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**PROGRAM MATERIALS**

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## **Practicing in the Pandemic: What We've Learned and Strategies as we Move Forward**

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## MODERATOR



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Dr. Sharon Meit Abrahams is a legal talent development expert with over 25 years of experience in success coaching for attorneys and executing high impact programs for law firms. She has created and implemented firm wide initiatives that help attorneys maximize their productivity while maintaining engagement. When individuals produce, a firm increases its profitability. As a talent development leader, she has handled every aspect of an attorney's firm life from onboarding and integration, through mentoring and training to succession planning and exit interviews.

Dr. Abrahams has published three books with the American Bar Association and regularly publishes articles for Thomson Reuters and American Legal Media. Known for engaging and educational programs, Dr. Abrahams is a sought-after keynote speaker, program facilitator and law firm advisor.

Bringing CLE topics to law firms, legal associations and law firm networks is a labor of love. Reach out to see what Legal Talent Advisors can do for you.

## SPEAKERS



Roberta ("Bobbi") Liebenberg  
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Roberta ("Bobbi") Liebenberg is a senior partner at Fine, Kapan and Black in Philadelphia and also a principal in The Red Bee Group, a women-owned consulting group that uses data-based strategies to attain DEI objectives. She focuses her practice on antitrust, class actions, and complex commercial litigation, and has been appointed by courts to represent classes in many class actions. She is now Lead Counsel for the End Payer Class in the *Generic Pharmaceuticals Pricing Antitrust Litigation*, which is the largest pending antitrust MDL in the country. She was also one of trial counsel for the class in the *Urethanes Antitrust Litigation*, where a \$1.06 billion judgment was entered against Dow Chemical Company after a four-week jury trial. That was the largest price-fixing judgment ever. The judgment was affirmed by the Tenth Circuit and, during Dow's appeal to the Supreme Court, it settled for \$835 million, the most ever obtained from a single defendant in a price-fixing case. She has also defended Fortune 500 companies, including Southwest Airlines, and Temple University in class actions and other complex commercial litigation.

She has written and spoken extensively about many issues of importance to women lawyers and has chaired numerous organizations devoted to gender equality in the profession, including the ABA Commission on Women in the Profession, the ABA Gender Equity Task Force, the ABA Presidential Initiative on Achieving Long Term Careers for Women in Law, DirectWomen (the only organization devoted to increasing the number of women attorneys on corporate boards), the Pennsylvania and Philadelphia Bar Associations' respective

committees on women in the profession, and the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness. She has received many awards and honors, including induction into the American Antitrust Institute Private Enforcement Hall of Fame, the Margaret Brent Women Lawyers of Achievement Award from the ABA Commission on Women in the Profession, the Lynette Norton Award from the Pennsylvania Bar Association, the Sandra Day O'Connor Award from the Philadelphia Bar Association, and the Florence K. Murray Award from the National Association of Women Judges. She was named by former Pennsylvania Governor Edward Rendell as a "Distinguished Daughter of Pennsylvania," and The National Law Journal named her as one of the "50 Most Influential Women Lawyers in America" and also one of the "Elite Women of the Plaintiffs' Bar."



Stephanie A. Scharf  
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Stephanie A. Scharf is founding partner of Scharf Banks Marmor, LLC, a prominent women-owned law firm that represents local, national and global businesses. Specializing in complex litigation and appeals, Stephanie and the firm have been profiled for the "unique quality of their work" and for "Work at a Very High Level." A frequent author and CLE speaker, most recently Stephanie has been Lead Editor of the PLI treatise, Product Liability: Current Law, Strategy and Best Practices. She has been named a Leading Lawyer, Best Lawyer, Super Lawyer, one of the "500 Leading Litigators in America," and is Martindale-Hubbell AV-rated.

In addition to her law practice, Stephanie is a Founding Principal of The Red Bee Group, LLC, <https://www.theredbeegroup.com/>, a consulting firm that helps businesses, organizations and law firms achieve their goals for growth and innovation using data-based strategies with diverse and inclusive solutions.

Stephanie received a Ph.D. in Behavioral Sciences and a J.D. from the University of Chicago. She frequently combines her skills in data analytics to create cutting edge research on issues of diversity and inclusion. Stephanie founded and conducted the NAWL Annual Survey of Women in Law Firms (2006-2014); and the first national survey of women's initiatives in law firms, The Strategy, Structure and Scope of Women's Initiatives in Law Firms (2012). With co-author Roberta Liebenberg, Stephanie conducted the seminal survey of women as lead counsel in litigation, First Chairs at Trial: More Women Need Seats at the Table (2015); and a national survey of experienced women lawyers, Walking Out the Door: The Facts, Figures and Future of Experienced Women in Private Practice (2019). Most recently, Stephanie and Roberta reported on the largest survey of the legal profession ever conducted by the American Bar Association, which includes data-based best practices for firms, organizations, and individual lawyers to achieve long-term success. Practicing Law in the Pandemic and

Moving Forward: Results and Best Practices from a Nationwide Survey of the Legal Profession (April 2021).

Stephanie was 2017-2020 Chair of the American Bar Association Commission on Women in the Profession; is a member of the Advisory Board of DirectWomen; is a former President of the National Association of Women Lawyers (2004- 2005); and was Special Advisor to the American Bar Association's Presidential Commission on Diversity and Inclusion.

Stephanie has received many awards in recognition of her work for advancing women in the law, including The Coalition of Women's Initiatives in Law Inspiration Award (2020); The Women's Bar Association of Illinois Myra Bradwell Award (2018); the National Association of Women Lawyers Public Service Award (2017); the Chicago Bar Association Alliance for Women Founder's Award (2015); the National Law Journal Two Steps Forward Award (2014).

# Walking Out The Door

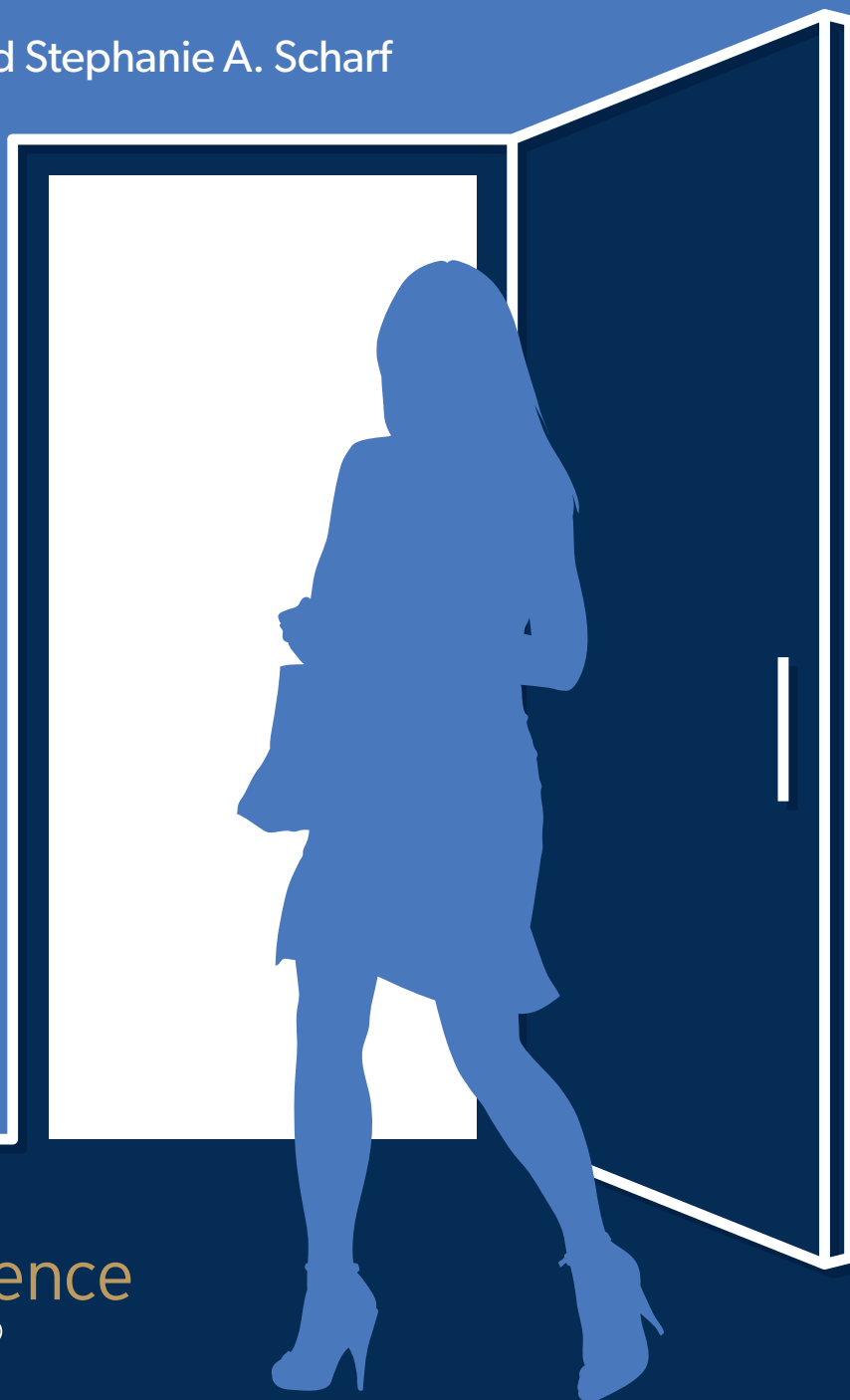
THE FACTS, FIGURES, AND FUTURE OF EXPERIENCED  
WOMEN LAWYERS IN PRIVATE PRACTICE

by Roberta D. Liebenberg and Stephanie A. Scharf



AMERICAN **BAR** ASSOCIATION™

 **ALM** Intelligence  
Legal Compass®



# Walking Out The Door

THE FACTS, FIGURES, AND FUTURE  
OF EXPERIENCED WOMEN LAWYERS  
IN PRIVATE PRACTICE

BY ROBERTA D. LIEBENBERG AND STEPHANIE A. SCHARF



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# A Note from the Authors

In 2017, then-ABA President Hilarie Bass launched a Presidential Initiative on Achieving Long-Term Careers for Women in Law, and we were honored to be appointed as its Co-Chairs. This groundbreaking initiative was begun because of the troubling fact that far too many experienced women lawyers are leaving the legal profession when they are in the prime of their careers and should be enjoying the most success. To examine and help solve that problem, the initiative sponsored a number of innovative research studies, including this one, which focuses on the nation's largest firms and was conducted in cooperation with ALM Intelligence.

BigLaw is no stranger to the loss of experienced women attorneys. While entering associate classes have been comprised of approximately 45% women for several decades, in the typical large firm, women constitute only 30% of non-equity partners and 20% of equity partners. Women lawyers face many other challenging hurdles as they seek to advance into senior roles: the number of lawyers named as new equity partners at big firms has declined by nearly 30% over the past several years, and firms are increasingly relying on the hiring of lateral partners, over 70% of whom are men.

The departure of senior women lawyers is unfortunate not only for women who sought to carve out long-term careers in private practice, it is also a growing problem for law firms and their clients. Law firms devote substantial time and resources to the hiring and training of their women lawyers, and that investment is lost when senior women leave. A firm's relationship with the clients of departing women necessarily suffers, and the clients lose valuable and trusted legal advisors who know their business and legal needs. The attrition of experienced women lawyers leaves law firms without a critical mass of senior women who can participate in key leadership roles; creates a dearth of senior women to serve as first chairs at trial and leads on deals, which clients are increasingly insisting upon in their outside firms; deprives firms of much-needed gender diversity at senior levels; and deprives younger women lawyers of role models and sponsors.

The critical question, of course, is why? What is it about the experiences of women in BigLaw that result in such different outcomes for women than men, and why do even senior women lawyers have so many more obstacles to overcome? These core questions drove this first-of-its-kind study and provided eye-opening data on the everyday work experiences of senior women and men in large firms through the perspective of more than 1,200 big firm lawyers who have been in practice for at least 15 years. The research was multidimensional. We measured various aspects of big firm practice and opportunities for success from the viewpoint of senior women, senior men, and managing partners.

