Minnesota legal employers in implementing and maintaining diversity initiatives in their organizations. The Guide recommends important first steps organizations should take in establishing a diversity Best Practices plan and outlines specific Best Practices to help ensure fairness, inclusiveness and equity for women, racial and ethnic minorities, individuals of all religious backgrounds, those with disabilities, and gay, lesbian, bisexual and transgender individuals.

It is the intention of the Task Force that the Guide will be a helpful resource in working toward fairness and equality within the legal profession and, in the process, will assist employers in their ability to attract and retain a diverse workforce. Including and appreciating employees with a broad range of backgrounds, experiences, cultures, and lifestyles and respecting and honoring each individual will help create a richer environment for thinking creatively and solving problems, leading to better solutions for clients.

As the United States population and its workforce grow more diverse, organizations are increasingly expected to understand the unique needs and goals of both their employees and their clients. The ability to understand, incorporate and appreciate differences is more important than ever to compete successfully in a global marketplace. Organizations are learning that recognizing, valuing, and promoting diversity enhances the bottom line by recruiting the most talented employees, benefiting from broad and diverse thinking, and succeeding with an increasingly diverse client base.

The MSBA Diversity Effort – History and Origins

The MSBA and other legal organizations in the state have a longstanding history of examining and supporting diversity in the legal profession. One of the five primary goals of the MSBA is Acceptance and Inclusion, with a commitment to “principles of equality and fairness that will clearly demonstrate the value of diversity to the legal community.”

In 2005, Susan M. Holden, then-President of the MSBA, appointed the Task Force on Diversity in the Profession. In doing so, she noted the significant work of numerous committees over the years in promoting women and minorities and in eliminating bias in the legal profession:

- The Women in the Legal Profession Committee, founded in 1988, which has engaged in numerous projects to achieve the full and equal participation of women:
  - Produced an award-winning video.
  - Created a model mentoring program.
- Created the Self-Audit for Gender Equity (SAGE) objective and attitudinal surveys, collecting and analyzing data from public and private legal employers in 1997, 1999, and 2005.
- Published SAGE Best Practices in 2003, setting forth goals to encourage the employment and retention of women.
- Developed the SAGE award, recognizing employers for significant progress in furthering gender equity.
- The Diversity Committee, founded in 1997, which sponsors the Minnesota Minority Clerkship Program for summer associates, sponsors the website www.MNLegalDiversity.org, and assists the bar in advancing a culturally diverse workplace for the practice of law.
- The Minority Bar Summit, which is sponsored by the MSBA and includes minority bar associations, area law schools, and state and county bar associations, and which meets periodically to discuss issues of concern.

The 2005 Diversity Task Force was charged with broadening the scope of the past SAGE audits to track progress on other important areas of diversity. The Task Force developed and executed a comprehensive research study of Minnesota employers and individual lawyers on gender, race and ethnicity, sexual orientation, disability, religion, and creed. The study, titled the 2005 Self-Audit for Gender and Minority Equity, surveyed law firms, corporations, courts, legal aid organizations, county attorneys, attorneys general and law schools. The University of Minnesota Center for Survey Research assisted in developing a survey of individual lawyers, and a discussion guide used by the Task Force in focus groups organized by area of diversity. The purpose of the study was to gather and provide the legal community with information about demographic and cultural aspects of legal employment and the perception and experience of Minnesota attorneys regarding bias.

The full report of the 2005 Task Force, released in September 2006, is available at http://www2.mnbar.org/committees/DiversityTaskForce/index.htm. The 2006 Report stated that while some progress had been made in achieving diversity, significant work remained. The Report found a consensus for striving to achieve diversity, but the data reflected a disconnection between the perception and the reality of whether diversity had been achieved. The study also found disparate opinions of the severity of bias between attorneys in diverse communities and those in the majority.

The 2006 Report recommended that the MSBA appoint a committee to develop specific recommendations for action based on the results, and that those recommendations provide Minnesota legal employers with practical strategies and tactics to increase the effectiveness of their diversity efforts. In response, then-MSBA President Patrick J. Kelly appointed the Diversity Implementation Task Force in 2007, and this 2008 Best Practices Guide is the product of its work.

**The 2007 Diversity Implementation Task Force**
The 2007 Diversity Implementation Task Force appointed four subcommittees to focus on the constituent groups identified in the 2006 Report: gender, race and ethnicity,
disability and religion, and sexual orientation. The subcommittees conducted research on six issues that track the areas of analysis in the 2003 SAGE Best Practices: equal access, workday issues, governance, evaluation and promotion, recruitment and retention, and compensation. Recognizing the important role that mentoring plays, particularly in the retention of lawyers, the Task Force devoted special attention to mentoring. A separate section of the Guide provides a step-by-step plan for setting up a formal mentoring plan. This section also summarizes empirical research and demonstrates the importance of mentoring relationships to skill development and professional success.

**The 2008 Best Practices Guide**
As noted earlier, the Guide highlights important first steps employers should take to establish a diversity Best Practices plan, including gathering data, securing commitment to diversity and gender equity, assembling a team responsible for the plan, establishing goals, creating and adopting strategies to accomplish those goals, tracking results, and communicating successes and concerns.

The Guide lists Best Practices for the demographic areas of each subcommittee and includes commentary. The Best Practices for a given demographic area are not meant to be exclusive or apply only to that area of diversity. Recommended Best Practices on gender may also apply to racial and ethnic minorities, those from diverse religious backgrounds, those with disabilities, and GLBT lawyers. Throughout the Guide, each subsequent section contains more detailed recommendations and analysis, allowing employers to focus as deeply as they wish. Since each organization has its own structure, culture, and workforce, the Guide is designed to allow the employer to tailor the Best Practices for their work environments.

**Adoption of the Guide**
The Diversity Implementation Task Force and its outreach subcommittee obtained feedback on the Guide at the Minority Bar Summit in April 2008. Facilitators at the Summit solicited suggestions and worked with small groups to develop work plans that demonstrate the process employers might use for implementing Best Practices. After an additional period for comment, the Best Practices Guide was presented to the MSBA General Policy Committee, where the recommendations were reviewed for approval.

The Diversity Implementation Task Force encourages comments and additional resources and ideas. The Guide is not intended to be static. The Diversity Implementation Task Force hopes that the Guide will be a useful resource for Minnesota employers in increasing fairness, equality, inclusiveness, and sensitivity in the workplace. The Minnesota legal community and its clients throughout the state and country deserve no less.
How to Use this Guide: Important Notes

1. The Guide contains four main substantive sections:
   
   A. First Steps for Diversity Best Practices Implementation
   B. Summary Best Practices for five areas of diversity:
      1. Gender Equity
      2. Race and Ethnicity
      3. Religion
      4. Attorneys with Disabilities
      5. Sexual Orientation/Gender Identity
   C. Commentary and References for the Best Practices
   D. Mentoring: A Step-by-Step Guide and Research Studies

2. Each subsequent section contains more detailed recommendations and analysis, allowing employers to focus as deeply as they wish.

3. The Best Practices for a given demographic area are not meant to be exclusive or apply only to that area of diversity. For example, recommended Best Practices on gender may also apply to racial and ethnic minorities, those from diverse religious backgrounds, those with disabilities, and GLBT lawyers.

4. Since each organization has its own structure, culture, and workforce, the Guide is designed to allow the employer to tailor the Best Practices for their work environments. The Best Practices should be adapted as necessary to fit a particular workplace.

5. Best Practices are the most efficient and effective means to accomplish a goal. The Guide identifies some common practices that have been found successful in helping organizations embrace and achieve diversity and gender equity.

6. The Guide represents important initiatives for improving diversity and gender equity in organizations, defined to include law firms, corporations, legal departments, law schools, the government, the judiciary, and other legal employers.

7. Throughout the Guide, the terms “diversity” and “diverse groups” encompass gender, race and ethnicity, religion, disability, and sexual orientation/gender identity.

8. The Guide is not intended to be static. The Diversity Implementation Task Force encourages comments and additional resources and ideas.
Flow Chart for the Guide

Introduction

A. First Steps: Diversity Best Practices Implementation

B and C. Summary Best Practices, Commentary and References

Gender Equity
- Comments
- References

Race and Ethnicity
- Comments
- References

Religion
- Comments
- References

Attorneys with Disabilities
- Comments
- References

Sexual Orientation/Gender Identity
- Comments
- References

D. Mentoring: A Step-by-Step Guide, Mentoring Studies and Bibliography
Overview of the Guide

This page presents an overview of the substance of the Guide. It lists important steps from Section A for implementing a diversity plan and strategies for accomplishing diversity goals. It notes the areas addressed in the Best Practices of Section B, and includes page references for the Commentary of Section C and Mentoring in Section D.

A. First Steps for Diversity Best Practices Implementation (page 11):
   1. Gather data.
   2. Determine and communicate commitment from your top leaders to diversity and gender equity.
   3. Assemble your diversity team; specify each person’s role.
   5. Create and adopt strategies for accomplishing the goals.
   6. Track the results; continually revise the plan.
   7. Communicate successes and concerns.

Strategies for accomplishing diversity and gender equity goals (page 16):
   1. Review and revise strategic plans to include diversity and gender equity goals.
   2. Establish a diversity committee, with representation from all constituencies.
   3. Mandate diversity training.
   4. Develop specialized, tailored training to address particular problems such as leadership, networking, time management, etc.
   5. Create a mentoring and coaching environment.
   6. Review and revise compensation and promotion procedures.
   7. Establish and encourage flexible work schedules.
   8. Establish equitable work assignment systems.
   9. Monitor the work environment to assess inclusiveness and sensitivity, and communicate the availability of programs, benefits, and accommodations.
  10. Support and encourage participation in bar and community activities.

B. Summary Best Practices address the following topics:
   Gender Equity: Equal access, workday issues, governance, evaluation and promotion, retention, compensation, mentoring - page 19
   Race and Ethnicity: Steps for implementing diversity plans, recruitment and retention, mentoring - page 23
   Religion: Equal access, workday issues – page 25
   Attorneys with Disabilities: Equal access and workday issues, recruitment and retention - page 26
   Sexual Orientation/Gender Identity: Terminology, internal policies, inclusive diversity efforts, mentoring and coaching; particular recommendations for courts, public employers, law schools – page 28

C. Commentary and References: page 33
Diversity Best Practices
Implementation: First Steps

This section of the MSBA Best Practices Guide lists First Steps for Diversity Best Practices Implementation in organizations:

- Gather data.
- Determine and communicate commitment from your top leaders to diversity and gender equity.
- Assemble your diversity team; specify each person’s role in achieving diversity and gender equity.
- Establish S.M.A.R.T. diversity and gender equity goals.
- Create and adopt strategies for accomplishing goals.
- Track results; continually revise the plan.
- Communicate successes and concerns.

Definition of Diverse Groups: Throughout the Guide, the terms “diversity” and “diverse groups” encompass gender, race and ethnicity, religion, disability, and sexual orientation/gender identity.

Definition of Organization: Law firms, corporations, legal departments, law schools, the government, the judiciary and other legal employers.

Definition of Best Practices: Best Practices are the most efficient and effective means to accomplish a goal. The Guide identifies Best Practices that have been found successful in helping organizations achieve diversity and gender equity. Because Best Practices evolve and are irrelevant out of context, they must be tailored to each organization.
Diversity Best Practices Implementation: First Steps

The following are the steps necessary for establishing a Diversity and Gender Equity Best Practices Plan for organizations.

1. Gather Data

Basic information about the status of diverse groups is collected to determine needed action and to measure results after a diversity program is implemented.

This information will establish a baseline from which progress will be measured.

- Collect demographic data on hiring, promotion, retention, compensation, and governance for all levels within the organization.
  See the MSBA SAGE studies for a model of data collection:


- Identify which diverse groups are underrepresented or are disproportionately represented, and identify the areas of underrepresentation or disproportional representation.

  Examples: Women may make up half of new hires but only a fourth of lawyers promoted; male lawyers may not take parenting leave at the same rate as female lawyers.

- Review organization policies and practices and identify any that overtly discriminate against, have a disparate impact on, or discourage women or members of diverse groups from full participation within the organization.

  Examples: Holding meetings on Saturdays may negatively affect members of certain religious groups; holding meetings early in the morning or late in the day may have a disparate impact on women or men who have primary child care responsibilities; inviting spouses only may discourage GLBT lawyers with partners from participating.

- Gather investigation data on both a qualitative and quantitative level.

  Example: Lawyers’ attitudes and satisfaction levels must be surveyed.
See SAGE attitudinal study:
http://www2.mnbar.org/committees/women-in-profession/sage.asp

- **Measure the cost of lack of diversity, including actual costs and lost profits as well as potential business.**

  **Examples:** The cost of training a diverse employee who leaves is determined; the potential for business from a client who seeks a diverse law firm is measured; clients' demands for diversity are measured; the cost of attrition is determined; and the cost of recruiting and training per lawyer is measured.

- **Analyze and allocate time and resources needed to establish and implement a plan, and include it in your budget.**

### 2. Determine and Communicate Commitment from Your Top Leaders to Diversity and Gender Equity

If leaders, managers, and lawyers are not committed to diversity, the Diversity and Gender Equity Plan is unlikely to succeed.

- **Leadership Commitment:** Using business data supporting the value of diversity, secure commitment from senior leadership and lawyers in all ranks to establishing and implementing diversity and gender equity.

  This may be part of the data gathering.

  **Example:** At a large accounting firm, the CEO took the lead in communicating the rationale for a comprehensive, long-term initiative on recruitment and advancement of women, and appointed a high-level task force to head the effort.

- **Internal Communications Plan:** Communicate, orally and in writing, the organization’s commitment to diversity and gender equity to your lawyers and staff.

  **Example:** Schedule frequent internal roundtable discussions and meetings to improve communication about gender issues.

- **External Communications Plan:** Communicate, orally and in writing, the organization’s commitment to diversity and gender equity to clients, law students, and the legal community.
3. Assemble Your Diversity Team:
Specify Each Person’s Role in Achieving Diversity and Gender Equity

Clear responsibility for the Diversity and Gender Equity Plan must be established to ensure action and follow through.

- **Determine the managers, members of diverse groups, lawyers, and staff with the interest, time, talent, and commitment necessary for creating and establishing a strategic plan for diversity and gender equity.**

  A mix of lawyers, managers, and staff will aid in creating the Plan by getting buy-in and input from all constituents.

- **Determine the individual or individuals responsible for implementing the Plan.**

  This may be a partner, diversity manager, or a committee, etc.

- **Identify the individual or individuals with day-to-day responsibility for maintaining and updating the Plan.**

  This may be a partner, committee, diversity manager, human resources personnel, etc. If the organization does not have a diversity manager, a diversity consultant may be used.

- **Identify the individual or individuals with responsibility for promoting the Plan.**

  Again, this may be a partner, committee, diversity manager, human resources personnel, etc. Preferably, a leader would serve as spokesperson for the organization.

- **Emphasize the need for each person in the organization to understand the importance and the value of diversity and gender equity, and the need to commit to a fair, equitable and inclusive workplace.**
4. Establish S.M.A.R.T. Diversity and Gender Equity Goals

Establishing goals for a Diversity and Gender Equity Plan aids the organization in focusing its efforts. Ideally, these goals should be **Specific**, **Measurable**, **Agreed-upon**, **Realistic**, and with a **Timetable**.

- **Establish SPECIFIC rather than general goals.**

  **Example:** A general goal is “improve retention”; a specific goal is “increase retention of women from 50% to 75%.”

- **Determine how the goals will be MEASURED.**

  **Example:** If the organization wants to improve retention of diverse attorneys, the goal may be measured by comparing the current number of diverse attorneys and the number within a certain time period after implementation of the Plan. A large accounting firm, for example, measured the success of its initiative to retain and promote women by examining the percentage of women in the partnership before and after implementation of its plan.

- **Secure AGREEMENT upon the goals within the organization.**

  **Example:** Elicit buy-in from all staff through organization-wide meetings to discuss gender and diversity challenges.

- **Establish goals that are REALISTIC, but are also challenging.**

  A realistic yet challenging goal takes into account the availability of possible resources, knowledge, and time.

  **Example:** If the organization has determined that women are not being promoted proportionately, then a goal of 50-50 promotions may be desirable. If there are no women eligible for promotion for two years, achieving the goal in one year might not be realistic. Deciding to bring in lateral women for promotion would be one way to meet the challenge, making the goal of 50-50 promotions realistic even in one year.

- **Establish a progressive TIMETABLE for accomplishing the goals.**

  An achievable timetable provides enough but not too much time to achieve the goal. An organization may choose to set progressive goals.

  **Example:** An organization may decide to work on hiring and retention first, compensation next, etc., and to space out its goals over the timetable.

- **Set goals for individuals as well as the entire organization and specify consequences for achieving or not achieving goals.**
5. Create and Adopt Strategies for Accomplishing Goals

Creating a Diversity and Gender Equity Plan will necessitate creative strategies for accomplishing goals.

- Adopt strategies consistent with the organization’s own strategic plan.

- Suggested strategies and action items include the following:

1. Review and revise the organization’s strategic plans and policies to include diversity and gender equity goals.

2. Establish a diversity committee, with representation from the diverse constituencies in this Guide.

3. Mandate diversity training.

4. Develop specialized, tailored training to address particular problems such as leadership, networking, time management, etc.

5. Create a mentoring and coaching environment.

6. Review and revise compensation and promotion procedures.

7. Establish and encourage flexible work schedules.

8. Establish equitable work assignment systems.

9. Monitor the work environment to assess inclusiveness and sensitivity. Beginning with employment screening and continuing through all stages of employment, communicate the availability of employer programs, benefits, and accommodations that promote inclusiveness.

10. Support and encourage participation in bar and community activities.
6. Track Results; Continually Revise Plan

- Regularly collect and review data to determine progress toward accomplishment of goals.
- As goals are accomplished, implement action on continuing goals.
- Revise the Plan and implement new strategies if goals are not being met.
- Review individuals’ and committees’ performance regularly. Reward accomplishments and efforts of lawyers in working towards diversity and gender equity.

7. Communicate Successes and Concerns

- Continue to gather feedback internally and communicate regularly with lawyers and staff about diversity accomplishments and ongoing efforts.
- Communicate successes externally to clients, bar associations, other organizations, etc.
Summary Best Practices

This section of the MSBA Best Practices Guide contains **Summary Best Practices**, developed by the Task Force subcommittees on gender, race and ethnicity, religion and disability, and sexual orientation.

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**Definition of Best Practices:** Best Practices are the most efficient and effective means to accomplish a goal. The Guide identifies Best Practices that have been found successful in helping organizations achieve diversity and gender equity.

**Notes:** The Best Practices for a given demographic area are not meant to be exclusive or apply only to that area of diversity. For example, recommended Best Practices on gender may also apply to racial and ethnic minorities, those from diverse religious backgrounds, those with disabilities, and GLBT lawyers.

Because Best Practices evolve and are irrelevant out of context, they should be tailored and adapted as necessary to fit a particular workplace.
Note: The Best Practices for a given demographic area are not meant to be exclusive or apply only to that area of diversity. For additional strategies to achieve diversity and gender equity, see recommendations on page 16.

Summary Best Practices:
GENDER EQUITY

**Equal Access**
1) **Work Teams:** Regularly monitor the composition of work teams to ensure that they include female and male attorneys.

2) **Training and Resources:** Provide women and men equal access to training, resources, and assistance for leadership, business generation, networking, and professional development. This may be done internally or by providing resources for attorneys to receive training outside the organization.

3) **Practice Planning:** Establish time frames, practice goals, and practice planning to enable both lawyers and their employers to evaluate progress fairly, to aid in training, and to ensure that all lawyers receive similar opportunities to make progress toward promotion.

4) **Informal Events:** Encourage participation by women and men in lawyers’ informal gatherings and social events and periodically review all scheduled events to ensure that all lawyers have the opportunity to participate. Women are more likely to leave an organization when they are not included in informal internal networks.

**Workday Issues**
5) **Work Assignments:** Design and implement a work assignment system with benchmarks to ensure the fair distribution of quality work and access to clients.

6) **Accountability:** Review the assignment of work regularly to ensure that there is no hidden gender bias. Hold managers accountable for the fair distribution of work, opportunities for client development, and opportunities for leadership.

7) **Work/life Balance:** Regularly review caseloads, hours, or other measures of productivity to lessen or avoid burnout or excessive demands. Work/life balance is especially important to women and men with children or other family responsibilities.

8) **Office Environment:** Work to create an environment in which lawyers feel comfortable using parenting leave, part-time, and flexible work schedules without fear of reprisal or adverse consequences. Avoid the assumption that all women or men with children want to work on a part-time basis, or do not want to travel or take on work that would require time away from their families.
Summary Best Practices: Gender Equity

**Governance**

9) **Management:** Support gender equity at all management levels through actions and words, and communicate this support to the entire organization. Ensure that women are proportionally represented at all levels of management and decision-making.

10) **Monitor Trends:** Monitor internal trends in compensation, promotion, and assignment to leadership positions to ensure that these opportunities are equally available to all.

11) **Anti-Discrimination Policies:** Adopt, implement, and enforce anti-discrimination and harassment policies, including gender discrimination and sexual harassment, and establish procedures to investigate and resolve complaints of inequity, discrimination, or harassment.

12) **Data:** Regularly gather, analyze, and internally disseminate statistical information regarding gender representation in hiring, promotion, compensation, and governance to ensure that there is no gender bias, hidden or overt, in the decision-making.

13) **Communication:** Hold regular and frequent discussions about gender equity to allow problems to be resolved before they escalate or before a person leaves because she or he does not feel heard, and to hear what is working well.

**Evaluation and Promotion**

14) **Feedback:** Provide regular feedback, informally and formally, and allow attorneys to ask questions and address concerns.

15) **Goals:** Establish individual goals or benchmarks for attorneys as part of their individual evaluations.

16) **Standards:** Apply uniform standards for promotion of women and men.

17) **Evaluation:** Evaluate and compensate lawyers based on objective and explicit standards that have been communicated and explained.

**Retention**

18) **Exit Interviews:** Conduct confidential exit interviews to allow for honest feedback.

19) **Flexible Programs:** Provide viable flexible workday programs, including alternative work schedules, telecommuting, job sharing, and retirement phasing. Provide needed technology.

20) **Flexible Schedules:** Develop a viable, “non-stigmatized” flexible work schedule policy that includes effective and fair implementation, training, and education, and that eliminates “caregiver” bias and employee turnover.
21) **Part-Time/Flexible Hours:** Enforce gender-equitable compensation, benefits, and advancement for part-time/flexible hours worked.

22) **Attorneys on Leave:** Encourage attorneys on leave to participate in firm, company, or organization events (client development, in-house training, etc.) so that they can stay connected to the organization and clients.

23) **Alumni:** Consider including women and men who have left the organization to stay home with children in the organization’s social and training activities, to encourage and support their eventual return.

**Compensation**

24) **Compensation Systems:** Establish compensation systems that are clear, equitable, well communicated, and flexible enough to adapt to changing practices, assignments, levels of performance, and market forces.

25) **Communication:** Explain the basis for each attorney’s compensation when set and, at a minimum, on a yearly basis.

26) **Objective Measures:** Determine objective measures of productivity that are result-oriented, lack gender bias, and do not rely primarily on billable hours or hours spent at work.

27) **Bases for Compensation:** Consider measures other than billable hours as bases for compensation. Other measures may include business development, realization rates, efficiency, client satisfaction, administrative duties, mentoring inside and outside attorneys, pro bono, community or charity work, participation in bar association activities, and teaching. Avoid penalizing attorneys who engage in bar association, community, or charity work.

28) **Salary Reviews:** Studies show that women are viewed negatively as being “too aggressive” when they negotiate salaries, especially when negotiating with men. Women are, therefore, less likely to negotiate on compensation issues. To avoid this, salaries should be reviewed to ensure that women are not penalized for negotiation and compensation issues or for avoiding the double bind.

29) **Compensation Committees:** Include women on compensation committees and in compensation decisions.

30) **Part-Time Attorneys:** Compensate part-time attorneys on a pro rata basis.

31) **Compensatory Time:** Compensate part-time and contract attorneys for time or work beyond their contracted time, or allow for compensatory time.
32) Recognition: Recognize women and men for their achievements in all areas of legal practice informally or through formal recognition programs. For public employees, recognition is especially critical since merit compensation usually is not available.

Mentoring
See the Mentoring Section of this Guide on page 65.

See Commentary and References beginning on page 34.
Note: The Best Practices for a given demographic area are not meant to be exclusive or apply only to that area of diversity. For additional strategies to achieve diversity and gender equity, see recommendations on page 16.

Summary Best Practices: RACE and ETHNICITY

Initial Steps for Implementing Diversity Plans

1) Commitment of Leadership: Secure the public commitment of senior leadership.

2) Strategic Plans: Expressly include diversity as an objective in the organization's strategic plan with set, measurable goals.

3) Diversity Directors and Committees: Place key senior leadership individuals in staff diversity positions and on committees or appoint a diversity director who has the authority to facilitate and mandate diversity training and coaching.

4) Diversity Assessment: Conduct an organization-wide diversity assessment to determine particular areas for improvement. Consider how firm policies and business practices impact minority recruiting, hiring, retention, promotion, compensation, work/life balance, and other relevant areas.

5) Training: Hold regular cross-cultural firm or organization training that focuses on appreciation of differences. Bring in outside consultants and facilitators regularly to conduct cultural competence training and coaching.

6) Implement Strategies and Review Progress: Implement strategies for improvement on identified problem areas and periodically review progress, so that reaching diversity goals is an ongoing process.

Recruitment and Retention

7) Cultural Understanding: Understand and relate to people as individuals, rather than as representatives of their entire diversity group. Every person is an individual, and no one person represents or speaks for an entire race or ethnic group.

8) Diversity Goals and Performance Evaluations: Include diversity goals in senior partner and managing attorney performance evaluations.

9) Compensation: Recognize time on diversity initiatives inside and outside of the organization in all compensation evaluations.
Summary Best Practices:
Race and Ethnicity

10) **Work Assignments:** Give attorneys of color important work assignments and client contact opportunities.

11) **Firm Governance:** Give attorneys of color intra-firm governance opportunities.

12) **Outreach:** Participate in external professional diversity efforts designed to promote recruitment and retention of attorneys of color, including projects of the MSBA and its Diversity Committee, the minority bar associations, the minority law student associations at area law schools, and others. Create or sponsor programs that encourage students of color to attend law school.

**Mentoring**

13) **Treat mentoring as a priority.** Effective cross-cultural mentoring of new and/or young attorneys of color is essential, not only to ensure their retention but also to maximize their chances of advancement to leadership positions.

14) **Establish formal mentoring programs.** A formal mentoring program, with a partner or managing attorney in charge, is important to ensure that mentoring is made available to all new and/or young attorneys of color, and to create a culture where it is acceptable for lawyers to seek assistance when needed.

15) **Encourage informal mentoring opportunities.** Build a culture where all senior partners, partners, managing attorneys and organization leaders are encouraged to look for opportunities to mentor new and/or young attorneys of color without fear that it will be perceived as paternal advice, and where new or young attorneys are encouraged to seek informal mentoring opportunities without fear that it will be perceived as a sign of inadequacy or weakness.

**Also see the Mentoring Section of this Guide on page 65.**
Note: The Best Practices for a given demographic area are not meant to be exclusive or apply only to that area of diversity. For additional strategies to achieve diversity and gender equity, see recommendations on page 16.

Summary Best Practices:
RELIGION

**Equal Access**
1) **Holidays**: Of the standard six holidays currently recognized, (New Years Day, Memorial Day, July 4, Labor Day, Thanksgiving and Christmas Day), only Christmas is an issue. Provide all employees with one extra floating holiday that can be used for an optional holiday of the employee’s choice.

2) **Judicial Fairness Policy**: Expand the Minnesota Judicial Branch Fairness Policy to include religion.

**Workday Issues**
3) **Food**: Provide a food selection at office events (meetings, parties, etc.) that includes a variety of options to avoid situations where attendees do not have food choices compatible with their religious beliefs. In the alternative, provide menu choices in advance so people can order food.

4) **Office Scheduling**: Prior to scheduling organization-wide events, check a calendar that lists major religious holidays to avoid scheduling an event on a conflicting date.

5) **Prayer Space and Time**: Provide a private space where members of certain faiths may honor their religious beliefs. In addition, be flexible about work breaks.

6) **Religion Awareness Seminars**: Provide workplace forum opportunities where employees of different religions can discuss and educate employees about religious beliefs and customs.

7) **Dress Restrictions**: Accommodate dress reflecting staff diversity, including face and head coverings and turbans, provided it does not present a danger.

See Commentary and References beginning on page 50.
Note: The Best Practices for a given demographic area are not meant to be exclusive or apply only to that area of diversity. For additional strategies to achieve diversity and gender equity, see recommendations on page 16.

Summary Best Practices:
ATTORNEYS with DISABILITIES

Equal Access and Workday Issues
1) Laws: Become knowledgeable about statutory obligations under the Minnesota Human Rights Act (MHRA) and the Americans with Disabilities Act (ADA).

2) Policies and Requests for Accommodation: Adopt policies and procedures for how requests for accommodation will be handled and ensure that these policies are well publicized and implemented.

3) Full Compliance: Ensure that both employees and managers know that the organization’s policies support full compliance with the MHRA/ADA and the provision of reasonable accommodation.

4) Training: Require adequate training of supervisors, managers, and human resources professionals on handling requests for accommodation and other requirements of the MHRA/ADA and other anti-discrimination statutes.

Common examples of reasonable accommodations include:
- Making existing workplaces accessible.
- Job restructuring.
- Part-time or modified work schedules.
- Unpaid leave once an employee has exhausted all employer-provided leave.
- Acquiring or modifying equipment (e.g., a TTY that would enable a deaf attorney to use a telephone relay service, or an assistive listening device that an attorney who is hard of hearing can use at a meeting).
- Modifying workplace policies.
- Providing tests or training materials in alternative format, such as Braille or large print or on audiotape.
- Providing qualified readers or sign language interpreters.

5) Requests for Accommodation: After receiving a request for a reasonable accommodation, move quickly to respond to it, seeking any additional information that is needed, and make a determination.
6) Changes to Work Environment: Consult with employees before making major changes in the work environment that affect all employees but may have a particular impact on attorneys with disabilities, such as changes to information technology or relocation of physical facilities.

7) Social Events: Ensure that non-alcoholic alternatives are available and easily accessible when planning food and beverage choices, and that employees, clients and guests are not pressured to use alcohol. Recognize that participants, including clients, spouses, and other guests, may choose not to consume alcohol for a variety of reasons.

8) Attitudes: Do not assume a person cannot perform a certain task. With the right accommodations and support, anyone can be productive.

9) Office Environment: Become educated about the advantages of hiring attorneys with disabilities and about the value of building successful partnerships between employers and attorneys with disabilities.

Recruitment and Retention
10) Clerkships and Mentoring: Establish clerkships and mentoring programs targeted at law students with disabilities.

11) Law School Outreach: Partner with law schools to recruit individuals with disabilities to attend law school and provide support to law students with disabilities, so that more individuals with disabilities enter the legal profession.

12) Recruitment Goals: Include people with disabilities in diversity recruitment goals.

13) Job Postings: Post job announcements in disability-related publications, websites and job fairs.

See Commentary and References beginning on page 51.
Note: The Best Practices for a given demographic area are not meant to be exclusive or apply only to that area of diversity. For additional strategies to achieve diversity and gender equity, see recommendations on page 16.

**Summary Best Practices:**

**SEXUAL ORIENTATION/GENDER IDENTITY**

Gay, lesbian, bisexual and transgender employees and their families are valued in the American workplace now more than ever. Inclusive non-discrimination policies and benefits for GLBT employees and their families are essential for businesses as they compete for talent and customers. Many businesses do not know they have any gay, lesbian, bisexual or transgender employees. In truth, many GLBT employees spend a good deal of energy hiding their personal lives so as to avoid any negative workplace consequences. This is not helpful to the employees, the employers, or those whom they serve.

Note: The Minnesota Human Rights Act defines sexual orientation broadly, to include concepts described elsewhere separately as “sexual orientation” and “gender identity.” The use of “sexual orientation” in this Guide should be understood to reflect that breadth as well.

**General recommendations regarding sexual orientation-related issues**

1) **Use Appropriate Terminology:**

- **Sexual Orientation:** an individual's enduring physical, romantic, emotional, and/or spiritual attraction to another person. Avoid the use of “sexual preference”: sexuality and gender are not a preference. People do not "choose" their orientation or gender.

- **Gender Identity:** an individual's internal, personal sense of being a man or a woman. For transgender people, their birth-assigned sex and their internal sense of gender identity do not match. Gender identity and sexual orientation are not the same. Transgender people may be heterosexual, lesbian, gay or bisexual.

2) **Maintain Inclusive Internal Policies:**

- Implement a clear non-discrimination policy, covering hiring, promotions, termination, and compensation, among other possibilities, that includes "sexual orientation" and "gender identity."
Summary Best Practices:
Sexual Orientation/Gender Identity

- Publicize these policies broadly among current, new, and prospective employees, to customers, to the public, and via National Association of Legal Professionals (NALP) forms.
- Review these policies regularly to ensure they are comprehensive and effective.
- Implement a clear anti-harassment policy that includes sexual orientation and gender identity with appropriate training.
- Ensure that all benefits, formal and informal, provided to employees’ spouses are also available to employees’ domestic partners to the maximum extent possible, including but not limited to: health coverage, family leave, bereavement leave, COBRA extensions, retirement plan beneficiary/rollover options, relocation assistance, and/or family discounts. Ensure that all pertinent forms reflect this inclusion, e.g., “Name of Spouse/Partner.”
- Monitor internal trends in compensation, promotion, and assignment to leadership positions to ensure that these opportunities are equally available to all without regard to sexual orientation and gender identity.
- Provide coverage for a full range of services related to gender transition within employee medical plans; use dress codes to reflect an employer’s desired degree of professionalism, not specific gender roles; and permit employees transitioning from one gender to another to use restrooms associated with their new gender at the earliest opportunity.

3) Employ Inclusive Diversity Efforts:
- Ensure that diversity programs, staff training, and other initiatives specifically include or apply to concerns related to sexual orientation and gender identity.
- Use broadly inclusive diversity terminology, specifically including sexual orientation and gender identity, and demonstrate commitment to a broad approach to diversity.
- Consider employees’ involvement in mentoring programs and outside efforts that have the effect of promoting GLBT-related diversity within the workplace and legal profession generally.
- Support or co-sponsor events and programs related to GLBT lawyers and law students and the GLBT community broadly, including events geared toward recruiting prospective employees and pro bono activities.
- Seek the input of GLBT employees and/or consultants to maximize the effectiveness of diversity-related efforts.
- Provide support as needed or requested to those seeking to form an employee resource group focused on GLBT-related issues.

4) Create a GLBT-Supportive Mentoring and Coaching Environment (see Commentary, page 53):
- Create a workplace environment that clearly communicates to a GLBT attorney seeking a mentor that she or he can feel comfortable expressing interest in a mentor who can provide guidance regarding being a GLBT attorney in that workplace.
Summary Best Practices:
Sexual Orientation/Gender Identity

- Ask those seeking mentors open-ended questions about the sorts of topics – personal or professional – on which they would like mentor guidance, and follow their lead.
- Have a plan for responding to a request for a mentor on issues relating to being GLBT in that work environment – even if that means seeking a mentor outside the specific workplace.