Our work was guided by three related issues:

1. What are the everyday experiences that contribute to the success of women and men in big firm practice?
2. Why do experienced women stay in large firms and why do they leave?
3. What are law firms doing to advance women into the top echelons of leadership, what actually works, and where is innovation needed?



The results offer a great deal of new information that can be used by firms to understand and reframe the effects of their policies, practices, cultures, and unwritten rules, all of which affect who succeeds and who does not. As examples, the data show that women in large firms have far less access to the building blocks for success than men. Experienced women lawyers report that, *on account of their gender*, they are significantly more likely than their male counterparts to be overlooked for advancement; denied a salary increase or bonus; denied equal access to business development opportunities; become subjected to implicit biases, double standards, and sexual harassment; be perceived as less committed to their careers; and more. Another striking finding is the sharp disparity in how senior women perceive their firm's commitment to advancing women, compared to the perceptions of managing partners and senior male attorneys. We found markedly different perspectives by gender on such factors as perceptions of whether firm leaders are active advocates of gender diversity (91% men v. 62% women agree), whether respondents' firms are succeeding in advancing women into equity partnership (78% men v. 48% women agree), whether firms actively promote women into leadership roles (84% men v. 55% women agree), and whether firms work to retain experienced women lawyers (74% men v. 47% women agree). This "men are from Mars, women are from Venus" dichotomy underscores the importance of implementing—not just talking about—real changes to the structure and culture of law firms.

Driven by the empirical results described in this report, we have formulated suggested best practices and strategies that law firms can adopt to retain and advance their senior women lawyers. We are hopeful that, over time, if these recommendations are followed, the vast majority of firms will eventually achieve gender parity in firm leadership, equity partnerships, and compensation, and ameliorate the disproportionately high rate of attrition of senior women from law firms.

We are way past the point where mere lip service to the goal of gender equality in the profession will suffice. All of us must act with a sense of urgency to take the long-overdue steps necessary to level the playing field for senior women lawyers, which is necessary for law firms to succeed in a market that is increasingly demanding not only a professed commitment to diversity and inclusion, but actual proof of success in achieving that objective.



Stephanie A. Scharf



Roberta D. Liebenberg

# Foreword

As President of the American Bar Association during the 2017–2018 bar year, I had the opportunity to choose issues of concern across the justice system on which I would shine the light and focus the attention of the juggernaut of the ABA and its thousands of members. Along with the critical issues of wellness, the immigration crisis, and declining bar passage rates, none was of higher priority to me than examining and better understanding why women continue to experience such different professional experiences as practicing lawyers than their male colleagues. As a woman practicing in “big law” for more than 35 years, I certainly had my own assumptions as to why women remain frustrated due to their failure to reach the level of success in the profession of comparably, and even less, talented men. But we also knew that any hope of moving past our personal frustration at the glacial speed of movement toward gender parity in our profession would require that we collect data regarding the specific challenges that continue to impede women from achieving the success that they deserve.

With the able leadership of past and current Chairs of the ABA Commission on Women in the Profession, Roberta Liebenberg and Stephanie Scharf, a four-prong research initiative was developed to look at this issue from every possible direction. This report, the first of the four to be published, focuses on the perspective of women in practice for more than 15 years in this country’s 350 largest firms. Better understanding the disconnect between their perceptions of what their firms have done well to close this gap, as compared to the perception of their Managing Partners as to what they think is working effectively, is a true eye opener as to just how much work remains to be done. The positive part of the story is that research such as that undertaken by the ABA and ALM Intelligence has the potential to really move the needle on making the professional experiences of men and women in our profession more comparable. The information gives us the roadmap we need to help address and eliminate those barriers that continue to prevent women from reaching their full potential as lawyers.

Identifying this issue obviously touched a nerve, as firms and corporate law departments generously contributed to our effort as soon as we articulated our plans for this research. Managing Partners across the country have reached out to describe their surprise that their well-intentioned efforts over the last 20 years, whether through the creation of Women’s Initiatives and Diversity Committees, implicit bias training, or focusing on diverse pipelines of incoming attorneys, had not done more to even the playing field for women attorneys in their firms. The increasing insistence of clients on greater diversity in the leadership of their legal teams has only added to the recognition that firms need assistance in figuring out how to ensure that their firms provide women attorneys the same opportunity for success as that provided to their male attorneys. Working toward gender parity in the profession is no longer just a moral imperative; any law firm that hopes to compete, let alone succeed and excel, cannot move forward if it is leaving 50% of its talent at the door.

The critical information revealed in this study will hopefully be looked back on as the beginning of the end for women facing unequal challenges in the practice of law. Our profession deserves nothing less.



Hilarie Bass  
*Past President*  
American Bar Association

# Foreword

Upon joining ALM in the summer of 2017, I (Patrick Fuller) was immediately asked to review survey questions for a joint study that ALM Intelligence was conducting with the American Bar Association on women in law. Specifically, then-ABA President Hilarie Bass launched a Presidential Initiative focused on Achieving Long-Term Careers for Women in Law. The numbers have been stunning in their disparity for years, as more than 50% of law school graduates are now women, and nearly 45% of Am Law 200 associate classes are female, and yet women somehow represent less than 25% of all Am Law 200 equity partners. Why the massive gap? And why have women been fleeing law firms and the legal profession in droves? This is what we set out to understand.

I gave my first speech on diversity in 2002 for the Minority Corporate Counsel Association. In the years that followed, I spoke often on both the need for a diverse and inclusive legal profession, as well as on the disappointing analytics that belied a seemingly indifferent profession. As the only son of a single mother, I witnessed first-hand the struggles that women faced in professional environments, from behavioral double-standards to the lack of advancement and recognition for achievements. My naivety was never greater than when I believed the legal profession would somehow be different, that the sheer nature of the profession, which blended both emotional and intellectual intelligence, would rise above the societal norms.

What I discovered is that the legal profession is very attractive to women, but that the attraction does not translate to retention, and this represents a far greater issue than most believe. Many professions struggle with attracting qualified professionals, only to find that once the professionals immerse themselves into a career, they commit to the advancement and evolution of their chosen profession. The legal profession, and specifically “big law”, is at the other end of that spectrum. This begs many questions, but channeling our inner Simon Sinek, we first need to start with why. Why is the experience so different for women compared to men that women leave the profession? As men, what can we do to ensure that we help reverse the course to ensure that our daughters and granddaughters do not face the same challenges that our current colleagues and their predecessors faced?

We were very fortunate to partner with the ABA, and specifically Hilarie Bass, Stephanie Scharf, and Roberta “Bobbi” Liebenberg to embark on the quest for answers in an effort to develop solutions for a problem that has continued to expand in recent years.

- What are the everyday experiences that contribute to success for both men and women?
  - Understanding this is the first key question, as the divergent experiences for men and women begin nearly immediately.
- Why do experienced women lawyers stay in large law firms, and why do they leave?
- What are law firms doing to advance women into the power structure and key leadership echelons of firms?
- What actually works, and where is more innovation and commitment needed?

Over 1,200 senior attorneys and leaders responded to our questionnaire, with the responses revealing a number of insights which are captured in both the attached report and in the survey data available through ALM Intelligence’s Legal Compass. In the period between the conducting of the research and the publishing of this study, the legal profession has experienced some important steps forward, with the adoption of the Mansfield Rule by many firms playing a key role.

This is a multifaceted problem that has been increasing in complexity for decades, and like similar challenges, there is not an easy or convenient answer. Rather, there are uncomfortable truths that we must address in order to move forward, which this study and report help bring to light.

Our goal in this report is to provide a factual, research-backed basis for action, and to facilitate change. The solution will happen through our collective actions, the policies we implement, and most importantly, our own personal attitudes, behavior, and commitment to change.



Patrick Fuller  
*Vice President*  
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Steve Kovalan, Esq.  
*Director of Research*  
ALM Intelligence

# Walking Out The Door

## THE FACTS, FIGURES, AND FUTURE OF EXPERIENCED WOMEN LAWYERS IN PRIVATE PRACTICE

BY ROBERTA D. LIEBENBERG<sup>1</sup> AND STEPHANIE A. SCHARF<sup>2</sup>

It has been over 40 years since women began entering the legal profession in large numbers. As the number of women lawyers increased, organizations began tracking the progress of women in private practice through regular surveys conducted by The American Lawyer,<sup>3</sup> the National Association of Women Lawyers,<sup>4</sup> Vault/MCCA,<sup>5</sup> and NALP.<sup>6</sup> The results are well known: each year, the surveys continue to show a significant under-representation of women in equity partner ranks and leadership positions. Year after year, women have comprised between 45% and 50% of entering law firm associates but nonetheless in 2018 account for just 20% of law firm equity partners.<sup>7</sup>

Even today, the rate of change is slow. According to the 2018 Vault/MCCA Law Firm Diversity Survey, which analyzed responses from 232 law firms, only 29% of new equity partners were women.<sup>8</sup> While firms continue to increase their partnership ranks through lateral partner hiring, in 2017 only 28% of the lateral partners hired were women.<sup>9</sup> Recent figures show that women constitute less than 25% of management committee members, practice group leaders, and office heads.<sup>10</sup>

At the same time, since 2015, the total number of partner promotions among AmLaw 200 firms has dropped by an astounding 29%.<sup>11</sup> In an effort to bolster their profits per equity partner statistics, many firms continue to reduce the number of equity partners. ALM Intelligence found that, among AmLaw 100 firms, the percentage of partners who are equity partners has steadily declined since 2000 and in 2018 those firms' partnerships were comprised of 56% equity partners and 44% non-equity partners.<sup>12</sup> As firms continue to move the goal posts further away by making equity partnerships ever more elusive, women will face an even more daunting challenge in attaining the highest levels of private practice. *The American Lawyer* has predicted that there will not be gender parity in terms of equity partners until 2181.<sup>13</sup>

Not only do women confront ever-shrinking partnership classes, their quest for equity partnership is rendered even more difficult by the fact that they tend to practice in subject areas which have lower billing rates and generate less attorneys' fees, rather than working in more lucrative "bet the company" commercial litigation, mergers and acquisitions, bankruptcy, and intellectual property law.<sup>14</sup> Women are far less likely than their male counterparts to be chosen as first chairs at trial<sup>15</sup> or as leads on corporate deals.<sup>16</sup> This in turn adversely impacts the ability of women lawyers to develop large books of business. While in the typical large firm, roughly one in three newly inherited client relationships are led by women partners, the process of achieving gender parity is slow: 80% of any given firm's relationship partners for its top 20 clients are men.<sup>17</sup> And men are overwhelmingly the top earners in large firms, with 93% of firms reporting that their most compensated partner is a man and of the 10 top earners in the firm, either one or none is a woman.<sup>18</sup>

It is clear that women lawyers on average do not advance along the same trajectory as men. While there is a perception that the gender gap occurs mostly in the early years before partnership decisions, in reality, the gender gap continues and even widens after partnership, and contributes to the disproportionately high rate of attrition of senior women lawyers. Indeed, women vote with their feet by leaving the practice of law. As a recent NALP report concluded: “The percentage of partners who are women or minorities has increased at least some every year, but the partnership ranks remain overwhelmingly white and male.”<sup>19</sup>

Law firms are well aware of this problem and would like to take the necessary steps to close this gap. Studies of gender diversity in other professional settings show significant benefits and, conversely, a lack of diversity has negative effects.<sup>20</sup> The gender gap at senior levels of firms impacts law firm finances, client relationships, the ability to attract and maintain client business, and recruiting and retaining the best lawyers in the profession. Law firms devote substantial resources to hiring and training their lawyers, and the attrition of senior women lawyers causes substantial losses, both tangible and intangible. When senior women lawyers leave firms, the firm’s relationship with those lawyers’ clients suffer, there is a reduced range of legal talent to offer clients, a narrower base for firms and businesses to develop robust client relationships, a diminished ability to recruit and retain skilled women lawyers at all levels, and, ultimately, serious challenges to the firm’s future growth and revenue.