Also see the Mentoring Section of this Guide on page 65.

See Commentary and References beginning on page 53.
Recommendations for Particular Workplaces

1. Courts (see Commentary, page 55)

- Amend the Minnesota Judicial Branch Fairness Policy to include sexual orientation, and ensure that internal diversity efforts include sexual orientation and other considerations beyond race and gender.
- Create or empower a committee to address sexual orientation-related and other diversity concerns beyond those of race and gender.
- Undertake an internal study of judicial branch employees' experiences and perceptions related to sexual orientation.
- Amend the Minnesota Judicial Branch Policy on Family and Medical Leave Act to include “co-habitors.”
- Provide the domestic partners of judicial branch employees with benefits comparable to those offered to employees' spouses.
- Implement an elimination of bias component for continuing judicial education.

2. Public Employers (see Commentary, page 63)

- Ensure that, wherever possible, benefits provided to employees’ spouses are available to employees’ domestic partners.

3. Law Schools

Application Process

- Have current “out” GLBT students, faculty, or staff contact prospective students who indicate in their application essays that they are out to describe the climate and support resources. Reassure them about the presence of out students, faculty, and staff on campus.

Orientation

- Make note, explicitly and repeatedly, of sexual orientation diversity in orientation remarks to new students.

Student Organization Support

- Ensure that the GLBT student group has equal footing with all other student groups in the student organization funding process.
- Visit (unobtrusively) an early GLBT student group meeting to welcome, establish rapport, and offer visible support.
- Sponsor or co-sponsor prominent speakers and visitors in collaboration with other law school offices, and invite students to participate.
Summary Best Practices:
Sexual Orientation/Gender Identity

Diversity Programming and Campus Climate
• Include GLBT issues in all diversity discussions and programming, including representation on diversity committees.
• Encourage, foster, and publicize debates and discussions of major issues including gay marriage, military exclusion, etc., and encourage attendance and support by administrators and faculty.
• Support Solomon Amelioration activities to counteract the impact of military recruiting on campus.

Career Planning and Development
• Sponsor discussions among students and “out” attorneys about the career development process, and whether and how to be out.
• Encourage the Career office to track organizations with a strong record of a welcoming environment for GLBT attorneys, including strong family leave and benefits policies that include same-sex partners.
• Support student participation in national GLBT conferences by covering registration fees.
• Seek attorney-student mentor matches among GLBT attorneys and students.

Curriculum
• Encourage and foster the faculty use of GLBT-related examples in class discussions, and assign GLBT topics in Legal Writing exercises and Civil Rights Moot Court.
• Facilitate teaching and course development in areas relevant to GLBT students (e.g., seminars on assisted reproductive technologies, or health law courses that address inequities in access to health care, or family law courses that address gaps in the law for GLBT couples).

Individual Support
• Ensure the availability of counseling resources on- or off-campus and provide referrals where necessary.

See Commentary and References beginning on page 53.
This section of the MSBA Best Practices Guide contains **Commentary and References** for the Summary Best Practices beginning on page 18, including:

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It is clear that to ensure gender equity in the workplace, a fair and effective work/life program must be created, monitored and enforced.

Proactive gender-equitable procedures that legal employers must adopt include providing in-depth education, training and leadership; enforcing anti-discrimination and harassment policies; implementing viable flexible work options; supplying adequate technology resources, and requiring objective evaluations of lawyers.

Viable flexible workday programs that promote gender equality include alternative work scheduling, telecommuting, job sharing, and retirement phasing. These balanced work/life plans are approved and endorsed by the American Bar Association, and provide positive documented outcomes such as:

- Enhanced diversity and fair treatment of employees.
- Increased productivity.
- Improved employee job commitment and satisfaction that meets clients’ needs.
- Reduced turnover, absence, and work-related stress and strain.
- Ability to attract desirable employees.
- High return on employee investment.
- Address the need for a family-friendly environment for employees.
According to a recent survey conducted by the National Association of Women Lawyers, “statistics show, among other things, that women occupy lower positions within the firm’s equity partner ranks, as it is our impression that selection of the firm’s managing partners and members of the highest governing committees typically come from the top half of the equity partnership.”

Even when women lawyers achieve the formal status of equity partner, preliminary information indicates a gap in compensation between male and female equity partners. Moreover, women’s role in the governance of law firms is far less extensive than men’s. Women hold on average only 16% of the seats of their firm’s highest governing committee. Only about 5% of managing partners are women. To the extent that gender diversity matters for decisions that firms make about such critical firm-wide issues as long-term strategy and growth, business development, partner compensation and advancement, and policies and practices related to the retention and promotion of women lawyers, it appears that, at the highest level, these decisions are still being made in a decidedly male environment.

Diverse attorneys are gaining more visibility through leadership of practice groups. Diverse attorneys are running more law offices. The numbers for women are generally promising, as 81.1% of firms have women on governing committees. Marginal improvements are shown in the number of women or minorities who are equity partners and sitting on governance committees.

“Twenty years ago people looked ahead and thought the problem would be solved by now, and that clearly hasn’t happened . . . It’s been more than a decade since women began to constitute half of most law school graduating classes, yet they are far from reaching equality at the top of the profession. Women still account for only 17 percent of law firm partners, 20 percent of federal judges and 14 percent of Fortune 500 general counsels. And, at the current rate, the number of women partners won’t reach parity with the number of male partners until 2088.” ¹

“Law firms pride themselves on being meritocracies, but studies show that most partnerships are self-replicating cultures in which those most often deemed to have what it takes to be partner look just like those already at the top: white and male.” ²

“In government and the nonprofit sector, women have fared better than in private practice . . . There are more women in higher-profile, higher-powered, higher-status jobs in the nonprofit world. There’s more of an effort, more of an egalitarian spirit and more of a sensitivity to issues of diversity . . . one reason for that success may be that publicly spirited jobs have a stronger appeal to women. The percentage of women who said that ‘helping others’ was one of the most important factors to consider in picking a career was double that of men, accordingly to a 2004 study by some Harvard Law students.” ³

Recent studies confirm that in law firms, women are well-entrenched at the associate and of-counsel levels, but do not occupy senior positions in the number many expected based on the large number of women law school graduates over the past 25 years. ⁴

Women are not represented in large numbers as equity partners, on the highest management committee of their firms, or in the role of managing partner. More positively, however, there are a large number of women lawyers practicing in private firms at all levels. The evident commitment of women to careers in private practice combined with the desire of firms to retain and promote women lawyers provides a solid foundation for advancing women into leadership positions in greater numbers. The pipeline is filled with women lawyers capable of occupying positions as equity partners, law firm managers, and members of the highest governing committees in firms. The challenge for the profession - individual women, their firms and other interested stakeholders, such as law firm clients - is to determine what policies and practices will work best to open that pipeline and advance women quickly into roles they have earned and will occupy with distinction.
Commentary:
Gender Equity - Promotion

2 Id.
3 Id.
"A good compensation plan attracts, motivates, and retains skilled workers whose expertise keeps their company ahead in the marketplace. Employees want to know that when their … [employer] says, ‘People are the key to our competitive advantage,’ that means they will be rewarded when they meet or exceed … objectives.”¹

According to the U.S. Department of Labor, the best compensation practices for promoting equal opportunity and affirmative action are: 1) conduct a self-audit; 2) correct any problems identified by the self-audit; 3) create a set of procedures and practices for ensuring that all decisions on compensation in the future are based on job-related criteria that are consistent with business necessity and are applied uniformly and consistently to each and every pay decision.

Compensation is ranked highest in importance of seven positive influences of overall job satisfaction for all employees and those who work full time. Part-time employees rank flexible work schedules as most important, according to a 2007 Deloitte and Touche survey on ethics and the workplace.

Legal employers should routinely analyze compensation numbers to ensure that there is no gender bias in the decision-making.

Studies show that women are viewed negatively as being “too aggressive” when they negotiate salaries, especially when negotiating with men. Thus, they are less likely to negotiate. To avoid this, salaries should be reviewed to ensure that women are not penalized for negotiation and compensation issues and for avoiding the double bind.

If an employer’s compensation system is based on seniority or is lockstep, compensation for women is likely to be disproportionately low, as fewer women are senior. Care should be taken to ensure that less senior attorneys are being compensated fairly, or retention is likely to be a problem.

Compensation based on the amount of business generated and hours billed fails to recognize other ways in which attorneys add value to a firm, such as expanding work for existing clients, doing firm administrative work, training associates, and mentoring. These activities take away from an attorney’s ability to do his or her own work, but they are important to the employer. They should be compensated.

Further, employers should consider other measures other than billable hours as bases for compensation. These may include business development, realization rates, efficiency, client satisfaction, administrative duties, mentoring inside and outside
Commentary:
Gender Equity – Compensation

attorneys, pro bono, community or charity work, participation in bar association activities, and teaching.

A formal system should be implemented for compensation, detailing the bases for compensation. If some types of work, service, or activity are to be given more weight in compensation decisions, this should be expressly stated and communicated to attorneys.

The bases for each attorney’s compensation should be explained to the attorney, at a minimum, on a yearly basis.

Part-time attorneys should be compensated on a pro rata basis and for time worked beyond their required time. Further, part-time attorneys should be eligible for benefits and bonuses on a pro rata basis.

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**Sources Consulted for Gender Equity: Compensation**

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Chicago Bar Association, *Call to Action, Best Practices for Ensuring Compliance with Commitments*.

Much of the focus on developing Best Practices to promote diversity in the legal profession is on recruiting, hiring and retention. Simply increasing the numbers of attorneys from traditionally underrepresented groups is a meaningless gesture if the organization does not understand what its diversity issues are or how to measure whether its diversity efforts have been successful.

A thorough assessment may show that the organization has a diversity issue, opportunity or problem because:

- A policy or business practice (formal, informal, internal, or external) has a different impact on a particular group (for example, do billable hour requirements disproportionately penalize certain associates?).
- The practice happens more frequently to a particular group (for example, who gets to go to pitches and who makes them, who is present to observe and who is not, or who gets real feedback on his or her briefs and who does not).
- The potential barrier is more difficult for one group to overcome (upward mobility for a particular group within an organization, including who is represented in leadership positions and who is not – “glass or color ceilings”).

A diversity issue exists when an organization policy or business practice affects attorneys of different backgrounds differently. In other words, certain practices produce outcomes that affect members of the majority community differently from members of minority communities in the attorney ranks. Is there a trend or pattern that impacts certain groups of attorneys and staff differently? For example, look at the top 10 rainmakers in your firm. Who are they mentoring? Is the next generation of “mega-billers” different from the current “in group or dominant group” in the firm? When a firm has identified its diversity issues, it can better create an environment in which diversity initiatives can be successful.

Not only is it important for an employer to conduct an assessment before beginning diversity initiatives, it is also imperative to develop mechanisms to gauge the success of diversity efforts. For example, a firm may attend minority job fairs and target women and lawyers of color in its recruiting programs, but still fail to retain lawyers of color once they have been hired. Accordingly, organizations should periodically review their progress on the following factors and compare the findings with the results from the initial diversity assessment. The success of a diversity program can be measured through several factors, such as:
Commentary: Race and Ethnicity
Diversity Assessment

- Demographics of firm or organization as a whole
- Demographics of firm or organization leadership and management
- Retention
- Promotions
- Recruiting and hiring
- Attrition
- Compensation and benefits programs
- Relevancy and fairness of current systems, policies, and procedures
- Part-time or work/life balance
- Physical environment
- Leadership and management practices
- Career development and succession planning

Organizations should also institute strategies to sustain diversity efforts. One way in which employers can hold themselves accountable for diversity efforts is to incorporate increased diversity into the overall strategic plan. This not only provides a barometer to measure success, but also makes a statement about the organization’s commitment to diversity. Another method is to tie shareholder compensation to how well individual shareholders promote diversity. This increases buy-in by giving shareholders a personal stake in a successful diversity program.

In short, assessment is critical in helping to create and implement an effective diversity initiative plan. It is critically important to understand an organization’s level of development before launching a diversity initiative. Organizations must be prepared to assess their hiring practices, overall culture, interpersonal relationships, and views about diversity and promotion practices, and they must find ways to measure their progress and hold themselves accountable for achieving those goals. Organizations must also be willing to take the necessary steps to correct the disparities revealed by the assessment. For example, partners and managers must be committed to redirecting work to attorneys of color if the assessment reveals that they are consistently the low-billers because partners and managers provide them fewer billing opportunities.
The issues surrounding Best Practices for recruitment and retention of diverse attorneys in private law firms and corporations are very complex. Focusing on recruitment alone is not sufficient; it is simply an initial step. Focus on retention; building and maintaining diversity within the workplace requires an ongoing commitment and effort.

Statistics show that retention of all attorneys, not just diverse attorneys, is a difficult issue for most law firms. The reasons for low retention rates vary, but include work/life balance issues, generational issues, and differing goals and aspirations.

Frankly, diverse candidates are in demand. Most law firms are seeking qualified, talented, diverse attorneys. Corporations, especially those that do not hire directly out of law school, are constantly in the marketplace seeking diverse attorneys.

More and more, corporations are demanding that outside legal counsel increase minority representation. As they become more diverse, corporations expect the law firms with which they do business to uphold their commitment to diversity and to reflect the changing workplace. This “supplier diversity” has an impact on the recruitment and retention of minority lawyers. In addition, corporations are increasingly requiring their law departments to keep statistics on the amount of legal business that they send to minority-owned firms. While there is nothing wrong with sending legal business to minority-owned firms, corporations are reporting that they are not getting credit for legal business sent to diverse attorneys within non-minority-owned law firms.

Status and a feeling of being part of a law firm are significantly impacted by an attorney’s ability to bring in business. If the law departments of various corporations are only given credit for legal work sent to minority-owned law firms, there may be an unfortunate incentive for diverse attorneys to leave those law firms either to join or start a minority firm. And thus, although sending legal business to minority-owned firms is a laudable goal, it may in fact have an adverse impact on the retention of diverse candidates in law firms.

One solution is for lawyers in corporate legal departments to send work directly to diverse attorneys within the law firms with which they do business, and to make sure that the diverse attorney gets the billing credit within that firm. Law firm leaders also need to monitor the workflow constantly to minority attorneys to make sure that they are getting the same opportunities as non-minority attorneys.
Cultural competence requires that organizations have a defined set of values and principles and demonstrated behaviors, attitudes, policies and structures that enable them to work effectively cross-culturally. Organizations should have the demonstrated capacity to value diversity; conduct self-assessments; manage, appreciate and leverage the dynamics of difference; acquire and institutionalize cultural knowledge; and adapt to diversity and the cultural contexts of their employees and the clients and communities they represent.

Cultural understanding, knowledge, and connectedness in the legal profession are another level of diversity and race. It is not as widely written about as cultural competence and, for that reason, Best Practices are not as widely discussed. Nevertheless, it is in the economic interests of lawyers and the legal profession to have knowledge and understanding of different cultures for two main reasons: lawyers reflect the racial, ethnic, and cultural diversity of the many immigrant groups in the United States; and the United States must compete in a global economy. Being able to communicate across cultural lines is essential to maintaining successful lawyer-client relationships in an international business climate.

It is incorrect to assume that the issue of race in America can be entirely represented by the experience of any single community of color. Racial and ethnic diversity issues affect all persons who are not part of the Caucasian Eurocentric majority groups that have historically been in positions of power within organizations as well as in society at large. Moreover, the issue of race will affect each community of color in a variety of often-unique ways. Effective diversity efforts include the need and willingness to acquire some knowledge and understanding of the different cultural and ethnic experiences of the attorneys or clients of color that an organization seeks to recruit or retain.

No one correct and immediate way exists to gain cross-cultural knowledge and understanding, although any number of nonexclusive efforts may be pursued as such an important and ultimately enriching endeavor is undertaken.

While one can learn about and attempt to gain an understanding of the culture of a minority or other ethnic group, it is important to remain aware of one’s limits about the depth of that knowledge or understanding. One’s perceptions and reactions to a statement, event, or set of circumstances will not always be shared by someone with a different cultural and ethnic experience. For example, body language or nonverbal
Commentary: Race and Ethnicity
Cultural Understanding

communication techniques for people of color may differ based upon cultural and ethnic backgrounds and can often be misinterpreted by members of the majority.

Do not assume that even within a single minority or ethnic group, all cultural experiences and practices are the same. Always be aware that cultural practices and ethnic experiences and backgrounds will have a great deal of difference and complexity in their depth.

Attempt to learn more about the historical context for the racial experience of a minority or ethnic group of the attorneys and clients you seek to recruit or retain. Gaining some knowledge about the historical context of the racial experience for a minority or ethnic group may help provide understanding about how members of that group view themselves within the larger issue of race within America today.

Finally, when interacting or working with anyone from any community of color, be vigilant and engage in an ongoing self-assessment to guard against using or applying racial stereotypes. Stereotyping is detrimental to race relations because it involves inaccurate assessments and judgments of entire racial or ethnic groups and perpetuates a lack of understanding about and among diverse communities. More directly, by engaging in stereotyping, people prevent themselves from gaining an accurate and deeper knowledge and understanding of the cultural practices and experiences of attorneys from communities of color with whom they work and clients whose business they seek, thus damaging and inevitably undermining the long-term survival and continuation of the very relationships they seek to cultivate. Communicating honestly but without stereotypes helps ensure better understanding, which helps cultivate mutually beneficial relationships.
Good mentoring of new and/or young attorneys of color is essential to retention efforts and, perhaps more importantly, to efforts to ensure that diversity exists throughout all levels of the legal profession – in the ranks of senior partners, judges, and general counsels, not just young associates.

Mentoring should be more than just a formal program that provides assigned mentors to new attorneys of color. The reality is that in all employment settings, a great deal of important informal mentoring goes on between experienced lawyers and “up-and-coming” young lawyers who have been recognized as having special talent. This informal mentoring can be far more valuable to the recipients than formal mentoring that often is either too structured or too artificial, leaving both the mentor and mentee frustrated.

This means that mentoring programs for new attorneys of color must arise from an organizational culture shift in which it becomes second nature for senior lawyers to look for opportunities to mentor young associates of color informally. Formal mentoring programs, alone, will not bring about that culture shift.

One roadblock to this culture shift is that senior white attorneys may fear that their informal mentoring efforts with young attorneys of color will be misinterpreted as lack of confidence that without the mentoring, the young attorney will fail. Some of this fear may stem from the simple fact that race issues are sensitive. Some of it may stem from the fact that the senior attorney may not have the same level of confidence in the young attorney of color he or she is attempting to mentor informally as with other mentees, not because of skin color, but rather because of perceptions of talent level.

It is also important for young attorneys of color to understand the importance to their careers of seeking out advice and counsel from more experienced colleagues. Too often, young attorneys of color may feel that they cannot be fully successful unless they “make it” on their own. Seeking help and advice may be perceived as a sign of weakness. But this creates a “chicken and egg” problem. The young attorney of color may not seek out the mentoring needed because of a lack of understanding of its importance. But to gain that understanding, the young associate needs good mentoring. Again, this is partly a question of creating a culture shift in the organization, one in which young associates of color are not as likely to reach the conclusion intuitively that seeking help is an unacceptable sign of weakness.

Also see the Mentoring Section of this Guide on page 65.
References: Race and Ethnicity

Sources Consulted for Race and Ethnicity: Diversity Assessment
Velásquez, Mauricio, *Jump-Starting Your Law Firm’s Diversity Program*,

Sources Consulted for Race and Ethnicity: Cultural Competence
Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against individuals because of their religion in hiring, firing, and other terms and conditions of employment. The Act also requires employers to make reasonable accommodations for the religious practices of an employee or prospective employee, unless to do so would create an undue hardship upon the employer. Flexible scheduling, voluntary substitutions or swaps, job reassignments, and lateral transfers are examples of accommodating an employee’s religious beliefs.

An employer can claim undue hardship when accommodating an employee’s religious practices if allowing such practices requires more than ordinary administrative costs. Undue hardship also may be shown if changing a bona fide seniority system to accommodate one employee’s religious practices denies another employee the job or shift preference guaranteed by the seniority system.

It is illegal to discriminate in any aspect of employment, including:
- Hiring and firing
- Compensation, assignment, or classification of employees
- Transfer, promotion, layoff, or recall
- Recruitment
- Testing
- Fringe benefits
- Pay
- Retirement plans
- Disability leave
- Training and apprentice programs
- Terms and conditions of employment.
The Equal Employment Opportunity Commission has observed that individuals with disabilities generally have not been a part of the discussion about diversity in the legal profession. Yet, it is important that attorneys with disabilities have access and are integrated into the legal field.

While there is little data on the barriers that attorneys with disabilities face in the legal profession, the MSBA 2006 Self-Audit for Gender and Minority Equity found that bias against attorneys with disabilities is a problem within the legal profession in Minnesota. According to the Self-Audit, 66% of disabled attorneys surveyed found that bias against attorneys with disabilities in legal workplaces was a major or moderate problem.  

A disabled attorney who participated in the study reported, “In firms, any disability is viewed as creating vulnerability for the firm as a whole. At least that's been my experience.”  

Another disabled attorney reported, “Changing jobs (when one needs accommodation) is very, very difficult, unless you know the people personally that you're going to be working with and they, on an individual basis, can see some advantage to themselves by accepting your limitations.”  

As a result of the problems found in the Self-Audit, the disability subcommittee recommends that employers in the legal profession adopt the Best Practices on pages 26 and 27 to reduce the barriers attorneys with disabilities face and to increase their access to the legal field.

The subcommittee applied the Minnesota Human Rights Act (MHRA) definition of disability to their analysis. The MHRA definition is substantially similar to the definition used by the Americans with Disability Act (ADA). Under the MHRA, a disability is “any condition or characteristic that renders a person a disabled person. A disabled person is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.”

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1 Minnesota State Bar Association, 2006 Self-Audit for Gender and Minority Equity, p. 32.
2 Id.
3 Id.
4 Minn. Stat. § 363A.03, subd. 12.
References: Religion

Sources Consulted for Religion
Religious Discrimination in the Workplace, http://www.nolo.com/article.cfm/ObjectID.

References: Attorneys with Disabilities

Sources Consulted for Attorneys with Disabilities
American Bar Association, Standing Committee on Lawyers’ Professional Liability, Commission on Lawyer Assistance Programs, General Practice, Solo and Small Firm Section, Section of Labor and Employment Law, The ABA Center for Continuing Legal Education, The Impaired Lawyer from the Law Firm’s Point of View (2004).
Whether or not to enter into a mentor-mentee relationship is, as with so much else, an individual decision based on considerations that will vary from person to person. Individual GLBT attorneys are as likely as anyone else to conclude that they would benefit from the ability to have access to a mentor. That said, sometimes the “invisible” nature of sexual orientation can create challenging issues in fostering such a relationship. In the MSBA 2006 Self-Audit for Gender and Minority Equity, one participant in this study, identified as a GLBT woman with 10-14 years of experience currently in a firm, observed:

(I)dentifying others within … my employment setting that were either lesbian or gay when I began my employment (was difficult) because we’re invisible … (I)t’s hard to even know who your peer group is and how to be able to identify within a large organization who a support group of individuals might be … (T)o this day I’m still not sure.  

Some GLBT attorneys conclude that it is better for them, professionally, to remain quiet regarding their sexual orientation. Eventually, however, most do decide to be open in the workplace regarding their sexual orientation. Revealing one’s sexual orientation (or having others reveal it) even after establishing oneself successfully in a workplace nonetheless can have ramifications for mentor-mentee relationships:

I had a very high-level partner say, “I’m going to make you the best associate this firm has ever seen,” and he did because they have the power to. The second I was outed I was dropped, and then I became a pariah.  

And even when someone who is open regarding their sexual orientation participates successfully in a mentor-mentee relationship, as one GLBT woman with 0-4 years of experience currently in the public sector, reported:

(T)here was just this automatic expectation from people (in the firm) setting up mentoring relationships or people talking informally about who I should ally myself with … that I should become one of these gay poster children, regardless of my interests or needs (regarding mentorship).  

Fostering effective mentor-mentee relationships involving GLBT attorneys, then, can boil down to answering one fundamental question: to what extent is the mentor intended to focus on guidance with respect to one’s practice area, versus guidance with
regard to questions like “how open should I be in this workplace regarding my sexual orientation?” There may not be an easy answer.

First, employers need to create a workplace environment that clearly communicates to the GLBT attorney seeking a mentor that she or he can feel comfortable expressing interest in a mentor who can provide guidance regarding being a GLBT attorney in that workplace. The attorney may not express such an interest, because she or he simply feels this is not necessary – but the key is to foster an environment where an attorney who does have such an interest does not fear professional repercussions from expressing it. As with any other sort of attorney, GLBT attorneys want to succeed in their careers – and may prefer mentorships focusing solely on their practice areas, and may have little or no interest in an employer’s GLBT-related projects. Ask those seeking mentors open-ended questions about the sorts of topics – personal or professional – on which they would like mentor guidance, and follow their lead.

Second, employers need to be prepared to respond to a request for a mentor on issues relating to being GLBT in that workplace. This may involve letting others in the workplace know that the firm is interested in identifying those who would be interested in mentoring a GLBT attorney, to see if people with relevant insights step forward. It would also be important to make sure that those who do are, in fact, conversant in the possible topics that might arise in such a mentor-mentee relationship to maximize the usefulness of the guidance they might offer. If no internal candidates appear, employers should be prepared to work with the Minnesota Lavender Bar Association, GLBT employee groups at similar employers, or personal networks to identify other resources where potential mentors might be found.

1 Minnesota State Bar Association, 2006 Self-Audit for Gender and Minority Equity, at 28.
2 Id. at 27.
3 Id. at 30 (Source: GLBT woman with 20 or more years of experience, currently in firm.)
4 Id. at 61.
Perhaps more than any other sort of employer analyzed in the 2006 MSBA Diversity Report, the Minnesota judiciary is perceived as having a duty to articulate, implement, and affirm practices that reflect a deep commitment to fairness for all. A perception that the judiciary is not committed to basic fairness, or is oblivious to the increasingly diverse Minnesota population and to its correspondingly diverse needs, undermines the confidence Minnesotans place in our state’s judicial system as a forum in which all persons may be effectively heard and in which all persons have an expectation of fair and impartial review. A judicial system perceived, even partially, to be closed to those on the “margins” of society undermines society itself.

**Equal Access**

The Minnesota Judicial Branch’s Judicial Council Policy 10.02 (Racial, Ethnic and Gender Fairness Policy) states that it is their policy to “identify and eliminate barriers to racial, ethnic, and gender fairness within the judicial system, in support of the fundamental principle of fair and equitable treatment under law.” This is unquestionably a worthy and appropriate goal.

However, the Minnesota State Bar Association’s diversity work has acknowledged that “diversity” extends well beyond the legitimate issues relating to race and gender and, in fact, encompasses various other categories, such as sexual orientation/gender identity, disability, and religion. With the increased visibility of Minnesotans who identify themselves in accord with these characteristics, it seems that at a minimum, the Minnesota judicial policy in this regard must adequately reflect these aspects of our diverse community.

Existing Canons of Judicial Conduct as well as the Rules of Professional Conduct demand that our judicial process be open to all, and specify that discrimination and other negative conduct related to sexual orientation (including gender identity), disability, and religion be proscribed. When the Minnesota judicial branch undertakes to articulate a “Fairness Policy” but excludes from its scope various significant communities within the Minnesota population, it sends a message that “fairness” extends only so far.

In its 2006 report, the MSBA Task Force on Diversity in the Legal Profession noted that only 28% of GLBT participants in its survey felt that employer “diversity efforts” included sexual orientation,¹ and nearly 70% of GLBT participants felt that bias against GLBT attorneys in courtrooms was a “major” or “moderate” problem. ² Participants across the board indicated that leadership of key players in any employment setting was critical
Commentary: Sexual Orientation/
Gender Identity - Courts

to the success of the employer's diversity efforts. Here, the Minnesota judicial branch’s limited Fairness Policy represents a limited commitment to the goal of successfully pursuing the “fundamental principle of fair and equitable treatment under law,” a shortcoming that could negatively affect many operations of the judicial branch as a whole.

Recommendation: that the Minnesota judicial branch specifically amend its Fairness Policy to include, at a minimum, those populations identified within the scope of the 2006 MSBA Self-Audit for Gender and Minority Equity. Further, the Minnesota judicial branch should direct that all judicial branch “diversity committees,” including District Equal Justice Committees and diversity staff within the State Court Administrator’s office, address within the scope of their work, at a minimum, the populations identified in that MSBA report.

Minnesotans often view their state as a progressive community and may be reluctant to imagine that their neighbors, particularly public employees, would be biased. However, the judiciary in at least two other states that might also be considered progressive – California and New Jersey – has conducted broad studies of judicial operations that have produced startling results. Like Minnesota, both states have broad civil-rights laws prohibiting discrimination on the basis of sexual orientation.

In 2001, a report titled Sexual Orientation Fairness in the California Courts, issued by the Sexual Orientation Fairness Subcommittee of the Judicial Council’s Access and Fairness Advisory Committee, contained one section examining “The Court as a Workplace” (the other examined courts from a users’ standpoint). Among the findings of the report: lesbian and gay employees were at least four times more likely to experience negative actions or comments based on sexual orientation than were heterosexual employees; 49% of those employees who took some action in response to such an incident reported that their intervention had little or no effect; 20% of lesbian and gay court employees reported experiencing discrimination in the workplace based on their sexual orientation (2% of heterosexual employees reported this); 56% of those who took some sort of action in response to discrimination reported that nothing happened as a result; 23% of those taking no action indicated they did not act for fear of triggering retaliation. The report noted that the very act of surveying court personnel on such matters “itself generated a number of negative responses [which] underscore some of the findings from the survey, which indicate that some court employees are unconcerned or hostile with respect to sexual orientation issues in the courts.”

Also in 2001, the New Jersey Supreme Court Task Force on Gay and Lesbian Issues produced a similar report, also examining the judicial system from the standpoint of employees and public consumers. Among other things, the report concluded that “approximately one-third of the court employees who responded reported observing or experiencing derogatory statements or inappropriate jokes about gays and lesbians. . . .
Most of these comments were attributed to co-workers, although judges and supervisors were also identified as the source of objectionable remarks. Further, the report found that numerous participants had witnessed sexual-orientation discrimination in pay, work evaluations, promotions and advancement, work assignments, in exclusion from social functions, and in the form of verbal abuse or harassment. As with the California experience, “a great deal of hostility was expressed against the survey, much of it emanating from court employees who, receiving it with their paychecks, felt forced to complete it. Many expressed anger that state funding was being used for this study and felt that completing it was a waste of time. Others were more explicit in their disdain for gays/lesbians.” The report concluded:

The possibility that bias may create a hostile work environment, affect case disposition, hinder professional opportunities, dissuade individuals from using the court system and undermine public confidence in judicial neutrality is a serious concern which warrants heightened awareness by the bench and bar of the importance of education as recommended by the Task Force.

The fact that progressive states on both coasts have conducted similar surveys and found such similar, pervasive concerns within their judicial systems raises the concern that if Minnesota were to do the same thing, it may also uncover bias within the Minnesota judicial branch. This dispiriting possibility, however, should not be used as the basis for deciding that such a study would not be helpful for Minnesota. If such a study were to reveal bias affecting both employees of the judicial branch and court users among the general population, this would be a wake-up call highlighting the need for remedial action. Such action would, in fact, advance the judiciary’s commitment and obligation to fairness and openness to all.

Recommendation: that the Minnesota judicial branch undertake a comprehensive internal study of court employees’ experiences and perceptions with respect to, at least, sexual orientation issues along the lines of the studies completed by the court systems in California and New Jersey. Judicially created committee and task forces focusing on sexual orientation matters conducted these studies; creating such a committee is reflected in the Governance recommendation below. Findings could illuminate other areas of helpful reform.

Workday Issues
In some ways, the Minnesota judiciary’s employee policies reflect the reality that it employs people in unmarried relationships, including those in same-sex relationships. For example, Minnesota Judicial Council Policy 3.13 (Employment of Relatives) provides that “no appointing authority appoint, transfer, or promote to any position a member of his or her immediate family.” In a footnote, the policy defines “immediate family” to include “co-habitors,” which presumably would include domestic partners. In addition, various policies specifically include references to “sexual orientation,” including Policy 3.00 (Human Resources General Policy), Policy 3.04 (Discrimination and
Commentary: Sexual Orientation/Gender Identity - Courts

Harassment), and Policy 3.02 (Equal Employment Opportunity). To this extent, the Minnesota judicial branch does at least as well as most private employers, which include “sexual orientation” within the relevant non-discrimination or non-harassment policies.9

However, one glaring area in which the judicial employee policies are inadequate is in its Policy on Family and Medical Leave Act (no policy number; it is categorized as a “personnel” policy). This policy is the basis for providing employees with up to twelve weeks’ unpaid leave consistent with the Family Medical Leave Act (FMLA). The policy mirrors the FMLA language that it is available for an employee if needed “to care for a child, spouse or parent who has a serious health problem.” 10 However, the policy goes out of its way to note that “The [FMLA] specifically defines a spouse as a husband or wife and does not address other ‘alternative lifestyle’ relationships.” 11 The policy cross-refers to other judicial personnel policies, including chapter 13 (Sick Leave). 12

In Chapter 13 of the Minnesota Judicial Branch’s Human Resources Rules, Rule 13.4 states that an employee may use sick leave “to the extent of his/her accumulation for the following: … (f) illness or disability of an employee’s spouse or co-habitor ….” Additionally, Rule 13.4(h) permits an employee to use sick leave time “to attend the funeral” upon “the death of the employee’s spouse [or] co-habitor ….”

While the judicial policy regarding FMLA is correct that FMLA does not, by its own terms, extend its protections to employees needing time to care for sick “co-habitors,” it is equally true that nothing bars the judicial branch from extending this protection on its own initiative. (Certainly, nothing requires the judicial branch to describe these relationships dismissively as “alternative lifestyle relationships.”) The judicial branch’s failure to exercise its authority, not remotely diminished by FMLA or any other law, to provide employees with the ability to seek FMLA-type leave to address the serious health problems of their domestic partners is mystifying in light of its willingness to permit employees to use accumulated sick time to care for partners or to attend a partner’s funeral. The fact that the judicial branch does have these policies in place is commendable, but its failure to apply this principle of fairness to all areas within the scope of its discretion sends a message that some employees’ families are worthy of consideration, and others are not.

Recommendation: that the Minnesota judicial branch amend its Family and Medical Leave Policy to make it consistent with its Sick Leave Policy by making its protections available to employees and their “co-habitors.”

Governance
The Judicial Council of the Minnesota Supreme Court has established a number of committees designed to improve judicial policies and operations, as well as to advise the judiciary on matters of law or proposed policy. Reflecting the Fairness Policy (see above), the Court has established two particularly relevant committees: the Racial
Fairness Committee and the Gender Fairness Implementation Committee. The existence of committees dealing with matters relating to race and gender mirrors the scope of the Fairness Policy itself, which also focuses on these same critical areas.

However, inasmuch as this report recommends that the judicial branch expand the scope of its Fairness Policy to reflect that Minnesota experiences diversity in ways beyond race and gender, the scope of these committees is similarly inadequate to address the judicial branch’s need to examine critical issues related to, among other possible categories, sexual orientation/gender identity, disability, and religion.