It is evident that current policies and practices will not be enough to close the gender gap. To stem the attrition of senior women lawyers and ensure their critical mass in leadership positions requires an understanding about the everyday experiences of practicing law, and why women are not advancing at the same rate as men into the highest levels of private practice. Every firm has a culture defined by a mix of policies and practices, expectations, unwritten rules, implicit and explicit biases, and workplace demands – which in combination have negative and/or positive consequences for gender parity. Many components of a firm’s culture are under the control of firm management and can be modified to achieve diversity goals. While there have been suggested best practices and policies about how to close the gender pay gap in private practice,<sup>21</sup> we believe there has been no systematic survey that looked simultaneously at the multiple factors impacting careers from the viewpoint of managing partners and women and men who have sustained long-term careers in firms.

For all of these reasons, we collaborated with ALM Intelligence to conduct surveys of experienced women and men practicing for 15 or more years in the nation’s 500 largest firms, and to also survey a sample of managing partners from those firms. Our focus was on three main issues:

1. What are the everyday experiences that contribute to success for women and men in firm practice?
2. Why do experienced women stay in large firm practice and why do they leave?
3. What are law firms doing to advance women into the top echelons of firms, what actually works, and where is innovation needed?

Data-based answers to these questions not only provide a better understanding of the circumstances that advance or impede women’s long-term careers in private practice, but also point to policies and practices that have a realistic chance for closing the gender gap.



# Survey Methodology

Working with ALM Intelligence, we designed survey instruments and then surveyed a sample of managing partners and individual men and women who have practiced law for at least 15 years and are currently in private practice at the NLJ 500 law firms.<sup>22</sup>

The data reflected in this report are from the collaborative survey research project between the ABA and ALM Intelligence. The survey incorporated responses from 1,262 individuals, of whom 70% were women and 30% were men.<sup>23</sup> As might be expected, the percentage of women among the respondents declined as the seniority level of the respondents increased, although even in the cohort practicing 40+ years, 35% of respondents were women.<sup>24</sup> The respondents had a good distribution by years in practice, with the largest percentage of respondents practicing from 15 to 20 years (26%) and fewer respondents practicing more than 35 years (23%). Half the respondents (53%) were equity partners, with the remaining respondents about equally divided between non-equity partners and counsel/senior counsel. Respondents were from firms with single tier partnerships, two tier partnerships, and firms with three or more partner tiers. The number of lawyers of color in this sample was low, consistent with numbers in older cohorts.<sup>25</sup> As a result, we did not have enough respondents to do a separate analysis focusing on women lawyers of color.<sup>26</sup> Overall, the individual respondents appear to constitute a representative sample of experienced women and a representative sample of experienced men at the partner or counsel level in the nation's 500 largest firms. While there was substantial variation in non-response rates from question to question, the overall size of the sample allowed meaningful analyses of responses by individual female and male respondents to each question posed. We generally report results based on the number of respondents for a given question.

The fact that the sample includes a robust number of equity partners shows that senior men and women wish to contribute their views and voices for understanding the reasons for the gender gap, and want to be part of the solution. Unfortunately, we received a much lower level of interest from managing partners, only 28 of whom participated in the survey. One possible explanation for this lack of participation is management's recognition that their firms' gender diversity statistics are disappointing. Going forward, if the survey is repeated, we will take additional steps to encourage managing partners to provide their input on this very important issue.

## Results And Recommendations

### **I. WHAT ARE THE EVERYDAY EXPERIENCES THAT CONTRIBUTE TO SUCCESS FOR MEN AND WOMEN IN FIRM PRACTICE?**

#### **A. THE CONCEPT OF ACCESS TO SUCCESS**

Many lawyers in private practice think of law firms as meritocracies, where the best lawyers reach increasingly greater levels of success. We know, however, that perceptions of who is "best" and opportunities to succeed are not equally distributed.<sup>27</sup> Selection of people for key assignments as well as evaluations of their work are subject to various biases, such as similarity bias, confirmation bias, affinity bias and more.<sup>28</sup> Ironically, organizations that perceive themselves to be meritocracies "tend to have members with more bias than organi-

zations that do not. People who believe the firm is meritocratic tend to perceive themselves as unbiased and fair, which causes them to succumb more easily to unconscious biases.”<sup>29</sup>

Our focus here was to measure whether senior women and men are afforded the same opportunities to succeed in private practice. To do so, we asked a series of questions about job satisfaction and experiences at work. With respect to some factors, women and men report highly similar experiences. That is especially true when examining satisfaction with the actual work that is performed and relationships with their colleagues. On the other hand, women report very different everyday experiences along a number of dimensions that we are calling “access to success”—factors that speak to how women generally are perceived and what opportunities they are given to climb up the ladder within their firm.

## B. SATISFACTION WITH THE JOB

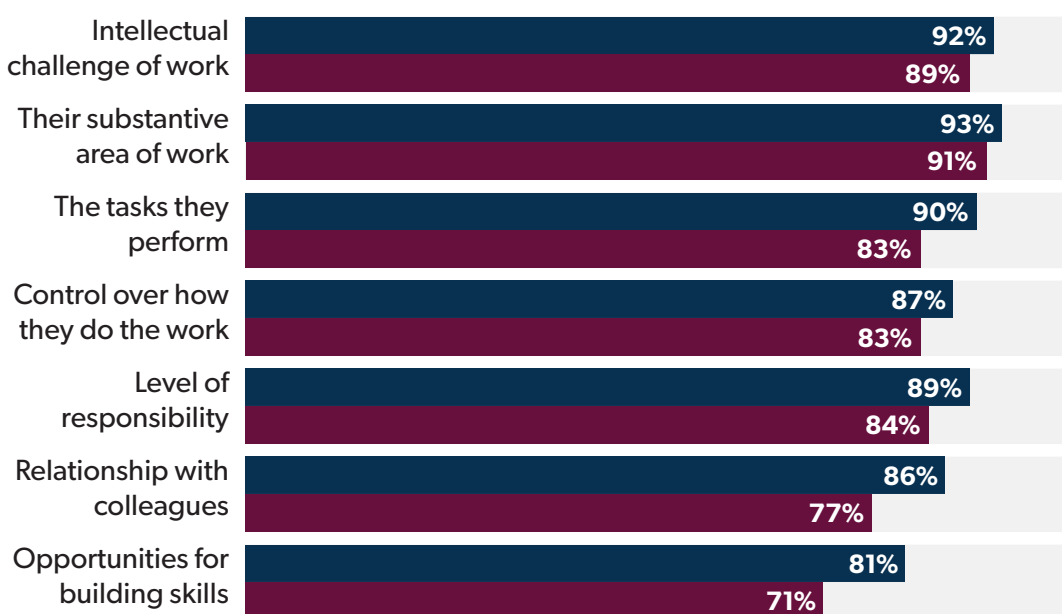
We asked women and men a series of questions about overall job satisfaction, and also about their satisfaction levels with specific components of the job.<sup>30</sup> With respect to our question on “overall level of satisfaction with your job,” 87% of men and 72% of women are extremely or somewhat “satisfied” with their job. At the other end of the spectrum, 5% of men and 21% of women are somewhat or extremely “dissatisfied” with their job. The data show a clear gender gap in job dissatisfaction. Through other questions, we can zero in on what causes those differences.

Throughout our report, bar graph results are based on data collected by ALM Intelligence, and are color-coded as follows:

■ Men ■ Women ■ Managing Partners

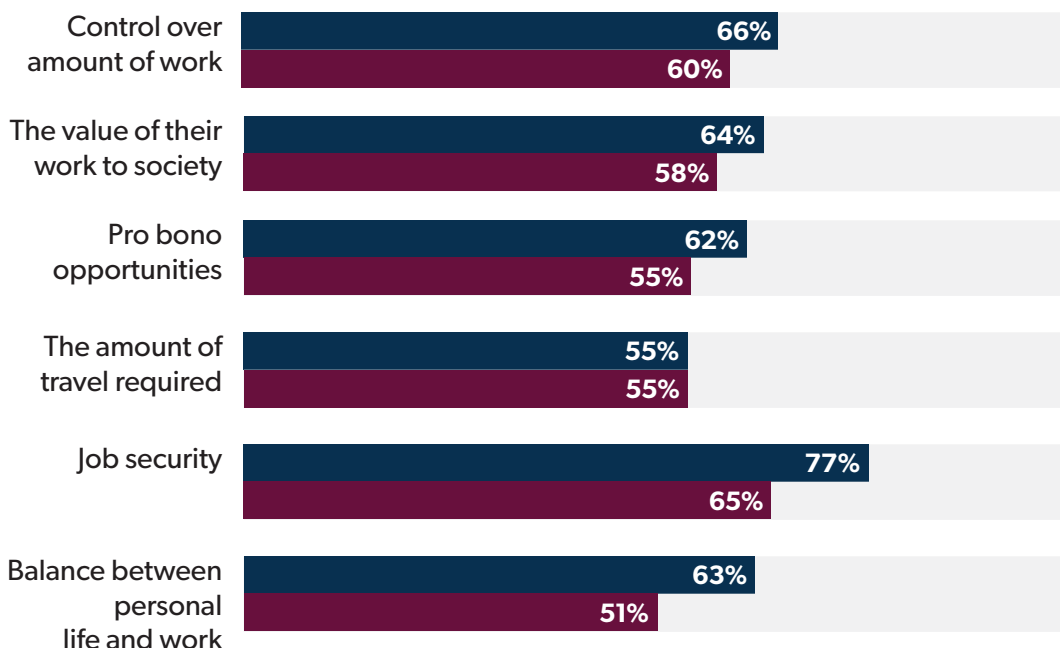
### *Factors where men and women report similar levels of job satisfaction.*

On many specific job components relating to the inherent nature of legal work and the value of that work to themselves and others, women and men report similarly high levels of satisfaction.<sup>31</sup>