Further, since this report makes other recommendations regarding sexual orientation-related matters, the judicial branch would strongly benefit from expanding its available resources to review these or other recommendations that emerge now or at some later point.

*Recommendation: that the Minnesota judicial branch expand the scope of its Fairness Committees to include at least one committee focused on other “fairness” issues beyond those of race and gender. The judicial branch could create committees to address each subject-matter area (e.g., a committee regarding sexual orientation, a committee regarding disability, etc.) or could create one broad committee designed to address all subject matter areas beyond race and gender.*

**Evaluation and Promotion**

With respect to one significant group of court employees – namely, judges – the concepts of “evaluation” and “promotion” are not quite the same as attorneys in other settings would experience. “Promotion” may come about as the result of an election, not because of the decision of an individual serving as their immediate supervisor. But regardless of whether the judge is “promoted” by the people, or by a recommendation for a higher appointment, it is likely that such a promotion (the result of evaluation, in one form or another) will be based in part on the judge’s performance of his or her duties. That performance, in turn, is influenced by the educational and other opportunities available.

According to the Minnesota State Court Administrator’s Office’s Professional Development Opportunities Guidebook for January 2006 – June 2007, the judicial branch offered three courses under the heading of “diversity.” These courses were: “He Says, She Says: How to Communicate Effectively with the Other Gender,” “Appreciating Differences” (a course based on the Myers-Briggs test), and “Intercultural Conflict Style Inventory” (an analysis of participants’ own conflict-resolution styles). It is not immediately apparent how, with the exception of the first course, these sessions would naturally lend themselves to the sort of “diversity”-related concepts that are embodied in the Court’s own rules regarding the elimination of bias requirements.
imposed on attorneys throughout Minnesota, or how they would prepare judges to identify and eliminate the sorts of discrimination that could appear in their courtrooms and which the Code of Judicial Conduct obligates them to prohibit. Indeed, judges are not required to undergo an equivalent of elimination of bias training as part of the continuing judicial education requirements. Providing at least one course that is designed with an eye toward the Code’s obligations (as well as those in the Code of Professional Conduct, governing the lawyers that appear before the judges) could be an improvement that would strengthen the professional development opportunities on offer while also reaffirming the judicial branch’s commitment to the anti-discrimination principles it has implemented in the Codes of Judicial and Professional Conduct.

Additionally, the Guidebook indicates that a course in “Family Law for the Minnesota Judiciary” was offered to participants. One participant noted that part of the session focused on “non-traditional families,” and indicated a hope that this would involve same-sex couples and their families. Instead, the focus was on unmarried heterosexual couples with children. It would be important to encourage in this or similar courses on substantive legal issues, where relevant, the inclusion of material relating to the diverse communities within Minnesota, including the GLBT community. It would also be helpful to encourage other groups, such as the District Judges’ Association, to include similar content.

Recommendation: that the Minnesota judicial branch encourage the expansion of existing professional education course offerings to court personnel to include relevant substantive-law matters pertaining to diverse Minnesota communities. Further, the Minnesota judicial branch should implement an elimination of bias requirement as part of continuing judicial education, and provide educational sessions regarding discrimination within the court system and strategies for identifying and eliminating it.

Recruitment, Retention, and Compensation
Between 2001 and 2003, Minnesota state employees in same-sex relationships had the ability to provide for their families in essentially the same way that employees with spouses could: by providing health insurance coverage to their partners that was equivalent in most respects to that available to spouses. This opportunity arose because then-Governor Jesse Ventura saw the fundamental fairness involved in providing equivalent compensation to all state workers. Under the Governor’s plan, negotiated with employee unions, an employee with a different-sex partner could provide for them through marriage, while an employee with a same-sex partner could provide for them through this domestic partner plan. This possibility arose because of executive branch commitment to fairness for all state employees.

In 2003, however, the domestic partner benefit possibility was closed when the Legislature, at the behest of the new Governor, Tim Pawlenty, removed relevant provisions from employee contracts before approving them. In 2007, the Legislature
changed course and approved legislation that would have reinstated the domestic partner benefit provisions for state workers. Governor Pawlenty vetoed that legislation, for this among other reasons. In 2007, the Legislature demonstrated its own commitment to fairness for all state employees.

According to Minnesota Judicial Policy 3.00 (Human Resource General Policy), the judicial branch is committed to, among other things, “provid[ing] comprehensive insurance and other benefits comparable to the other branches of state government.” While it is helpful to be consistent with the other branches of state government where it is in the judiciary’s interest to do so, consistency at the expense of fairness is never in the interest of the judicial branch.

Under Minn. Stat. 179A.101, the Legislature recognized the independence of the judicial branch in its dealing with its own employees, authorizing it to negotiate collective-bargaining contracts to cover its employees. Under subdivision 1(g) of this statute, the Legislature required only that “copies of collective bargaining agreements entered into under this section must be submitted to the Legislative Coordinating Commission for the commission's information.” This is quite distinct from contracts negotiated by the executive branch, where the Legislature required that “the negotiated agreements and arbitration decision must be submitted to the legislature to be accepted or rejected in accordance with this section and section 3.855.” See Minn. Stat. 179A.22, subd. 4. While the Legislature retained the power to “accept or reject” collective-bargaining agreements involving executive branch employees, the Legislature requires nothing more than to be “informed” of agreements for judicial branch employees. The judicial branch, therefore, is free to negotiate the provision of domestic partner benefits for its employees irrespective of whether executive branch employees enjoy those benefits.

The judicial branch’s extension of these domestic partner benefits would fulfill its unique, nonpartisan role, and ensure that this critical part of our government not only be but be perceived as fair and impartial. The judicial branch already recognizes non-marital relationships. Current human resources policies covering “co-habitors” are discussed elsewhere in this summary. Additionally, the Code of Judicial Conduct recognizes this reality. In Canon 3D(1)(c), for example, the Code provides: “A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where ... the judge knows that he or she, individually or as a fiduciary, or the judge's spouse [or] significant other ... has an economic interest in the subject matter in controversy....”

Likewise, Canon 4 regulates the financial dealings of judges and applies to dealings of family members. The comment to Canon 4 (emphasis added) provides:

"Family" denotes a spouse, significant other, child, grandchild, parent, grandparent, or other relative or person with whom the specified individual maintains a close familial relationship. See Sections 4D(2), 4E, 4G and 5A(3)(a).
... "Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Sections 3D(1) and 4D(5).

Under these provisions, the Minnesota judicial branch recognizes that a domestic partner is a member of a judge's family. Thus, while imposing burdens on a judge’s actions when a judge has a domestic partner, the judiciary should likewise provide equal benefits based on that status.

Finally, Minnesota Judicial Council Policy 3.00 (Human Resources General Policy) provides that “at least each biennium, the Judicial Council shall approve a compensation plan for employees who are not covered by a collective bargaining agreement.” Accordingly, the Judicial Council has the authority to confer upon non-union employees the same domestic partner benefit provisions it could make available under collective-bargaining procedures.

Recommendation: that the Minnesota judicial branch exercise its statutorily-recognized independent authority and negotiate for domestic partner benefits for its employees covered by collective-bargaining agreements, and provide similar benefits to its employees not covered by such agreements.

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1 Minnesota State Bar Association, 2006 Self-Audit for Gender and Minority Equity, at 28.
2 Id. at 29.
3 Id. at 9-10.
4 Id. at 13 (includes sample derisive comments).
5 Id. at 2.
6 Id. at 46.
7 Id. at 59.
8 Id. at 64.
9 Id. at 56.
10 Minnesota Judicial Branch Policy on Family and Medical Leave Act, at 1.
11 Id. at 2.
12 Id. at 3.
14 Id. at 5.
Recruitment, Retention, and Compensation
Under Minnesota law, local government employers may not provide domestic partner benefits to their employees. See Lilly v. City of Minneapolis, 527 N.W.2d 107 (Minn. App. 1995). However, the statute at issue in Lilly applies to premium-based insurance; it does not bar local governments from providing, for example, family leave policies that permit employees to take time off to care for a sick domestic partner. Local government employers should also critically review their policies and practices to ensure that opportunities not governed by Lilly that are made available to employees’ spouses, from beneficiary designations to relocation allowances to inclusion in the staff picnic, are made available as well to employees’ domestic partners.

State boards and agencies may provide domestic partner benefits only with the approval of the Legislature and Governor, which is not forthcoming at this time. However, state boards and agencies should conduct a comprehensive review of policies not governed by Lilly to ensure that domestic partners are treated the same way as spouses.
Sources Consulted for Sexual Orientation/Gender Identity
Websites for local law firms (Dorsey & Whitney; Halleland Lewis Nilan & Johnson); Faegre and Benson Equality Award, www.faegre.com/articles/article2308.aspx.
This section of the MSBA Diversity Best Practices Guide addresses the important role that mentoring plays, particularly in the retention of lawyers. It contains the following:


A *Bibliography*, identifying the source for each study, on page 85.
Achieving Excellence through Mentoring:
A Step-by-Step Guide

Lisa Montpetit Brabbit*

The Best Practices in this Guide can be advanced through a formal, organizationally supported mentor program. A growing body of empirical research shows positive professional development and improved culture as a return on organizational investment.¹ Practitioners and scholars are uncovering new ideas and ways to advance relational structures and mentoring outcomes.² Fine nuances in relational structures are now giving insight to the variations of mentoring quality.³ Smart investors appreciate that each program should be specifically tailored to organizational and participant goals, and developed in union with the mission of the organization. While one size does not fit all, several key elements can be identified as consistent factors in successful formal programs.

This mentoring guide outlines the necessary underpinnings of a formal program through a practical step-by-step plan. Section I, Feasibility Study, gives decision makers both information and factors to consider before an investment of time and money is made in a program. Section II, Program Preparation, outlines the foundation for the program and identifies the tasks to be accomplished before participants are engaged in mentoring relationships. Section III, Program Implementation, provides tips for maximizing the mentoring process through the lens of the program director. Section IV, Assessment, addresses the need to create systems to evaluate mentoring outcomes for both quality control and opportunity for improvement.

I. Feasibility Study: Evaluate a Formal Program’s Viability

Each legal employer should carefully discern whether it is positioned to support a successful program. Not all environments are ready-made for mentoring success. For legal employers that have previously experienced either failure or mediocre outcomes with a formal program, the evaluation should also identify missteps and reasons why the program did not meet expectations. This section gives guidance to the pre-program conversations and decisions in which key stakeholders should engage about trained staff (the program director), financial resources, and culture.

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¹ A summary of mentoring studies and a bibliography are found on pages 80-86 of this Guide.
³ Id.
A. Program Director

Most legal employers underestimate the importance of a trained program director - a point person for every mentor relationship who is strategically involved from preparation to assessment. Law firms, government entities and law schools typically employ or assign an individual to pair mentors and protégés, but a formal program requires more. Without a director who supports the mentoring relationship throughout the entire program, mentoring outcomes fail to achieve maximum potential.

The active participation of a program director in a formal program is a key distinction between formal and informal mentoring. The foundation for informal mentoring is often a spontaneous dyadic relationship between mentor and protégé. Formal mentoring, however, is a planned tertiary relationship between a mentor, a protégé and a director. While mentoring relationships under both rubrics can fail, when a formal program understands and engages the mechanics of a tertiary relationship, successful mentoring outcomes will more likely follow. Legal entities that seek to build a formal program should consider the engineering of a three-legged stool.

In selecting a program director, the organization should look for the following:

- Familiarity with the practical application of mentor programs and the core concepts of mentoring.
- Strong interpersonal skills.
- The ability to navigate complex social and interpersonal challenges.
- Strong administrative and organizational skills.

The director should have or develop (early on) a working knowledge and appreciation of the following:

- Basic mentoring concepts and an understanding of mentoring theory.
- The mission and values of the organization.
- The services of the organization, how they are delivered, and the client base.
- The required skill sets of the lawyers (i.e., client relations, negotiations, problem solving, drafting).

The director is a valuable asset to the relational structure and process of a formal program. A director can infuse accountability, purpose, and quality into the mentoring process in ways not possible in informal mentoring. The director, as outlined in Sections II, III and IV, is responsible for:

- Developing program goals and objectives.
- Identifying and gathering relevant information from mentors and protégés.

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4 A failure to appreciate the unique role of the director typically stems from a common belief about formal programs; namely, that participants are assumed to be self-sufficient as soon as a match is made. Such an assumption can only be made for successful informal mentoring.
• Developing or acquiring helpful written materials for program participants.
• Pairing mentors and protégés.
• Training participants.
• Supporting and empowering mentoring relationships in the program.
• Troubleshooting and problem solving.
• Data collection and analysis.
• Overall quality control.

The organization will need to determine whether the director is full-time, part-time, or whether the role is integrated into an existing position. Common missteps include assigning the director role to a competent, but already busy, employee and underestimating the amount of administrative time a successful program requires. Try to make fair comparisons when evaluating the amount of time a mentor program will require. For larger environments, does the organization have a full-time recruiter? Does the organization have a full-time pro bono coordinator? For smaller environments, how much time is spent on human resources issues? How much time is spent on management and administrative issues? Evaluating all options with an honest assessment of the time and energy required will lead to viable solutions. Understanding the critical role of the director throughout the entire mentoring process, and the director’s opportunity to advance each relationship on a continuum of quality, will position a program for success.

**B. Financial Support**

The single most important financial commitment for a formal mentor program is the investment in the program director, primarily in the form of salary and benefits. Other important financial considerations include:

• Financial rewards for successful program participants or participants who achieve stated goals.
• Expenditures for program activities such as a kick-off event, monthly luncheons, small group meetings, or year-end receptions.
• Reimbursements for mentor-protégé activities (lunch, coffee, mileage, travel).
• Professional consultants to assist with training directors, conducting orientation programs, and developing program requirements and materials.
• Marketing costs associated with a successful program.

**C. Cultural Assessment**

While more research is necessary to better understand how organizational systems and attitudes impact the acceptance and effectiveness of mentoring, anecdotal evidence implicates a strong connection between organizational culture and the way participants approach and engage the mentoring process. Best Practices for a mentor program require all stakeholders to see mentoring as a valuable endeavor, especially the highest levels of leadership and management. Mentoring activities should be accepted and encouraged in tangible, visible ways and should model both the values of the
organization and the core values of the profession. For example, organizations that value diversity should integrate discussion items or events related to underrepresented groups into the activities of the mentor program. Organizations that value excellence, service, or professionalism should undertake the same effort to integrate these concepts.

Senior lawyers influence culture and shape the personality of the organization, either intentionally or by default. Protégés in the program will focus on the actions of leaders and mentors, not just their words, and respond to the program accordingly. If protégés perceive that the culture is unsupportive of the program, they will disengage, morale will decline, and the risk of failed relationships will increase. Organizations should consider the following when trying to create a strong connection between organizational culture, individual objectives, and the various ways in which the two can support each other:

- Allow time spent on mentoring activities to count toward overall hourly requirements.
- Consider and evaluate whether each mentor and protégé obtained mentor program goals as a part of his or her performance reviews (see Section III on developing personal and professional goals).
- Consider financial incentives for both mentors and protégés who achieve identified mentor program goals.
- Create organizationally supported opportunities for mentors and protégés (i.e., luncheon roundtables, small group debriefings).
- Encourage mentors and protégés to suggest ways to improve organizational culture.
- Allow protégés to offer reviews of their mentors.
- Do not allow senior leaders a “free pass” from participating in or showing support for the program. At a minimum, each person should be able to identify the ways in which he or she will support the program. Alternatives to a formal relationship include hosting a small group discussion on a topic important to the organization, delivering discussion suggestions to mentors and protégés, or organizing a group activity.
- Disseminate a newsletter or other communication designed to impart useful information, mentoring tips, or offer readings of interest related to mentoring and diversity.
- Provide recognition and non-financial rewards for mentors and protégés.

Mentoring and organizational culture both grow from our relationships with other people, and in an intra-organizational program, the two are inextricably linked. A community that demonstrates care and concern for one another and honors a lawyer’s unique gifts and contributions to organizational and professional goals will advance a healthy culture and positive mentoring outcomes.

II. Program Preparation

Design features of formal programs vary greatly from organization to organization.
Empirical research is virtually non-existent in the area of design and structure of a formal program. As a result, the literature is flush with tips and techniques flowing from large doses of anecdotal evidence. A summary of positive anecdotal evidence is outlined in this section on Best Practices for program preparation.  

A. Program Objectives

Successful mentor programs have clearly articulated, achievable objectives. Objectives communicate to participants both an understanding of what the program seeks to accomplish within the organization and how the organization sees its priorities for participants. Program objectives should capture an organization’s values and norms and parallel the aspirations of the profession. Examples of program objectives include:

- Creating opportunities for lawyers to develop specific professional skills for the benefit of clients and the community.
- Generating opportunities for lawyers to engage in conversations about professionalism, diversity, the practice of law, and other issues important to the organization.
- Growing and developing authentic, ethical leaders.
- Expanding professional knowledge.
- Fostering professionalism and the highest ideals of the profession.
- Establishing developmental networks
- Creating professional opportunities for and providing meaningful work assignments to new associates.
- Building a community of respect and acceptance for all individuals.
- Designing opportunities for all lawyers to participate in pro bono activities.
- Maximizing the benefits of a diverse work environment.
- Building social capital.

As identified later in part IV, program objectives serve as a critical foundational building block for assessment, feedback, and evaluation of how the mentor program is working.

B. Program Requirements

Program requirements define the expectations of the participants and give guidance about the amount of time and types of activities for both mentors andprotégés. Program requirements should incorporate the necessary structure to capture

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5 See also Katherine Giscombe, Advancing Women through the Glass Ceiling with Formal Mentoring, Handbook of Mentoring at Work, supra note 2, at 549-571 (author reviews 11 formal programs specifically developed to advance women business leaders to identify key elements of mentor programs judged to be effective).

6 Ragins et al., Handbook of Mentoring at Work, supra note 2. The term “developmental networks” has recently been introduced to the mentoring literature. The term is used to describe multiple sources of mentoring support and the resulting cumulative impact on outcomes such as satisfaction, skill development, career advancement, and increased self-confidence.
accountability (i.e., stating a minimum number of times mentor pairs should connect) and allow for enough flexibility to maximize individual goals (i.e., program participants determine the nature of the engagement at each connection point). In formal programs, a spectrum - and often a tension - exists between formality and flexibility in program requirements. In finding a balance, understand that managing the expectations of the participants is critical to the success of the program and the satisfaction of the participants. Questions to consider include:

- Is participation voluntary or required?
- How long is the commitment to the formal relationship (six months, one year, three years)?
- What is the minimum amount of time the mentor and protégé should commit to the program?
- Are a minimum number of interactions required for the mentoring relationships?  
- Will time spent on mentoring activities count towards minimum hour requirements for lawyers?
- Will program requirements give guidance on mentor activities? What are the various ways in which mentors and protégés can spend their time (lunches, shadowing, conversations, problem solving, small group sessions, assigned projects with feedback)?
- Does the program require discussion items or specific mentor-protégé activities?
- How will participants record time and activity in the program?
- How will participation be evaluated and/or rewarded?
- Who will evaluate and/or reward participation?
- Will other mentoring models be utilized, such as mentoring circles and peer mentoring?

Each question must be answered in the specific context of the organization and should seek to advance the program objectives. The answers to these questions will form the basis for communications with the program participants and will guide expectations relative to program activities.

C. Selecting and Gathering Information from Mentors and Protégés

Depending on the size of the program, participants are selected either because they volunteer, they are invited, or they are required to participate. Mentors who volunteer are often intrinsically motivated individuals who derive personal and professional satisfaction from assisting another lawyer on his or her professional journey. While this is most often the case for a volunteer, the director should still converse with the volunteer about expectations to rule out motivations that are contrary to the objectives of the program. For example, a lawyer might volunteer to mentor a law student with the

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7 S. Gayle Baugh and Ellen A. Fagenson-Eland, *Formal Mentoring Programs: A “Poor Cousin” in Informal Relationships?*, Handbook of Mentoring at Work, supra note 2 at 261 (“Available research suggests that setting guidelines for frequency of meetings leads to more positive responses to the program.”) (citations omitted).
hopes of obtaining a “free law clerk.” Similar conversations should be engaged with a volunteer protégé. Left unchecked, misplaced motives and expectations will lead to failed relationships.

Invited mentors are generally identified using an aspirational benchmark of experience or expertise. Invited protégés are generally identified using some threshold for professional skill or other need for professional improvement. Conversations with mentors and protégés invited to participate in a program should give specific attention to mutuality and reciprocity. The concepts of mutuality and reciprocity emphasize that the participant was invited to both give and receive in the relationship. If the mentor views his or her role as limited to “giving,” and the protégé to “receiving,” that expectation will also limit possible opportunities and outcomes.

If lawyers are required to participate, evaluate their specific needs and strengths and make the appropriate investment in the pairing process. In short, not all lawyers have the interpersonal skills necessary to be an effective mentor in the tertiary relationship of mentor, protégé, and director. As mentioned earlier in this guide, alternatives to a “paired” relationship exist.

When considering mentors for the program, note the degree to which the lawyer demonstrates:

- Interpersonal skills
- Professional skills
- Listening skills
- Problem solving skills
- Expertise and knowledge
- Self-reflection
- Professionalism.

Once a participant has been identified, the program coordinator should:

- Provide education about program objectives
- Provide education about program requirements
- Gather all necessary information for the pairing process
- Provide written program materials
- Answer questions.

**D. Written Materials**

Written materials serve as a road map for participants in a formal mentor program. Written materials range from short, concise checklists, to longer, more informative creations. Consider including the following in the written materials:

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8 Ragins et al, Handbook of Mentoring at Work, *supra* note 2 at 661 (citations omitted.)
III. Program Implementation

A. Pairing Mentors and Protégés

Investing the necessary time, thought, and energy into the pairing process will maximize the opportunity for a high quality, reciprocal relationship. While programs are beginning to report more useful information in the last decade about the process, pairing mentors and protégés remains a challenge for most programs.

For intra-organizational programs, the director will have some baseline knowledge of the participants. Personal knowledge can be very helpful in considering work habits, work style, delivery and receipt of feedback, personality, and a wide variety of interpersonal skills. On some level, the coordinator is trying to predict “chemistry.” While the “chemistry” question is worth asking, formal programs are not designed to advance on chemistry. Like all relationships, there is no substitute for effort, time, emotional energy, and self-reflection.

Mentor relationships in a formal program arise in four primary ways, or a combination thereof: director assignment, protégé selection, mentor selection, or mutual selection. Regardless of the method, the director has several important roles to play.

First, the director should ensure that relationships center around the articulated professional goals of the protégé, and that the mentor can (at least in theory) advance those goals.

Second, the coordinator should consider needs and goals related to members of underrepresented groups. Scholars conclude:

We can postulate that when these relationships are of high quality, they will not only have the potential to enhance the careers of individuals from non-dominant
groups but can also prompt the personal learning of both mentors and protégés. While same-gender and same-race relationships have been found to be a critical source of psychosocial support in individuals’ developmental networks and mentoring relationships, cross-race and cross-gender relationships are opportunities for individuals from all backgrounds to acquire emotional competencies and relational skills essential to leading and thriving in a diverse workforce.9

Third, the coordinator should consider other stated factors from either the perspective of the protégé or the mentor. If a new lawyer identifies a desire to improve her writing skills, who can assist in that goal? If a new lawyer identifies marketing as a goal, who can role model those relationship skills for her? If a protégé seeks more meaningful work assignments, what potential mentor falls in that sphere of influence and decision-making?

Last, the director may need to re-match mentors and protégés during the program. A lawyer may leave for other employment. Another lawyer may change goals that render the initial pairing obsolete. And in some instances, the personalities of the mentor and the protégé prevent any forward progress. Under a variety of circumstances, mentors and protégés will need to be re-matched or the relationship will need to be “amended” in some way. To accomplish this goal efficiently, a formal program should always identify more mentors than protégés. After the initial pairing process, some identified mentors will be called to participate in the program in ways other than a one-to-one relationship. However, an initially unpaired mentor may need to step in during the course of the year.

The director, and others involved in the process, should allocate roughly 20 to 30 minutes of time per relationship for the pairing process in a small program. This estimate of time per relationship will grow with the size of the program. If a program has 25 to 50 pairs, the time allocation can fall between three to five days to complete the pairing process after all the appropriate information has been collected. For a program with 450 pairs, the time allocation can reach up to three to four weeks.10 In a large program (over 450 pairs), it may not be possible to interview each participant; however, basic information needs to be gathered. Written questionnaires are an appropriate substitute for personal conversations.

Legal environments often debate whether a lawyer’s supervisor should serve as a mentor. Perhaps that question is the exclusive decision of the protégé. The benefits of a mentor-supervisor include the possibility that the relationship is already formed on trust, and the supervisor has a clear understanding of the strengths and weakness of the protégé. Under this construct, the mentor must be intentional about providing objective, non-evaluative feedback in addition to the regular evaluative feedback generally given on assignments. The risks of a

9 Ragins et.al, Handbook of Mentoring at Work, supra note 2 at 667 (citations omitted).
10 Lynn P-Sontag, Kimberly Vappie, and Connie R. Wanberg, The Practice of Mentoring, Handbook of Mentoring at Work, supra note 2 at 595 (MENTIUM 100®, a formal mentor program, identifies that it “takes a team of four approximately six weeks to match 250 partnerships.”)
supervisor-mentor include the possibility that the protégé will feel uncomfortable communicating issues to the mentor or identifying areas of self-improvement, particularly if the mentor's role includes performance evaluations.

When organizational objectives and individual goals serve as the fulcrum for the pairing process, directors will increase the likelihood of highly successful relationships.

B. Training Sessions

Scholars leave room for the possibility that “excellent training can enhance or even replace a detailed matching process…. "11 Whether this is true, both scholars and practitioners agree that quality training is a must.12 Training sessions (similar to the written materials) can address or reinforce:

- Program overview
- Program objectives
- Program requirement.
- Participant expectations
- Suggested activities
- Suggested discussion items
- Helpful tips for successful participation
- Options for conflict resolution within the relationship
- Data collection.

A thorough training session will also include information about mentoring functions and outcomes. Knowledge about mentoring functions and outcomes can expand views on the utility of mentoring and increase the level of engagement for participants. The literature suggests four mentoring functions:

a. Career Mentoring Function

The career mentoring function directly aids the protégé’s career advancement and should assist with:

- Favorable and challenging work assignments
- An understanding of unwritten rules
- Networking and marketing
- Leadership development13

11 Baugh and Fagenson-Eland, Formal Mentoring Programs, supra note 7 at 264.
12 Id.
13 Veronica M. Godshalk and John J. Sosik, Mentoring and Leadership: Standing at the Crossroads of Theory, Research, and Practice, Handbook of Mentoring at Work, supra note 2, 149-178 (authors discuss the current intersection of mentoring and leadership, pose theoretical similarities and empirical distinctions between mentoring and leadership, and offer ideas about how to advance research into practice for organizations).
• Self-organization and time management
• Sponsorship and career planning
• Feedback on work.

a. Psychosocial Mentoring Function

The psychosocial mentoring function enhances the protégé’s sense of competence, self-esteem, self-image, and identity in a professional role and should assist with:

• Self-confidence in a professional role
• Sense of self-worth
• Interpersonal relationship skills.

Mentors often overlook and undervalue opportunities within the psychosocial mentoring function. Are you in a position to honestly transfer credibility to a protégé? Does your feedback tear down or build self-confidence? Are you providing challenging work assignments to send the message that you have faith in the intelligence and competence of your protégé?

b. Role Modeling Mentoring Function

Role modeling focuses on learning through observation. A role model in a professional context sets an example of excellence and demonstrates applied knowledge necessary for professional competence. The mentor models the core values of the organization and assists with:

• Client relationship skills
• Technical skills (negotiations, drafting, writing)
• Problem solving skills
• General practice management.

c. Professionalism Mentoring Function

The professionalism mentoring function is new to the literature.\textsuperscript{14} The professionalism mentoring function helps the protégé realize key principles of professionalism,\textsuperscript{15} meaning that each lawyer:

• Continues to grow in personal conscience over his or her career.
• Agrees to comply with the ethics of duty - the minimum standards for the lawyer’s

\textsuperscript{14} Neil Hamilton and Lisa Montpetit Brabbit, \textit{Fostering Professionalism through Mentoring}, 57 J. Legal Educ. 102, 109 (2007).
\textsuperscript{15} Neil Hamilton, \textit{Professionalism Clearly Defined}, 18(4) Prof. Law. 4-20 (2008) (Hamilton’s principles of professionalism are a synthesis of the major ABA reports, the Conference of Chief Justices National Action Plan and the Preamble to the Model Rules of Professional Conduct).
professional skills and ethical conduct set by the Rules.

- Strives to realize, over the course of a career, the ethics of aspiration - the core values and ideals of the profession including internalizing the highest standards for the lawyer’s professional skills and ethical conduct.
- Agrees both to hold other lawyers accountable for meeting the minimum standards set forth in the Rules and to encourage them to realize core values and ideals of the profession.
- Agrees to act as a fiduciary where his or her self-interest is overbalanced by devotion to serving the client and the public good in the profession’s area of responsibility: justice.
- Devotes professional time to serving the public good, particularly by representing pro bono clients.
- Undertakes a continuing reflective engagement, over a career, on the relative importance of income and wealth in light of the other principles of professionalism.

A strong focus on professionalism and ethics in a mentor program will also permeate the organizational culture. The organization will realize positive collateral benefits by intentionally incorporating the professionalism mentoring function into a formal program.

C. Developing Personal and Professional Goals

At the first meeting of the protégé and the mentor, personal and professional goals should be discussed, outlined, and shared with the program director. Mentor-protégé goal setting accomplishes several important facets of the learning-focused relationship. First, goal setting encourages a protégé to be self-reflective about strengths, weaknesses, and professional passion, purpose, and aspiration. Through this exercise, the mentor relationship can begin from a platform of self-awareness. Each protégé articulates what he or she hopes to obtain from the relationship. Second, articulated goals from a protégé allow the mentor to better understand his or her role and the various ways to assist the protégé. Third, the director uses the mentor-protégé plan to support the relationship. All participants have the same road map of mentor program activities throughout the year. Last, the process allows both mentor and protégé to evaluate the various ways in which the relationship can advance the organizational mission, program objectives, and the mentoring functions.

A quick Google search reveals that many formal programs do not require written goals, let alone goals that are discussed, evaluated, and utilized between mentor, protégé and director. Rather, a “let’s see what comes up” approach is adopted, or “call me if you need anything.” Falling back on the misplaced assumption that organizationally supported mentor relationships are self-sufficient and process-oriented, these programs are at risk for experiencing high levels of unsatisfactory outcomes. 16 The risk is one that program developers should reasonably foresee when neither the protégé nor the mentor understands why they are working together.

16 In most instances, the mentor and protégé meet on one or two occasions for lunch during the tenure of the program.
D. The Role of the Director: Supporting the Relationship

Whether the director is external or in-house, the roles remain largely the same. A director will identify and utilize professional tools to guide the supervision and administration of the mentor program with a focus on the highest level of quality control. In addition to the aspects of program preparation and program implementation identified in sections II and III, a director should consider the following as part of his or her unique leverage capabilities:

- Review each goal plan and provide feedback.
- Ensure that each relationship demonstrates progress consistent with the plan in the first 30 days.
- Solicit feedback and reflection following randomly selected mentoring activities.
- Connect with each relationship every 60 days.
- Engage and inform senior leadership in the process.
- Assist either mentor or protégé with challenges to progress.
- Manage “amended” or “re-matched” relationships when necessary; not all organizationally supported mentor relationship will be successful despite the best intentions. In this situation, a mentor or a protégé may need to be re-matched.
- Organize individual, small, or large group activities consistent with program objectives.
- Ensure that each participant is recording (as directed) all mentor program activities.

IV. Program Assessment

Assessment tools designed to measure mentoring outcomes and provide feedback for evaluation and improvement should be a staple in any formal program. Most formal programs rely on pre-evaluation and post-evaluation tools in the form of a questionnaire. While participant-reported conclusions are helpful, assessment tools should also capture the activities of the participants. Without a complete and thorough understanding of what the participants are doing, or did, program administrators cannot evaluate the substance of the mentoring relationship. How did the mentor and the protégé spend time together? What activities did they participate in? What did they discuss? When pre- and post-evaluations can be viewed in light of the activities of the participants, the information has increased value. When shared externally, the information has value to other programs, researchers, and scholars.

A complete collection of data, including an evaluation and summary of participant activities, brings to light several key questions:

- Is the mentoring process advancing the organizational mission?
- Are program objectives being met?
- Are individual goals being met?
- Do mentors and protégés self-report positive outcomes and progress?
- Which mentoring functions were advanced?
- What aspects of the program require changes and how can the program improve?
Other assessment tools - primarily focused on quality control - flow from many of the interactions the director has with both the protégés and the mentors. The primary opportunities include:

- Review of individual goal plans
- Individual contact with each relationship
- Anecdotal reports from students and mentors
- Review of recorded program activity on a periodic basis.

Conclusions about formal mentoring are currently based, in large part, on inference, anecdotal evidence, and educated guess. While the number of formal programs has grown tremendously in the last two decades, very few programs report or publish outcomes. Given the amount of time, energy and resources that go into a successful program, assessment models should be designed and integrated into each program.

V. Conclusion

Mentoring is no stranger to the professional workplace and should be readily available to all who seek to grow professional skills, expand self-confidence, gain knowledge, and find meaning and purpose over a lifelong legal journey. Concepts of mutuality and reciprocity ensure that all participants have the opportunity to experience directed, accelerated professional growth. While each mentoring fingerprint is unique, successful programs integrate key concepts outlined in this guide into the fabric of formal mentoring relationships and an array of developmental networks. Mentoring is a process legal organizations can no longer afford to pass up. The next generation expects it; the health of the profession demands it.
This section of the MSBA Diversity Best Practices Guide contains Research on the Impact of Mentoring in a Professional Environment.*

Empirical research on mentoring relationships and outcomes remains sparse, especially for the legal profession.¹ Anecdotal evidence however, is powerful on the importance of mentoring relationships for a successful work environment, specifically for women.

Mentoring can have a significant impact on professional development and skill development for women. Two large-scale studies (although not specifically on mentoring) provide evidence that newer lawyers learn some of the key professional skills through observation of, and discussion with, senior lawyers.²

The studies are organized as follows:
- Mentoring Studies about Women in Law Firms and Other Legal Settings
- Mentoring Studies about Women in Law Schools
- Mentoring Studies about Race and Ethnicity
- General Mentoring Studies

A bibliography follows on page 85, identifying the source for each study.

¹The author wishes to thank Jenna Tschida for her research assistance.
MENTORING STUDIES:
Research on the Impact of Mentoring in a Professional Environment

Summary of Mentoring Studies Relating to WOMEN in LAW FIRMS and OTHER LEGAL SETTINGS

**Equal Access:** Study indicates that female protégés feel more socially integrated than non-protégés and this finding holds regardless of their mentor’s gender.³

**Workday Issues:** Journal article notes the benefits that a mentoring relationship provides, such as listening to an associate’s concerns and questions about assignments and work/life balance, and ensuring that the associate is exposed to a wide range of work experiences.⁴

Journal article notes that formal mentoring programs help promote cross-gender relationships, especially in environments where there are few women senior enough to act as mentors.⁵

Women and minority lawyers are capable of finding one or more mentors if they are strategic and proactive in seeking them.⁶

**Governance:** Journal article examining the issue of gender and mentoring in law firms notes that “the fewer women who are mentored, the fewer of them there are to rise to the top to act as mentors to new women associates.”⁷

Article notes that one law firm’s approach to promoting women into leadership positions in the firm centered on “mentoring circles” for female lawyers, which provided opportunities for women to connect and develop mentoring relationships with women across practice groups and at different levels of seniority.⁸

**Evaluation and Promotion:** In general, mentoring helps women advance in the law firm hierarchy.⁹

**Recruitment and Retention:** “A good mentor can also acquaint a new associate with firm culture and client relations, and can help groom the associate for partnership.”¹⁰

Study examining the benefits of mentoring for female lawyers notes that female professionals appear to benefit from having been mentored; protégés are more satisfied with their careers, and their professional expectations have been met to a greater degree when compared to non-protégés.¹¹
Mentoring Studies

Study examining how lawyers build and maintain successful mentoring relationships found that 90% of those in formal mentoring programs were satisfied with those relationships and the majority of participants expressed a preference for informal mentoring relationships.  

Article notes that “it is incumbent on law firms to figure out how to mentor young lawyers, and especially women of color, because the firms will lose business if they do not have truly diverse ranks of attorneys at all levels” and otherwise these same associates will likely leave the law firm.

Compensation: Study examining the benefits of mentoring for female lawyers noted that female protégés report significantly higher earnings and perceive more opportunities for promotions than female non-protégés.

Summary of Mentoring Studies Relating to WOMEN in LAW SCHOOLS

Mentoring helps women faculty experience increase job and career satisfaction.

Summary of Mentoring Studies Relating to RACE and ETHNICITY

Workday Issues: Race clearly influences overall access in two ways: access to any type of mentoring relationship and who has access to a mentor.

People of color have a more difficult time gaining access to a mentor.

A Catalyst study focused on women of color correlates mentoring and positive career outcomes.

Gaining access to mentors of color may be problematic because of the lack of diversity within higher levels of the organization.

In a 2004 study, mentors of color have been found to have somewhat different experiences than their white counterparts. “Mentors of color reported a number of outcomes at higher levels than did their white counterparts. Mentors of color reported increased self-confidence, improved supervisory skills, improved skills for recruiting new talent, better networking skills and renewed commitment to their fields.”

Evaluation and Promotion: Mentoring has helped people of color achieve senior levels within an organization.
### Summary of GENERAL MENTORING STUDIES

**Equal Access:** Study examining mentoring experiences and gender determined that mentoring systems provide a special form of entry into important social networks.\(^{22}\)

**Workday Issues:** One study indicates that mentored individuals were more satisfied with their career, more likely to believe that they would advance in their career, and more likely to be committed to their career than were their non-mentored counterparts.\(^{23}\)

Separate study recommends that protégés develop a network of mentoring relationships and consider the importance of accessibility of a mentor, as well as a mentor’s status position.\(^{24}\)

Study examining mentoring relationships in retail protégés found that 75% of “same-sex and cross-sex participants identified their mentoring relationship as having been ‘very valuable’ to their career success.”\(^{25}\)

Meta-analyses also indicate that protégés experience increased job and career satisfaction as a result of mentoring.\(^{26}\)

**Evaluation and Promotion:** Allen study shows that greater career mentoring related to more promotions.\(^{27}\)

Underhill study concludes that mentoring has a positive impact on promotion and compensation.\(^{28}\)

Two studies involving law firms provide evidence that mentored associates were more likely to make partner.\(^{29}\)

**Recruitment and Retention:** Allen study indicated that mentored individuals had greater intentions to stay with their current organization than did non-mentored individuals.\(^{30}\)

Separate study noted the possible link between mentoring and career success that includes modeling and vicarious reinforcement.\(^{31}\)

Two studies provide evidence that mentored lawyers are less likely to leave the firm when given a viable option.\(^{32}\)

Study examining the different types of protégés and mentor relationships noted that protégés with traditional mentors (i.e., a more senior member of profession) indicated “significantly greater job satisfaction . . ..”\(^{33}\)
Mentoring Studies

**Compensation:** Allen study indicated that greater career mentoring was related to greater compensation and greater career growth.  

Underhill study concludes that mentoring has a positive impact on promotion and compensation.  

Bibliography for Mentoring Studies

9 McManus, *supra* note 4, at 220.
12 Abbot and Boags, *supra* note 6.
17 Id. (citations omitted).
18 Id. (citations omitted).
19 Id.
21 Id. at 225 (citations omitted).
26 Christina M. Underfull, The Effectiveness of Mentoring Programs in Corporate Settings: A Meta-Analytical Review of the Literature, 68 J. Voc. Behav. 92, 302 (2006) (“[T]hose receiving mentoring have a slight advantage in their careers over those not mentored.”)
27 Allen, supra note 23, at 130.
28 Underfull, supra note 26.
29 David N. Laband & Bernard F. Lentz, The Impact of Having a Mentor on Earnings and Promotion: Evidence from a Panel Study of Lawyers, 6 Applied Econ. Letters 785-787 (1999) (those who reported having a mentor in 1984 were more likely in 1990 to have achieved partner status); Monica C. Higgins and David A. Thomas, Constellations and Careers: Toward Understanding the Effects of Multiple Developmental Relationships, 22 J. Organiz. Behav. 223, 240 (2001).
30 Allen, supra note 23.
31 Dreher, supra note 22, at 540.
32 Laband & Lentz, supra note 29 (examining data from the 1984 AVA National Survey of Career Satisfaction); Higgins & Thomas, supra note 29 at 223, 236 (assessed in 1991 and 1997 whether the respondents were still at their original firm and whether they had been promoted).
33 Ensher, supra note 24, at 419, 434.
34 Allen, supra note 23, at 130.
35 Underfull, supra note 26.
Acknowledgements

Minority Bar Summit:
The Diversity Implementation Task Force is grateful for the contributions of the participants in the Minority Bar Summit held on April 17, 2008 and its facilitators, James C. Burroughs and Janice Downing of Fredrikson Human Resources Consulting, Ltd.

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On April 17, 2008, the MSBA Diversity Implementation Task Force hosted the Minority Bar Summit. Participants included representatives from state and county bar associations, area law schools, law firms, legal assistance organizations, and other groups representing legal employers. The purpose of the Summit was to: 1) gather feedback on the Best Practices Guide; 2) discuss strategies that have been used at places of employment; and 3) incorporate action strategies into sample work plans that could be used by employers with the Best Practices Guide to meet the diversity goals of their organizations.

During the Summit, participants, working in groups, were assigned to review selected Best Practices for each of the diversity areas set forth in the Guide. Each group discussed the following areas: Value and Definition of Diversity, Return on Investment (Business Case); Goals, Strategies and Action Steps; and Metrics to Measure Success.

The Sample Work Plans in this Appendix are the result of these group discussions. These sample plans may assist employers, in conjunction with other sections of the Guide, in developing specific action plans to accomplish the diversity goals unique to their organizations.

Note: The Minority Bar Summit included both Task Force and non-Task Force participants, and the Task Force did not formally adopt the Sample Work Plans. As a result, they may not coincide completely with the recommendations in this Guide.
Note: These instructions were distributed to the small working groups at the Minority Bar Summit for assistance in developing Work Plans to implement their assigned Best Practices.

The Area of Diversity for Our Group is ________________________.

Area of Diversity (10 minutes)

- How is this area of diversity defined in the workplace?
- Does the definition encompass all areas for this type of diversity?
- Why should this area of diversity be valued?

Best Practice (10 minutes)

- Define each Best Practice with a one or two sentence definition.

Return on Investment (20 minutes)

- What is the impact on each of the following areas if diversity is achieved?
  
  Financial (revenues)
  Employees (satisfaction, engagement, loyalty, retention)
  Clients (satisfaction, engagement, loyalty, retention)
  Community (image, media, networks)

Goals (15 minutes)

- Identify one measurable goal for each Best Practice.

Action Steps (20 minutes)

- Identify specific action steps necessary to accomplish each goal.
- For each action step, identify potential challenges/barriers.
- For each challenge/barrier, identify potential solutions.

Metrics to Measure Success (15 minutes)

- Identify a method to measure the success of the goals and action steps.
- Identify a proposed time line for achieving the goals and action steps.
- Answer this question: How will you know when success is achieved?
Sample Work Plan: Gender Equity

Area of Diversity: Gender Equity

Value/Definition of Gender Diversity:
- How are females and males defined and are policies and practices applied in a gender-neutral manner?
- 50% of law school graduates are women so there is value in creating an environment inclusive of women.
- Changes that make the environment inclusive to women also benefit men (e.g., work/life balance).
- Healthy balance promotes more satisfied attorneys and better service to clients.
- Job sharing - the culture being supportive of change.

Return on Investment:
Huge monetary impact when associates leave; clients and customers view that there are problems and expense for clients; positive image in the community if diversity is genuine; employees are loyal to company/good output to firm and clients.

Best Practice 1: Work/Life Balance

Goal 1: Increase the number of women and men taking advantage of programs that support work/life balance.

Strategy/Action Steps: Identify and communicate the need for and use of work/life balance programs and policies:
(a) Create a list of statistics that support the current use of work/life programs.
(b) Create a list of facts/data that identify the need for work/life balance programs and policies.
(c) Document the ROI/business case of work/life balance programs/policies.

Metrics to Measure Success: Measure whether the percentage of women/men represented at all levels of the organization increased.

Goal 2: Increase the percentage of women represented at all levels of the organization to reflect gender diversity as reported by 2000 census data.

Strategy/Action Steps: Decrease turnover of all employees with a strong focus on associates or entry-level employees.

Metrics to Measure Success: (1) Measure whether gender diversity is reflected among all levels of employees; (2) whether there is decreased turnover of associates and employees.
Best Practice 2: Client Development

Goal 1: Diversify client development strategies.

Strategy/Action Steps: Use a lottery system as a method for client development and mentoring. The lottery system will ensure that associates get equal amounts of work and that partners cannot self-select who receives their work (a change in paradigm).

Metrics to Measure Success: (1) Measure the amount and quality of assignments given to women; (2) measure the effectiveness of client development statistics of women.

Best Practice 3: Monitor Trends

Goal 1: Create and track trends.

Strategy/Action Steps:
(a) Make gender equity part of the bonus plan.
(b) Keep metrics on everything.
(c) Survey partners about gender diversity versus current reality.
(d) Conduct a tiered survey (sent to each employee at all levels) to identify the current reality about gender diversity.

Goal 2: Embrace flexibility.

Strategy/Action Steps:
(a) Create support groups that encourage employees to get to know one another.
(b) Create opportunities for interactions among colleagues.
(c) Survey partners about gender diversity versus current reality.
(d) Conduct a tiered survey (sent to each employee at all levels) to identify the current reality about gender diversity.
Sample Work Plan: Race and Ethnicity

Area of Diversity: Race and Ethnicity

Value/Definition of Racial/Ethnic Diversity:
Racial and ethnic diversity are typically viewed as non-Anglo Saxon diversity. This area of diversity is valued because it promotes diverse perspectives, increases success with diverse jury pools, increases cultural competence, prevents the loss of diverse brainpower, and serves as a recruiting tool.

Best Practice 1: Diversity Plan

Goal 1: Create an inclusive work environment where diverse perspectives are valued and cultural competence is lived.

Strategy/Action Steps: Develop and publish a diversity plan that is part of the firm’s strategic plan and that will use the environment as a recruitment and retention tool.

Metrics to Measure Success: Measure whether the diversity plan is: (1) achieved; (2) understood; (3) implemented in conjunction with the organization’s strategic plan.

Best Practice 2: Diversity Training

Goal 1: Establish a training system that supports an inclusive environment.

Strategy/Action Steps:
(a) Identify the business case for racial and ethnic diversity (e.g., juries and new client markets); diverse attorneys can connect with individuals who look like them; financial savings (retention).
(b) Include metrics to evaluate the effectiveness of training.
(c) Tie diversity leadership plan initiatives and expected results to compensation and leadership’s actions.
(d) Promote client development training for racial and ethnic minority attorneys.

Metrics to Measure Success: (1) Measure retention of diverse attorneys and establish accountability of the reasons for possible attrition; (2) quantify the cost of new hires based upon attrition.
Sample Work Plan:
Race and Ethnicity

Best Practice 3: Mentoring

Goal 1: Develop a mentoring program.

Strategy/Action Steps:
(a) Include external and internal resources (social, professional and community mentors may be needed).
(b) Visibly support mentor program by leadership (including revenue-producing leaders).
(c) Hold individuals accountable to leadership (who are role models through their behavior).
(d) Create subcommittees that give input and feedback to leadership on the effectiveness of the program.
(e) Train mentors, leadership, and mentees.
(f) Include practical advice in formal programs.
(g) Develop cross-cultural dialogue training to improve mentor/mentee communication.

Metrics to Measure Success: (1) Mentor/mentee satisfaction survey; (2) evaluations completed by mentor and mentee; (3) expectations identified and achieved.
Sample Work Plan: Religion

Area of Diversity: Religion

Value/Definition of Religious Diversity:
A set of beliefs that can include everyone (including atheists). These beliefs are respected and not discriminated against in the workplace.

Best Practice 1: Prayer and Dress Restriction Accommodation; Holiday Scheduling and Food Selection Accommodation

Goal 1: Accommodate religious needs and practices without promoting one group over another.

Strategy/Action Steps:
(a) Floating holiday schedule (i.e., allow employees to work on Christmas but use time off [eight hours] to celebrate a different religious holiday).
(b) Provide everyone with one to two floating holidays.
(c) Divide break time (i.e., one-hour lunch break can be divided into four 25-minute breaks).

Metrics to Measure Success: Employee survey.

Best Practice 2: Religion Awareness Seminar

Goal 1: Increase understanding of the unique religious needs of employees.

Strategy/Action Steps: Open-door policy that ensures that the employees’ needs are met (especially since religious needs change) and that the policy is always neutral and accepting.

Metrics to Measure Success: Assessment model where outside consultant conducts individual interviews. This would provide for employee confidentiality and promote open-end honest feedback. This can be done annually or during the exit interview process.

Best Practice 3: Religious/Cultural Awareness

Goal 1: Create a culture of acceptance.

Strategy/Action Steps:
(a) Provide education for understanding of various religious beliefs and practices.
Sample Work Plan:
Religion

(b) Create a zero tolerance policy for judgment against someone based on his or her religious needs or practices (if an employee makes offensive comments against another because of their practices, it will not be tolerated).

(c) Leaders need to lead by example (i.e., if a manager or partner hears negative comments, he or she needs to put a stop to it).

(d) Provide seminars about different religions and accompanying needs and practices and encourage attendance.

**Metrics to Measure Success:** Leader “evaluation” model: during evaluations, if someone in a management role did not follow policies, his or her behavior is addressed (e.g., they are reprimanded).
Sample Work Plan: Attorneys with Disabilities

Area of Diversity: Attorneys with Disabilities

Value/Definition of Diversity for Attorneys with Disabilities:
Disabilities include physical and mental disabilities. These include disabilities caused by chronic illness, mental illness, and substance abuse or addictions. The Diversity Task Force must provide a clear definition to include these types of disabilities.

Best Practice 1: MHRA and ADA Training

Goal 1: Remove the stigma and build awareness of disabilities.

Strategy/Action Steps:
(a) Design and implement a model policy to address disabilities.
(b) Build awareness to change attitudes through training.
(c) Provide workplace accommodation:
   - Understand appropriate accommodations.
   - Consider a continuum of employees’ ongoing situations and cooperation.
   - Work with employees to achieve optimum accommodation.

Metrics to Measure Success: Measure productivity of employees.

Goal 2: Provide an environment that allows employees to do their best work.

Strategy/Action Steps:
(a) Provide a flexible work environment and telecommuting tools.
(b) Understand the requirements and merits of the job.
(c) Work with appropriate accommodations and trust the employee to figure out the best work environment.
(d) Allow the use of personal leave for health appointments.

Goal 3: Adopt a training policy to approach employees to discuss possible impairment.

Strategy/Action Steps:
(a) Establish a protocol so employees know how to report the possible impairment and who to contact with concerns.
(b) Provide rehabilitation and counseling, not discipline.
(c) Design and implement a policy for impaired attorneys to meet with clients.
(d) Provide non-alcoholic drinks at social events and make it okay not to drink alcohol

Goal 4: Facilitate a successful return to work or a career transition after a leave caused by disability.
Sample Work Plan:  
Attorneys with Disabilities

**Strategy/Action Steps:**  
(a) Communicate the organization’s commitment through return-to-work policies.  
(b) Develop “outplacement” counseling resources.  
(c) Develop job coach resources.

**Goal 5:** Define the business case for recruiting and retaining disabled employees.

**Strategy/Action Steps:** Invest in seminars or training to discuss the employment availability of those with disabilities and how this can address a shortage of workers.

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**Best Practice 2: Law School Outreach**

**Goal 1:** Demonstrate a commitment to diversity through recruitment efforts.

**Strategy/Action Steps:**  
(a) Post openings with law schools and professional networking organizations.  
(b) Broaden the EEOC statement in recruiting materials.  
(c) Establish a model policy for recruitment.  
(d) Don’t use canned photos in recruitment materials

**Metrics to Measure Success:** Measure the recruitment and retention of students with disabilities.
Sample Work Plan:
Sexual Orientation/Gender Identity

Area of Diversity:  Sexual Orientation/Gender Identity

Value/Definition of Diversity in Sexual Orientation/Gender Identity:
Employees feel valued and respected and can bring their full selves to work. Policies and procedures are defined and applied to all employees including GLBT employees (e.g., domestic partner benefits).

Overall Goals:
- Every individual feels valued and included; no one is made to feel like the “other.”
- Numerical increase in “out” GLBT attorneys.
- Increase outreach efforts to GLBT employees, making sure behaviors and policies are inclusive; GLBT employees make the choice as to how far it goes; provide a list to each GLBT lawyer of mentors and coaches.

Best Practice 1:  GLBT Mentoring and Coaching

Organizations will invest in GLBT attorney education and will make outside coaches available if a GLBT employee wants a coach or mentor.

Goal 1: Inclusive policies; employees feel valued and respected; everyone feels like a full contributor.

Strategy/Action Steps:
- a) Facilitate social mixers; host events at GLBT venues.
- b) Have attorneys participate in networking activities.
- c) Sponsor GLBT events within the community (i.e., Gay Pride, booths for legal services to GLBT community).
- d) Incorporate GLBT resources into the “on-boarding” process (the process of interviewing, hiring, orienting, and successfully integrating new hires into an organization’s culture).

Metrics to Measure Success: Employee surveys that measure inclusiveness, value and respect.
Sample Work Plan:
Sexual Orientation/Gender Identity

Best Practice 2: Diversity Committees

**Goal 1:** Establish diversity committees that have the power and authority to hold people accountable.

**Strategy/Action Steps:**
(a) Establish a GLBT subcommittee or workgroup and diversity committee.
(b) Recruit through the GLBT legal community and law school groups.

Best Practice 3: Inclusive Policies

**Goal 1:** Have GLBT attorneys feel valued and respected.

**Strategy/Action Steps:** Incorporate sexual orientation-specific language into policies, social invitations, and work situations.

**Metrics to Measure Success:** (1) Employee surveys; (2) ongoing evaluations; (3) on-boarding process evaluation.


20. Id. at 25-27.


22. Id.

23. See Sheel Pandya, Long-Term Care Trends; Racial and Ethnic Differences Among Older Adults in Long-Term Care Service Use (AARP Public Policy Institute, June 2005), available at http://www.aarp.org/research/longtermcare/trends/fs119_ltc.html.

Diversity Best Practices Guide
Welcome to the NALP Diversity Best Practices Guide.

In an effort to further advance the important diversity enhancement efforts of the legal community, NALP has created this Guide to assist legal employers in moving from abstract discussions about diversity to practical implementation of diversity strategies and initiatives. This Guide is a compilation of best diversity practices derived from industry research and interviews of law firm professionals across the country. Albeit comprehensive, this Guide does not purport to be exhaustive of all diversity best practices. Rather, it strives to serve as a resource for legal employers aiming to craft tailor-made diversity plans that best fit their organizational culture and goals. While this Guide necessarily includes diversity practices that intersect with the diversity efforts of law schools, it is intended to focus on practices implemented by legal employers. Law firms were the primary source for the ideas and best practices described in this Guide, and therefore law firm terminology is often used; the creators of this Guide believe, however, that the practices suggested here are practical for all legal employers.

For ease of use, this Guide is organized into four topics:

- **Leadership**;
- **Retention, Culture, and Inclusion**;
- **Professional Development**; and
- **Recruitment**.

Some of the best practices overlap topics, and thus are purposefully included in more than one section of the Guide. A "Diversity Resources" list of relevant articles, books, and websites is included at the end and is intended to serve as a starting point for those who wish to delve deeper into the diversity dialogue.

NALP hopes that you discover new ideas within these pages to bring home to your organization to further your diversity enhancement efforts. NALP applauds all legal employers who are committed to diversity, whether just embarking on the diversity journey or already making demonstrable strides in improving the diversity and inclusiveness of the profession.

Special thanks to NALP’s Diversity Advancement Committee for their dedication in bringing a great idea to fruition with the creation of this Guide. In particular,
this Guide benefited from the focused commitment and tireless efforts of Susanne Aronowitz, Melissa Balaban, Dina Billian, Betty Henderson, Jay Levine, Anton Mack, Laurie Logan-Prescott, Jeanne Svikhart, Fiona Trevelyan, and Kari Anne Tuohy.

Additional Best Practices Invited

This Guide will continue to be updated. If your organization has developed a successful diversity initiative or has other best practices suggestions to share, you are invited to submit information to NALP Director of Publications Janet Smith at jsmith@nalp.org
Leadership

There are some universal tenets that have proved essential to a successful strategy for enhancing and embracing diversity in law firms. First, there must be a strong demonstrated commitment from firm management. Second, diversity must be defined as a core value of the organization and woven into all that the firm does. Finally, specific goals must be identified and metrics must be utilized to ensure accountability and progress. Effective and innovative leadership is critical on all of these fronts.

Commitment from Leadership

Law firms that have demonstrated progress on the diversity landscape have, without fail, credited strong firm leaders with their success, in large part due to their identification of diversity as a top priority of the firm and their commitment of financial, operational, and human resources to diversity.

Communication

- Identify diversity as one of the firm’s key strategic initiatives or core values.
- Formalize a diversity plan with measurable action steps; define leadership and management roles in the plan; incorporate diversity into the firm’s strategic plan and business model.
- Communicate the importance the firm places on diversity internally and externally, including the firm’s goals, programs, and progress.
- Utilize firm-wide e-mails to discuss the firm’s diversity priorities and plan; distribute the firm’s diversity strategic statement and plan.
- Include diversity on the agenda for meaningful discussion at firm retreats.
- Provide information about the firm’s commitment to diversity on the firm’s website, in its recruiting materials, and in client communications.
Resources

- Retain a diversity consultant to conduct a cultural assessment and examine how the firm can enhance inclusiveness and improve the recruitment, retention, development, and advancement of diverse lawyers.

- Hire a full-time diversity professional to serve on the Diversity Committee, facilitate the implementation of the firm’s diversity initiatives, serve as a development resource for diverse lawyers, and assess whether minority and female associates have access to opportunities and are working on matters for clients with the most sought-after work.

Involvement of Leadership in Day-to-Day Diversity Work

Legal employers making successful strides on the diversity front realize that firm leaders must do more than just “talk the talk” about the firm’s commitment to diversity. They need to “walk the walk” as well, actively participating in the day-to-day journey and leading by example.

- Include the firm’s Managing Partner and/or Executive Committee members on the firm’s Diversity Committee.

- Schedule periodic face-to-face meetings with firm leaders and diverse lawyers and staff to discuss diversity and inclusion issues, concerns, and successes.

- Actively engage firm leaders in internal minority lawyer and women lawyer business development conferences.

- Encourage firm leaders to participate in diverse bar associations and other community organizations that foster and enhance diversity.

- Visibly and vocally support firm mentor programs and lead by example.

Representation of Diverse Lawyers at All Leadership Levels

The diversity landscape can be improved by integrating minority and women lawyers into leadership positions. Diverse associates convey this message during the hiring and exit interview processes, explaining that it is very difficult to integrate and believe that success is possible if no one at the leadership level seems to share your diverse traits.
Appoint diverse lawyers to serve on the firm’s Executive Committee, Management Committee, Hiring Committee, Partner Compensation Committee, and Associate Evaluation Committee.

Appoint diverse partners to serve as Chairs of offices and practice groups.

Ensure that minority and female partners fill major client service roles and meaningfully participate on client service teams.

**Leadership Training**

Many legal employers have recognized the importance of providing additional training opportunities for firm leaders charged with implementing diversity goals and initiatives. Improving individual leadership competencies necessarily contributes to a more inclusive and rewarding work environment.

- Provide diversity training to strengthen diversity awareness and communication skills.
- Offer executive coaching services on management, mentoring, and supervision skills.
- Encourage participation at national diversity conferences, both within the legal industry and in multi-industry contexts.

The **American Institute for Managing Diversity** (AIMD) and the **Atlanta Large Law Firm Diversity Alliance** (a consortium of 11 large law firms based in Atlanta — Alston & Bird LLP, Arnall Golden Gregory LLP, Jones Day, Kilpatrick Stockton LLP, King & Spalding LLP, McKenna Long & Aldridge LLP, Morris Manning & Martin LLP, Powell Goldstein Frazer & Murphy LLP, Smith Gambrell & Russell LLP, Sutherland Asbill & Brennan LLP, and Troutman Sanders LLP) recently developed a course for law firm partners who have responsibility for managing people and departments in their firms. The three-day Diversity Management Series for Law Firm Practice Leaders was designed to give participants a greater awareness of and capability in managing diversity. As Ralph Levy, partner of King & Spalding LLP, described, “Most law firms understand and embrace the business case for addressing diversity, but what they find lacking is a strategic management program aimed specifically for law firm leaders that provides the tools and skills to bring about sustainable change.”
Accountability of Leaders

As is true with all strategic goals and initiatives, it is essential to hold firm leaders accountable for progress on diversity. Firm management should stay actively engaged in reviewing progress on the diversity front, and in rewarding diversity enhancement contributions.

- Monitor progress made on diversity goals by utilizing metrics, soliciting feedback from the firm’s internal affinity groups, and maintaining diversity attrition statistics.
- Include diversity-related contributions in the tally of “firm commitment” or “firm administration” hours for statistical review purposes.
- Hold practice group leaders accountable for setting diversity goals and engaging in diversity enhancement efforts.
- Incorporate diversity hours and individual diversity enhancement efforts into evaluation and compensation determinations for firm leaders, including management and office/practice group leaders.

One innovative practice that Sonnenschein, Nath & Rosenthal, LLP instituted is a system of Partner Accountability which makes certain that partners are accountable for diversity within their departments. Partners go through a self-evaluation process to determine what they are doing to actively diversify their departments. This process is reviewed by the Management Committee and the results affect each partner’s compensation.
Retention, Culture, and Inclusion

The twin goals of retention and creating a firm culture that genuinely values and reflects diversity weave together as key components of any effective firm diversity program. While many efforts impact both retention and culture, efforts on the retention front tend to cluster in the programmatic realm, while those on the cultural front tend to focus on internal and external communications. Interestingly, firms’ retention efforts focus primarily on lawyers, while cultural efforts are directed more broadly to both lawyers and staff. For multi-office firms, although centralized programming is helpful in advancing specific programs and initiatives, tailoring efforts for improved retention and inclusion to individual offices is key. The participation and buy-in of local office populations is critical, as is ensuring that the programs and events are meaningfully geared to a particular office culture and its constituents. As demonstrated below, achievement of diversity requires a long-term visible commitment from the firm and its leaders.

Retention

- Analyze existing systems and policies for unintended and/or historic bias, including the firm’s work allocation system, the process for inclusion at firm events, the internal training programs, and the committee appointment process.

- Require annual reports by practice area leaders on goals and efforts to diversify practice groups.

- Make firm leaders accountable for meeting diversity goals, including achievement of diversity goals as a factor in the compensation process.

- Encourage all firm members to participate in women and minority bar associations and minority counsel programs. Sponsor memberships in these bar associations and fund participation at these events; support lawyers in leadership roles in professional organizations.

- Count diversity-related activities toward “firm commitment” hours.
Institute anonymous upward reviews, with diversity competence as a component.

Promote work/life balance via equity/non-equity partnership options, on-site day care and free emergency child care, a sabbatical program, and part-time/flex-time options that maintain partnership eligibility.

Sponsor minority attorney participation in the “Charting Your Own Course Career Conference.” (See www.cyoc.org.)

Develop and support internal diversity networks/affinity groups.

Institute reverse mentoring, whereby senior attorneys are paired with junior diverse attorneys to learn about the challenges junior minority attorneys face.

Periodically reevaluate practice area assignments to assess fit.

Mandate equal access for diverse attorneys to quality work assignments, marketing efforts, formal and informal events, and clients.

Conduct annual internal conferences for women and minority lawyers, including sessions and panels on business development, leadership development, presentation skills, billing practices, etc.

At Day Berry & Howard each member of the Executive Committee mentors at least one minority attorney. This informal partnership helps to ensure that issues important to minority attorneys are heard by the firm’s leadership. The full Executive Committee holds regular quarterly meetings with minority attorneys as a group.
Culture and Inclusion

- Create a diversity vision statement embodying the firm’s commitment and disseminate both internally and externally.

- Develop and implement a firm-wide diversity plan.

- Develop a Diversity Committee composed of a staff diversity director, attorneys, and staff across all offices, with access to/participation from the Management Committee and key decision makers, to identify key internal issues and to propose solutions, diversity events, and diversity training.

- Provide annual diversity training for all lawyers and staff, and management training for supervisors, including hiring attorneys, management, and practice area leaders. Tailor content and materials to the firm and its culture.

- Send a welcome letter from the Diversity Chair to all entering attorneys (entry-level and lateral) highlighting the firm’s valuing of diversity and outlining the firm’s goals and initiatives.

- Celebrate diverse cultures through firm-wide or office-wide events and recognition, including Black History Month, Hispanic History Month, Asian Pacific Heritage Month, and Gay Pride Month.

- Host firm celebrations for diversity milestones (e.g., 50th anniversary of Brown vs. Board of Education, anniversary of end of Apartheid, Martin Luther King, Jr. Day).

- Sponsor local diversity bar association membership and events, as well as community outreach efforts.

- Survey lawyers and staff regarding outside activities and share information about connections with community minority organizations both internally and externally; promote and encourage such involvement.

- Co-sponsor local minority networking series with other area firms.

- Develop a regularly distributed internal diversity communication highlighting diversity achievements, awards, reports on conference attendance, updates to firm policies, and reports from the Diversity Committee; include articles of interest and website links to diversity organizations; specify avenues for active involvement by firm lawyers in diversity enhancement efforts.

- Build strong relationships and strategic alliances with external organizations (e.g., MCCA, NAACP, women and minority bar associations), as well as community outreach organizations.
• Sponsor national affinity conferences (law students’ and practitioners’ conferences).

• Develop a firm web page focused solely on diversity.

• Inaugurate an Annual Diversity Day, including a celebration, speakers, and discussion groups.

• Provide domestic partner benefits.

• Ensure that social invitations are inclusive by using wording that invites partners, not just spouses.

• Provide public firm-wide support for diversity. For example, be a signatory to the Association of the Bar of the City of New York’s statement of diversity goals for law firms, or similar local strategic initiatives.

• Include diversity goals and achievements in the firm’s annual report.

• Develop goals to identify and utilize minority and women-owned businesses as firm vendors.

• Participate in or develop pipeline programs to introduce diverse college and law school students to private practice and the legal profession.
One of the critical components of a successful diversity initiative is a multi-faceted and integrated professional development program. Successful programs must have flexibility, adequate resources, and accountability. Moreover, firms must demonstrate a solid commitment to diversity from the top down and actively integrate diversity concepts into the fabric of every facet and level of firm management.

**Shearman & Sterling**'s global mission is to weave diversity into everything it does.

Its diversity objectives are to (1) foster a firm culture that supports and promotes diversity, so that all lawyers, legal assistants and staff feel they are included and valued; (2) facilitate diversity in all aspects of the firm’s programs, administration, and operations; (3) increase recruitment, retention, development, and promotion of lawyers, legal assistants, and staff from diverse ethnic and cultural backgrounds; (4) promote diversity in the global legal community; and (5) collaborate with clients, nonprofit organizations, and bar associations to encourage diversity awareness.

Specific steps the firm has taken to implement its global mission range from training to mentoring to recruiting to signing the Association of the Bar of the City of New York’s statements supporting diversity.
Diversity Training

The centerpiece of an effective professional development program that promotes diversity is the training program. The essential components to such a program are as follows.

Needs Assessment

In order to ensure that the content of a training program will be effective, the firm must conduct an assessment of its diversity, history, culture, and any other applicable demographic data. The assessment should be focused on understanding the climate of the firm, successes, and areas for improvement. There are several effective methods of assessing the particular issues and concerns that must be addressed. These methods include focus groups; questionnaires; a review of documents, policies, complaints, and litigation history; and one-on-one interviews with partners, associates, and staff, including members of diverse groups.

Participation

The success of a diversity training program is dependent on the level of participation from each and every member of the firm community — from senior partners to mail clerks. The firm should do everything in its power to make the training accessible and ensure 100% participation.

- Partners should be trained first to set the tone and example for the entire firm.
- Sessions should be offered on at least an annual basis and should be integrated into new staff and lawyer orientations and annual associate conferences.
- Sessions should be divided appropriately — partners with partners, associates with associates, and staff with staff. This allows trainers to tailor their material to the various levels of responsibility and address relevant issues of concern in a safe environment for all lawyers and staff.

Trainers

It is critical that firms carefully select trainers in order to ensure effective and engaging sessions. At a minimum, trainers must:

- Have experience with and knowledge of legal issues to avoid potential legal problems than can result from diversity training;
• Understand employee relations and the particular problems that can arise from diversity issues in a law firm; and

• Have strong and engaging communication skills and be able to communicate effectively with a wide range of employee types.

• It is helpful if trainers also reflect the diversity (or perhaps desired diversity) of the firm.

## Content

The content of the training program must be developed according to the results of the assessment and the specific needs and culture of the firm. It is essential to consider variations in state law as well as the individual “personalities” of each office when tailoring training to individual branches. While there will be variation in content based on the particular needs of the firm, diversity training should include:

• A discussion about the value the firm places on diversity, including moral, legal, economic, policy, and ethical motivation.

• A broad and thorough definition of diversity.

• A discussion of cultural differences and stereotypes.

• An explanation of the types of harassment.

• A discussion on the specific responsibilities of managers (both lawyers and nonlawyers).

• Effective communication.

## Methods

An engaging training program employs a variety of presentation methods including written material, video vignettes, discussion, and interactive case studies. In addition, each session must be prepared and presented according to the various levels of knowledge of each group. For example, a presentation to lawyers should assume a certain level of legal knowledge.
Other Educational Programs

- **Offer more classes.** An effective professional development program includes training on a variety of skills to ensure that diverse lawyers are able to succeed in the firm. Suggested courses include marketing, business development, persuasive writing, public speaking, client communications, community involvement, and, of course, traditional legal skills.