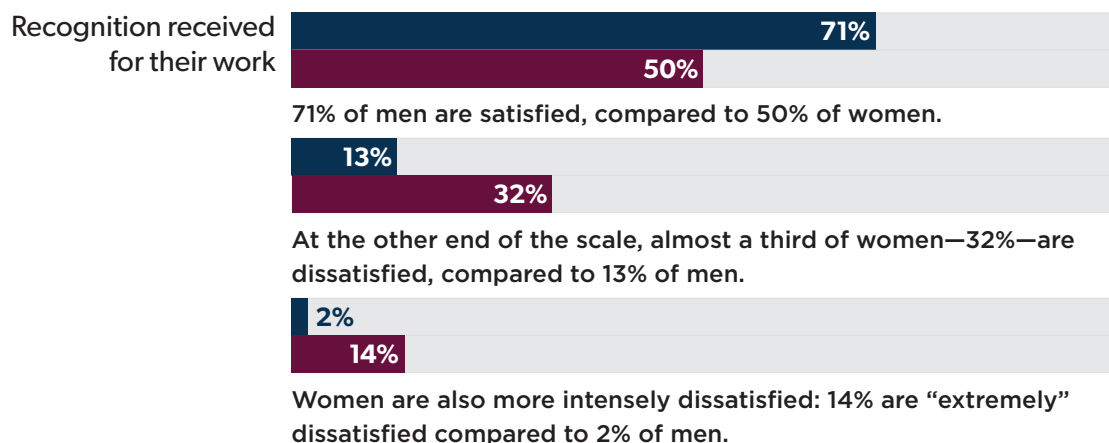


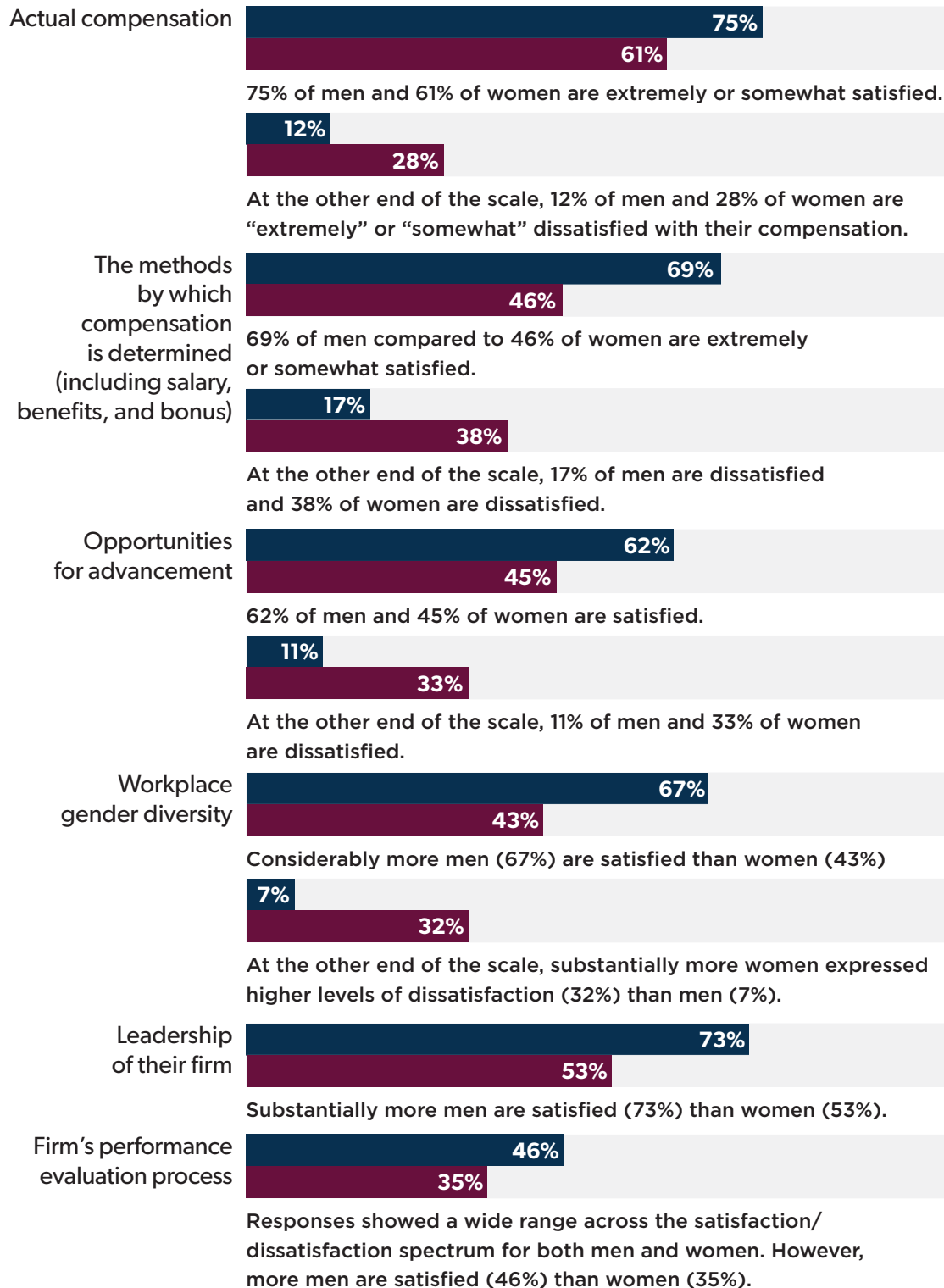
On the factors described below, men and women also reported similar levels of satisfaction (although not at levels as high as for the factors above).<sup>32</sup>



*Factors where men and women report dissimilar levels of job satisfaction.*

In contrast to those factors about which women and men generally agree, there are certain factors with which women are noticeably less satisfied than men – with sometimes a pronounced 20% or greater gap in levels of satisfaction<sup>33</sup> or dissatisfaction<sup>34</sup>. These differences<sup>35</sup> occur with respect to factors over which firm management can exercise substantial control:





One implication of these results is that firms need to do a much better job to make sure that policies are clear, well known, and applied equitably to men and women when it comes to rewarding and advancing lawyers, including experienced women lawyers. A prime example concerns the methods by which compensation is determined. Too many firms have their compensation systems shrouded in mystery, where unwritten rules and relationships determine equity shares, origination credit, salary, and bonuses. These unwritten rules help maintain the *status quo*, which directly impacts the ability of women (and lawyers of color) to break through into the top levels of compensation.<sup>36</sup> Moreover, the lack of a critical mass of women on many firm compensation committees, coupled with a lack of women sponsors in the compensation process, contribute to the continuing and significant gender pay gap for women partners.<sup>37</sup> In the same vein, many firms continue to lack a “team” approach to compensation decisions, which would ensure that credit is shared among all the partners who are playing a significant role on a client matter. Thus, when it comes to compensation decisions, many experienced women lawyers believe that the compensation system is “rigged” against them.

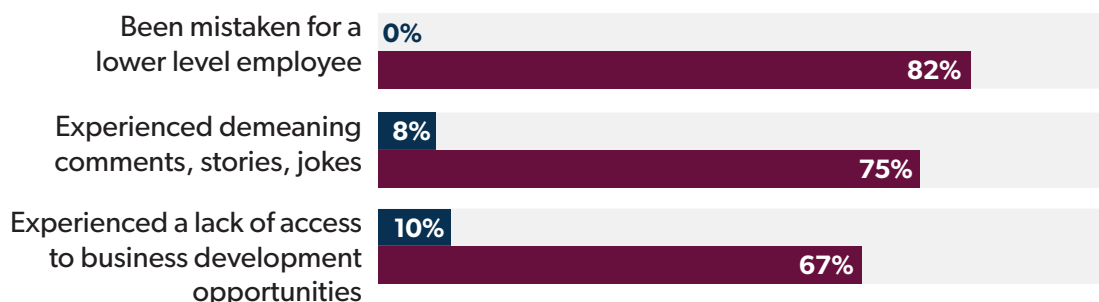
The same problems – a lack of communication and clarity – frequently exist when it comes to opportunities for advancement, recognition in the firm, and leadership positions. We note that lower levels of satisfaction among women on these factors reflect similar responses on questions about access to success, where women experienced less access to business development opportunities, advancement, salary increases or bonuses, and recognition than men.

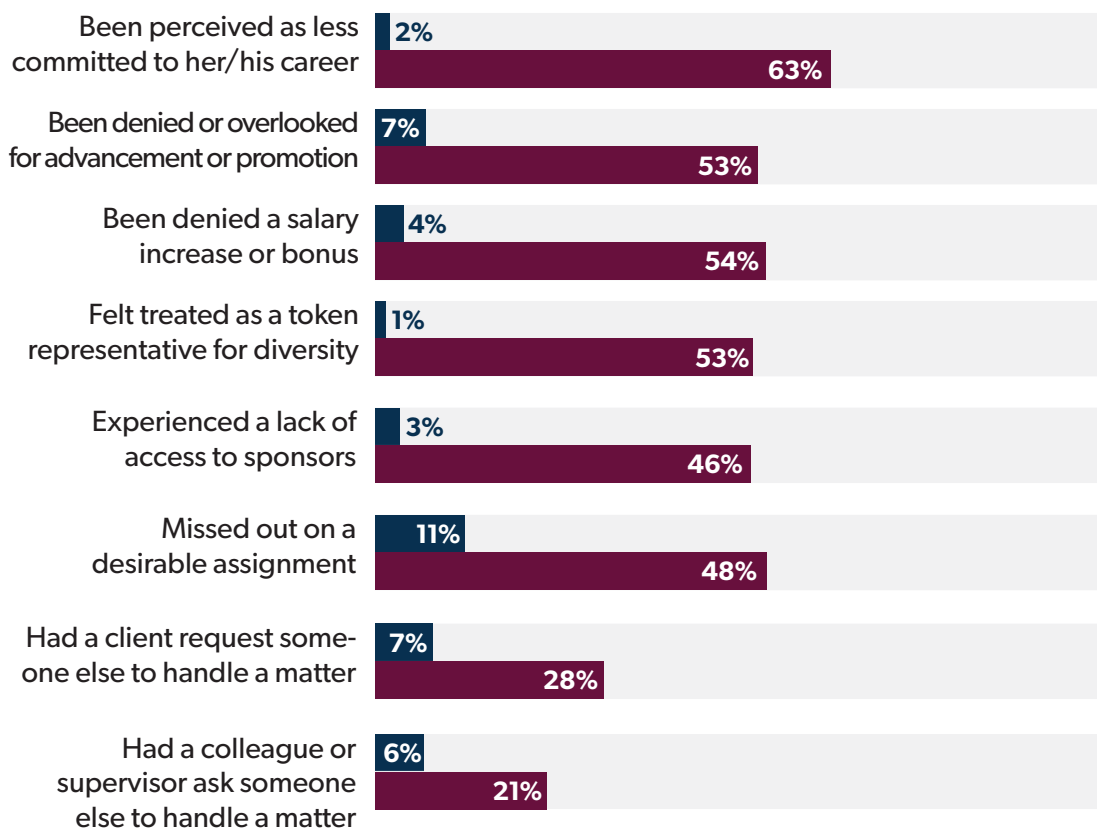
Finally, satisfaction with the actions taken by a firm depends in part on whether someone feels that he or she has been equitably treated. In the area of compensation, for example, people tend to evaluate their actual level of compensation against what they view to be an equitable level of compensation.<sup>38</sup> Systems that lack transparency exacerbate a sense of unfairness and dissatisfaction. According to Major, Lindsey & Africa’s 2018 Partner Compensation Survey, partners in open compensation systems report higher average compensation, higher average origination and are more likely to classify themselves as very satisfied than partners in partially open or closed systems.<sup>39</sup> In contrast, 69% of partners in closed compensation systems said they would like to see aspects of their compensation changed.<sup>40</sup>

In short, ignoring policies and practices that lower the satisfaction levels of experienced women lawyers invites a number of adverse consequences, which even over a short period of time can have a negative impact on the firm as a whole.

### C. THE EVERYDAY BUILDING BLOCKS FOR SUCCESS

Senior women attorneys are far more likely than men to report negative work experiences that resulted simply because they are women. Women also have less access to the opportunities needed to reach various levels of firm leadership. Thus, senior women are significantly more likely than men to report that, *on account of their gender*, they have:<sup>41</sup>





These gender differences are both striking and alarming. It is clear that too many firms have not addressed the two key impediments faced by their women lawyers: (a) unequal access to the experiences that are building blocks for success, and (b) negative gender stereotypes and implicit biases. Women report being *four to eight times more likely* to be overlooked for advancement, denied a salary increase or bonus, treated as a token representative for diversity, lacking access to business development opportunities, perceived as less committed to her career, and lacking access to sponsors. Each one of these factors is, in and of itself, critical for advancement. The combination of such significant disparities on so many core factors does much to explain why women are not advancing at the same rate as men – and underscores the importance of implementing effective policies and practices that can ameliorate these negative everyday experiences.

#### D. SEXUAL HARASSMENT

While there are numerous striking differences between the everyday experiences of senior women and men in law firms, one set of responses stands out above all the rest: the much greater extent to which women experience sexual harassment. In our sample of over 1200 experienced lawyers:

- 50% of women versus 6% of men had received unwanted sexual conduct at work. In essence, one of every two women said they had experienced sexual harassment.
- 16% of women versus 1% of men have lost work opportunities as a result of rebuffing sexual advances.
- At the same time, more than a quarter of all women (28%) avoided reporting sexual harassment due to fear of retaliation while 1% of men reported the same avoidance behavior.<sup>42</sup>

These distressing results show that the problem of sexual harassment in law firms is far from solved. Sexual harassment is not confined to “certain” firms, but instead is widespread throughout the profession.<sup>43</sup> The inappropriate personal comments made to respondents clearly illustrate the severity of this significant problem.

Few law firms, if any, are focused on sexual harassment as a core reason why women leave the practice or become disengaged from firm culture. Yet, the data here and in other recent studies overwhelmingly suggest that law firms need to take a fresh look at their policies and practices. The American Bar Association has analyzed and approved policies for how law firms, among other legal employers, can minimize sexual harassment.<sup>44</sup> Certainly, a key component is for firm leadership and management to implement sensible and enforceable policies that incentivize women to report sexual harassment, protect them from retaliation, and punish those who engage in such conduct. Law firms must send a strong message that sexual harassment simply will not be tolerated.<sup>45</sup>

In sum, our data show that gender bias takes place in many different ways. The cumulative result is what we term “death by a thousand cuts.” While women in private practice may talk with each other about such experiences, they are less often discussed by law firm leadership or with male partners. Until these kinds of experiences are brought into the open and addressed, they will continue to be impediments to advancing women – impediments, we add, that have nothing to do with the qualifications, talent, or ambition of individual women lawyers, but instead are created by implicit biases, gender stereotypes and sexual harassment, all of which remain pervasive in too many law firms.

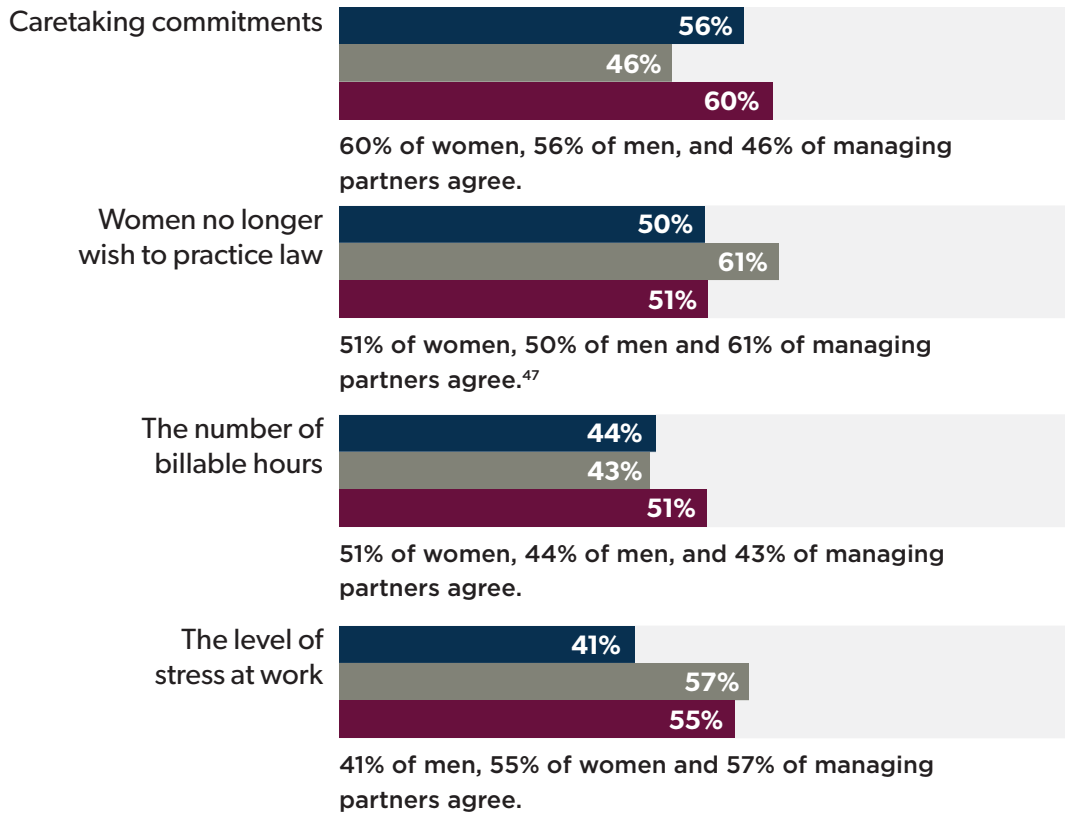
## II. WHY DO EXPERIENCED WOMEN LAWYERS STAY AT THEIR FIRM OR LEAVE?

We asked experienced men and women, and managing partners, about which factors influence why experienced female lawyers stay with or leave their firms.<sup>46</sup> By framing questions about the respondent’s particular firm, the responses are more likely to reflect first-hand knowledge about why women stay or leave, rather than more abstract information about firms in general.

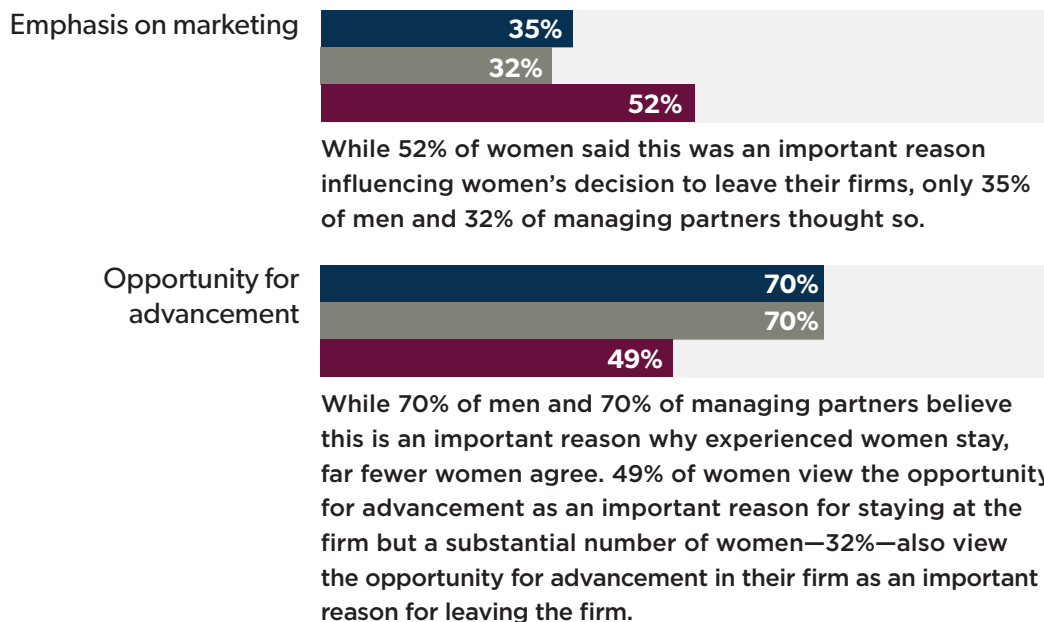
There was a good deal of consensus among men, women, and managing partners about the reasons why experienced women lawyers *stay* in their firms:



Men and women along with managing partners also generally agree on the following reasons why experienced women lawyers *leave* their firms:



Women, however, have significantly different views about the impact of these three factors on women leaving or staying:<sup>48</sup>





A similar dynamic exists for financial compensation. 61% of women and 63% of men view this factor as an important reason for women staying in their firm. Managing partners are in accord with these results: 68% of them think that financial compensation is an important reason for women staying. At the other end of the spectrum, however, almost one quarter of women (24%) report that compensation influences why experienced female lawyers leave the firm, although a small minority of men (11%) view compensation as an important influence on experienced women lawyers' decisions to leave.

A few other factors that we measured are largely a neutral to somewhat important reason for women leaving their firm: personal or family health; job opportunities for a partner or spouse; and performance reviews.

These results, of course, have certain limitations. Our respondents are women and men who are still practicing in firms and offering opinions from their perspective about why experienced women stay or go. We believe, however, that the women we sampled are much more likely to be aware of reasons why women stay or leave their firms, based on informal networks with women in the firm and those who have left.

A summary of the data on reasons why women leave, according to experienced women lawyers, is presented here:

	% OF WOMEN WHO SAY IT'S A VERY IMPORTANT REASON FOR LEAVING	% OF WOMEN WHO SAY IT'S A SOMEWHAT IMPORTANT REASON FOR LEAVING	COMBINED % OF WOMEN WHO SAY IT'S A VERY OR SOMEWHAT IMPORTANT REASON FOR LEAVING <sup>49</sup>
FINANCIAL COMPENSATION	7%	17%	24%
WORK/LIFE BALANCE	19%	27%	46%
CHALLENGING/INTERESTING WORK	2%	7%	9%
ADVANCEMENT OPPORTUNITY	12%	20%	32%
RELATIONSHIPS WITH COLLEAGUES	3%	6%	9%
LEVEL OF STRESS AT WORK	17%	37%	54%
NUMBER OF BILLABLE HOURS	15%	34%	50%
EMPHASIS ON MARKETING OR ORIGINATING BUSINESS	13%	38%	51%
CARETAKING COMMITMENTS	16%	42%	58%
PERSONAL OR FAMILY HEALTH CONCERNS	9%	33%	42%
JOB OPPORTUNITIES FOR SPOUSE/PARTNER	4%	27%	30%
PERFORMANCE REVIEWS	2%	14%	16%
NO LONGER WISHES TO PRACTICE LAW	18%	31%	49%
SEXUAL HARASSMENT OR RETALIATION	9%	15%	24%
OTHER	2%	3%	5%

In trying to distill the data, we have ranked the top reasons that experienced women cite as an “important” influence on women leaving their firm, listing any reason mentioned by at least 40% of respondents:

<b>CARETAKING COMMITMENTS</b>	<b>58%</b>
<b>LEVEL OF STRESS AT WORK</b>	<b>54%</b>
<b>EMPHASIS ON MARKETING OR ORIGINATING BUSINESS</b>	<b>51%</b>
<b>NUMBER OF BILLABLE HOURS</b>	<b>50%</b>
<b>NO LONGER WISHES TO PRACTICE LAW</b>	<b>49%</b>
<b>WORK/LIFE BALANCE</b>	<b>46%</b>
<b>PERSONAL OR FAMILY HEALTH CONCERNS</b>	<b>42%</b>

These top reasons why experienced women leave private practice boil down to the stress and time needed to “do it all,” especially around non-substantive responsibilities at the office that do not reflect the quality of an individual’s legal work. Pressures to bill a large number of hours, and then spend more time to originate business, and then meet caretaking commitments lead to increased stress and an inability to strike an acceptable work/life balance.

The responses we collected on caretaking commitments drive home the point. Experienced women lawyers are, indeed, much more likely than experienced men to be solely responsible for multiple dimensions of child care. The gender differences are striking:<sup>50</sup>

<b>ACTIVITY</b>	<b>PERCENTAGE OF WOMEN WHO SAY THIS IS THEIR FULL RESPONSIBILITY</b>	<b>PERCENTAGE OF MEN WHO SAY THIS IS THEIR FULL RESPONSIBILITY</b>
<b>ARRANGING CHILDCARE</b>	54%	1%
<b>LEAVING WORK FOR CHILDCARE</b>	32%	4%
<b>CHILDREN’S EXTRACURRICULARS</b>	20%	4%
<b>EVENING CHILDCARE</b>	17%	4%
<b>DAYTIME CHILDCARE</b>	10%	1%

As the data make clear, experienced women lawyers bear a disproportionate brunt of responsibility for arranging for care, leaving work when needed by the child, children’s extracurricular activities, and evening and daytime childcare. Any one of these factors affects the time and effort expected for a successful law practice, and the combination competes all the more for a lawyer’s time.

The results beg a bigger policy question: what will law firms do to devise more effective means of enabling all lawyers, including experienced women, to balance those family and household responsibilities with their professional obligations at the firm? As examples, there are a few firms that provide child care on site. The knowledge that it is both easy to obtain child care when needed and the site is literally at the workplace would be of great help to working parents. Another example is the pressure to obtain household services. Some



firms are offering so-called concierge services to perform personal tasks for lawyers and staff, such as arranging to pick up dry cleaning; making on-line purchases, including groceries, and even arranging moving services.<sup>51</sup> Management is recognizing that in order to attract and retain lawyers, firms need to help them deal with their responsibilities outside the office.