- **Provide information about and sponsor external educational opportunities.** In addition to solid internal programming, a firm must also provide sufficient opportunities for associates to learn and network outside the firm. A variety of opportunities exist for lawyers at all levels to join and actively participate in minority bar associations, minority corporate counsel groups, and outside conferences. Active involvement and leadership in such organizations not only add to associates’ professional development but also can help lawyers acquire effective business development techniques.

- **Conduct retreats.** Several law firms have found it useful to hold annual retreats to bring diverse lawyers together from all offices, allowing women and diverse attorneys to network with one another and get involved in various diversity initiatives.

- **Encourage diversity dialogues.** Dialogues provide opportunities for small groups to discuss what diversity means to them and what the firm can do to support it.

- **Support affinity groups.** Groups that either form voluntarily or are organized by the firm can serve as support networks for diverse lawyers. They can meet formally to discuss issues within the firm, and informally for support and social activities.

- **Celebrate diverse cultural events.** Host firm events to celebrate Black History Month, Asian Pacific Heritage Month, Hispanic History Month, and Gay Pride Month.

Individual Career Development

As with any initiative, one size does not fit all. A new trend in professional development is for firms to employ a career development manager who works individually with associates to help them assess and guide their careers and skill development. Some firms have successfully drafted career development guidelines for each practice group. These guidelines are used by career development professionals to evaluate the progress of each associate and to monitor competency. Individual career development professionals can also
review billing reports and work assignments to ensure fair and appropriate distribution of work to diverse lawyers.

**Mentoring**

A mentoring program can be integral to the success of a diversity program if it is conceived within the context of the firm’s culture, if it is managed properly, and if pairings are made in a judicious manner. Elements of a successful mentor program include:

- Mentors must be trained in appropriate techniques and rewarded for success.
- Mentors and mentees must set mutual expectations and be provided specific and regular opportunities to meet.
- Mentors must be assigned carefully. Consider —
  - Self-guided mentoring, which allows the employee to identify a senior leader as a mentor.
  - Pairing diverse lawyers with other diverse lawyers.
  - Pairing each associate with both an associate and a partner to allow a variety of resources to address individual needs and goals.
  - Establishing a supplemental mentoring program during the third or fourth year to assist associates during this crucial period of career development.
  - Pairing members of the senior management team with diverse lawyers to allow information to flow between these two important groups.

**Accountability**

Even the best diversity programs have little chance of success without mechanisms to ensure partner accountability and continuous evaluation of both the programs and the participants. The firm must manifest the importance of diversity by investing diversity professionals with visible power through having them report to senior firm management. It is also beneficial to attach economic significance to diversity enhancement efforts — for example, tying partner compensation to success in meeting diversity goals and allowing associates to count diversity-related activities toward their billable hours requirement.
Recruitment

Recruiting diverse legal talent is an obvious goal in any diversity plan. To do so effectively, recruitment best practices should be multi-dimensional and incorporate a network inclusive of law schools, clients, internal and external affinity groups, women and minority bar associations, and city-wide law consortiums.

Recruitment Practices Aimed at Law Schools

- Foster good working relationships with law school career services professionals.
- Participate in minority clerkship or fellowship programs.
- Meet with and support law student leaders and student affinity groups; host events sponsored by these groups.
- Participate in mentor programs for minority law students.
- Conduct resume workshops.
- Participate in mock interview programs.
- Take part in career panel presentations.
- Host receptions for women and minority law students.
- Host a reception for admitted students from a local law school with which the firm has strong ties.
- Advertise in minority law student association publications.
- Add predominantly minority law schools to the firm’s recruitment program.
- Communicate the firm’s diversity goals to deans, professors, and career services professionals; ask for assistance in identifying and referring promising minority students.
Internal Recruiting Efforts

- Support affinity groups in the firm.
- Host dinners for minority attorneys and minority law student recruits.
- Involve the Diversity Committee in recruitment efforts, including direct follow-up communications from Diversity Committee members to minority recruits.
- Hire minority law students to work part-time during the academic year in addition to participating in minority clerkship or fellowship programs, which typically take place in the summer.
- Enlist the firm’s Hiring Partner to take an active role in diversity recruitment.
- Educate interviewers in best practices for interviewing diverse candidates.
- Bolster the firm’s marketing materials; create a minority recruitment brochure to emphasize the firm’s commitment to diversity, diversity goals, and diversity achievements.
- Utilize executive search firms that specialize in the placement of minority lawyers for lateral hiring.
- Maintain contact with exceptional minority applicants who chose other employment.
- Set diversity recruitment goals consistent with management’s priorities.
- Sponsor a summer associate reception by the firm’s Diversity Committee.
- Host a minority law student job fair.
- Devote a section of the firm’s website to diversity.
- Work with clients in recruiting diverse partners.

External Recruiting Efforts

- Contribute to nonprofit educational programs that introduce minority youth to the legal profession.
- Fund minority law student scholarships for students attending area law schools.
Advertise in minority professional publications and on minority professional association websites.

Post lawyer positions online on diversity organizations’ websites such as the MCCA.

Form strategic alliances with local and national diversity organizations to identify diverse candidates.

Participate in minority job fairs throughout the country.

Take part in “pipeline programs” that encourage diverse college students and law students to consider a career in the private practice of law.

Partner with others in your community who are reaching out to diverse elementary and high school students to improve their education and encourage them to consider a legal career.

Collaborate with other area law firms to promote diversity in the legal profession.

Support affinity groups in the community.

Participate in the ABA’s National Conference for Minority Lawyers, which holds a forum for in-house counsel and private practice lawyers to discuss methods of increasing diversity.

Participate in the Minority Corporate Counsel Association’s fall conference and other MCCA events.

Arnold & Porter LLP strives to recruit a diverse population by reaching out to women, racial and ethnic minorities, and the LGBT community to inform them of the firm’s commitment to inclusion and diversity. The firm’s recruitment efforts include participation in career development programs and minority job fairs. All minority law students who receive associate and summer associate offers from the firm’s U.S. offices are invited to the Washington, DC office for a panel discussion, reception, and dinner. Scholarships are awarded to minority law students at a dozen law schools each year. Internal affinity groups serve as support networks for women, minority, and LGBT attorneys. Firm financial support is provided to many external organizations that promote diversity.
Diversity Resources

Articles

Note: NALP members can access NALP Bulletin articles in the Bulletin archives at www.nalp.org. Non-members interested in receiving an article or inquiring about reprint permission should contact NALP Director of Publications Janet Smith at jsmith@nalp.org.


**Books and Periodicals**


ABA Commission on Women and the Profession, *Dear Sisters, Dear Daughters*, 2000 (available through NALP).

Minority Corporate Counsel Association (MCCA), *Diversity & the Bar* magazine, (see [http://www.mcca.com](http://www.mcca.com) for information).

National Association for Colleges and Employers, *NACE’s Guide to Diversity Recruiting*, 2003. NACE is an association of undergraduate career services offices and employers that recruit on college campuses, and thus this NACE manual is not targeted specifically to legal recruiting. However, almost all of the strategies suggested — from working with minority student groups on campus to developing relationships with faculty to making interviewing “facially neutral” — apply equally to legal recruiting. (See [http://www.naceweb.org](http://www.naceweb.org) for information on ordering.)

http://www.abanet.org/minorities/ — The Commission on Racial and Ethnic Diversity in the Profession is focused on creating leadership and economic opportunities for racially and ethnically diverse lawyers within the ABA and the legal profession.

http://www.abanet.org/women/ — The Commission on Women in the Profession is focused on assessing the status of women in the legal profession, identifying barriers to advancement, and recommending to the ABA actions to address problems identified.

http://www.aimd.org — The American Institute for Managing Diversity (AIMD) is a nonprofit think tank dedicated to promoting and furthering the field of diversity management. The website includes resources and articles.

http://www.acca.com — The Association of Corporate Counsel has a section of their website dedicated to diversity issues.

http://www.catalystwomen.org — Catalyst is a research and advisory organization working with businesses and the professions to build inclusive environments and expand opportunities for women at work.

http://cleoscholars.com — The Council on Legal Education Opportunity (CLEO) is a nonprofit project of the American Bar Association Fund for Justice and Education to expand opportunities for minorities and low-income students to attend law school and become members of the legal profession by providing pre-law recruitment, counseling, placement assistance, and training.

http://diversecounsel.org/about.html — Diverse counsel is a service of the Association of Corporate Counsel to help corporate counsel find more diverse outside counsel who can represent their corporate clients.

http://www.diversity.com — Provides nation-wide job advertisements, corporate branding, career networking, and executive recruitment services.

http://www.diversitybusiness.com — A membership-based exchange platform that facilitates contacts and communication and provides business news and information on diversity-related issues.

http://www.diversitycentral.com — An archive chronicling corporate diversity efforts over the past 14 years in the United States, Canada, Australia, and several other countries.
http://www.diversityinc.com — The website partner of DiversityInc, the magazine. The site includes articles and materials on diversity-related topics.

http://www.diversitynews.com — Diversity News is a monthly publication whose mission is to serve as the link between women and minority-owned businesses and their professional peers. It is a forum for the exchange of information through a format of news, features, profiles, positive guest columns, and advertising.


http://www.lawyersforoneamerica.org/mission/index.htm — An organization whose goal is to advocate for and actively promote greater racial and ethnic diversity in the legal profession nation-wide, so that our law schools, judicial systems, and lawyers more accurately reflect the communities they serve.

http://www.mcca.com/ — Minority Corporate Counsel Association is an association whose mission is to advocate for the expanded hiring, retention, and promotion of minority attorneys in corporate law departments and the law firms that serve them. MCCA collects and disseminates information about diversity in the legal profession.

http://pihra.org/capirasn/doc.nsf/doc/Diversity+University — Professionals in Human Resources Association (PIHRA) has a website entitled “Diversity University” that is designed to provide a variety of educational tools and resources to assist human resources professionals with diversity training and programs. It includes a list of community resources broken down by subject group.

http://www.shrm.org/diversity/ — The section of the website for the Society for Human Resource Management (SHRM) that is dedicated to diversity issues. SHRM is an international human resource management association. The diversity focus area includes articles, news, and resources related to diversity issues.

http://www.trainingregistry.com/ — The Training Registry is a directory that lists companies, trainers, coaches, training workshops, and training seminars.

http://www.outandequal.org — The website of Out & Equal Workplace Advocates offers suggestions to employers who are seeking to recruit GLBT employees and create a GLBT-friendly culture.
Diverse Bar Associations

Hispanic National Bar Association, http://www.hnba.com
South Asian Bar Association, http://www.na-saba.org
PRIDE IN MY WORKPLACE
BEST PRACTICES GUIDE
FOR NEW YORK STATE BUSINESSES TO SUPPORT LESBIAN, GAY, BISEXUAL AND TRANSGENDER EMPLOYEES
SECOND EDITION
EMPIRE STATE PRIDE AGENDA
The mission of Pride in My Workplace is to encourage workplaces in all sectors of the workforce throughout the State of New York to be free of discrimination and to affirm the presence and contributions of their lesbian, gay, bisexual and transgender (LGBT) employees. The program seeks to develop relationships with employers and build strong alliances with business leaders to further the goal of achieving equality and justice for all LGBT New Yorkers.

SPECIFIC GOALS OF THE PROGRAM INCLUDE:

- Educate employers and employees about New York State’s Sexual Orientation Non-Discrimination Act (SONDA) and the value of creating affirmative workplace policies for LGBT employees and their families.
- Publicize best practices and encourage all employers to adopt them.
- Organize to increase the number of LGBT Employee Networks in New York State.
- Encourage employers in the private sector to act as advocates for LGBT equality & justice.

Pride in My Workplace celebrates the achievements of employers and individual New Yorkers at its annual Equality@Work Awards Luncheon during Pride Month every June.

Since its first printing and distribution in spring 2006, the Best Practices Guide has reached over 7,500 employers, business professionals and employees in New York State. From the board room to the lunch room, the guide has influenced conversations and broadened how employers and employees alike think about diversity and inclusion in the workplace.

In recognition of the evolving legal, legislative and political landscape and its impact on LGBT people, this updated guide includes new best practice recommendations for addressing marriage recognition and transgender non-discrimination for employees and customers.

The Pride in My Workplace program looks forward to continuing to work with business leaders and employers who are committed to providing a fair and equitable workplace for all LGBT people and their families.

This guide is available in PDF format on the Empire State Pride Agenda website at www.prideagenda.org.

EMPIRE STATE PRIDE AGENDA

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The inspiration for the front and back covers of the Best Practices Guide is the often quoted statistic that 1 in 10 people is LGBT.
INTRODUCTION
The Benefit to Employers of Supporting LGBT Employees

Providing a non-discriminatory workplace regardless of sexual orientation is the law in New York State, and providing a non-discriminatory workplace regardless of gender identity and expression is the law in New York City, as well as six other cities and three counties in New York State. It is also the right thing to do, and it is good for business.

Increasing numbers of employers recognize that it makes sound business sense to have a diverse employee base. Diversity is not about singling out one group for special treatment, but rather about embracing the value in difference and creating an inclusive workplace environment.

People with diverse backgrounds bring different approaches to leadership and problem solving, generating and sharing ideas, and building relationships, all of which have an impact on the bottom line.

New York employers are leading the way in this area. This means that many New Yorkers work for organizations that follow not just the letter of the law, but also its spirit. Unfortunately, not all LGBT employees in New York are working in such a supportive work environment. When employees are not comfortable in their work environment or feel that they are not being treated equally in terms of the administration of benefits or policies, retention and productivity are hindered.

We believe that workplaces that treat all employees equally and with respect are a win for the organization, a win for the individual and a win for New York. With that in mind, we offer this guide to give employers the information they need in order to provide a safe and supportive work environment for LGBT employees.

How to Use this Guide:
The purpose of this guide is to provide employers with an overview of how to make your workplace a safe and supportive environment for your LGBT employees.

This guide includes:
• Overview of certain legal requirements for New York State employers
• Beyond the law, the top six best practices for affirming your LGBT employees
• Resources for further information
• Glossary of commonly used terms

As discussed on the next page, this guide is not intended as legal advice and may not be relied upon as such.
The Benefit to Employers of Supporting LGBT Employees continued

DOES THIS GUIDE OFFER LEGAL ADVICE?
No. This guide does not offer legal advice and may not be relied upon as such. This guide was updated in the spring of 2009 and reflects certain relevant legal requirements at that time. Legislative and case law in the area of rights associated with sexual orientation and gender identity and expression are rapidly evolving. To ensure compliance with federal, state and local law related to sexual orientation and gender identity and expression, we strongly encourage you to consult your legal advisors.

DOES THIS GUIDE GIVE TIPS ON MARKETING TO LGBT CONSUMERS?
Not specifically. This guide is a tool for businesses in their role as employers. It does not include specific marketing tools for reaching LGBT customers. However, Pride in My Workplace does consider marketing to the LGBT community to be a best practice because it demonstrates to your employees that you care about and value the LGBT community, which in turn helps with recruitment and retention. Some information on marketing to the LGBT community is included in the “Supporting the LGBT Community” section of this guide.

OVERVIEW OF ADVANTAGES FOR EMPLOYERS
At a minimum, New York businesses can reduce the risk of legal liability and litigation by making efforts to avoid discrimination based on sexual orientation and gender identity and expression. Going beyond that minimum to foster a diverse and inclusive workplace is usually based on a company’s commitment to principles of fairness and inclusion. But these policies can also be good for business, as documented by DiversityInc (see box at left). Companies promoting diversity attract and retain existing business, as they attract and retain the best talent.

RECRUITMENT AND RETENTION: MAINTAINING THE COMPETITIVE ADVANTAGE
An employer’s most valuable asset is its human capital. How does a company attract and retain the best talent? By valuing all employees through policies that allow them to provide for themselves and their families, and through a workplace culture that encourages appreciation of and respect for differences. Inclusion breeds loyalty, and creating a loyal workforce reduces the time and expense associated with employee turnover.

EMPLOYEE PRODUCTIVITY
Employees who have to worry about their uninsured partner, who feel uncomfortable being out at work or who feel isolated because they feel they are the only ones struggling with these issues have been shown to be less productive. If your LGBT employees feel comfortable and supported in their work environment, they will be able to focus more effectively on the work of the company, thereby increasing productivity.

More than half of Fortune 500 companies offer domestic partner health benefits.

BRAND LOYALTY
National surveys have documented that the LGBT community demonstrates brand loyalty to companies that have policies of equal treatment. “Two-thirds (66%) of all GLBT adults reported that they would be very or somewhat likely to remain loyal to a brand they believed to be very friendly and supportive to the gay, lesbian and transgender community—even when less friendly companies may offer lower prices or be more convenient.”

THE RIGHT THING TO DO, FOR SO MANY REASONS
A growing number of employers believe it makes sound business sense to have a diverse employee base. We hope the information that this guide offers about best practices will help ensure that your workplace is inclusive and diverse, and as a result, more successful.

DOES THIS GUIDE OFFER LEGAL ADVICE?
No. This guide does not offer legal advice and may not be relied upon as such. This guide was updated in the spring of 2009 and reflects certain relevant legal requirements at that time. Legislative and case law in the area of rights associated with sexual orientation and gender identity and expression are rapidly evolving. To ensure compliance with federal, state and local law related to sexual orientation and gender identity and expression, we strongly encourage you to consult your legal advisors.

DOES THIS GUIDE GIVE TIPS ON MARKETING TO LGBT CONSUMERS?
Not specifically. This guide is a tool for businesses in their role as employers. It does not include specific marketing tools for reaching LGBT customers. However, Pride in My Workplace does consider marketing to the LGBT community to be a best practice because it demonstrates to your employees that you care about and value the LGBT community, which in turn helps with recruitment and retention. Some information on marketing to the LGBT community is included in the “Supporting the LGBT Community” section of this guide.

OVERVIEW OF ADVANTAGES FOR EMPLOYERS
At a minimum, New York businesses can reduce the risk of legal liability and litigation by making efforts to avoid discrimination based on sexual orientation and gender identity and expression. Going beyond that minimum to foster a diverse and inclusive workplace is usually based on a company’s commitment to principles of fairness and inclusion. But these policies can also be good for business, as documented by DiversityInc (see box at left). Companies promoting diversity attract and retain existing business, as they attract and retain the best talent.

RECRUITMENT AND RETENTION: MAINTAINING THE COMPETITIVE ADVANTAGE
An employer’s most valuable asset is its human capital. How does a company attract and retain the best talent? By valuing all employees through policies that allow them to provide for themselves and their families, and through a workplace culture that encourages appreciation of and respect for differences. Inclusion breeds loyalty, and creating a loyal workforce reduces the time and expense associated with employee turnover.

EMPLOYEE PRODUCTIVITY
Employees who have to worry about their uninsured partner, who feel uncomfortable being out at work or who feel isolated because they feel they are the only ones struggling with these issues have been shown to be less productive. If your LGBT employees feel comfortable and supported in their work environment, they will be able to focus more effectively on the work of the company, thereby increasing productivity.

More than half of Fortune 500 companies offer domestic partner health benefits.

BRAND LOYALTY
National surveys have documented that the LGBT community demonstrates brand loyalty to companies that have policies of equal treatment. “Two-thirds (66%) of all GLBT adults reported that they would be very or somewhat likely to remain loyal to a brand they believed to be very friendly and supportive to the gay, lesbian and transgender community—even when less friendly companies may offer lower prices or be more convenient.”

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On January 16, 2003, New York State enacted the Sexual Orientation Non-Discrimination Act (SONDA). This law amends the New York State Human Rights Law (Article 15 of the Executive Law) to prohibit discrimination on the basis of sexual orientation in employment, public accommodation, housing, education, credit and other areas of everyday life. Every employer subject to the law must post an official New York State SONDA posting in a conspicuous and well-lit place at or near where work is performed.

Currently there are no federal laws prohibiting discrimination based on sexual orientation in employment. However, employers should be aware that legal protections from sexual harassment in the workplace can also impact the treatment of LGBT employees. The U.S. Supreme Court has found that sexual harassment between people of the same sex, regardless of the sexual orientation of either the perpetrator or the target, is just as actionable as harassment between members of the opposite sex. Prohibited sexual harassment includes both requests for sexual favors (“quid pro quo sexual harassment) and sexually offensive behavior that leads to an oppressive work environment. Therefore, it is important that employers investigate complaints that involve anti-gay epithets or other sexually explicit behavior that might be interpreted as sexual harassment.

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EMPLOYER RIGHTS UNDER SONDA

Consistent with other provisions of New York’s Human Rights Law, under SONDA, an employee who believes s/he has been discriminated against based on his/her actual or perceived sexual orientation can file a complaint against the employer either with the New York Division of Human Rights or in state court. For more information about complying with SONDA, contact the New York Division of Human Rights by visiting www.dhr.state.ny.us to find the nearest regional office.

LAWS RELATED TO GENDER IDENTITY AND EXPRESSION

As of the spring of 2009, neither federal nor New York state law explicitly prohibit discrimination based on gender identity and expression. However, some state and federal courts have interpreted laws that prohibit sex or disability discrimination as...
Legal Obligations on Sexual Orientation and Gender Identity/Expression in New York continued

affording protection to individuals harassed or discriminated against because they are transgender or do not conform to societal gender norms. The law in this area remains unsettled.

As of the spring of 2009, there are at least six cities and three counties in New York State that have amended their non-discrimination laws to explicitly protect transgender people on the basis of gender identity and expression. The cities are Albany, Binghamton, Buffalo, Ithaca, New York City and Rochester. The three counties are Suffolk, Westchester and Tompkins counties.

EMPLOYER RESPONSIBILITIES

Employers doing business in the above-mentioned municipalities and counties that are covered by these laws may not discriminate based on gender identity and/or expression in hiring, promotion, job assignments, termination and compensation of employees or prospective employees.

EMPLOYEE RIGHTS UNDER THE LAW

If employees believe that they have experienced discrimination based on their gender identity or expression, they have the legal right to file a complaint at the municipal level. For example, in New York City, an employee can file a complaint with the City Human Rights Commission or sue in court. In Buffalo, an employee can file a complaint with the Buffalo Commission on Citizens’ Rights and Community Relations.

In municipalities and counties where there are no explicit laws protecting individuals based on gender identity and/or expression, an aggrieved employee can file a claim based on sex or disability discrimination which may be successful based on previous court rulings.

The law in this area and the latest legal developments, can be accessed through the Empire State Pride Agenda’s website at www.prideagenda.org.

The cities of Albany, Binghamton, Buffalo, Ithaca, New York City and Rochester as well as Suffolk, Westchester and Tompkins counties have amended their non-discrimination laws to explicitly protect transgender people on the basis of gender identity and expression.
Including “Sexual Orientation” and “Gender Identity and Expression” in Your EEO Policy

Adding “sexual orientation” and “gender identity and expression” to your existing EEO policy reinforces the cultural values of your company and helps to create a more respectful and inclusive environment for all employees. Of course, employers in the State of New York are already obligated to comply with SONDA, regardless of the enumeration of “sexual orientation” in the company’s EEO policy. Similarly, employers covered by gender identity and expression local ordinances are obligated to comply with those.

Getting Top Management Approval

Creating or revising an EEO policy requires that you have the support of your organization’s senior leaders. A culture of respect and inclusion starts at the top. It is easier to obtain the support of senior management when those individuals understand how an EEO policy is consistent with the mission and values of your organization.

A Model EEO Policy

Because EEO policies can set the tone for fostering a workplace respectful of employee diversity, we recommend the creation of a written EEO policy. Here is a model that is based on actual corporate policies:

NewYorkCorp is committed to maintaining a work environment free of harassment, discrimination, intimidation or retaliation.

NewYorkCorp does not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, veteran status, disability, age, citizenship, marital or domestic/civil partnership status, sexual orientation, gender identity or expression, or because of any other criteria prohibited under applicable law. NewYorkCorp administers all terms, conditions and privileges of employment on a non-discriminatory basis, including, but not limited to, recruiting and hiring (including recruitment advertising), promotions and transfers, performance appraisals, training, job assignments, compensation, termination of employment and benefits.

If a NewYorkCorp employee believes that a violation of this policy has occurred, s/he should take immediate action by contacting his/her supervisor or Human Resources representative. If a job applicant believes that a violation of this policy has occurred, s/he should contact his/her staffing representative, or a company Human Resources representative. Retaliation, intimidation or discrimination against employees or applicants who report violations is strictly prohibited, and will be considered to be a violation of this policy.

NewYorkCorp will investigate reports of policy violations expeditiously and as discreetly as possible. Employees who violate this policy will be subject to disciplinary action, up to and including the termination of employment.

Publicizing and Enforcing Non-Discrimination Policies

- Employees need to know about your non-discrimination policy.
- Your non-discrimination policy should also prohibit harassment of any kind.
- Outline a clear grievance procedure.
- Communicate a no retaliation policy.
- Build a reputation that you take complaints seriously.
A NOTE ON "EMPLOYEE BENEFITS"

"Employee benefits" refer to any benefits given to employees as part of an overall compensation package, including but not limited to health insurance, pensions and bereavement, family care and maternity/paternity leave. The best practice in this area suggests that employers equalize benefits offered to all employees regardless of their sexual orientation or gender identity and expression. Thus, offering health insurance benefits to the domestic partners of your employees if you cover spouses as well as covering the specific healthcare needs of transgender employees will send a clear message that your organization values all employees and their families equally.

MARRIAGE AND SPOUSAL BENEFITS

As discussed in the "Legal Obligations" section of this guide, case and statutory law in this area are rapidly evolving, so employers are encouraged to consult with legal advisors about specific requirements governing eligibility for employee benefits.

As of the publication date of this guide, jurisdictions including Massachusetts, Connecticut, Iowa, Vermont and Canada allow same-sex couples to marry. Therefore, even absent a law in New York State that permits same-sex couples to marry here, an employee working in New York might be legally married to a same-sex spouse.

New York State has specific legal requirements about respecting the marriages of same-sex couples who were legally married in other jurisdictions. For example, in accordance with these marriage-recognition requirements, the New York State Insurance Department has issued a letter to insurance companies authorized to do business in New York to extend insurance to same-sex spouses under the same terms as offered to opposite-sex spouses. As such, an employer offering group insurance benefits to the spouses of employees under policies governed by New York state law should ensure that same-sex spouses are covered to the same extent as opposite-sex spouses. While an employer's self-insured ERISA plan might not be covered by New York's marriage recognition law, as a best practice, private employers should accord equal spousal benefits to the same-sex spouses of employees who were legally married in a jurisdiction outside of New York.

OTHER LEGAL FAMILY RECOGNITION

Some states have created legal structures similar to civil marriage to protect same-sex couples and their families. New Jersey, for example, allows same-sex couples to...
Employee and Domestic Partner Benefits continued

enter into civil unions, while same-sex couples in California can enter into domestic partnerships that offer the same legal rights and responsibilities that California extends to married couples. New York State does not offer civil unions or domestic partnership status on a statewide level, so the legal requirements for these family-protection structures should be recognized in New York is unclear. Some private employers have decided to respect these relationships by offering spousal benefits to the partners of employees who have entered into these legal relationships elsewhere.

While federal law currently does not recognize marriages or any other state-based legal mechanism protecting same-sex couples, there is no federal restriction on any private actor or state respecting marriages, civil unions or domestic partnerships for the purpose of granting spousal benefits. Employees are advised to consult a benefits specialist or legal counsel to find out about the interplay between state and federal law in this area, and to determine how spousal benefits extended to heterosexual couples would be treated for tax and imputed income purposes.

Many lesbians and gay men use “domestic partner” colloquially to refer to their life partner. However, as mentioned above, “domestic partnership” can have a specific legal definition under local or state law as well as a specific definition under an employer’s policies. Some New York municipalities and counties have created a domestic partner legal status for couples. Some local domestic partnerships create select rights and responsibilities for the couple. Other domestic partnership structures give no substantive rights at all other than having the partnership documented. Currently, New York State does not have a statewide registry; however, cities like Albany, Ithaca, New York City and Rochester; towns like East Hampton, Ithaca and Southampton; and counties like Rockland, Suffolk and Westchester have created domestic partner registries. For more information on the specific requirements in each city or county, please consult with your attorney or contact your local agencies.

Nationally, approximately 57% of the Fortune 500 companies and over 9,000 other employers offer domestic partner health benefits. These employers recognize that employees are more productive if they are not spending time and energy worrying about providing for their families. They also know that employee benefits are a very important tool in employee recruitment and retention. If your health plan covers the spouses of employees, your organization can seek to provide equal benefits to unmarried LGBT employees by offering health insurance to their domestic partners. Your organization may decide to provide domestic partner health benefits only to same-sex couples, because marriage is an option for heterosexual couples. Alternatively, it can define domestic partner more broadly and without regard to the biological gender of the employee’s partner. Either way, your insurance carrier may require that you obtain proof of an employee’s domestic partner status before providing coverage to the partner.

Registration of domestic partnership with a governmental body pursuant to local law authorizing such registration is one form of proof of status and is often sufficient for benefit enrollment. Another is typically in the form of an employer-created certification of domestic partnership status, especially because not all legalities in the state have partner registries. Such certification typically requires that an employee state that s/he is not currently married or in a domestic partnership with anyone else and is in a close, committed relationship with that individual. Just as an employer would not require an employee who was legally married to attest that s/he has been living continuously with his/her spouse, or that their finances are commingled, it is equitable to make that requirement of employees in a domestic partnership.

Another option for offering inclusive benefits is to offer coverage to a “qualified adult.” With this approach, all employees are eligible to cover their spouse or one qualified adult. A “qualified adult” can be a domestic partner or an extended family member that meets certain criteria as defined by the plan. This option allows individuals to define families for themselves in an even broader sense than just including domestic partners, and may be appropriate for some employers.

Your insurance carrier may be able to assist you in extending group insurance benefits to domestic partners.

**COST OF PROVIDING DOMESTIC PARTNER BENEFITS**

Many employers believe that the cost of providing domestic partner benefits is too prohibitive to justify the good will created by this inclusive action. In practice, however, the cost for most employers is relatively minimal, typically a 1% to 2% increase over current benefit costs, according to a 2006 study by the Williams Institute at UCLA Law School. As alluded to earlier in this section, unlike health benefits provided to heterosexual married spouses, federal law currently requires that the amount spent by an employer to provide health insurance coverage to a domestic partner must count as imputed income to the employee. Hence, an employee receiving domestic partner coverage bears the burden of this tax disadvantage. A few companies alleviate the tax disadvantage faced exclusively by LGBT employees (because federal law does not recognize them as “married” even if they have been married in a jurisdiction where it is legal) by compensating employees (i.e. “grossing up” the income) for the amount of taxes paid.

For more information regarding the tax implications of providing domestic partnership benefits, we encourage you to consult a benefits or tax specialist.

**HEALTH INSURANCE COVERING THE NEEDS OF TRANSGENDER EMPLOYEES**

Some transgender individuals will choose to take hormones and/or have surgical procedures to align their physical anatomy or appearance with their gender identity. A fully inclusive health insurance plan will include coverage for hormone therapy and all medical and mental health care related to transitioning, including coverage for necessary surgical procedures and eligibility for short term disability benefits following surgery. Additionally, companies may have to work with their insurance carriers to make sure employees are receiving coverage for the medical needs appropriate to their bodies, regardless of the sex indicated in insurance paperwork or other legal documents. For example, a transgender male employee may still require a pap smear or screening for breast cancer, and a transgender female employee may still require a prostate exam. Best practice would be for the employee’s health plan to cover these medically necessary procedures.
BEST PRACTICES

3 Inclusive Work Environment

FOSTERING AN INCLUSIVE ENVIRONMENT

One way to create an inclusive work environment in your organization is to offer diversity trainings that provide comprehensive education to employees about many aspects of diversity, including sexual orientation and gender identity and expression. Effective and engaging diversity training will enable employees to gain a better understanding of your organization’s culture of inclusion and respect, and to conform your workplace behavior in a manner ensuring that everyone feels comfortable in his/her work environment.

Diversity training should, at a minimum, address inclusiveness through the lens of your organization’s EEO policy and state and local law. Because sexual orientation and gender identity and expression are distinct characteristics, inclusive diversity training should address all of these characteristics.

In conducting diversity training, start with the senior members of your organization. They need to fully understand the importance of respecting staff in all its diversity. Once they are on board, train your front line managers. These individuals usually set the tone for their specific work area. Finally, diversity training should be required of every single employee in the organization.

If your budget allows, it is best to engage a professional with skills and experience in conducting diversity trainings that are culturally-competent in addressing LGBT issues. These diversity professionals can help you assess the training needs of your workplace and provide effective trainings tailored to your workforce.

Best Practices Employers Can Adopt:

- Use inclusive language in policies impacting an employee’s family. Refer to “spouse or domestic partner” rather than or in addition to “husband” or “wife.” Include “partner’s parents” as well as “mother-in-law and father-in-law.”
- Make sure that family events are inclusive. For example, if your organization is hosting an event for employees’ children, make it clear that the dependent children of an employee’s domestic partner are welcome.
- Use appropriate pronouns for transgender employees. Ask employees if they would prefer to be addressed with male or female pronouns.
- Provide mentoring to LGBT employees. If current employees self-identify as LGBT, make sure they are included in mentoring programs and are given the same professional development opportunities afforded to all other employees.
- Involve the leaders of your LGBT Network to help gauge whether LGBT employees feel comfortable in their work environment.

SUCCESS STORIES

“In 2006, we revised our Firm Diversity Statement and EEO policy, which had already covered sexual orientation, to include gender identity. Gender expression was later added as protected class under our policies.

Enhancement of the Firm’s policies required education on the distinctions between gender expression and identity. We then implemented the policy change and educated Firm attorneys and staff about gender expression and identity in our workplace diversity trainings.

McDermott is a large international law firm. Our commitment to diversity enhances our ability to attract and retain exceptional talent and helps bring the best, broadest and most innovative approaches to client service.”

Lisa A. Linsky
New York City-based Trial Partner, Partner-in-Charge of Firm-Wide Diversity and Founder and Chair of the Firm’s LGBT Diversity Committee
McDermott Will & Emery LLP
In addition to including gender identity and expression in your company’s EEO policy and providing a comprehensive benefits plan that includes reimbursement for all health care — physical and mental — related to the transitioning process, employers can adopt other policies and practices to support their transgender employees. While this guide will offer a brief description of best practices in this area, for further information we encourage you to review the Human Rights Campaign’s *Transgender Inclusion in the Workplace, Second Edition*, a detail-rich resource available on the HRC’s website, [www.hrc.org](http://www.hrc.org).

Educate your employees about gender identity and expression. Diversity trainings should be inclusive of all aspects of diversity, including issues of gender identity and expression. Training around gender identity and expression can educate employees about the use of appropriate terminology and pronouns and restroom access issues, and should ultimately focus on treating transgender colleagues and customers/clients with respect.

Have clear guidelines in place for the transitioning process. Employees who want to transition, as well as their managers, need to understand the policies and procedures required in the workplace. Some of the needs of a transitioning employee, like leave of absence, may fall under the company’s medical leave policy or short term disability plan, which applies to every employee. Other policies or guidelines regarding transition may be more unique, such as how a manager will assist a transitioning employee in explaining a transition to colleagues. Companies that have adopted specific gender transition guidelines have found them to be an important tool that provides structure and predictability for both employees and managers.
Supporting Transgender Employees continued

Help facilitate name changes and other administrative tasks. Assist an employee who wishes to change their name by making sure that all the necessary departments are informed so the paperwork process can go smoothly. In the event that a transgender employee’s name and/or gender identity does not match legal documents, the employer should recognize the individual’s preferred name and gender as much as possible.