Also ripe for review is the impact of part-time, flex-time, and leaves of absence on women lawyers and their firms. We know many women who would wish to practice on a part-time basis or take a leave of absence but are legitimately concerned that firms simply pay lip service to policies for such arrangements, and that the actual result is sidelining a career because of fear of developing a reputation as not being sufficiently committed to work. While almost all law firms have implemented part-time policies to accommodate their lawyers' needs to care for their children, parents, or other family members, the reality is that only 6-7% of law firm attorneys use such policies, and they are mostly women.<sup>52</sup> Few women partners work part-time: only 1.7% of women equity partners and 4.4% of women non-equity partners do so.<sup>53</sup> The reason is obvious: lawyers correctly perceive that "going part-time" may well impede, if not derail, career advancement. The same fear applies to the consequences of participating in a reduced-hours program, maternity/paternity or family leave, and flexible work schedules.<sup>54</sup> And unlike the large majority of senior men, women partners are much less likely to be supported by a stay at home spouse, requiring additional time and effort to handle obligations outside of work.<sup>55</sup> More than one observer of women in law firm practice has suggested that biases in favor of traditional gender roles directly impact the advancement of experienced women lawyers.<sup>56</sup>

Overall, what do the results mean for large law firms with respect to experienced women lawyers? Law firm policies and practices can have a marked influence on changing the direction of these numbers – even for factors that at first blush are outside the usual ambit of law firm concerns. We also emphasize that there is no "one size fits all" set of policies that suits all firms. We urge firms to tap into the creativity of their own lawyers to create solutions that can work within the context of their firm's unique culture and goals. We anticipate that any firm that fails to achieve meaningful gender diversity among its more experienced lawyers will fall behind its peers—the firm simply will not have a large cadre of experienced women lawyers, becoming increasingly out of sync with the range of talent in the legal profession and the demands of the marketplace.

### **III. WHAT ARE FIRMS DOING TO FOSTER LONG-TERM CAREERS FOR WOMEN IN PRIVATE PRACTICE?**

#### **A. FIRM LEADERS CLEARLY RECOGNIZE THE BENEFITS OF GENDER DIVERSITY AT SENIOR LEVELS**

Managing partners appear to be well aware that attracting experienced women lawyers will allow their firms to remain competitive, because of (1) the benefits to law practice and (2) the market's demand for diversity at senior levels. Thus, our data show:

##### **1. RECOGNITION BY MANAGEMENT OF BENEFITS FOR QUALITY OF THE FIRM**

- 82% of managing partners cited "achieving better decision-making by improving diversity at senior levels."
- 79% of managing partners cited "widening their talent pool at senior levels."
- 79% of managing partners cited mitigating the costs of female lawyer attrition or turnover.

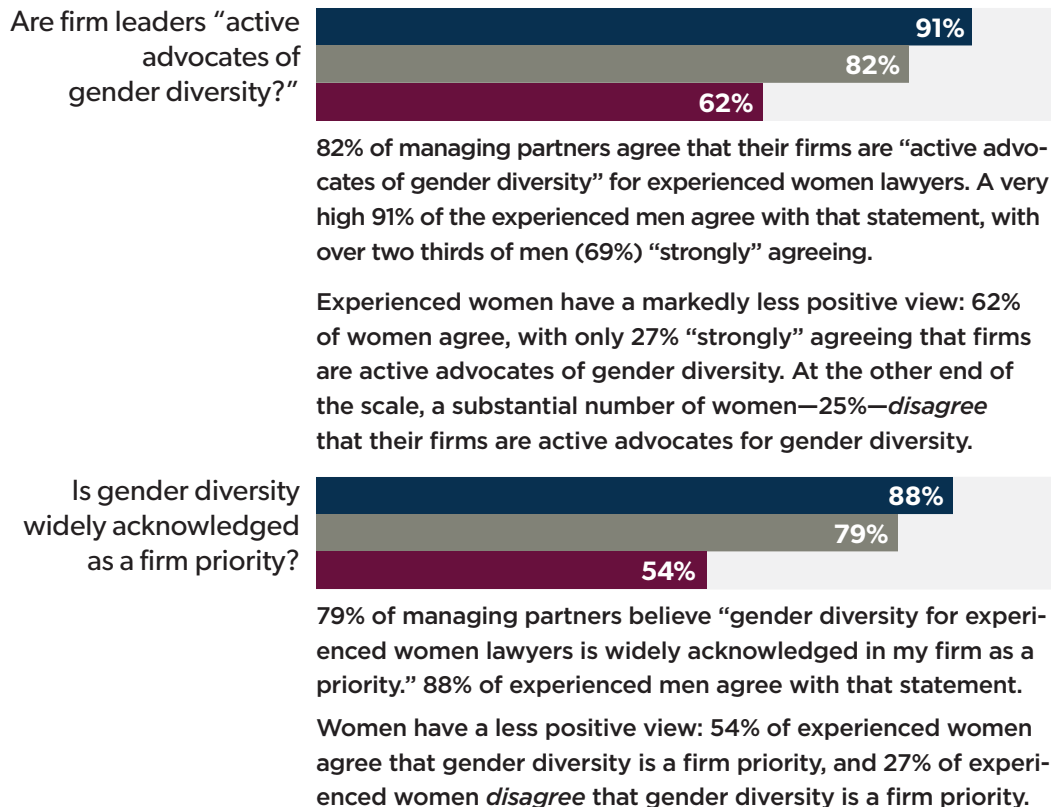
## 2. RECOGNITION BY MANAGEMENT OF BENEFITS FOR MARKET RESPONSIVENESS

- 86% of managing partners cited improving the firm's reputation and image.
- 86% of managing partners cited being more responsive to the market.
- 79% of managing partners cited being more responsive to the requests of clients.

But beyond awareness that experienced women are critical to a firm's long-term success and clients' demand for experienced women lawyers, which policies are in place and which ones are actually impacting the advancement of women?

### B. FIRM LEADERS AND MALE PARTNERS BELIEVE THEIR FIRMS DO WELL IN ADVANCING EXPERIENCED WOMEN – BUT EXPERIENCED WOMEN DO NOT SHARE THAT VIEW

We asked managing partners and individual men and women lawyers a series of questions about their firm's efforts to retain and advance experienced women lawyers and their success in doing so. Overall, a large percentage of managing partners and senior men agree that their firms have been active in making gender diversity a priority and have been successful in advancing experienced women lawyers.<sup>57</sup> However, experienced women lawyers have significantly less positive opinions, as shown by responses to five questions we asked about law firm advocacy and success in advancing gender diversity:





75% of managing partners believe that their firm “has been successful at promoting experienced female lawyers into leadership positions in the firm.” Individual senior men agree at an even higher level (84%).

A much lower percentage of experienced women (55%) agree that their firm has been successful and a substantial number (30%) *disagree* that their firm has been successful in promoting women into leadership.



71% of managing partners believe that their firm “has been successful at advancing/promoting female attorneys into equity partnership.” A similar level of agreement exists among experienced male lawyers (79%).

Substantially fewer experienced women—48%—agree that their firm has been successful at advancing women into equity partnership, and 35% *disagree* with that statement.



64% of managing partners believe that their firm “has been successful at retaining experienced women lawyers.” A much greater percentage of experienced men—74%—agree with that statement.

A lower percentage of women—47%—agree that their firm has successfully retained women lawyers, and 38% *disagree* that their firm has been successful.

Clearly, managing partners and senior men have far more positive views than their women colleagues about their firm’s “success” in retaining and advancing experienced women lawyers, acknowledging gender diversity as a priority, and promoting experienced women into the highest levels of the partnership and firm leadership. What explains the differences? It may be that managing partners and senior men are unaware of the actual statistics showing a relative lack of advancement for experienced women lawyers and their high rate of attrition. Alternatively, men may have different expectations than women for assessing the firm’s “success” in advancing and retaining senior women lawyers. Whatever the reason, there is a definite “men are from Mars, women are from Venus” dichotomy regarding their respective perceptions of their firms’ commitment and success in advancing women into senior roles.<sup>58</sup>

The data lead us to conclude that firms need to look anew, from broader perspectives, at setting targets and implementing policies and practices that actually achieve meaningful progress and results. The pronounced gender perception gap demonstrates that law firm efforts and initiatives are not accomplishing as much as firm leaders and their male colleagues believe, and far more needs to be done.

### C. WHAT GENDER ADVANCEMENT POLICIES ARE FIRMS USING, AND HOW ARE THEY WORKING?

Virtually every large firm has goals to increase the number of women lawyers. How any given firm goes about doing so, however, varies widely. Some initiatives are managed by the top level of leadership, while others may be managed by lawyers or staff. Some initiatives are well-funded, while others are funded with less than the cost of a first year associate's compensation. Some initiatives have a strategic plan that sets concrete goals for advancement of women in the firm, while others are less formal. And there are many different types of programs that firms sponsor with the goal of advancing and retaining women lawyers.

We asked managing partners about the use and importance of specific policies for advancing gender diversity. The results are listed below and show that the large majority of managing partners – 90% – report use of these policies: clear, consistent criteria for promotion to equity partner; firm-sponsored client networking for female lawyers and female clients; paid parental leave; work from home policy; mentoring or sponsorship programs for female lawyers; and sexual harassment training. Implicit bias training and training female lawyers in business development are also widely used programs, by at least 80% of firms.

That said, we did not anticipate that all policies would be viewed as equally effective. Indeed, there is a large range of opinion about the effectiveness of these policies for advancing experienced women, based on responses from women lawyers whose firms have implemented the particular policy:<sup>59</sup>

POLICY	PERCENTAGE OF EXPERIENCED WOMEN LAWYERS WHO SAY THE POLICY IS VERY OR SOMEWHAT EFFECTIVE
WORK FROM HOME POLICY	78%
PAID PARENTAL LEAVE	76%
FORMAL PART-TIME POLICY FOR PARTNERS	75%
CLEAR, CONSISTENT CRITERIA FOR PROMOTION TO EQUITY PARTNER	75%
CLIENT SUCCESSION PLANNING POLICY	71%
TRAINING FEMALE LAWYERS/BUSINESS DEVELOPMENT	70%
CLIENT NETWORKING/FEMALE LAWYERS AND CLIENTS	70%
MENTORING/SPONSORING PROGRAMS FOR FEMALE LAWYERS	69%
LEADERSHIP/MANAGEMENT TRAINING	68%
WRITTEN RULES ABOUT CREDIT ALLOCATION	60%
MONITOR GENDER METRICS	60%
IMPLICIT BIAS TRAINING	47%
SEXUAL HARASSMENT TRAINING	42%
FORMAL PROCESS FOR DISPUTE RESOLUTION (E.G., PROMOTION, ORIGINATION)	42%
MANSFIELD RULE	42%
ON-RAMPING PROGRAMS	37%
COMPENSATING DIVERSITY WORK (NOT PRO BONO)	35%
PARTNER COMPENSATION PARTLY TIED TO DIVERSITY EFFORTS	31%

These results show that:

1. Many different policies can be useful for advancing women into senior roles, depending on the circumstances in a particular firm.
2. The policies that at least 75% of women believe are important to advancing senior women are work from home (78%); paid parental leave (76%); clear consistent criteria for promotion to equity partner (75%); and a formal part-time policy for partners (75%). We conclude that when a firm does not implement these policies in a meaningful way, it is undercutting its ability to retain and advance women into senior roles.
3. At least half of the women in our sample also view these policies as important: a client succession planning policy that emphasizes greater inclusion of women lawyers (71%); client networking with female clients (70%); training in business development (70%); mentoring/sponsoring programs (69%); leadership/management training (68%); monitoring gender metrics (60%); and written rules/credit allocation (60%).

The results reinforce our view that, in order to implement effective policies, a firm needs to understand the nature of its culture, how existing policies and practices actually work from the point of view of the lawyers those policies are supposed to benefit, and why policies that are especially effective should be regarded as “best practices” that all firms can consider implementing.

## IV. WHAT SHOULD FIRMS BE DOING DIFFERENTLY?

It is undeniable and unfortunate that experienced women lawyers are simply not moving up the ladder to senior levels at the same rate as men. Moreover, experienced women lawyers are leaving their firms at a greater rate than men for reasons that firms are able to address, even if they have not yet done so. What is holding senior women lawyers back is not a lack of drive or commitment, a failure to promote themselves, or an unwillingness to work hard or to make substantial sacrifices. Simply put, women lawyers don’t need to “lean in” any more than they have already done. What needs fixing is the structure and culture of law firms, so firms can better address the needs of the many women they recruit and seek to retain.