Be sensitive about bathrooms and locker rooms. This can be a challenging topic for transgender and non-transgender employees alike. Most transgender people prefer to use the bathrooms and locker rooms associated with the gender with which they identify, regardless of whether they have had gender reassignment surgery. Other employees may feel uncomfortable with this approach. Having single-occupancy, gender-neutral restroom facilities available can be one way in which this issue can be resolved.

WAYS TO SUPPORT TRANSGENDER CUSTOMERS/CLIENTS

If employees interact with customers/clients, training should include how to demonstrate sensitivity to transgender customers/clients. In order to provide your transgender customers/clients with an inclusive atmosphere, a company can also offer gender-neutral fitting rooms, restrooms and other facilities. At a minimum, if your company provides gender-segregated fitting rooms and/or restroom facilities to customers/clients, transgender customers/clients should be permitted to access the facility corresponding to the gender with which they identify.

Please see page 28 for definitions of commonly-used terms for discussing gender identity and expression in the workplace.

ENCOURAGE AND SUPPORT LGBT NETWORKS

Employee Networks are any organizationally-sanctioned group within a place of work whose purpose is to bring together employees with similar interests or characteristics who support the same goals. These groups are often referred to as Employee Networks, Employee Resource Groups or Affinity Groups. At a minimum, Employee Networks provide an outlet for employees to engage in social and professional networking opportunities among colleagues who might not otherwise have routine contact. Typically, Networks represent groups who have historically had minority representation in the workplace, such as African American, Latino, Asian American and women employees. As such, Networks can offer an opportunity for employees to achieve a better sense of community in the workplace and can be an important resource for management. To be truly inclusive, Networks should encourage all employees in the company—and not just those who are members of the Network’s targeted population—to be involved.

We recognize that not every workplace has Employee Networks. Some businesses are simply too small to accommodate Networks, some may not have considered them and still others may have made a conscious decision not to have them. The best practice advocated here is that any company with pre-existing Employee Networks should also have a Network supporting their LGBT employees and straight allies. If your business establishes Employee Networks in the future, a network for LGBT employees should be included.

“Some of our major employers and some of our small employers across the state have voluntarily adopted gender identity and expression policies. I haven’t heard any regret or problem with voluntarily adopting those. It’s simple human rights and simple justice.”

— Assemblymember Richard N. Gottfried advocating for the Gender Expression Non-Discrimination Act during the debate in the New York State Assembly on June 3, 2008.

Many New York employers choose to adopt policies protecting gender identity and expression even if they do business in localities where there is no local law which requires them to do so.

GETTING THE MOST OUT OF AN LGBT NETWORK

An Employee Network that provides wide-ranging opportunities will result in employees remaining engaged and excited. Companies can succeed by creating a combination of social, educational, philanthropic and advocacy opportunities for the Network that benefit the membership of the Network, the company and the community.

Robert Berman
Eastman Kodak Company

“I am the Chief Human Resources Officer and a Senior Vice President at Eastman Kodak Company. We are an industry leader in imaging because we provide our customers the best value and highest quality products and because we create an environment in which our employees can perform to their fullest potential. As early as 1992, the company officially recognized the Lambda Network to support gay and lesbian employees. This network has impacted several hundred senior Kodak managers through its Annual Management Educational Event and provided education and support to thousands of employees. We believe diverse opinions and fresh ideas create the most competitive solutions, and the Lambda Network helps us recruit, retain and inspire a diverse and inclusive workforce.”

continued on next page
LEGAL OBLIGATION

INTRODUCTION

BEST PRACTICES

FULLY LEVERAGE YOUR NETWORK

Companies can fully leverage their LGBT Networks by taking steps to:
- Collaborate with other Networks in your company. Co-sponsor internal events, partner on external volunteer activities and work together on joint initiatives to encourage diversity and inclusion within your organization.
- Develop relationships with other LGBT Networks in your industry to discuss best practices and proven strategies.
- Provide opportunities for new Network leadership. Succession planning allows for greater investment and a fresh perspective.
- Actively seek out and engage members of your LGBT employee population at all levels of the company, from senior executives to administrative staff. Diversity and inclusion initiatives are most successful when they include everyone and encourage diversity of thought and experience.

ENGAGE STRAIGHT ALLIES IN YOUR LGBT NETWORK

All employees play a role in creating a culture of inclusion and respect in their workplace. For LGBT employees, the open support of heterosexual and non-transgender allies is an essential component of workplace inclusiveness. Non-LGBT employees can “come out” as an ally in the workplace.

Here are some suggestions you can make to non-LGBT employees who are interested in ways to show their support:
- Attend a meeting of your company’s LGBT Network and/or an LGBT diversity event sponsored by it.
- Let LGBT colleagues know you are interested in learning more about their families, personal experiences and issues that matter to them.
- Speak up when you hear an anti-LGBT remark or “joke” in your work environment.
- Politely correct colleagues if they use the wrong gender pronoun for a co-worker, customer or client.

Employee Networks Can Fulfill a Wide Range of Objectives, Including:
- Educate other employees about historical achievements and contributions as well as current challenges faced by the LGBT community.
- Support career development through leadership, mentoring and coaching.
- Provide a safe space for employees to “come out.”
- Serve as a link to information and community resources.
- Help with employee recruitment at MBA, law school and other professional LGBT job fairs.
- Work with HR to enhance policies and benefits and support the other best practices discussed in this guide.

SUCCESS STORIES

“Mercer’s Lesbian, Gay, Bisexual and Transgender Network has opened eyes, minds and dialogue. Our employees see LGBT role models among our senior leaders and feel encouraged about being themselves in the workplace and inviting other potential employees to join Mercer. Our LGBT Network has sparked good dialogue within the firm about inclusion and about how important it is for Mercer to continue to be a place where there is room for many views to coexist and be respected. We want to keep that dialogue going, especially with our leaders and managers. All of this combines to create positive energy within Mercer that also touches our clients.”

Mary Ellen Connerty
Worldwide Partner, Global Leader of Diversity & Inclusion
Merrill

(from left) Derrick Sampson, Co-Chair, Mercer’s LGBT Employee Network; James Campbell, Co-Chair; Mary Ellen Connerty, Andrew Beagley, Chief Compliance Officer and Co-Executive Sponsor
There are many ways an employer can support and advocate for the LGBT community. For the purposes of this guide, support and advocacy refer to anything an employer might do that has a positive impact on the LGBT community as a whole — both inside and outside your organization. If your business demonstrates support for other groups based on their demographics, whether by marketing to niche communities, making philanthropic donations, organizing community volunteerism or advocating on public policy, your company should demonstrate the same level of support to the LGBT community. Supporting the community beyond the walls of the workplace itself can speak volumes about how a company values its LGBT employees. And when employees feel supported and valued, they will respond with increased productivity and loyalty.

HOW TO SHOW SUPPORT

Here are some ways that employers can support and advocate for the broader LGBT community:

- Provide philanthropic support to the LGBT community.
  If your company provides financial or volunteer support to community-based organizations, include organizations in the LGBT community in your annual giving programs. Your LGBT employees can provide information about organizations that might be appropriate at the local, state or national level.

- Educate elected officials and government agencies about your best practices.
  Influential business leaders can provide an important voice in favor of public policy that provides equal treatment for LGBT individuals and their families. Your company can educate policymakers on the many ways that equal benefits and non-discriminatory policies benefit business.

- Include LGBT-owned businesses in your supplier and vendor diversity program.

- Market to the LGBT community.
  Members of the LGBT community are well-informed about corporate policy, and they reward companies that maintain supportive policies with their business. Supportive companies are rated and publicized in the Human Rights Campaign’s “Buying for Equality” guide. This tool is listed within the Resources section of this guide.

- Actively recruit LGBT employees.
  Reach out to LGBT professional organizations and LGBT associations at undergraduate and graduate institutions. What better way to demonstrate your commitment to diversity and inclusion than by actively seeking to recruit LGBT employees?

- Get involved in the Pride in My Workplace program.
  If you have been successful in helping your organization establish policies and practices supporting LGBT employees, take the next step by helping another organization do the same. To learn more about participating in one of our Industry Roundtables, hosting a training on this Best Practices Guide and other ways to get involved, please contact the Pride in My Workplace Coordinator at 212-627-0305 or go to www.prideagenda.org.

SUCCESS STORIES

“Corcoran Cares is the name of the nonprofit, in-house charitable organization created to support dozens of charitable and philanthropic organizations within the communities Corcoran serves. Our business successes are based on our ability to understand and fulfill our customer’s needs. Our personal successes are based on our ability to understand and share the responsibility of maintaining the communities in which we all live and work so that the needs of the entire community can be met. As part of Corcoran Cares, we are proud to support organizations serving the LGBT community.”

Frank Percesepe
Regional Senior Vice President,
The Corcoran Group
“People with diverse backgrounds bring different approaches to leadership and problem solving.”

Mark Henderson
Executive Director, Corporate Human Resources
Time Warner

RESOURCES
Sources for More Information and Commonly Used Terms

EMPIRE STATE PRIDE AGENDA
Pride in My Workplace Program
Transgender Issues in the Workplace: Lessons from Across New York State
www.prideagenda.org

AMERICAN CIVIL LIBERTIES UNION (ACLU)
LESBIAN, GAY, BISEXUAL, TRANSGENDER PROJECT
www.aclu.org/gbt

DIVERSITYINC
Annual report on employers with best practices in diversity
www.diversityinc.com

GENDER PUBLIC ADVOCACY COALITION (GENDERPAC)
Workplace Fairness resources on transgender employees
www.gpac.org

HUMAN RIGHTS CAMPAIGN (HRC)
Corporate Equality Index
State of the Workforce
Buying for Equality
Transgender Inclusion in the Workplace, 2nd Edition
www.hrc.org

LAMDA LEGAL DEFENSE & EDUCATION FUND
Out at Work: Tool Kit for Workplace Equality
www.lambdalegal.org

NATIONAL CENTER FOR TRANSGENDER EQUALITY
www.nctequality.org

NATIONAL GAY AND LESBIAN TASK FORCE
Domestic Partnership Organizing Manual for Employee Benefits
www.thetaskforce.org

NEW YORK CITY HUMAN RIGHTS COMMISSION
Guidelines Regarding Gender Discrimination
www.nyc.gov/cchr

NEW YORK DIVISION OF HUMAN RIGHTS
www.dhr.state.ny.us

OUT & EQUAL
Workplace Resources
www.outandequal.org/workplace-resources
New York Metro Affiliate
www.outandequal.org/metro-new-york
Training Programs
www.outandequal.org/training-programs

PRIDE AT WORK, AFL-CIO
www.prideatwork.org

THE WILLIAMS INSTITUTE
AT THE UCLA SCHOOL OF LAW
www.law.ucla.edu/williamsinstitute
COMMONLY USED TERMS

The following definitions will help explain some commonly-used terms for discussing sexual orientation and gender identity and expression in the workplace.

Sex
This most commonly refers to the biological “make-up” of individuals as either male or female. This binary distinction is based on a combination of biological characteristics including reproductive organs, hormones and chromosomes.

Gender
Refers to the cultural, social and behavioral traits associated with an individual’s sex.

Gender Identity
A person’s innate, deeply felt psychological identification as male, female or not specifically male or female, which may or may not correspond to the person’s body or assigned sex at birth.

Gender Expression
All of the external characteristics, behaviors and mannerisms that are socially defined as either masculine or feminine, such as dress, hairstyle, speech patterns and name. This term refers to the way people present their masculinity and/or femininity to the world.

Transgender
This is an umbrella term used to designate a community of people whose gender identity and/or gender expression is different from the sex assigned to them at birth. The term includes people who have undergone medical procedures to change their sex and those who have not. Most, though not all, transgender people live a significant part of their lives in the gender with which they identify.

Transsexual
A term rooted in medical history used to describe an individual who has changed, or is in the process of changing his or her physical sex through the use of hormones and/or surgery to conform to his or her internal sense of gender identity.

Gender Transition
The process through which a person modifies his/her physical characteristics and/or manner of expression to live in a gender other than the one he/she was assigned at birth. Some people transition simply by living as a member of the other gender through their dress, hairstyle, pronoun use, etc., while others undergo medical treatment to alter their physical characteristics.

Intersex
An individual who was born with reproductive organs, genitalia and/or sex chromosomes that are not considered exclusively biologically male or female.

Sexual Orientation
This most commonly refers to one’s romantic and sexual attraction. Being transgender is not in itself any indicator of sexual orientation. Just like everyone else, transgender people may be heterosexual, homosexual, bisexual or asexual. For the purpose of identifying illegal discrimination, the Sexual Orientation Non-Discrimination Act defines sexual orientation as “heterosexuality, homosexuality, bisexuality or asexuality whether actual or perceived.”

Resources continued
Reduced Hours, Full Success: Part-Time Partners in U.S. Law Firms

The Project for Attorney Retention

September 2009

by

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and
Linda Marks

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EXECUTIVE SUMMARY

Part-time arrangements have long been viewed as bullets to the heart of lawyers’ careers—and dubious propositions for law firms’ bottom lines. This report challenges that view. It shows that law firms can create successful reduced-hours programs—and that part-time lawyers and their law firms can flourish when they do.

In 2000, the Project for Attorney Retention developed its best-practice “balanced hours” model, which challenged the then-standard practice of taking part-time lawyers off the partnership track. As the number of part-time partners increased, from 1.6% in 1999 to 3% in 2008, questions emerged about how to compensate part-time partners, what to expect from them in terms of business development and firm service, and the best ways to create successful practices. This report is PAR’s response to those questions.

PAR interviewed 109 lawyers for this study, including 53 part-time equity partners, 23 part-time income or non-equity partners, and six part-time counsel. Seventy-five of the part-time lawyers were female; eight were partners of color. In lengthy telephone interviews, they answered questions about their career history, firms, schedules, practices, clients, compensation, business development, colleagues, satisfaction, and personal lives. PAR also interviewed additional partners of color who were not working part-time, and several managing partners. The study focused on partners in Colorado, the District of Columbia, and San Francisco, and also included partners from other regions.

The participants’ responses challenge conventional wisdom. Most strikingly, it is clear that working reduced hours is not inconsistent with long-term career success in the law, as detailed in these key findings:

- Many respondents had significant books of business, and the majority reported spending as much or more time on business development as full-time partners;
- Most respondents generate significant revenue, billing between 1200 and 1600 hours annually and pushing additional work down to associates; and
- Many hold leadership positions in their firms, including managing partner, executive committee member, practice group head, and members of high level committees.

This success leads to the important contribution of part-time partners as mentors and role models. Their presence sends the message to more junior lawyers, and to colleagues who feel they might need to reduce their hours in the future, that they have a future at the firm. Successful part-time partners enable a firm to retain valued attorneys—even those who have not expressed an interest in reducing their hours.

Another break with the past comes with the key finding that most respondents do not feel a stigma associated with their part-time status. Nearly 60% reported the absence of stigma, and the perception that they are supported and valued at their firms. The remaining 40% reported a variety of evidence of stigma, including unfair compensation policies, attitudes that were hostile to part-time work, firm policies that refuse to allow part-time partners to attain equity status, and doubts about their commitment. These findings come with a caveat. This study looked at partners who have remained with their firms, and therefore are most likely to be happy with their arrangements. Part-time partners who experienced significant stigma and who were not supported by their firms have likely left and were not reached by this study.
Several of the key findings challenge the notion that part-time partners are not available to their clients:

- Respondents tend to work as needed, having considerable flexibility in their schedules and working around client needs;
- Client service is foremost, with the vast majority of respondents stating that they do whatever is necessary to be responsive and meet deadlines; and
- Most clients are unaware of the partners’ schedules because client service is seamless.

Clients who are aware of their outside counsel’s reduced-hours schedules are generally supportive. They realize that all partners, regardless of the hours they keep, work on a variety of matters and are not available 24/7, and that technology gives them access to their lawyers no matter where they are. The general counsel participating in PAR’s Diversity and Flexibility Connection have stated their support for reduced hours work because they understand it facilitates retention and advancement of valued and diverse lawyers.

Finally, this report debunks the common assumption that only white women with children seek to reduce their hours. Without a doubt, this group is vastly over-represented among part-time partners. Most respondents had reduced their hours due to child care, but others had other outside jobs, were writing, had health issues, or were nearing retirement. Moreover, respondents included part-time men, and a quarter of the partners of color respondents are working part-time. A troubling finding is that the flexibility stigma—the stigma often associated with reduced hours—discourages some women of color from reducing their hours for fear of compounding the challenges they face as attorneys of color. Notably, some women of color respondents reported that having part-time partners at their firms signaled opportunity and acceptance in ways that mattered, even if they themselves were not currently part-time.

This study also gathered information helpful to firms that seek to design viable, nonstigmatized part-time partnerships. It provides information on fair ways to design compensation and steps to eliminate stigma. Other best practices include having a written policy, supporting business development efforts, encouraging part-time partners to assume leadership roles, and using part-time partners as role models.

Finally, the report provides information to individual attorneys who want to be successful part-time partners, drawn from the respondents’ experiences. These include strategically creating schedules to include valued firm service, prioritizing business development, and being proactive about compensation.

Part-time partners play a crucial role in the long-term financial stability of law firms. By staying with their firms, they deepen relationships with clients, generate business, and provide needed leadership. Part-time partners also serve as evidence of their firms’ commitment to flexible work arrangements, enhancing recruitment efforts and sending a message to clients that the firm is serious about diversity. Supporting part-time partnership is a sound business decision.
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ACKNOWLEDGEMENTS

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Finally, PAR thanks the many lawyers who took time out from their busy practices to participate in the study. You have contributed immensely to the work/life knowledge base. Our protocol prevents us from naming you, but you know who you are.
INTRODUCTION

When the Project for Attorney Retention was founded a decade ago, part-time partners were rare. Most associates who reduced their hours were taken off the partnership track either expressly or de facto; regardless of what the policy said, no part-time associate in most firms had ever been elevated to partner. Recognizing that reduced hours work could not be a real option as long as it was a career ender, PAR developed the best-practice balanced hours policy, which helps eliminate the stigma associated with part-time and keeps associates working reduced hours developing professionally toward partnership.\(^1\)

The best practices PAR identified have been adopted by many firms across the country, which helped pave the way for an increase in the number of part-time partners. In 1999, the before year of PAR's first report was issued, 1.6% of partners worked part-time.\(^2\) By 2008, 12% of women partners and 3% of all partners nationwide worked part-time.\(^3\)

As the number of part-time partners increased, PAR received a growing number of inquiries from law firms about part-time partners and best practices to support them. Can reduced-hours work by partners be successful for the firm and clients? How can part-time partners become productive partners and rainmakers? How should part-time partners be compensated? What should firms expect from part-time partners in the way of business development and firm service? This report is PAR’s response.

**Why Part-Time Partners Matter**

Simply put, part-time partners are key to law firms’ long-term financial health. Consider the following:

- Law firms need highly credentialed, highly experienced, and highly intelligent lawyers to be able to attract and serve clients;
- Most young lawyers—male and female—place a priority on being able to balance work and life;\(^4\)
- Nearly one-half of all lawyers graduating from law school today are female\(^5\) and females are responsible for the majority of child care and other family care;\(^6\)

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5 See, e.g., Nancy Rankin, Phoebe Taubman & Yolanda Wu, Seeking a Just Balance: Law Students Weigh In on Work and Family (A Better Balance, June 2008) (72% of male and 76% of female law students said they were very or extremely worried about being able to balance work and family; 84% said they would trade money for time); Catalyst, Women in Law: Making the Case (2001) (study of graduates of five top law schools found a nearly equal percentage of male and female attorneys—around 71%—report work/life conflict).
7 National Alliance for Caregiving and AARP, Caregiving in the U.S. (2004) (61% of family caregiving provided by women); U.S. Census...
Recent graduates and lawyers seeking lateral moves consider the availability of flexible work arrangements in choosing their employer;\(^8\) In stable economic times, the disconnect between the work style lawyers want and the work style law firms are offering has caused an attrition treadmill that costs a typical large law firm more than $20 million annually in regretted losses, that is, in losses of attorneys whom the firm wanted to keep;\(^9\) Clients want more diverse lawyers, including more women, among their outside counsel,\(^10\) and law firms’ younger lawyers tend to more diverse than their older lawyers; and Clients want their outside law firms to use business models that create stability in their relationships with their lawyers and improve client service.

Firms that can attract and retain excellent lawyers through flexible work arrangements are going to be able to hire from a larger pool of applicants, save recruiting costs by hiring fewer new lawyers, retain a diverse group of lawyers, reduce attrition costs, attract new clients, and increase the satisfaction of their current clients. In short, the way firms view flexible work for lawyers needs to shift from an “accommodation for mothers” to a business strategy designed to improve the long-term financial health of law firms.

Part-time partners play a crucial role in this paradigm shift. All too often, part-time lawyers have been highly stigmatized. Firms send direct and indirect messages to their lawyers that cutting one’s hours is professional suicide. Some openly refuse to offer part-time schedules; others allow them but with the price of forgoing partnership. Even in firms where associates are allowed to reduce their hours and remain on the partnership track, associates who cut back often get low-level assignments that undermine their readiness for partnership, lack mentors, and are passed over for business development opportunities. The resulting lack of role models sends the not-too-subtle message that part-timers do not make partner.

The presence of part-time partners provides the assurance that reducing one’s hours does not end the opportunity for advancement. Making part-time associates partner, and letting them remain on reduced-hours schedules, are powerful messages of a firm’s commitment to diversity. As part-time partners succeed and their number grows, the stigma attached to part-time tends to wane.

**Background of Study**

PAR undertook this part-time partners study to collect information on the structure and effectiveness of current part-time partner arrangements and to develop recommendations for law firms that seek to provide continuous career paths for part-time lawyers. PAR gathered information through an interactive interviewing process. We conducted in-depth, one-on-one interviews with 109 lawyers by telephone. Eighty-two of the interviews were

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8 See, e.g., Catalyst, supra n. 5 (45% of female law graduates cited “Work/Life Balance” as the number one reason for choosing their current employers and 34% of male law graduates reported that work/life balance was among their top three reasons for selecting their current employers).

9 WILLIAMS & CALVERT, SOLVING THE PART-TIME PUZZLE, supra n. 2.

of part-time partners or counsel, and covered professional and personal information relating to their schedules, satisfaction, compensation, business generation, service to their firms, and personal lives. In addition, PAR interviewed managing partners at firms known for having successful part-time partnerships to discuss their firms’ experiences and best practices. PAR also interviewed 23 women partners of color who were not working part-time to gain insight into the intersection of work/life conflict and racial/ethnic minority status. Additional information about the study methodology is available in Appendix I.

A Note Regarding “Part-Time”
Most “part-time” partners work schedules that, in many other jobs, would be considered full time. For this and other reasons, the term “part-time” has fallen out of favor in recent years. PAR has encouraged the move away from the term, preferring instead “balanced hours” and “nonstigmatized flexible work.” Yet in this report we have stuck with the term because it is readily understood. We do not encourage legal employers to use this term in naming their programs. Alternatives are balanced hours, flex-time, and flexible work schedules.
DEMOGRAPHICS OF RESPONDENTS

Eighty-two part-time lawyers were interviewed: 53 equity partners, 23 non-equity partners, and six counsel. The majority of the part-time respondents were white females; eight respondents were part-time women partners of color and seven were part-time men. Respondents have been with their firms for an average of 11 years (range: 3 to more than 25 years).

The respondents are at firms that ranged in size from three to more than 750 attorneys:

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<th>Firm size</th>
<th>50 or fewer attorneys</th>
<th>51–100 attorneys</th>
<th>101–250 attorneys</th>
<th>251–500 attorneys</th>
<th>501–750 attorneys</th>
<th>751 or more attorneys</th>
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Respondents practice in a variety of practice areas:

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<th>Practice area</th>
<th>Litigation</th>
<th>Labor and Employment</th>
<th>Real Estate</th>
<th>Tax</th>
<th>Corporate</th>
<th>Securities</th>
<th>Intellectual Property</th>
<th>Mergers and Acquisitions</th>
<th>Insurance</th>
<th>Other</th>
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Nearly all female participants reduced their hours for family-related reasons (94% of female partners providing a response to the question), and the most common family reason is to spend more time with their children. At least six of the respondents who reduced their hours for childcare initially have maintained their part-time status even though their children are now in college. They cite health, desire for a slower lifestyle, and flexibility to travel as some of their current reasons for working fewer hours. Four of the seven male partners reduced their hours for family reasons. Two partners decided to reduce their hours because they were nearing retirement. Other reasons included writing, quality of life, health, and a second job.

Ninety-one percent of female part-time respondents share their homes with a spouse or partner; 100% of the male respondents have spouses or partners. Nearly all have children. The part-time respondents contribute significantly to their family’s income: 70% earn half or more. Respondents also provide a significant portion of the family care. Eighty percent of females and 43% of males reported doing 50% or more of household chores. Ninety-one percent of females and 25% of males reported doing 50% or more of the childcare. Sixteen percent of the female partners and 86% of the male partners said they have a spouse or partner who either does not work outside the home or works part-time and is primarily responsible for household work and childcare. While this study included too few male partners to draw valid conclusions about the frequency of spouses who provide most of the household work, a study by the MIT Workplace Center showed that 78% of male law firm partners earn 80-100% of the family income and 74% of male partners described their spouses as being less committed to their own careers, which suggests that they have partners who are primarily responsible for household work and childcare. Only 57% of female partners report their partners are less committed to their careers.

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11 To protect the confidentiality of participants, we do not identify an individual’s race or gender when attributing quotations in this report.

12 Twenty-eight of respondents have been with their firms between three and eight years; 32 between nine and 15 years; and 16 between 16 and 24 years, and five have been with their firms for 25 years or more. In addition, one respondent had been with her firm for one year.

13 Mona Harrington & Helen Hsi, 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 (MIT Workplace Center, Spring 2007) at 17 (74% of male partners described their spouses as being less committed to their own careers; 57% of female partners described their spouses as being less committed to their careers).
1. Part-Time Partners Seldom Work Set Schedules

The majority of respondents reported that their schedules were driven by client needs. Forty-one percent said they work four or more days in the office and put in additional time working from home. A common pattern is to work 30 to 40 hours in the office in a normal week, supplemented by very long hours as dictated by trial preparation or deal closings, followed by a period of time off. These respondents tend to view their reduced-hours arrangement on an annualized basis:

If my workload can sustain it, I just work slightly shorter days. I’ll get in around 8:30 or 9, and I’ll leave at 4:30 or 5. But it doesn’t always look like that, and that’s one of the ways it’s worked for me is that I’m pretty flexible. If I have a trial, obviously I’m working long hours, but then I have the flexibility to take a few days off or leave early or take a vacation, or whatever. So, for me, my personal goal is just to work fewer hours over a billable year.

I’m a transactional attorney, so when I’m in the heat of a deal I’ll work 12 to 14 billable hour days. And then, when I don’t have anything to do, I go home. It’s not practical for me to have Fridays off or to leave at 2:30 or 3:00 every day. It’s annualized.

About one-third (34%) reported working fewer hours per day in the office, often with additional hours worked at home, when client needs allowed. Several reported that their initial part-time arrangement involved working fewer days per week, but they found it easier to work at least a few hours every day:

I started out at three days and it really doesn’t work. It did not work for me. It was very, very hard to do that because of my client’s needs and I’m a litigator. I couldn’t be inflexible with my time. I couldn’t say I’m not available on Wednesdays and Fridays, because I just had to go to court. I had to deal with clients. So what I soon found worked a lot better for me was to have five-day-a-week child care, essentially, so that I could take days when I could take them, reduce my time depending on my client’s needs as opposed to an inflexible schedule. And now, I try to protect Fridays. Friday is typically my day not in the office. But, with my kids in elementary school, it’s totally different because Fridays I can easily work.

Twenty-one percent work fewer hours per day, as illustrated by this comment:

Obviously there’s some exceptional periods, but normally I’m in the office from roughly 8 to 2 every day. There was a period where I went to trial this year where obviously that went all out the window, but that was one of a few rare exceptions. And I also said I didn’t want to travel when I came back, and they’ve been respectful of that, as well.

Partners who have worked part-time over numerous years say that their schedules evolved based on family, firm, and client needs:

My kids are older now so, the schedule that I am doing now is working more during the school year, coming in every day but working shorter days. And during the summer, it really has varied a lot, too. So, I guess in general, I’m viewed as a part-time attorney here at this firm in terms of less hours over the course of a year. And how I get to those hours is
Several credited their firms with having flexible policies that permitted them to change their schedules as needed.

2. Flexible Work Arrangements Attracted and Retained the Partners

About one-fourth (26%) of respondents joined their firms on a part-time schedule. For many of those partners, the availability of part-time was a deal-breaker. One of the partners explained that she was already an equity partner working part-time at her former firm, and she would never have gone to another firm if she could be an equity part-time partner there as well. Another partner said, “My need to have reduced hours was an integral part of the negotiation as to whether I would join this firm or not.”

Several partners told how they left their former firms even though they had been allowed to work part-time as equity partners, because they did not feel that their firms supported reduced schedules. One of the partners explained that at her current firm, being a part-time partner is a non-issue because the firm is so supportive, which was not the case at her old firm. She has been at her new firm for six years. Another partner details why she made the switch to her current firm:

“My previous firm was not the friendliest firm to part-timers known to mankind. It’s not that they wouldn’t offer them. They let me do it. But it was made pretty clear to me on almost a day-to-day basis that this was not a long-term prospect. I always had the sense they were wondering when I would get over the novelty of the birth so I could go back to full-time. And that was probably the principal driving reason why I just decided not to stay there, because I saw myself as a part-time lawyer for some time in the future.

She has been at her new firm for over seven years.

For other attorneys, the offer of part-time partnership was an enticement to join a firm, or stay in the profession: “Certainly, I was not looking to stay in private practice after I decided to leave my old firm. This firm’s suggestion that I could work part-time was a large factor in my decision to come here.” She explained,

“I ran into an old friend at a conference and mentioned that I was leaving my firm soon, that I had decided that motherhood was incompatible with being a partner in a law firm. And he said that his firm would be willing to talk to me about a part-time partnership. I visited with them, which led to my part-time position.

She has been at her new firm for more than ten years.
A partner of color who works a full-time flexible schedule said her decision to join her current firm was significantly influenced by the fact that the firm had promoted a female attorney from part-time income partner to part-time equity partner: “I was very impressed with the fact that the firm promoted a part-time partner to the highest level you can reach.” Another full-time partner of color said that work-life balance issues were “definitely on my radar screen when I made the switch to my new firm, because at that point I’d already had two children and my children were very, very young. So it was a huge factor for me as to how this was going to impact my family.”

The vast majority of partners stated that they would likely have left their firms if they could not have worked flexibly. Their career decisions bear this out: more than three-fourth (76%) of the partners interviewed began working reduced hours at their current firms, and the average tenure of the those partners is 12 years (ranging from four to 37). 14 Given that more than half of women lawyers leave their law firms by their seventh year, 15 this longevity is noteworthy. Here is what some of the partners had to say:

“It was never an overt threat, but it was just, ‘I can't do this full-time so let's figure out another schedule.’ (Tenure at firm: 10 years)

“I am so loyal to the firm. I mean, I was going to quit, not because I wanted to, not because I didn't like my job. I love my job. I love the people I work with. I couldn't have imagined working at a different firm. But, the part-time arrangement allowed me to continue working at a job I really love with people I really respect and address these other real issues/needs in my life. So, I'm the happiest lawyer you'll ever meet. (Tenure at firm: 15 years)

Law firms that have embraced part-time partnership highlight its importance in retaining valued attorneys. Said one managing partner:

“The primary benefit is that you retain a really talented person and that person is not fungible, that lawyer is not just a fungible asset. It is somebody that is valuable to the firm, is valuable to the firm's clients.

Another managing partner agreed:

“Our program is hugely successful. It has been in existence for well over 20 years. We have been able to retain people because we have not asked them to make a choice, but rather have created a structure that allows them to spend the time that they need to with family and raising children, etc., and that has made them that much more engaged, enthusiastic, committed and loyal to our partnership. And I think it's proven its value in spades.

He went on to discuss how retention of key personnel allowed the firm to develop outstanding expertise that has brought national recognition:

“We have many reduced-time partners who are absolute leaders in their fields of practice and who have national reputations, including top-notch litigators, top-notch environmental lawyers, top notch real estate, corporate and M&A lawyers, to name just a few.

14 This study yielded some interesting and informative descriptions of part-time lawyers’ paths to partnership; these are set forth in Appendix II.
15 See, e.g., National Ass’n for Law Placement Fndn., Update on Associate Attrition 11 (2007).
In addition, partners who work flexibly are visible role models who help to retain lawyers, even if those lawyers have not (yet) expressed an interest in reducing their hours. A part-time partner who has been at her firm for more than 20 years explained:

> Ever since I was a junior associate, I saw other people, men and women, taking the option from time to time to reduce their hours and those people were progressing and well-regarded. In those times when your life is so crazy and you’re not sure whether this is the right balance for you, you say to yourself, “Well, if I decide I don’t want to do this, then I have that option here. I don’t have to go somewhere else to reduce my workload or get that peace of mind. If there comes a time when I need that flexibility, it’ll be there for me. I don’t have to go look for it elsewhere.”

Likewise, a partner of color who currently has no need to reduce her hours stressed how important part-time partnership is even to women who currently have no children:

> Most of the women at the firm would like to get married and perhaps have a family down the road. And so knowing that we have these options available to us makes us feel good about working here. The alternative work schedule is probably the biggest thing that I think we look at in terms of the firm’s commitment to making sure that everyone, but especially women at the firm, has the flexibility to practice but, at the same time take care of the responsibilities they have in their non-legal lives.

Part-time partners themselves report that they commonly find themselves serving as role models for attorneys that they supervise:

> I’m proud that a lot of the teams that I’ve supervised have included more junior women who have gone on to have children and who have worked out successful part-time arrangements that mirrored mine in a lot of respects. And I think most of them would also say that that’s, as far as they’re concerned, one of the most positive aspects of their job is being able to do that.

> A lot of associates seek me out for mentoring if they themselves are trying to do a part-time arrangement. They’re like, “Okay, this is somebody that’s done it. This is kind of a weird animal. Let me see how she does it.”