One key lesson learned from the data here: simply putting policies into place and giving lip service to the goal of diversity appears to have little impact on closing the gap at mid-levels and senior levels of experience. Enacting policies is a basic first step, but it is not enough. And while large firms have developed policies designed to address the gender gap, there is significant variation in the nature of these policies, how well they work in practice, and whether the policies are implemented consistently and equitably over time.

As our data show, women lawyers are much less satisfied than their male colleagues and managing partners with the extent of gender diversity in their firms, the level of commitment that firm leaders have to gender diversity, and what firms are doing to advance women into upper levels of their firms. The satisfaction data should not be a surprise. Women lawyers have substantially less access to the building blocks needed for long-term success in firm practice. Far more than men, and *simply on account of their gender*, women experience demeaning comments, lack access to business development opportunities, have been overlooked for advancement, lack access to sponsors, and suffer other behaviors in firms that diminish their chances for reaching the same level of success as their male colleagues. Women are markedly less satisfied than men with the recognition they receive for their work, their compensation and how it is determined, and the opportunities for

advancement in their own firm. Senior women leave their firms because of the inordinate demands imposed by firm policies – especially onerous billable hours requirements and the emphasis on marketing. While substantial quotas for billable hours drive up profits per equity partner, there is a real cost to pay through the firm’s loss of so many experienced women lawyers, diminished diversity at the upper levels of firms, and increasing pressure from clients to fix the problem.

The greatest challenge facing large firms today is whether they will move beyond mere lip service to the goal of greater diversity by taking concrete and specific steps to meet the needs of women lawyers and lawyers of color. Client demands for the breadth of talent that comes with diversity are being heard today, and will increase each year. Firms have both the motivation, resources and, we believe, the creativity to develop programs and policies that truly serve women attorneys throughout the entire cycle of their careers. As very basic next steps, we encourage the leaders of every firm to review the research presented here, and use it to inform changes that are specifically geared to the culture of their firm.

We also suggest that each and every AmLaw 500 firm survey their lawyers on an anonymous basis with the types of questions that we administered, in order to fully understand whether there are any gender-based differences in their lawyers’ work day experiences and their satisfaction or dissatisfaction with the firm’s culture, policies and practices. We encourage guided in-firm conversations so firm leaders can decide how to use that information effectively to make necessary changes and reforms for eliminating any gender gap in access to success and create a workplace environment more conducive to the retention and advancement of experienced women lawyers. And we urge male leaders to take ownership of this process and not delegate the internal discussions and process of recommending policies largely to women partners, who often lack the power to ensure that their recommendations are implemented, and to prevent the implicit if not explicit notion that the lack of gender diversity is only a “women’s problem.”

We do not believe there is a silver bullet that will create meaningful gender diversity in all firms. We do believe, however – based on this new research and other well-regarded studies – that certain practices implemented over a four to five year period will achieve noticeable positive changes for a firm’s retention of experienced women lawyers, the number of women advancing to leadership positions, parity in compensation, the firm’s enhanced capabilities at its senior levels, and the firm’s ability to take a leading position in a marketplace that demands diversity. With these goals in mind, our recommended best practices are:

- 1. Develop a strategy, set targets, and establish a timeline for what the firm wants to achieve.** A strategy is best developed in collaboration with members of the firm and with an outside specialist. It is difficult for any firm to take an objective look at its own culture, articulate its needs, and reach consensus about action items without an independent analysis to provide additional perspective based on other firms’ policies and experiences, and advise about possible solutions.
- 2. Take a hard look at the data. Use gender metrics and gender statistics to measure and track the status of key factors over time.** As discussed above, 60% of the women respondents agreed that monitoring gender metrics is important to the advancement and retention of experienced women lawyers. A firm can focus on various key metrics, such as attrition, promotion, work assignments, compensation, bonuses, credit allocation and client succession, according to its specific goals. As examples, a firm may choose to look at gender statistics by overall firm; focus on major clients; practice area or office; posi-



- tion; departure data; or other parameters. Take some “soft measures,” including at least some of the perception and satisfaction data we describe above. When an experienced women lawyer leaves, conduct an exit interview and collate the findings over time.
- 3. Affirm leadership’s commitment to take specific actions for gender diversity.** Not only should firm leaders convey the message that they are committed to increasing gender equity, they also need to take actions demonstrating that this commitment is integral to the firm’s mission. For example, firm leaders should be assigned an initiative or area of improvement for which they are personally responsible. Thereafter, leadership must be held accountable if measurable progress is not made.
  - 4. Own the business case for diversity.** Firm leadership has to truly understand the business value of making retention and advancement of experienced women attorneys a core firm priority. Research makes clear that the presence of women in leadership roles has a positive impact on both innovation and diversity. Corporations are increasingly demanding diverse teams to handle their matters, and are making clear that a decision to retain a firm or to discontinue relationships with firms will be based, in part, on the firm’s demonstrated commitment to diversity. Clients correctly recognize that promoting greater diversity in the law firms they hire will lead to better decision-making, work product, and results. For example, corporations are increasingly requesting that senior women litigators serve as first chairs on their trials, based on research that female partners are more likely than male partners to get courtroom wins.
  - 5. Take steps to ensure that there is a critical mass of women partners on key firm committees.** This is vitally important with respect to committees that make decisions concerning the advancement of lawyers to partner and equity partner; the lateral partner hiring committee; the compensation committee; the firm Executive Committee; and appointments of office managing partners, practice group leaders, and other leadership roles. Firms should consider adopting the Mansfield Rule, which sets an aspirational goal of having at least 30% women lawyers and attorneys of color on key firm committees.
  - 6. Assess the impact of firm policies and practices on women lawyers.** In particular, evaluate practices relating to compensation, credit allocation, client succession, business development opportunities and internal referrals. Transparency and equal treatment for men and women with respect to these policies are vitally important. In large firms, written policies are far preferable to ad hoc decision making which, because of implicit biases and favoritism, generally disadvantage women and create considerable dissatisfaction. In addition, firms should consider the adoption of a formal process of dispute resolution to resolve disagreements concerning origination credit, client succession, and compensation.
  - 7. Continue to implement implicit bias and sexual harassment training for all partners.** Such training is an important baseline activity, to ensure that from the day women join the firm, they are treated equitably and with the respect that they deserve. Demeaning communications, unwanted sexual advances, gender bias, and double standards take a significant toll on women at all levels, contribute to dissatisfaction with a firm, and ultimately can influence the decision to leave.

- 8. Increase lateral hiring of women partners.** Legal recruiters play an important role in law firm hiring of lateral partners. Given the fact that at many firms more partners are hired laterally than are promoted internally<sup>60</sup>, it is critical that law firms instruct the recruiters they retain to focus on identifying potential women lateral candidates, including searching for qualified candidates out of existing networks. We recommend a special focus on practice areas where women are generally under-represented, such as antitrust, private equity, intellectual property, and mergers and acquisitions. Firms can set targets for the number of women who are presented by recruiters as lateral hire candidates, as well as the overall percentage of lateral hires that the firm makes.
- 9. Provide resources to relieve pressures from family obligations that women more often face than their male colleagues.** Incentivize partners to avail themselves of part-time and flex-time policies. This can be done by removing the stigma and ensuring that lawyers are not impeded in their career advancement on account of using such policies. Promoting those who have used such policies to partner status is one meaningful way to remove the stigma that prevents so many lawyers, male and female, from using such policies. In addition, provide assistance and support to lawyers with family obligations, such as childcare programs, concierge services and other measures to make work-life balance more achievable.

Ultimately, achieving gender diversity is a matter of how much talent do law firms want to attract and retain, and what are firms willing to do to advance a range of diverse attorneys in their firms. With input from genuinely diverse perspectives, firms can frame policies and procedures that fit their desired culture and also meet the goal of providing men and women equal access to successful long term careers in the law. Only the full strength and voice of a firm's leaders can give teeth to a firm's efforts to ensure the advancement and retention of experienced women lawyers and position the firm as a leader in the marketplace.



# Endnotes

<sup>1</sup> Co-chair, American Bar Association Presidential Initiative on Long-term Careers for Women in the Law; Senior Partner, Fine, Kaplan & Black, R.P.C.; Former Chair, ABA Commission on Women in the Profession.

<sup>2</sup> Co-chair, American Bar Association Presidential Initiative on Long-term Careers for Women in the Law; Founding Partner, Scharf Banks Marmor LLC; Chair, ABA Commission on Women in the Profession.

<sup>3</sup> E.g., <https://www.law.com/2018/09/24/data-snapshot-is-big-law-making-progress-on-gender-diversity>.

<sup>4</sup> The NAWL Annual Survey of Women in Law Firms was designed, implemented and reported by Stephanie Scharf from 2006 through 2014, with collaboration at various times with Roberta Liebenberg, Barbara Flom, and Christine Amalfe. The Survey is now overseen by Destiny Peery, Northwestern Pritzker School of Law. For the NAWL series of reports, see <https://www.nawl.org/p/cm/ld/fid=82>.

<sup>5</sup> See 2018 Vault/MCCA Law Firm Diversity Survey, <https://www.mcca.com/resources/surveys/2018-vault-mcca-law-firm-diversity-survey/>.

<sup>6</sup> “Women and Minorities at Law Firms: What Has Changed and What Has Not in the Past 25 Years?” February 2018, <https://www.nalp.org/0218research>.

<sup>7</sup> See *NALP Bulletin*, April 2019 (women comprised 19.6% of equity partners in 2018, and a much higher percentage of women are non-equity partners (30.5%)), <https://www.nalp.org/0419research>. See also 2018 NAWL Annual Survey on Retention and Promotion of Women in Law Firms (“NAWL Survey”), covering the nation’s 200 largest firms. “The likelihood that women will become equity partners remains on a sluggish upward trajectory over the last 12 years, with the data reflecting an increase from 15 percent in 2006 to 20 percent in 2018.” <https://www.nawl.org/p/cm/ld/fid=1163>, at 7.

<sup>8</sup> 2018 Vault/MCCA Law Firm Diversity Survey at 6.

<sup>9</sup> *Id.*

<sup>10</sup> 2018 Vault/MCCA Law Firm Diversity Survey at 6 shows that women constitute 24% of management committee members; 24% of practice group leaders; and 21% of office heads.

<sup>11</sup> Vivian Chen, “Partnership Classes Are Shrinking, Hampering Advancement and Diversity.” (Feb. 5, 2019).

<sup>12</sup> <https://www.raw.com/2019/05/06/data-snapshot-the-path-to-big-law-equity-partnership-is-narrowing>.

<sup>13</sup> The “Special Report: Big Law is Failing Women,” *The American Lawyer*, May 28, 2015.

<sup>14</sup> See, e.g., ALM Intelligence, “Where Do We Go from Here? Big Law’s Struggle with Recruiting and Retaining Female Talent,” April 2017. <https://www.law.com/sites/ali/2017/04/17/where-do-we-go-from-here-big-laws-struggle-with-recruiting-and-retaining-female-talent>.

<sup>15</sup> Stephanie Scharf and Roberta Liebenberg, “First Chairs at Trial: More Women Need Seats at the Table,” ABA Commission on Women in the Profession (2015).

<sup>16</sup> *Id.* note 13.

<sup>17</sup> 2018 NAWL Annual Survey at 7, 12.

<sup>18</sup> 2018 NAWL Annual Survey at 7.

<sup>19</sup> “Women and Minorities at Law Firms: What Has Changed and What Has Not in the Past 25 Years?” February 2018, <https://www.nalp.org/0218research>.

<sup>20</sup> See, e.g., “Why Diversity Matters,” McKinsey & Company (2015); Marcus Noland, Tyler Moran, and Barbara Kotschwar, “Is Gender Diversity Profitable? Evidence From a Global Survey,” The Peterson Institute for International Economics (February 2016).