Having role models is vitally important. One partner who joined her firm four years before adopting a reduced-hours schedule explained, “I came to this firm because I saw that there were a lot of women partners here who worked part-time, and it seemed like a firm that was amenable to that.” She has been at her current firm for more than nine years.
3. Client Service is Not Compromised by Part-Time Schedules

Virtually every respondent strives not to let his or her schedule impact client service. They said that client service is foremost, and that they adapt their schedules as necessary to meet client needs:

*I'll always take a client call. I always respond to e-mails. So I actually work a lot on my days off. I do not have a rigid, fixed schedule in any way. It has nothing to do with my deal with the firm. It has to do with the way I want to service my clients.*

*My clients do not feel the effect of my part-time work schedule at all, and that was a conscious choice from day one and a commitment that I made to the firm that the client needs come first.*

*When there are projects to be done, they're done. If it's Saturday, Sunday, 1 o'clock at night, I mean, it's just done. So, you know, the reduced hours doesn't really impact time commitment on a project by project basis.*

Like all partners, respondents made responsiveness and accessibility to clients a priority. As one partner put it: “I believe I’m in a service industry so I make myself available.” Another said, “I’m very responsive and it’s rare that they feel my absence.” Technology facilitates their efforts:

*I get my e-mails when I’m on vacation or at home or driving the kids around so that I can respond to client needs. And then I can log in from home, and it looks like I’m at my computer here. So I could work at home if needed. With the BlackBerry, I can respond to e-mails anywhere.*

*I look at my BlackBerry probably every hour or so. If there is anything that needs to be taken care of, I take care of it. I rarely bother to put my out-of-office response on anymore because I know that I’ll get back to colleagues and clients immediately, if necessary.*

In a few instances, partners said that they may not have been able to address matters as quickly as they would have been had they been a full-time partner. The partners make clear, however, that they work to make sure their clients are not impacted negatively:

*Sor sometimes, like right now, I'm rather overwhelmed with work, and so it may be having a slight impact in terms of the speed with which I can get things done. But because I work directly with clients and not through a more senior partner or something, when I say, “Okay, I think I can have this done by such-and-such a date,” I try to set those dates reasonably based on what I know about my schedule. So, maybe if I were working full-time, the date I would give them would be earlier. But I don’t miss my deadlines that I give people.*
4. Many Part-Time Partners are Financially Successful at their Firms

Contrary to the conventional wisdom that firms don’t make money on part-timers, study participants provided strong evidence that part-time lawyers generate significant revenue both from their own billable hours and from origination of new business. In the course of the interviews, several noteworthy examples emerged of part-time partners who are major rainmakers.

Revenue Generation. Most of the part-time partners participating in the study billed between 1200 and 1600 hours per year. Nearly 22% billed fewer than 1200 hours per year, 29% billed between 1200 and 1399 hours, 36% billed between 1400 and 1599 hours, and 14% billed more than 1600 hours. Respondents (n=43) reported billable hour rates between $175 and $830. Nearly 12% reported rates below $300 per hour, 30% have rates between $300 and $499 per hour, 44% are between $500 and $699, and almost 14% have rates at $700 or above, with a top rate of $830.

Doing some quick math, one sees that a part-time partner billing 1400 hours per year at the median of $535 per hour can generate $749,000 annually. One respondent noted that she was one of the top revenue generators in her firm:

As an M&A lawyer, my rate is high. I was about 20\textsuperscript{th} out of nearly 200 partners in terms of my revenues. If those revenue figures had been annualized, I would have been in the top 10, probably.

Business Origination. Lower revenue from reduced hours can be offset by business origination. When asked about the impact of their reduced hours on business development activities, nearly 60% of respondents said that they did as much or even more business development as their full-time counterparts. This number is better understood when broken down by category of respondent. Nearly three-quarters (73%) of the equity-partner respondents reported doing more or the same amount of business development as did full-time partners at their level. In sharp contrast, most part-time nonequity partners reported doing less (61%) or the same amount (28%) of business development as did full-time lawyers at their level. Of counsel who were part-time were even more likely to report doing less business development than full-timers at their level (86%).

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<th>Does more than full-time lawyers at their level</th>
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<th>Does less than full-time lawyers at their level</th>
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<td>21 (44%)*</td>
<td>14 (29%)</td>
<td>13 (27%)</td>
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<td>Nonequity Partners (n=18)</td>
<td>2 (11%)</td>
<td>5 (28%)</td>
<td>11 (61%)</td>
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<td>Counsel (n=7)</td>
<td>0</td>
<td>1 (14%)</td>
<td>6 (86%)</td>
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*Percentages refer to the respondents in each category

Several partners stressed that business development is key to reaching the top:

I haven’t cut the things I do to originate cases. I have cut other things, but I haven’t cut that. So, I’m doing as much of the things that lead to origination now as I did when I worked full-time.

I’ve been extraordinarily active in business development compared to some older partners.

16 Total does not equal 100 due to rounding.
Most of my non-billable work was business development. There were a number of industry group conferences that I would attend, I'd say maybe five or six a year, and that's like a couple of days each.

I am 1,000 hours billable and 1,000 hours business development.

Their activities appear to pay off. Several partners discussed their success with originating new client business:

My business development is not impacted by my part-time status. In fact, my working part-time means I originate more things because I hand them off to other people, because I don't have the time to do them.

I probably could be 80% if I didn't do as much marketing. I don't think I could be 100 percent. But, I wouldn't have—I've had a lot of success here because of running a practice group and, you know, bringing in the clients and everything else. I've sacrificed my salary in the short-term for what I think will be making more money in the long-term, and also having a better practice and more interesting work-life.

I've developed a much bigger book of business. Some years I've had huge billings. As I've grown my practice, I've been responsible for a lot of money coming into the firm. And so, my total contribution to the firm has gone up, even though I continue to keep my billable hours low.

Another said her compensation is in excess of $400,000 annually (including bonus), largely because she has brought in three major clients and an additional two clients in the past month. Additionally, roughly two-thirds (62%) of respondents said they generated at least half of their own work from their own clients.

Interestingly, some part-time partners reported that because they bill fewer client hours, they can spend more time on business development:

I'm 60% supposedly, but I'm at work every day because I spend a tremendous amount of time on marketing because I wanted to get my practice where I wanted it to be. I was able to take that cut in salary and take the time to really build my practice the way I wanted it and fulfill my firm's expectations.

Some partners reported, however, that being part-time makes it harder to develop business:

Once I came to my new firm, I increased the amount of hours that I worked and I increased my marketing activities a lot so that I really effectively ended up working full-time—Even though my billable hours weren't full-time, my marketing was—Then I was able to make partner. It's very hard when you're at a firm that bases partnership on generation of business to become a partner when you're part-time, unless you have a lucky break or two, because it's a lot of work to generate business.
5. Many Part-Time Partners Are Involved in Firm Governance

Contrary to the stereotype of the part-time lawyer who does nothing but bill hours and leave the office as soon as possible, many respondents are very involved in firm committees, associate mentoring and training, and other non-billable activities. Only 19% say they have decreased their involvement as a result of their schedules.

Six have served on their firm’s executive or management committee. Three have served as managing partner of their firm or office, and two have been deputy managing partners of their firm or office. Seven are or have been practice group heads. Others have served on the compensation committee, the hiring committee, the partnership consideration committee, the associate evaluation committee, associate training and development committee, and various other high-level committees.

The managing partner of a firm known to have successful part-time partners stated that part-time partners at his firm have frequently served in firm leadership positions:

*Many of our flex time or reduced time partners have served in key management positions, including as a member of our management committee, as department chair, as practice group manager, and as chair of significant firm committees. One has also gone onto to serve as our managing partner and one as the chair of our management committee.*

Some of the respondents stated their belief that their part-time schedules allow them to engage in more firm administrative work than they could if full-time:

*Some of us who are part-time are very actively involved in certain pro bono and community activities, which is part of the reason that we wanted to be able to have a lighter workload, so that we could be involved in those things. But, what happens is, realistically, a person who’s working less billable hours is being compensated less, is probably doing almost as much of all those other types of nonbillable things as somebody who’s working full-time, if not more, just because we have the time to do it.*

*I have always placed a premium on being involved in firm management and it is one of the reasons why I believe I will stay part-time even after my children are older. Despite being part-time, I’m on our firm compensation committee and I’ve just accepted a leadership position in my department, which is one of the larger practice groups in our firm. I enjoy those roles and would choose to do them even if they were not economically rewarded by the firm. If I were being held to a very strict billable hour budget, I would likely do less of this non-billable work—and if that were the case, I would feel less a part of the firm and less happy. I probably would have left.*

PAR has documented the stigma experienced by associates who reduce their hours while working in firms with traditional part-time programs.\(^{17}\) Stigma tends to arise where reduced hours work is permitted grudgingly as a temporary accommodation for lawyers with family-care obligations, and where the culture of the firm prizes long hours and copious face time. It can include removal from high-level work, loss of client contact, loss of mentoring relationships, ineligibility for advancement, financial penalties, transfer from practice area, and general loss of status. Stigma makes it less likely that lawyers will choose to work part-time, and makes it more likely they will leave their firms if they are unwilling or unable to work the high number of billable hours required of full-time lawyers. In response, PAR identified best practices that have helped law firms reduce stigma.\(^{18}\)

In sharp contrast to the high levels of stigma PAR found a decade ago, nearly 60% of respondents reported that they did not feel stigmatized because of their part-time status. Predictably, a higher percentage of equity partners than income partner or counsel reported no stigma, and none of the five male respondents (three equity partners and two income partners) who answered this question felt stigmatized.

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<td>18%</td>
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<tr>
<td>Of counsel (n=4)</td>
<td>25%</td>
<td>50%</td>
<td>25%</td>
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One partner said her firm felt positively about her schedule:

*There was never any questioning, never any comments, never any negative connotations. There was no stigma—my partners were always positive and always “we’re thrilled to have you” and “we love what you do” and upbeat all the time. Additionally, there was an enormous amount of independence and flexibility to construct my work schedule however I wanted. There were no rules about that, no restrictions, and that gave me a lot of self-confidence because the firm was basically saying, “we trust you and we know you’re going to do a great job and you’re going to make this all work and that’s fabulous,” instead of saying “you’ve got to do it this way, or you’ve got to be in the office this many days, or you can only work at home this much.” There were just never any rules like that at all.*

Another respondent felt similarly welcomed:

*When I said, “Here is what I want,” the response was, “Look, we’ll take whatever you give us because you’re a valuable member of our team.”*

Seven of the eight women partners of color who work part-time reported no stigma, another very encouraging piece of news. A possible reason for this is that partners of color would not reduce their hours if they felt it would harm their careers to do so, as suggested by this respondent’s observation about why she chose not to work part-time:

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17 Williams & Calvert, *Balanced Hours*, *supra* n. 1.
18 Williams & Calvert, *Solving the Part-Time Puzzle*, *supra* n. 2.
19 Total does not equal 100 due to rounding.
As a minority attorney, I was already fighting an uphill battle to try to make it into the partnership ranks to begin with, and I thought that adding another layer of difficulty with being part-time would only increase that and serve as a convenient excuse for that firm to continue to delay my partnership.

Not all the news is happy, however. A disturbing 40% of partners and counsel reported feeling stigmatized as a result of having reduced their hours. Their reports arise in two main areas: devaluing them as professionals and refusal to allow them to be equity partners. Additionally, 14% of all respondents who answered questions about their satisfaction with their compensation reported that they felt their compensation was unfair.²⁰

Many of the 40% told stories of feeling devalued at their firms. Some reported hostility towards part time at their firms, saying it was discouraged and other partners made snide comments about their schedules or commitment:

The part-time policy for associates here provides that you can’t become an equity partner while on a part-time schedule and I’ve heard that a leader of the firm told a part-time associate that he’d missed a million dinners with his kids and he’d be damned if someone was going to make partner if they hadn’t done the same. So, my sense is that there’s a great deal of hostility towards part-time and reduced hours arrangements here at the firm.

Several said they believe their partners view them as financial liabilities, and have made comments about their contributions to the firm. One reported that a partner singled out the part-time attorneys in a partner meeting and said they were not billing their full hours. She had a response for him, but his message that part-time partners are not desirable still left a mark:

I said, “All of us are bringing in far, far more than we’re paid. Two out of the three of us brought in over $1 million to the firm last year and were paid far below that. And if we missed our hours by 50 hours, who cares? We’re bringing in a lot of revenue and we’re turning out a lot of work to associates and keeping a bunch of people busy. And isn’t that exactly what we’re supposed to be doing?” But, I kind of feel like no matter what you do they find some way to criticize, either it’s you’re not giving out work, you’re not developing work, you’re not hitting your hours. Sometimes it feels like you’re playing that game Whac-a-Mole. Remember that amusement park game? Yeah, hit one head down and another one pops up.

Another respondent said part-time partners are seen as taking their careers off track, another said that her partners think she should go find another job, and another observed that she just wasn’t one of the guys.

In an interesting twist, one partner noted the presence of stigma and said her response to it was to focus on business development so she could have a lead role, choose the attorneys with whom she would work, and make sure her work was interesting.

Some of the strongest evidence of stigma is the fact that several respondents have not been allowed to become eligible for equity partner status because of their part-time schedules. Several counsel said, but for their part-time status, they would be partner. Some others were either required to give up their equity status or voluntarily did so.²¹

²⁰ Compensation is discussed in a separate finding in this report.
²¹ A recent study of women lawyers in New Jersey is consistent with these findings; most of the lawyers reported not feeling stigmatized because they reduced their hours, except that 44% reported that part-time associates could not make partner in their firms. Joan Williams & Cynthia Thomas Calvert, Legal Talent at the Crossroads: Why New Jersey Women Lawyers Leave Their Law Firms, and Why They Choose to Stay (New Jersey State Employment & Training Commission, Council on Gender Parity in Labor and Education, April 2009) at 17, 20.
One managing partner said his firm, while supportive of part-time work, does not allow equity partners to work part-time for more than six months.

This finding about stigma requires further study. By interviewing partners who remain employed at their firms in a reduced hours capacity, we necessarily focused on partners who, on balance, felt satisfied. By limiting our interviews to partners, we received data from only those who had “made it,” which likely means they overcame obstacles such as stigma. Moreover, the partners we interviewed may not take offense easily or may not recognize stigma when it occurs—or they may be in firms that have taken effective steps to eliminate stigma. Future studies that include senior part-time associates who left their firms without making partner and partners who worked part-time but left their firms could help answer these questions.

7. Compensation for Most Part-Time Partners is Proportional

One of PAR’s early best-practice recommendations was proportional pay for part-time work, largely in response to the then-common practice of giving lawyers who reduced their hours a “haircut.” In the intervening years, proportional pay for part-time associates has become the norm in many cities. Does the principle of proportionality carry over to partners? The answer depends on which compensation system a law firm uses. The most common systems are discussed below.

**Shares, Units, or Points tied to Monetary Amounts.** Under this system, equity partners are awarded shares, units, or points, each of which will have a dollar value attached to it once the firm’s profits for the year are known. Share awards are most often determined subjectively, and sometimes based on formulas. Both methods typically consider hours billed and collected and other factors such as business origination, primary responsibility for a matter, or firm service.

While some firms award fractional shares to part-time partners, proportional to the schedule they work, more commonly firms award shares to part-time partners as if they were full-time and then to adjust the amount of money received for each share to reflect the percentage schedule they work. For example, a partner who targets to bill 80% of the firm’s average or minimum billable hour level for full-time partners and who meets his or her target for the year would receive credit in the calculation of shares as if he or she had billed 100% of the full-time level, and shares are awarded accordingly. Yet when profits are distributed, the part-time partner would receive 80% of the amount received by a full-time partner.

**Tiers, Levels, or Slots.** Some firms award shares or points to partners, and then group partners with similar overall contributions into tiers or levels. The partners in each tier or level receive the same amount of compensation. Awards are based on approaches similar to the those described above. While most firms that use this system determine part-time partners’ levels as if they were full-time and then give them a proportional percentage of the compensation received by the other partners in their level, some firms look at the part-time partner’s actual billable hours and place them in a lower level, lumping part-time partners with full-time partners who have low billable hours. One partner explains the problem with the latter system:

> I am awarded the same amount of shares as my peers, considering the type of work I’m doing, the sophistication of work I’m doing, and the amount of energy that I’m bringing to the firm. Because I am part-time, I get paid out 70% of the share value of those points.

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22 Williams & Calvert, Balanced Hours, supra n. 1. A “haircut” is a disproportionate differential in pay. For example, it was common in the 1990s for law firms to pay attorneys who worked 80% of a full-time schedule only 65-70% of a full-time salary.

which is an incredibly favorable way to do it for part-time partners. Other firms give part-time partners less shares. At those firms, if you go full-time later, it’s much harder to catch up to your peers. So, I am at a full-time share slot with what I would consider to be my peer group. If tomorrow I decided to go full-time, I would be in the comp structure with those people. I get paid less for the time period that I am working less hard than my colleagues, because they just multiply my shares times .7, so my draw is 70% of my share level. But I am not penalized in the long-term.

A more serious problem can arise with placement in lower tiers. One part-time partner described being “double dinged” in her compensation; she was placed in a lower tier based on her lower billable hours, and then was paid a percentage of the amount the other partners in that lower tier were paid. It is important that firms account for reduced hours through one method or the other, but not both.

**Lockstep.** Ten of the respondents work at firms that use a lockstep system under which partners’ compensation is set according to seniority and typically increases each year, without regard to billable hours, business origination, or firm service. While some of the firms are true lockstep, four are lockstep only for a certain number of years after a lawyer is elevated to partnership; one is lockstep in practice but not theory. Lockstep systems are easy to adapt to part-time partners, who are simply paid proportionally to the number of hours they bill. One partner reported that her firm eschewed the easy route, choosing instead to calculate fractional progress from one step to the next for part-time partners. This system, she noted, would have the effect of penalizing her for her past schedule if she were to return to full-time work.

**Discretion.** A handful of respondents said partner compensation at their firms is determined completely by exercise of discretion. A management committee or managing partner sets each partner’s annual compensation, without using a formula or other set criteria. Typically, discretion-based compensation is found in closed systems in which partners do not how much other partners are making.

A substantial literature documents that unfettered discretion tends to open the door to gender bias.\(^{24}\) Research shows that women often receive lesser rewards for the same achievements.\(^{25}\)

Questions of fairness may also be more likely to arise in highly discretionary systems. One of the respondents who expressed dissatisfaction with her compensation was in a firm where compensation was set by discretion. She is working 80% of a full-time schedule and believes she is making less than half of what full-time partners make.

**Salaries.** Most of the nonequity partners and counsel who participated in this study are paid on salaries. These are set in a variety of ways. Some are paid a percentage of the salary they made when full-time, some are paid a percentage of the compensation a full-time partner at their level of experience and contribution would make, while some are paid according to a decision maker’s discretion or an amount they negotiated with the decision maker. Most reported that they were eligible for bonuses for billing hours above their target and/or for business origination.

**Hourly.** A few of the nonequity partners are paid on an hourly basis, receiving compensation only for hours

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worked. At least one stated that she was compensated only for hours billed, and was not paid for nonbillable work she did for the firm. Some receive a percentage of the amounts they bill and the business they originate, while others receive a negotiated hourly rate.

Regardless of system used, a handful of respondents stated that they are not paid proportionally to the number of hours they bill. They were told their compensation would be reduced by an additional five or ten percent, so that a partner billing 80% of a full-time schedule would receive 70 or 75% of full-time compensation. A managing partner at a firm that imposes this type of “haircut” expressed concern that if part-time partners were compensated proportionally, all partners would want to reduce their hours. More typically, the few firms that impose haircuts do not do so to discourage part-time work, but rather because they apparently believe that part-time partners are not as profitable. This study, along with PAR’s previous work, show that reflexive generalizations about profitability are likely invalid.

8. Most Partners Do Not Tell Clients about Their Schedules

Whether to tell clients that one is working part-time is a thorny issue for partners. If clients are not aware of the partner’s schedule, they may inadvertently undermine the partner’s attempts to control the hours they work. Moreover, some clients affirmatively want to know whether any of their outside counsel are working reduced hours; some want to actively support flexible work because they recognize the link between flexibility and retention and further recognize the benefit to their companies from stable relationships with outside counsel. Some partners, on the other hand, are concerned that if they tell clients that they have cut back their hours, the clients will give new work, or at least the more challenging and time-sensitive work, to other lawyers or other firms. One counsel expressed her hesitancy:

"I have been concerned that some clients would not like it and would be maybe more inclined to give work to someone else. I would say that’s a constant worry."

Another respondent is concerned it could give a bad impression:

"If I have a deal going on, I am there, late nights and everything for the clients. And that’s why I really didn’t see the necessity of telling all of them that I work part-time, because a lot of them — some of them, I guess, would get this impression that, “Gosh, she’s not going to be there on Tuesdays and Thursdays.” Maybe they wouldn’t care in this day and age, but I think it’s still there."

Most of the partners interviewed have resolved this issue by deciding not to tell their clients. Many, like these partners, said their schedules are irrelevant because they are so responsive to their clients’ needs:

"I don’t see any reason why they should have any idea. If I’m being responsive and fulfilling their needs, it’s irrelevant whether I’m part-time or not."

26 PAR has previously addressed the “floodgates” concern. See Williams & Calvert, Balanced Hours, supra n. 1 and Williams & Calvert, Solving the Part-Time Puzzle, supra n. 2, at 137. In sum, the firms with nonstigmatized reduced hours programs have not experienced floodgates; usage rates rarely top 10-12% of all lawyers. Most lawyers do not want to cut their hours or cannot afford to do so, and others reduce their hours for only a short period of time.

27 See Williams & Calvert, Solving the Part-Time Puzzle, supra n. 2, at 44-6.

28 Information obtained by Joan C. Williams of PAR from interviews and meetings conducted as part of PAR’s Diversity and Flexibility Connection (2009).

29 Id.
I'm extremely responsive, and it should be invisible to them that I'm part-time. And so, most of them don't know.

It just doesn't come up. I mean, it has come up at different times in the past. It's been an issue of whether to tell and so forth. Back when I was keeping a schedule that meant I wasn't going to be around certain days, there might have been a reason to say something to certain clients. But, I can't think of the last time it mattered, especially with e-mail and BlackBerries and so on.

Some partners reported telling their long-time clients. They said that their clients had no objections or concerns:

The clients who find out that I work part-time generally think that that's wonderful.

Most of them don't care. As long as they can get a hold of me, they are happy.

I've spoken to a couple of them about it, and they say “As long as you do our work, we don't care where you do it or when you do it, as long as it's done.” They don't care, absolutely don't care. A couple of them, some women that I work with are excited about the fact that they're working with a woman who's part-time. So it's all been positive.

All of them have been very supportive. I haven't gotten anybody complaining about it. They usually say that's great that you were able to do that.

With the exception of one—there was one male client who was uncomfortable with my part-time arrangement—but that was one out of all my clients and all my other clients were just indifferent, I would say. Their view was if you get back to me promptly and you're responsive and the work gets done, then what you are doing when you're not working for me is your own business.

Some say that their clients were surprised to learn that they worked part-time:

Most of them were floored. They had no idea.

Most of them were surprised because they thought I was always available. So they didn't think I was part-time.

Clients are usually surprised upon learning of my part-time status. Their response is, “But, you're always around. You're always there when I need you.”
9. Most Part-Time Partners are Satisfied with their Arrangements

Most of the respondents reported being satisfied or very satisfied with their part-time arrangements. Many expressed a desire to stay at the firm; 84% of respondents answering this question said they would stay with their firms for the next five years if it were up to them. Three said that would stay “over any other firm” or legal job. One partner described it this way: “I feel very lucky and I don’t think I could get a better deal anywhere else, mostly because I really like my work. I mean, I have good clients. I have good work. I have good colleagues.” Other responses include:

- I routinely get head-hunted and I routinely say no.
- I definitely plan to stay at my firm.
- I would never go to another law firm anywhere, ever, under any circumstances. I’m absolutely certain of that.
- I think I might stay for the rest of my life, at least my working life.
- I enjoy being treated as a professional. So the firm assumes that I’m going to get my work done and that I’m going to keep the clients satisfied, and I take that responsibility seriously.

Interestingly, few of the respondents plan to return to full-time work, even when their children are grown.

10. Developing Associates, and Delegating Work to Them, Is Essential

The importance of developing junior lawyers emerged as a major theme for the partners interviewed. They describe “supervising and leveraging and pushing down work to associates” as “an absolute necessity” to maintain their schedules. One equity partner explains:

I'm in the good position of not having to worry about having work. My worry is about having too much work because I'm all about making sure I can get home and make dinner and, you know, do whatever. It's a constant balancing act and one of the main ways you do that is by leveraging yourself so that you can still meet the client needs because we're a service-oriented business, meet the needs of your partners who are referring you work, but still not working like a crazy woman all the time.

Another equity partner who has recently handled back-to-back trials agrees: “I was motivated to have case teams to do the work so I didn't have to do it.”

Respondents say they remain accessible to associates, just as partners do when they are traveling for another client matter. Partners point to their upward evaluations and interactions with associates:

On my upward evaluations, I get very high marks for being accessible. So, I don’t think that the part-time status in any way affects that.

I have wound up being the person that many of our associates and paralegals and administrative assistants come to for assistance and advice. So, I don't think they feel like they can't reach me or that I'm not accessible.
However, some partners who regularly telecommute said that supervising associates can be challenging when working from home more than one day. “It changes by virtue of how frequently you’re there in the office. The more regularly you’re in the office, the more seamless it is.” They make it work by “spending enough time training and interacting with associates when in the office.” And, as with their clients, part-time partners say that they prioritize responsiveness to the lawyers they supervise:

When I’m supervising someone else, I’m supervising them on my own matters. If I have a new matter for a client, I’m going to give them as much attention to that matter whether I’m full-time or part-time. I take the matter seriously and I manage it.

I think any of the associates would tell you that I continue to micromanage them in the same way that I always have, whether I’m remote or not remote. Everyone that I work with knows. I’m very open about my part-time status, and everyone I work with tends to know my schedule. And they also tend to know that I’m pretty responsive on e-mail and stuff, and that they are free to and encouraged to call me at home if something comes up, and they shouldn’t ever wait to contact me if they have something that they feel needs my input.

My schedule has not impacted my ability to supervise associates or project teams, because my entire career, when I have been working part-time, I have always been available by phone, in the beginning when there was no e-mail, and now by e-mail. I was never a person who said, “Well, I don’t work on Thursdays and Fridays, so you can’t contact me.” I was always available for a phone call with a client or an associate or an e-mail, etc., and still am. I think to be successful, you have to be available.

They add that technology facilitates their efforts:

You work with people when you’re not in the office all the time now. So, you’ve got the BlackBerry and the laptop. And last week, I was traveling but I was also supposed to be reviewing some opinions we were doing for the same client. And it didn’t really matter that I wasn’t physically in the office. I could see what the attorneys had written. I could call them.

Since I’m in every day, I can still meet with associates when I’m here. And if something comes up when I’m running around in the afternoon, then I just do it by phone or by e-mail.

I guess it can be a little bit of a challenge because if you’re supervising or managing a series of associates, their schedules do not always coincide with your schedule. But, with email and the telephone, you can pretty much always get together with anybody that you need to even if it’s not face-to-face. So, you can make sure that you’re still providing an appropriate amount of supervision and guidance.

Interestingly, some lawyers remain hesitant to call part-time partners at home despite repeated encouragement from the partners to do so:

I had an associate the other day who said he e-mailed me over the weekend. And he said, “Didn’t you get my e-mail?” And he’s young. It’s the opposite. I said, “Did you pick up the telephone? You know where I am if you need me. If I didn’t answer my e-mail,
there’s ways to get me. You’ve got my home number. You’ve got my cell phone. What’s wrong with your finger?”

I have always given people my home number and my cell number if they need to reach me, although oddly, clients don’t have any problem calling me at home or on my cell, but lawyers seem more reluctant to call.

11. Partners of Color Have Significant Work Life Conflict But May Feel Pressure Not to Use Existing Programs

In 2006, the ABA Commission on Women in the Profession highlighted the significant work-life conflict experienced by women of color in law firms. That conflict does not end when women attorneys of color reach partnership. PAR interviewed 31 partners of color. Nearly all were the breadwinners in their households; 90% contribute more than half of their household income. Of those respondents with partners and/or children, roughly two-thirds (64%) earn 70-100% of the family income, and nearly one quarter (23%) also have financial responsibility for additional family members or someone else. Over 40% of respondents without partners or children have full or partial financial responsibility for someone other than themselves.

Notwithstanding their roles as breadwinners, the vast majority of partners of color reported having significant household and caregiving responsibilities. Eighty-one percent said that they do 50% or more of the household chores. Seventy-four percent have children or other care-giving responsibilities, including 30% of the partners of color who are not coupled. Eighty-two percent of those with child care responsibilities do more than 50% of the child care. Only one respondent reported that she has a spouse who does not work outside the home.

Participation in community, church and non-legal volunteer work was commonplace, with 86% of respondents participating. These activities include, among other things, serving on one or more Boards of Directors for community and national organizations, volunteering at homeless shelters, teaching Sunday school, and participating in pipeline programs. Of those who provided an estimate, the partners of color spend an average of 170 hours per year on non-legal volunteer work. Those partners of color without caregiving responsibilities for children or others spend even more time—an average of 300 hours a year—engaged in community service activities. Three partners reported that, in addition to their community service, they devote substantial time to running or sailing.

The partners of color on average spend 580 hours on non-billable activities (of those who answered the question). Partners of color say, because they are one of the few minority lawyers at their firms, not only are they frequently called on to engage in diversity committee work and marketing activities, they feel personally obligated to do so: “I do it because I want to and I think it’s important and, if I had said no, I don’t want to do that anymore, there would be no one to do it.”

Over one-fourth (26%) of the partners of color interviewed work a reduced-hours schedule. Roughly 20% more work flexibly or regularly telecommute and 10% are considering reducing their hours. At least three respondents did not take advantage of reduced-hours programs because they were unable or unwilling to take the financial hit. One African-American partner who made significantly more money than her husband put it this way, “Not making as much money as I was accustomed to making just wasn’t an option for me financially, period.” Another African-American partner agreed, “Twenty percent of my salary is my child care for a year. It would be a really difficult thing to do financially.” The relationship between decreased pay and high child care costs is noteworthy in light of the fact that the part-time partners interviewed said that child care costs often remain the same or increase when a partner reduces his or her hours.
At least four partners of color said that working a reduced-hours schedule would negatively impact their careers or their standing at their firms. One African-American partner who was the sole provider and caregiver for her children described her decision to not reduce her hours this way: “Getting off track just wasn’t appealing to me. Going for the brass ring was appealing to me. And reduced hours would have taken me off track.” A second partner of color said that part-time “would not be a good career decision for me at this firm.” Instead, she cut back significantly on her non-billable work when she had children. She acknowledged the drawbacks to this strategy: “In the long run I probably am doing myself some disservice professionally, but it’s worth it to me to be home with my kids.” One Asian-American partner felt that if she were to go part-time “it would give decision makers an excuse” to delay her elevation from income to equity status. She explains: “Especially in these hard economic times, we would have to make a very strong case that I have some really special skill set or some really important client relations that would overcome something like a reduced work schedule. Another Asian-American partner said, “I never was at a point in my career that I felt like I could actually work 80 percent, or 85 percent.”

Five partners spoke of the “cumulative burden” faced by women of color. One firm’s Chief Diversity Partner explained:

> When you add on to the stigma associated with being a woman and having care-giving responsibilities the issue of women of color and their isolation in the workplace and some of the things that impact them differently than the rest of the women, then what you have is a cumulative burden. I don’t know if it’s necessarily a different burden. It’s just harder.

Four partners of color spoke candidly of their need to “perform better than the norm” to counteract pervasive stereotypes about their competence and work ethic. Their comments included:

> There’s no question in my mind that the standards are higher for Asian American women in litigation. Unless you perform better than the norm, you’re not going to achieve at least the norm, and you can’t perform better than the norm if you’re only working part-time—not in litigation you can’t.

> Women of color have to justify our existence on a daily basis and if you go part-time, that’s just another strike against you.

> You always think you have to do better, or you have to do more.

Particularly telling was the fact that four partners of color went to great lengths to ensure that their child rearing or health did not interfere with their advancement. Two partners delayed having a child because they feared that the pregnancy would impact the timing of their advancement. One partner called her decision to not have a child, “probably the only regret I have in my life.” She continued: “It is really sickening that females have to make a choice to have a kid or make shareholder. You should not be put in a position where you have to make that choice.” A third partner told how she worked during her maternity leave “so that there wouldn’t be the possibility that people could use that as an excuse.” She continued, “I actually attended firm events during my maternity leave so people would still see me around. I didn’t really make it known that I was on maternity leave so that people didn’t keep me out of the loop on work prospects and I made myself available if someone called.” A fourth partner planned to postpone a surgery until after the partnership vote; but, her firm got wind of her decision and a member of the management committee convinced her not to delay the surgery.

In the absence of a viable part-time option, partners of color value flexibility and telecommuting as a means to balance their professional and personal responsibilities. One partner explained: “It would take a lot for me to
leave my current firm because, having put in the time to build a reputation so that I have the flexibility that I
do, I’m not sure I would so easily just jump to another law firm.” Telecommuting is an essential factor in their
ability to make it all work: “The ability to have good network access from home is huge. I wouldn’t work at a
firm that did not provide a way to access work from home.” Another partner of color said:

   When people talk about the ability to work from home, the naysayers simply don’t get it.
   They do not understand. If you can take that hour and a half commute and convert it
   into billable time you can be very productive.

Partners of color also value their firm’s financial and other support for their Bar and volunteer activities. They
say that these activities help to mitigate the isolation that they feel at their firms. Fifty-two percent said they
are the only woman partner of a race or ethnic minority in their offices. Twenty-five percent are the only
woman of color partner in their firms. One partner of color who commits 20 hours a week on volunteer
activities explains their importance to her:

   It is helpful to have other outlets, other people to talk to and network with, draw strength
   from, whatever, whether it’s a Bar association or a community organization or alumni
   organization. Those are all ways to meet and interact with people that can provide, in a
   way, a balance to the legal tasks that you do as part of your full time job. It can provide
   rewards or satisfaction that you may not get through the legal job.

Thus, there is no doubt that partners of color face significant work-life conflict and, unlike many of their white
counterparts, they feel that existing firm programs are out of their reach. In the words of one partner, “If you’re
going to have these types of flex-time initiatives, then the firm should find some way to put a little backbone
behind it. It doesn’t matter if you have the policy if people are afraid to use it.”
**BEST PRACTICES RECOMMENDATIONS FOR LAW FIRMS**

Allowing reduced-hours work for equity partners is a sound business decision for law firms. Partners who have strong relationships with clients are retained, and many continue to develop those, and new, client relationships. The retained partners also provide stability and continuity, serve as firm leaders, and act as positive role models. To gain these benefits, firms need to view reduced-hours work not as an accommodation for a select few, but rather as a business initiative that is worth an investment of effort. This section details steps that firms can take to invest in their part-time partners for the benefit of the firm as a whole.

1. **Create a Written Policy for Part-time Partners**

   Having a written policy emphasizes the firm’s commitment to the concept of part-time partnership, and ensures even-handed application of the policy to all partners. A firm can either have a separate policy for partners or incorporate provisions pertaining to partners into its existing policy for associates. Having one policy that addresses lawyers at all levels at the firm sends a powerful message that adopting a reduced-hours schedule is not a career-limiting move. Regardless of which approach a firm decides to use, the firm should make sure that the language is consistent with the firm’s partnership agreement.

   Key elements of an effective policy include:

   • Establishing that lawyers who work reduced hours can be equity partners in the firm;
   • Making flexible work available to all partners, regardless of the reason flexibility is desired;
   • Allowing partners to create individually tailored schedules, and to change their schedules as needed;
   • Not placing a limit on the length of time partners can work reduced hours;
   • Detailing non-billable expectations for partners, including business development and firm service;
   • Providing for proportional compensation (discussed further below); and
   • Discussing the impact of a reduced schedule on equity status.

   PAR has previously provided recommendations for creating and implementing policies for reduced-hours work.30 These recommendations include assessing the firm’s needs, collaborating with key players within the firm, creating an effective group to develop the policy, communicating the support of firm management for the policy, discussing the policy openly within the firm, working to eliminate stigma related to reduced-hours work, and evaluating the success of the policy.31

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30 Williams & Calvert, Solving the Part-Time Puzzle, supra n.2.
31 Id.
2. Support Flexibility in When and Where Partners Work

Part-time partners highly value the flexibility they have to set their own schedules. They say that autonomy makes it possible to manage highly unpredictable workloads and client demands. Litigators and transactional lawyers alike use this strategy to allow them to respond to the sharp fluctuations associated with trials and deals. An easy way for firms to support part-time partners, therefore, is not to impose rigid requirements on when part-time partners need to be in their offices.

Firms that support flexibility in scheduling can measure the billable hours contributions of part-time lawyers over the course of a year instead of on a weekly or monthly basis. As long as the partner meets his or her annual total, interim fluctuations are immaterial.

Supporting part-time partners’ fluctuating schedules will often mean supporting comp time, i.e. the ability to take off time once a crisis has passed. When part-time partners have worked more than their agreed-upon schedule, it is vital to the long-term viability of their arrangements that they feel free to take time off as soon as their workload permits. This requires their partners not to schedule meetings and deadlines during the compensatory time unless doing so is truly necessary. It also requires eliminating the “sludge”: comments such as “Boy, I wish I could get Wednesday off” that suggest the partners’ comp time is unprofessional or undeserved.

A partner provided the following example of how her firm supported her efforts to take time off after she had worked the busiest three months of her career (including when she was full time):

I was talking to the head of my group. He said, “Oh, how’s it going?” I said, “Oh, I’ve been so busy. It’s such a nightmare. But, I’m planning to take a lot of the summer off.” He goes, “Well, as the head of your practice group, I hereby order that you must do so,” or something like that.

Most respondents’ firms have “look back” provisions that increase part-time partners’ compensation if they exceed their target hours. While this is a sound response that will insure that the part-time partners are not being taken advantage of, it should be used only if the partners in question prefers it to compensatory time. After all, if part-time partners preferred more money rather than more personal time, they would not have reduced their hours in the first place.

Having the ability to work from home increases partners’ ability to meet client needs seamlessly. Said a partner of color who works a flexible full-time schedule:

In addition to laptops, the firm has equipped all of us with the technology that we need so we can telecommute whenever we need to. And we have 24 hour IT assistance. They pay for our air cards so you can use your computer anywhere in the world. We’ve got some technology on our computer that they set up where people won’t even know that I’m not in the office. They’ll call me at my desk and I can answer my computer because it’s attached to my computer, and they won’t even know that I’m sitting in my pajamas in my living room.

3. Eliminate Stigma

It is often difficult for an attorney to raise his or her desire for a reduced-hours schedule unless the firm has demonstrated clear support for the program. This is particularly true for women of color, due to the cumulative burden discussed above. One partner of color explained:

> You're scared to ask for it because you don't want to get the scarlet letter of being that person who doesn't want to be 100 percent. Therefore, unless someone says, “We have this policy and we'd love for people to take advantage of it because we don't want to lose associates” it's difficult to be the individual and go to the head of your group and say, “I think I'd like to be part-time,” because, God forbid, that your group leader thinks that you're not still as committed to the firm as you always were. That challenge is even greater for minority women than it is for white women.”

Eliminating stigma means changing negative views of part-time partners within the firm, and designing policies and practices to eliminate the flexibility stigma. Achieving these goals begins with support from the highest levels of firm management and key rainmakers. In words and in actions, leadership needs to communicate support for part-time partners.

One partner who is on her firm’s executive committee and recently went part-time explains, “You definitely have to have strong leadership on this and you really have to indoctrinate your partners and your lawyers. There has to be a strong message from the firm about it that’s very supportive.” She described her firm’s efforts:

> At the highest levels, at the executive committee level, at the senior management level, the chairman of our firm has talked about these things and been supportive of them. And the fact that we have a written policy and that we have a committee, and even before we had this policy and this committee, we had an informal committee that regularly met that everybody knew about and had access to. And we had widely circulated lists of people who had made part-time arrangements work that other people could go to and talk to about how to do it.

A partner of color who works a traditional schedule said that her firm’s managing partner was actively involved in diversity efforts: “Our managing partner actually sits on our diversity committee, and not just in name only. I mean, he literally — whether he’s in the office or not, he is on the monthly conference calls and he makes sure that the committee does what it needs to do.” Another partner finds it very helpful that her managing partner steps in when full-time partners miss their hours to remind them that “You can’t do this *de facto* if you’re full-time and just end up at 85 percent when we have people who have chosen 85 percent and are taking a pay cut for it.”

Those partners who felt supported and valued by their firms report high levels of satisfaction and a desire to stay at the firm. As one partner put it, “the firm’s willingness to allow me to work part-time was very important to my decision to join the firm but it was certainly the attitude about it that really said that it was a place that I could succeed in and would enjoy being in.” These ambitious lawyers want—and need—to be “progressing and well regarded” at their firms.

Steps to eliminate flexibility stigma include: consistently communicating the business case for part-time partnership; recognizing the contributions part-time partners make to the firm; eliminating undermining
remarks about commitment and availability;\(^{33}\) including part-time partners in social settings; and celebrating successes achieved by part-time partners and by the firm because of its part-time partners.

The goal is to make part-time partnership a non-issue—to have it so embedded in the fabric of the firm’s culture that no one thinks about it, and that partners do not feel a need to prove themselves all over again after reducing their hours. Several of the partners in this study already feel their firms have met this goal, as do the managing partners who were interviewed. One managing partner said, “The culture is such that it’s an accepted part of what we do and what we offer.” Another added:

> We have had partners working under our flex- or reduced-time program for so long that it is now part of the fabric of our firm. So, this isn’t something that to us is really any big deal because we’ve been doing it for so long. And so, it’s just not the subject of a lot of conversation.

Both of these managing partners are at firms that have had part-time partners for 20 years or more, and both firms have many part-time partners. Eliminating stigma may take time, but they show it can be done.

### 4. Support Part-time Partners’ Business Development Efforts

At the partnership level, the ability to generate business affects all aspects of partners’ experience at their firms. This is no different for part-time partners. In fact, many part-time partners said that having their own book of business facilitated their efforts to balance their competing responsibilities by, among other things, increasing their leverage with their peers and giving them control over their workload. Therefore, rather than just making assumptions that part-time partners have neither the time nor the motivation to develop business, firms should take steps to ensure that part-time partners have the resources to develop business.

Steps to promote business development by part-time partners include monitoring access to key opportunities such as pitch teams and important firm representation teams, providing business development coaches and mentors who can help part-time partners design focused business development plans that maximize the potential for success, and ensuring that part-time partners get credit for the work that they do originate. Part-time partners’ efforts should be recognized on par with those of full-time partners. To state the obvious, business origination credit should not be reduced due to part-time status.

Two recent trends in the area of origination credit may be beneficial to part-time partners: first, adopting a team approach to clients, recognizing that no one partner brings in business on his or her own; and second, moving toward broader credit-allocation systems that give credit for managing client matters, serving as a client’s primary contact with the firm, securing new business from existing clients, and otherwise tethering clients to the firm in addition to credit for originally bringing the client through the door. These more modern types systems allow a firm to capture one of the key benefits of part-time partners—the partners stay at the firm longer and are thus able to develop deeper relationships with their clients.

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\(^{33}\) These types of comments can also undermine full-time partners efforts to work flexibly. One Asian-American partner explains: As an equity partner in this firm, I still get comments like, “Oh, leaving at four o’clock” or “Putting in a half-day, today?” from both other partners and people that are junior to me which I find just shocking and appalling. You have to put up with this whole stigma, still today in 2009, and that has surprised me, and continues to surprise me every time a comment is made.”
5. Recognize Part-Time Partners’ Contributions Fairly

Unfairness in awarding compensation—whether real or perceived—will undermine the success of any part-time partner arrangement. At a minimum, firms should strive to:

- Pay part-time partners as much as full-time partners who have similar billings and/or originations;
- Compensate part-time partners for hours in excess of their commitment (assuming that compensatory time is not possible, or that the partner in question would prefer additional compensation);
- Avoid the haircut;\textsuperscript{34}
- Avoid penalizing partners who return to full-time work for years spent on reduced schedules;
- Take into account part-time partners’ non-billable contributions; and
- Design system in which partners’ compensation will increase as their billable hours increase.

Steps toward fair compensation include: in billing or time reports made available to the partnership, expressing all partners’ billable and nonbillable time as progress toward their targets, which will equalize how contributions are perceived; awarding part-time partners the amount of shares they would have if full-time and adjusting their compensation, but not shares, to reflect the percentage reduction in their schedules; in lockstep systems, keeping part-time partners with their class and adjusting their compensation, but not their level, to reflect the percentage reduction in their schedules; and reviewing all partners’ compensation that is award based on discretionary factors to ensure that part-time partners are not receiving a disproportionately low award that may be influenced by biased assumptions about the commitment of part-time partners.

6. Encourage Part-Time Partners to be Firm Leaders

A surprising finding of this study is the extent to which part-time partners are involved in firm leadership. Firms can support their part-time partners by encouraging them to be involved in firm governance and important firm committees. This sends a signal throughout the firm of commitment to the success of part-time partners, while at the same time exposing part-time partners to the business priorities of the firm. One partner summed it up nicely:

\textit{Whether it’s attending conferences, being selected for training programs, or being chosen to participate in firm management, my part-time status has never played a role. I think that has been a very good thing for the firm. It has certainly made me a very loyal partner, but it’s also encouraged me to increase my contributions to the firm both financially and in other non-monetary ways, such as through mentoring and business development.}

Including part-time partners in firm governance sends a powerful message to attorneys at all levels that the firm wants—and expects—attorneys who reduce their hours to be successful at the firm. Firms should periodically review assignments to firm committees to ensure that flexible work attorneys are represented.

\textsuperscript{34} As discussed above, PAR has answered the overhead argument and demonstrated that a “haircut” is neither appropriate nor justified. See Williams & Calvert, Solving the Part-Time Puzzle, supra n. 2, at 44-6.
7. Use Part-Time Partners as Role Models and Recruiters

Celebrating the successes of partners working reduced hours underscores the business benefits of offering flexible work. Many of the respondents were acutely aware of the fact that they were role models for junior women lawyers coming up through the ranks. One partner put it this way:

My part-time schedule has probably been one of the best things I’ve accomplished as a lawyer. I mean, I’ve done a lot of things. I was named to the best lawyer list and I’ve gotten lots of kudos and awards and things over the years. But, being able to balance raising a family and paving the way for other women in my firm since I was the first one to do it to come after me and establish that type of a setup so that they also could have time with their children I think is huge.

Two partners of color who currently work full-time said that visible role models have made them more comfortable with the possibility of reducing their own hours:

At my former firm, I had the sense that going part-time would just be another item to be used against me as a woman of color in the partnership consideration process. And here, I think it truly is a choice that’s available to those who want and need it. And I’ve seen it work very successfully here for a number of other women, whereas at my former firm, I saw a number of women have it really not work for them in terms of what they were getting out of it versus what they were putting in and whether or not they were being fairly compensated for the work that was required of them.

Now, this is one of the few places I’ve met other people who successfully worked part time. So I’ve seen evidence that it is possible and I may consider that if at some point I want to work part time.

These quotes show the importance of successful part-time partners in helping firms retain women, including women of color.

8. Let Part-Time Partners Decide What to Tell their Clients

Whether to tell clients that one is working part-time is a delicate issue. In an ideal world, all lawyers could openly discuss their schedules with their clients without fear of stigma or repercussion, and hiding the existence of flexible schedules arguably allows biases against reduced-hours work to linger. Moreover, some clients want to know their outside counsel’s schedules so they can support them and avoid inadvertently driving the lawyers out of their firms because of a perception that it is impossible to achieve balance. A policy that prohibits lawyers from disclosing their part-time status to clients can help institutionalize a culture of secrecy that both reflects and fuels flexibility stigma. For this reason, it is important that firms avoid policies prohibiting part-time lawyers from discussing their schedules with clients.

Yet partners are keenly aware that they do not in an ideal world, and that flexibility stigma abounds. Some are afraid that even if their clients do not disapprove and even if their clients are able to reach them at all hours, some clients may nevertheless—perhaps out of an attempt to be supportive—not give them challenging or time-sensitive work.
Partners typically are in the best position to decide whether or not to tell their clients about their schedules. Therefore, PAR recommends that firms not adopt a policy, for or against, about informing clients about flexible schedules.

This means that a firm may have to temper its justifiable desire to highlight its successes with part-time partnership to avoid “outing” a partner who works reduced hours. Similarly, other attorneys at their firm should respect part-time partners’ decisions and be careful not to undermine accidently the partners’ relationships with their clients.
RECOMMENDATIONS FOR A SUCCESSFUL PART-TIME PARTNERSHIP

For attorneys who have achieved the brass ring of partnership, working a reduced schedule brings unique challenges. The part-time partners in this study have successfully carved out schedules that allow them to have long and successful careers, while at the same time achieving the work-life balance they need. This section details how they do it.

1. Create Schedules Strategically

Creating the appropriate schedule is the critical starting point. Whereas part-time associates often find that their schedules creep back towards full time due to billable hours pressures, schedule creep among part-time partners more often stems from the need to do client development, firm management, and other non-billable work. Therefore, when designing a reduced-hours or flexible work schedule, it is important for attorneys to evaluate what contributions the firm values most highly from attorneys at their level of seniority, and then to design their schedules around those expectations. In particular, many firms require significantly higher firm service hours and business development contributions from partners than from associates. One partner explains:

If you take 400 hours as your business development baseline and then you build in all the other firm citizenship and administrative functions that you have to discharge as a partner, just delivering evaluations and all that other kind of stuff, you really are in a range where, if you're a full-time partner, you probably should be spending a minimum of 600 non-billable hours on your job.

Maximizing billable hours to the detriment of all other activities is a short-term strategy that may jeopardize a partner’s success in the longer term. Part-time associates recently promoted to partner may need to re-evaluate and adjust their schedules to address the new responsibilities associated with becoming partner.

2. Prioritize Business Development Early In Partnership

The part-time partners who were most satisfied had their own client base. They said that having their own clients gave them maximum control over their schedules and increased their leverage within their firms. Some respondents intentionally reduced their billable commitment in the early years of their partnership to allow time for business development activities. They described business develop as having a “steep learning curve” that is difficult to overcome if a partner waits too long to begin to focus on developing business. One partner explains:

I do feel behind my peers in terms of my success in having my own clients, and I think one of the reasons is not having been out there in circulation outside of the firm a lot in kind of my formative years as a partner. And it’s just harder to get and establish those relationships later.

35 Williams & Calvert, Balanced Hours, supra n. 1.
Because of the time demands faced by part-time partners, attorneys may find it helpful to employ business development coaches to develop a targeted approach to maximize effectiveness and success.

3. Build In Time to Be in the Office

This study documents that part-time partners can be successful on a wide variety of schedules. A nearly universal sentiment of the partners interviewed, however, was the need to maintain a physical presence. One partner put it this way:

> You've got to stay visible. You've got to show everyone that you're committed, that your clients won't suffer, that you'll continue to grow as a lawyer and continue to do good legal work. And if you can do that, then you are going to be treated as a professional. You're going to be allowed to succeed.

How much physical presence is needed depends on the workload, time at the firm and in the partnership, and comfort level with other partners and associates on project teams. Most of the partners come into the office on most days, even if for only a limited time. Other partners who prefer to work fewer days in the office have developed strategies for staying visible in addition to being physically present, such as using email and teleconferences and making a conscious effort to be visible and/or meet face-to-face with associates when they are there.

4. Be Flexible, Accessible, and Responsive

Respondents repeatedly emphasized the importance of being willing and able to remain flexible. Doing so fosters confidence in a part-time partner's ability and commitment to meeting client needs. Flexibility also builds good will among one's peers. One partner explained, “So when I need to leave early, people are fine, because they know I’ll be back the next morning or they know that I’ll get back on the computer later at night.” Remaining flexible and responsive to the sharp fluctuations caused by trials and deals allows the greatest access to challenging and interesting work. One partner describes the tradeoffs this way:

> It was very important to me to do big, fun, crazy deals. And I understood that if I was going to commit to run those kind of deals, I couldn't say, "I'm leaving at 5:00," or, "I'm never working on a Friday." And for me, I was looking for batches of time, concentrated time, that I could write. So, did I really care that for two weeks I worked night and day and then for a week I left every day at 3:00 or I took three days off or whatever it was? It didn't matter to me, although certainly nobody likes working 80 hour weeks.

The most important aspect of making a reduced-hours schedule work from a client's perspective is “having people know when the work will get done.” One partner explains, “If they can reach you, even if you're just going to tell them, 'Okay, I'll deal with this in two days,' they know when it's going to get done and the system works better.” As a result, nearly all part-time partners choose to be available “all the time.” They accomplish this by checking emails and voicemail frequently. One partner forwards all of her work voicemails to her cell phone. Another partner told how he goes the extra step of keeping “very good records and research materials on my laptop or in other places like that so that even if I'm at home or I'm traveling and a client says can you do this, I can figure out the answer very quickly.” He emphasizes, “Clients just want the answer. They don't care where you're giving it from.”
5. Establish and Maintain Boundaries

Being flexible, available, and responsive does not preclude setting the boundaries necessary to preserve a reduced-hour commitment. Respondents are able to keep their hours close to their billable targets, as documented earlier in this report, notwithstanding their accessibility. One partner emphasized the difference between being flexible and “being a pushover”: “The key to being a successful part-time partner is to be flexible. You don’t have to be a pushover, just flexible enough to juggle your workload with your outside interests.” Partners set boundaries in a number of ways:

(a) Giving weight to personal responsibilities and commitments:

People making this move to part-time really have to impress upon themselves that they’ve chosen to get paid a lot less money because they are going to work a lot less and because they’ve identified some other significant priorities. The fact of the matter is, however, that nobody within the firm is ever going to give the weight to those other priorities if I do not do so. So if I am going to truly obtain the benefit of my part-time schedule that I’ve elected, I have to make clear that I don’t get suckered into jumping up for every internally created emergency that there is.

We’re all litigators in our firm; nobody works on just one case, most people work on at least two or three cases at a time. From my point of view, one of my cases is my family. I consider my days out of the office and my time with my family like an obligation that is entitled to a percentage of my time. It just happens that it’s not a client. Sometimes it’s necessary to move things around in my workday or my days off to accommodate a competing interest. And if necessary, I can almost always do that. But if a proposed work obligation really does not have to occur on a day I’m supposed to be out of the office, I usually try to propose an alternative that would be more convenient and not interfere with my volunteering at my kids’ school or some planned family activity.

(b) Training partners and associates to manage workflow effectively:

The people with whom I work have had to gain an understanding of the fact that true emergencies are true emergencies, but when you have someone working on a part-time basis with less availability, you can’t create emergencies by failing to identify an issue and provide me ample time to resolve the issue. They need to learn that because of your part-time arrangement, they have to address these things on a timely basis.

(c) Establishing expectations early in relationships:

When people inside the firm call me to work on a new case, and this is always internal people, not clients, I will say, “I’m happy to help you. But, you should know I am not in the office on Mondays and Fridays. And I’m available by phone or by e-mail. But, typically, I don’t come in unless it’s really necessary. I’ll come in for a client meeting or something like that. And so, people understand, when we start out working together, what my situation is. In my experience, if people know you will try to be there when they really need you—not at their beck and call, but in important situations—they are very accommodating. Most people want to be reasonable. Nobody has ever told me, “You know what? This is not going to work. I can’t deal with that. I need you on call 24 hours a day.” And if somebody did say that to me, I would tell them, “This is not going to work; I won’t be a good fit for your case team if that’s what you need.”
6. Invest in Associates

A key finding of this study is that part-time partners rely heavily on the associates they supervise. Part-time partners who take the time to learn how to effectively supervise and delegate work will achieve the greatest levels of success. One partner describes how her efforts to hone her supervisory skills early in her career paid off:

Ever since I was basically a fourth year associate, I started developing people to support me. I mean, that's probably why I didn't have to reduce my hours until I had my third child was because I had this really solid team, and I still do. And to get that and keep that, you really have to develop your associates and train them so that you have this backup so you don't have to physically be there all the time. You don't have to always be the one drafting the e-mail or being on the phone with your client. They can just fill in for you when you want to be doing something else.

Another partner agrees: “You have to get over the short-term time-intensive investment you have to do in order to train associates. Once you do that, you never go back because it makes your life easier: (a) you are leveraged, so it's good from a financial perspective, and (b) it frees up time.”

7. Create Flexibility in Life Outside the Office

Whatever the reason for adopting a reduced-hours schedule, partners can lower their stress by creating flexibility in their lives outside the office. One way to do this is to have flexible and back-up child care, which facilitates a partner's ability to be accessible and responsive to client needs while also ensuring that their children are not being short-changed as a result:

I really encourage people not to plan their child care arrangements so that they have no alternative coverage if they need to work or to work on a day they're supposed to be at home. Inevitably something will come up that will destroys the best laid plans. If you can't fit in a work commitment that's absolutely necessary, or you need to leave early during some crisis at work, because you only have part-time child care, you will ruin your credibility with the people with whom you work. Either that, or your nanny will quit because she is always having to work overtime with no notice.

I just found it was very hard to work with. It was very, very stressful for me when a client really wanted something on a Wednesday and I didn't have child care. And I wanted to be responsive to my clients. It was so stressful to try to deal with that. And so, it became much, much easier to just have the child care available.

Where possible, living close to the office helps, so one can come and go from the office with little time and/or effort. Living close to the office also fosters confidence that a partner who frequently telecommutes is nearby in the event of an emergency.

A third theme is that outsourcing any tasks that one does not enjoy, or that are particularly draining, is a good long-term investment. Again, what you are seeking to create is a work-life balance that can be sustained for the long term.
8. Be Proactive About Compensation

A firm’s compensation system “provides the key to understanding the behaviors and interpersonal relationships that are likely to exist among that firm’s attorneys.” Yet far too often respondents had little to no understanding of the compensation process at their firms. Part-time partners who understand their firms’ systems are better equipped to prioritize and articulate their contributions.

The first step in being proactive is to review the firm’s written compensation policies, and to follow that up with conversations with members of the committee that sets compensation. Two crucial elements all partners should understand are how business origination and firm service are reflected in compensation, and how working fewer hours impacts both current and future compensation. Also crucial is to be a good advocate for yourself when it comes time to submit a memo or participate in a meeting about your contributions. Highlight all achievements, even if widely known or if part of group effort. Finally, question compensation decisions that do not seem fair. Several respondents told us they asked about their level of compensation and received increases the following year.

36 Lauren Stiller Rikleen, Ending the Gauntlet: Removing Barriers to Women’s Success in the Law 91 (2006).
CONCLUSION

This big news from this study is that many part-time partners throughout the country have found ways to foster successful careers along with work-life balance. This is a key message for lawyers who are not able, or willing, to work the long hours required by a full-time schedule. Lawyers have an alternative to leaving the profession, or law firm life. Firms exist where part-time partners are thriving; the challenge is to find one.

This message has important implications for law firms. As clients become increasingly insistent on progress towards diversity, law firms without successful part-time partners need to ask whether the time has come to move towards the best practices identified in this report. The inspiration and roadmap provided by the lawyers who participated in this study will make it easier for firms to implement policies and practices that will enable a more diverse group of attorneys to have long and successful careers.
APPENDIX I

METHODOLOGY

PAR identified and recruited prospective subjects primarily through personal contacts, bar associations, forwarded email requests, weblog notices, and recommendations from other interviewees (“snowball sample”). PAR focused its recruiting efforts in three jurisdictions—the District of Columbia, Denver, and San Francisco although lawyers from other cities were also interviewed. In lengthy telephone interviews, subjects answered questions about their career history, firms, schedules, practices, clients, compensation, business development, colleagues, satisfaction, and personal lives. The interviews were conducted under a promise of confidentiality, and in accordance with regulations governing research involving human subjects. The interviews took place between August 2008 and September 2009.

The interviews were recorded and transcribed, with identifying information deleted from the transcripts. The transcripts were reviewed and responses were coded. Some responses were extracted from the transcripts and grouped with like responses under various topic headings.

Subjects were currently lawyers who were practicing in U.S. law firms, with one exception. A total of 82 part-time lawyers participated in the study. Seventy-five were female, including eight partners of color. Fifty-three were equity partners and 23 were non-equity. Two of the 23 nonequity respondents identified themselves as “contract partners.” Six of the lawyers were “of counsel” in their firms; we interviewed them to gain an understanding of whether their experiences were different from those of partners. In addition, because our initial recruiting efforts yielded only a small percentage of women of color partners, we interviewed 23 additional partners who were women of color who were not working less than full-time in order to gain insight into the intersection of work/life conflict and racial/ethnic minority status.

PAR also interviewed six managing partners at law firms. Most were chosen because of their firms’ apparent success with part-time partnership. In addition, PAR engaged a law firm consultant with experience in law firm financial matters to provide background information that assisted in the development of the study and to review certain findings.

37 The percentages of women partners and all partners working part-time in each of these three jurisdictions were higher than the national average (San Francisco 17.4% and 6.3%, Denver 14.7% and 5.2%, Washington, D.C. 15.7% and 4.4%).

38 One subject had recently left the practice of law.
APPENDIX II

PATHS TO PARTNERSHIP FOR PART-TIME LAWYERS

Since PAR’s Model Balanced Hours Policy first called for proportional advancement for part-time attorneys, there has been a marked increase in the number of part-time lawyers promoted to partner. In this study, 55% of the partners who went part-time at their current firm advanced to partner while working a reduced or flexible schedule. We asked those attorneys to tell us about their paths to partnership including whether their part-time schedules affected the timing of their promotions. Their experiences varied widely based on their individual situations and their firms’ business needs.

Of the partners who provided an answer to this question, 51% said that their schedules did not delay the timing of their elevation to partner. Notably, all but four of these partners were part-time for three or fewer years prior to their promotion. The remaining four partners had gone part-time between four and six years prior to elevation. One partner who had been elevated with her class had worked an 80-85% schedule at three days a week since her second year at the firm. She reported that, in the time that she has been part of the partnership decisions at her firm (a large New York firm), no one had ever been delayed making partner because of their part-time schedule:

Since I’ve been a partner, I’ve participated in the firm’s partnership discussions. All of the part-time candidates I’ve seen have been promoted without any delay because of their part-time status. What’s really interesting is not just that they are promoted on time, but notwithstanding maternity leaves they have taken. In many cases part-time candidates have one or two kids, in some cases three, and have taken several three to six month maternity leaves. Most never do any work at all on maternity leave—I had two five-month leaves, and was also on bed rest for three months with one of my pregnancies. So, I was basically out of the office for over a year, and that didn’t get held against me, which is more amazing to me than being promoted while part-time.

In one case, a partner said that her schedule did not affect the timing of her elevation even though the firm’s policy contemplated a delay depending on when an attorney reduced his or her hours and/or the nature of the reduction. At least two attorneys negotiated the timing of their consideration or promotion when they joined (or re-joined) their current firms. One partner explained: “I was made special counsel on joining the firm with a commitment from the firm that within two years, I would be partner. And the part-time partner issue was fully vetted before that offer was made. So, after two years I progressed to partner on schedule.”

Forty-nine percent of the partners said that their partnership track was lengthened because of their reduced-hours schedule. Delays ranged from one year to more than ten: “I became equity partner 19 years out rather than eight, but I also have four kids and a great family.” Three partners said that they did not have the option of becoming a partner. Instead of being elevated with their class, these attorneys became counsel because the firm had an official policy that barred advancement for part-time attorneys. Later, they were promoted to partner as support for part-time partners increased and/or the management of their firms changed. “I moved to an of counsel position because I was not eligible for partner and after three years some of my supporters came into power and I made partner.” Others attributed their promotion to leaving the firm and gaining specialized experience elsewhere: “I was not promoted from associate for those 10 years before I left private practice to work
for the government. It was only after I returned to private practice after my government service that I had enough leverage to be made partner.” One partner did not raise the issue of partnership because she assumed that she would have to be “willing to be full-time at some point to put in my dues.” But after 11 years, “everybody stood around, including me, and said, ‘Well, why not? Haven’t I put in my dues? What are we waiting for?’”

Ten partners voluntarily delayed their consideration because they did not want the additional responsibility associated with being a partner or because they felt that they had a better chance of getting a reduced-hours schedule approved if they took partnership off the table. For two partners, the path to partnership evolved with the needs of their children:

After I came back with my first child, who was significantly premature, I knew that I was going to need to spend a little bit more time with various things like doctor’s appointments and so on and so forth. So, at that point, I was an associate, a partnership track associate. And I went down to 80 or 85 percent. Then, I had a second child who was also premature. All my kids were. And when I came back I was being looked at for partner, I thought, you know what? I can’t do this. I know I’m going to have another kid. I know I’m going to have problems. So, I went to a counsel position on a contract basis where I had an expectancy of 80 percent. Then, I had my second child. I came back from that maternity leave and actually made partner on that basis and continued there for a while until I had my third child.

We didn’t have any policy when I started doing this. The deal I cut was to work 50 percent and be paid 50 percent, and to do that by working three full days a week as an associate. And that went on for three or four years but there came a time when I felt that I needed more time with the children, and so I jumped off of partnership track and began to work on an hourly basis. I was still called an associate, and we just agreed on an hourly rate; I might work as few as 10 hours a week. As it turned out, I ended up working practically full-time within about a year just due to a particular matter’s demands. It was suggested to me that it would be a really good time to try to come up for partner, to go back on partnership track and put my name out there. And so, I went back on partnership track and was voted in within a year. I was probably working close to three-quarters time. And that was partly because that case that was consuming me full-time resulted in an enormous win, and it was a contingent fee case. And so, every partner felt it in his or her pocketbook directly, and so my allies in the partnership said the timing couldn’t be better.

One full-time attorney took herself out of consideration because she would have been on maternity leave when the promotion became effective. She explained,

When you become partner you’re a partner effective January 1st. You start attending partner meetings. You start being privy to partner stuff. And I wasn’t going to be there for the first five months of that. And so, it just didn’t make sense to me to make that the year that I transitioned into partnership, when I wasn’t even going to be around. I had every expectation that I was coming back to work, and I absolutely wanted to be a partner. I just didn’t want to do it then.

She arrived at this decision after “having very open discussions with the partners who were my mentors and the folks in my group who I worked with most directly.” No one had expressed any concern to her about her ability to become a partner.
There was conversation about what I planned to do when I came back. We did have discussions about whether partnership was something I wanted to do when I came back, and I definitely did. And as soon as I said that was what I wanted, then I was helped to do that. Nobody discouraged me from it.

So, she and her group decided that instead of being elevated to partner that year she would be promoted to senior counsel with the expectation that she was going to be put up for partner the following year after she returned from leave: “And so, that’s what happened. I mean, I’d had the baby for about a week and I got a call saying, ‘Congratulations. You’re senior counsel.’” She was voted into the partnership as expected the following year.

Another attorney voluntarily opted for counsel instead of non-equity partner because the firm required non-equity partners to advance to equity partnership within three years or they had to leave the firm. She explains:

I wanted to be promoted. I had been working long enough, but I really didn't want to have the pressure of that partnership structure. Then, when the partnership structure in my firm changed so that there was an ability to be an income partner and just stay an income partner, I asked to be made income partner. I think if the partnership structure at the time that I came up had been what we have now — which was income partner — I would have been made income partner.

A third partner had left her previous firm where she was a part-time equity partner for a non-partnership track counsel position at a new firm. She explained why she was not interested in being partner at her new firm:

Partnership requires a lot more than billable hours. You have many obligations in terms of business development and attending meetings. You have to put a lot into the compensation process. So, there's just a lot of back-office functions that are not client service-oriented that take time. And when you're also trying to gear your life toward meeting your obligations to your clients, plus doing your obligations to the firm and your partners, that pretty quickly turns a part-time job into a full-time job. So, when I came over here as a part-time counsel I thought that I could do my billable client work, like, almost 100 percent of my time, and go home. And I wanted to keep my life free of any additional expectations.

In at least two instances, partners stepped in when attorneys tried to delay the timing of their partnership consideration. One full-time partner who went on maternity leave on the eve of the partnership decision shared her experience:

I had assumed that my pregnancy would delay my consideration by the partnership, but the partners in my group told me, you know, “No, we think this is the right year, and we don't see that your pregnancy changes anything.” It was a little bit daunting. And my pregnancy, in a way, just in my mind delayed the whole decision-making process a year, but they didn't allow me to do that. So, I was put up that year, and I was actually on maternity leave when the decision was made.
One part-time counsel found herself agreeing to be put up for partnership when a partner called her a week after the birth of her second child:

This powerful woman partner called me at home, ostensibly to congratulate me about having a baby, but really to inform me that she was putting me up for partner. She said that two of the partners that I worked closely with tell me that you’re not interested in being on the partner track, and I’ve told them that they’re crazy and that you’re crazy. And so, you’re not going to tell me no if I put your name in the hopper, are you?”

The powerful woman partner pushed both the firm and her to make her promotion happen and “that was the fortuity of having this powerful woman partner in the mix, because nobody else would have done that.” It is important to note how the experiences of these two partners (one of whom is a partner of color) contrast with the experiences of the partners of color discussed earlier who delayed having a child or worked during maternity leave out of fear that their promotion would be negatively impacted.

In a third instance, a part-time attorney who was hired to fill a non-partnership track position was promoted because “the business model required it.” She explained:

The people I was working with wanted their clients to deal with me as they would deal with themselves or with another partner. And there was a prevailing attitude among the people I worked for that they really needed for me to be a partner and to have that title so that my billing rates could be justified and their clients would have the level of comfort they wanted them to have dealing directly with me rather than having my work overseen by someone that didn’t even practice in this area. It was practical for all people involved.

One partner who was on the eve of a partnership when she went on leave told this story of how she broached the subject of her elevation with her firm:

One of the reasons I gave my partners, when I had that discussion about my assumption that I was going to be deferred a year because I was pregnant, was “I don’t know how I’m going to feel after I have a baby, and I don’t want you guys to expend your political capital, because I just don’t know.” And they said, “You know, we understand you’re not there yet, but all we’re asking you is that you have a good-faith belief you’re coming back, that you want to be a partner at the firm.” And I said, “Yes, I can say that, but I can’t guarantee.” And I came back, and I was not at all torn about coming back to work. I love my job. I love my firm. I was missing the social interaction. So, it was very easy for me to come back.

That conversation and their response made her feel “more secure about everything. I wasn’t stressed out about it. I had given full disclosure. I hadn’t made promises that I wasn’t sure I was going to be able to keep.” Moreover, the firm’s decision to promote her while on leave was a powerful incentive for her to come back. She explains:

When you’re made partner, when you’re on maternity leave, it’s the greatest endorsement you could ever have, because people are telling you, “Yeah, we know you’re not here, but we really think you have the potential to be a partner in the firm, and we want you to be part of the firm.” And for me, it was the greatest encouragement to come back.

What it is clear from these stories is that the decision to put oneself up for partner or for a firm to promote an attorney is highly personal and individualized. The variety of answers and stories suggest that firms that employ flexibility and communication around this issue will reap the greatest benefits.