<sup>21</sup> E.g., “Closing the Gap: A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation” (ABA Task Force on Gender Equity, August 2013); “Power of the Purse: How General Counsel Can Impact Pay Equity for Women Lawyers” (ABA Task Force on Gender Equity, August 2013); “What You Need to Know About Negotiating Compensation” (ABA Task Force on Gender Equity, August 2013).

<sup>22</sup> <https://www.law.com/americanlawyer/almID/1202791138736/>.

<sup>23</sup> A total of 1,325 total responses were initially collected. Sixty-three responses were excluded from our analyses because the respondent reported being an associate or staff attorney and was not on a track to advance into higher levels of the partnership; or because the respondent did not identify their gender.

<sup>24</sup> The distribution in our sample of gender by years out of law school is: 15-20 years: 81.5% women; 21-25 years: 81% women; 26-30 years: 73.7%

women; 31-35 years: 66.3% women; 36-40 years: 59.4% women; 40+ years: 35% women.

<sup>25</sup> See, e.g., Aviva Cuyler, “Diversity in the Practice of Law: How Far Have We Come?” American Bar Association, 2012. [https://www.americanbar.org/groups/gpsolo/publications/gp\\_solo/2012/september\\_october/diversity\\_practice\\_law\\_how\\_far\\_have\\_we\\_come/](https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2012/september_october/diversity_practice_law_how_far_have_we_come/)

<sup>26</sup> The ABA Initiative on Long-Term Careers and the ABA Commission on Women in the Profession have sponsored an independent national study on Achieving Long-Term Careers for Women Attorneys of Color, the results of which will be published by Fall 2019.

<sup>27</sup> See, e.g., <https://hbr.org/2017/04/how-gender-bias-corrupts-performance-reviews-and-what-to-do-about-it>.

<sup>28</sup> See, e.g., <https://hbr.org/2018/06/3-biases-that-hijack-performance-reviews-and-how-to-address-them>; <https://www.hcamag.com/au/news/general/the-danger-of-unconscious-bias-in-hr-decisions-and-how-to-overcome-it/151339>.

<sup>29</sup> Renwei Chung, “Unconscious Bias Remains Silent But Deadly for Legal Diversity,” Above The Law, Mar. 10, 2017, <http://abovethelaw.com/2017/03/unconscious-bias-remains-silent-but-deadly-for-legal-diversity/>.

<sup>30</sup> The questions about job satisfaction mirror the job satisfaction questions used in “After the JD: Third Results from a National Study of Legal Careers,” at 50-51. Published by the American Bar Foundation and NALP Foundation for Law Career Research and Education (2014). The satisfaction questions had five response categories: extremely satisfied, somewhat satisfied, neutral, somewhat dissatisfied, and extremely dissatisfied. In this analysis, we typically grouped “extremely” and “somewhat satisfied” responses unless there is an unusual gender distribution. Similarly, we typically grouped the “somewhat” and “extremely” dissatisfied responses.

<sup>31</sup> Responding “extremely” or “somewhat satisfied” to each factor.

<sup>32</sup> Responding “extremely” or “somewhat satisfied” to each factor.

<sup>33</sup> Responding “extremely” or “somewhat satisfied” to each factor.

<sup>34</sup> Responding “somewhat” or “extremely dissatisfied” to each factor.

<sup>35</sup> Each of these questions show significant differences in response distribution by gender at the

.001 level using a Chi-square test, with the exception that item 7 is significantly different at the .005 level.

As above, these percentages are for women and men reporting that they are “extremely satisfied” or “somewhat satisfied” with the aspect of their work.

<sup>36</sup> The most recent study of partner compensation by Major Lindsey & Africa found that, on average, male partners earn \$959,000 compared to \$627,000 for female partners, a 53% difference. “New Survey Finds Even Bigger Gender Gap in Big Law Partner Pay,” *The American Lawyer*, Dec. 6, 2018. Moreover, one of the key factors in the long-standing pay gap between male and female equity partners is that male partners receive on average over \$1 million more in origination credit than female partners. *Id.* at 24, 27. For example, in the Major Lindsey & Africa 2018 Partner Compensation Survey, the gain for male partners in origination credit was 8% in 2016; while female partners’ origination credit declined 8%. *Id.* at 13.

<sup>37</sup> The Report of the Eighth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms (February 2014) showed that having two or more women on a compensation committee has a significant impact in ameliorating the gender pay gap. *Id.* at 5, 12-13. <https://www.nawl.org/p/cm/ld/fid=82#surveys>.

<sup>38</sup> Y. Yao, E. Locke and M. Jamal, *On A Combined Theory of Pay Level Satisfaction*, *Journal of Organizational Behavior*, Nov. 3, 2017. <https://doi.org/10.1002/job.2243>

<sup>39</sup> Major Lindsey & Africa, “2018 Partner Compensation Survey,” at 17, 22, 33.

<sup>40</sup> *Id.* at 12.

<sup>41</sup> Logistic regression indicates that for each of these questions women are significantly more likely than men to experience these events (all p values are < 0.001).

<sup>42</sup> Logistic regression indicates that for each of these questions women are significantly more likely than men to experience these events (all p values are < 0.001).

<sup>43</sup> The results of other surveys examining unwanted sexual conduct in law firms are consistent with the results here. See, Lauren Rikleen, “Survey of Workplace Conduct and Behaviors in Law Firms,” The Women’s Bar Association of Massachusetts, [www.womensbar.org](http://www.womensbar.org). See also Chang and Chopra, “Where Are All the Women Lawyers?” FORUM, Sept./Oct. 2015 at pp. 15-20 (reporting that 2005

survey of California lawyers found that 50% of women respondents reported sexual harassment). <https://www.360advocacy.com/wp-content/uploads/2015/10/ChangChopraArticle-1-.pdf>; Results of the 2015 YLD Survey on Women in the Legal Profession, The Florida Bar, at 9 (17% of the respondents stated they had experienced harassment). <https://www.floridabar.org/wp-content/uploads/2017/04/results-of-2015-survey.pdf>; Report of the Florida Bar Special Committee on Gender Bias, May 26, 2017 at 1 (one out of every seven female lawyer respondents stated they had experienced harassment or bullying due to their gender within last three years, and only 23% of those who reported the incident to a supervisor stated that the complaint was resolved satisfactorily); <https://www.floridabar.org/wp-content/uploads/2017/06/Special-Committee-on-Gender-Bias-Report-2017.pdf>; *Women Lawyers of Utah, The Utah Report: The Initiative of the Advancement and Retention of Women in Law Firms* (Oct. 2010), [http://ms-jd-org/files/wlu\\_report\\_final.pdf](http://ms-jd-org/files/wlu_report_final.pdf) (“37% of women in firms responded that they experienced verbal or physical behavior that created an unpleasant or offensive work environment[, and] 27% of the 37% indicated that the situation became serious enough that they felt they were being harassed (approximately 10% of women in firms). The vast majority (86%) of those reporting harassment identified sex as the basis for the harassment.”); ABA Commission on Women in the Profession, *The Unfinished Agenda: Women and the Legal Profession* 18-19 (2001) (citing survey results indicating that one-half of two-thirds of women lawyers experienced or observed sexual harassment).

<sup>44</sup> See ABA Resolution 302 (February 2018) and ABA Resolution 300 (August 2018) and accompanying Reports. The ABA Commission on Women’s publication “Zero Tolerance” provides concrete best practices and solutions to combat sexual harassment in the workplace.

<sup>45</sup> See, e.g., “A Post-#MeToo Standard Emerges in Law Firms as Orrick, Mayer Brown Oust Partners,” *The Recorder*, March 29, 2019.

<sup>46</sup> Respondents had to choose one of five response categories about a given factor: very important reason for staying; somewhat important reason for staying, neutral, somewhat important reason for

leaving, very important reason for leaving. To keep the questionnaires a manageable length, we did not collect individual responses about why men leave.

<sup>47</sup> We note from other research that both men and women leave the legal profession for work in other sectors in increasing numbers over time. “After the JD III: Third Results from a National Study of Legal Careers,” American Bar Foundation and NALP Foundation for Law Career Research and Education (2014).

<sup>48</sup> Each of these questions show significant differences in response distributions between men and women at the .001 level using a Chi-square test. The number of managing partners was not large enough to compare their response distributions.

<sup>49</sup> Rounded to the nearest whole percentage for listing in this chart. Adding unrounded percentages from columns 1 and 2 accounts for any difference between the total percentage listed in column 3 versus adding the rounded percentages in columns 1 and 2 for “very important” and “somewhat important.”

<sup>50</sup> Logistic regressions with gender predicting likelihood of sole responsibility in these domains were all significant with  $p < 0.001$ .

<sup>51</sup> “At Kirkland, Concierge Service Aims to Ease Personal Distractions for Lawyers,” <https://www.law.com/americanlawyer/2018/11/13/at-kirkland-concierge-service-aims-to-ease-personal-distractions-for-lawyers/>

<sup>52</sup> 2018 Vault/MCCA Law Firm Diversity Survey at 17. This reality is reflected by the fact that according to the Vault survey, less than 1% of male associates and less than 4% of female associates work part-time schedules.

<sup>53</sup> *Id.*

<sup>54</sup> See M. Brodherson, L. McGee and M. Pires dos Reis, “Women in law firms,” McKinsey & Company (2017) at 9. <https://www.mckinsey.com/featured-insights/gender-equality/women-in-law-firms>.

<sup>55</sup> According to a 2013 NALP Survey, 87% of law firm partners are supported by a stay-at-home spouse. Oct. 21, 2013 National Law Journal, “*Diapers, Laundry and a Legal Practice*.” By way of contrast, the PAR/MCCA/ABA Commission Report in 2010 found that only 13% of female partners had a spouse at home full-time, while just 10% had a spouse home part-time.

<sup>56</sup> Lauren Rikleen, “Are Women Held Back By Colleagues’ Wives?” *Harvard Business Review*, <https://hbr.org/2012/05/are-working-women-held-back-by>.

*See also* Anna Dorn, “Big Law Is Still an Old Boys’ Club,” May 8, 2018. <https://medium.com/s/all-rise/big-law-remains-an-old-boys-club-b8fd85647305>.

<sup>57</sup> A respondent was coded as “agreeing” with the statement if he/she “strongly” or “somewhat” agreed.

<sup>58</sup> Unfortunately, the stark differences in opinion between experienced male and female lawyers concerning their firms’ efforts to create a level playing field for women also exist among millennial lawyers, which further underscore the need for fundamental change. A new survey of over 1,200 millennial attorneys found that 45% of the women strongly agreed that law firm culture is inherently sexist, compared to just 14% of men. Over 56% of the millennial women strongly agreed that there is a gender pay gap, compared to just 18% of men. Also, while 63% of the

women strongly agreed that a diverse and inclusive workforce should be a priority for law firms, only 37% of the millennial male attorneys strongly agreed. *See* Major Lindsey & Africa, “2019 Millennial Attorney Survey: New Expectations, Evolving Beliefs and Shifting Career Goals” (April 2019). <https://www.mlaglobal.com/en/knowledge-library/research/2019-millennial-attorney-survey-new-expectations-evolving-beliefs-and-shifting-career-goals>.

<sup>59</sup> Each respondent was asked to rate a policy only if her firm had already implemented the policy.

<sup>60</sup> *See* “2019 Client Advisory” by Hildebrandt Consulting and Citibank at 11 (reporting that in 2017, more partners were hired laterally than promoted internally). *See also* “Should Law Firms Be Clamoring For Diversity in Recruiters?,” *Law 360*, Oct. 4, 2019.

**The data contained in this report are from a collaborative research project by the American Bar Association and ALM Intelligence. An initial report of research results was presented in August 2018 at the American Bar Association Annual Meeting and may be found at [https://www.americanbar.org/news/abanews/aba-news-archives/2018/08/annual\\_meeting\\_20183/](https://www.americanbar.org/news/abanews/aba-news-archives/2018/08/annual_meeting_20183/).**

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The Initiative has implemented four research projects, which as of October 2019, have been completed and are in various stages of publication:

1. This joint ABA/ALMI survey of law firm managing partners and practicing attorneys;
2. A representative survey of law school alumni in order to generate systematic data about the course of long-term careers for women and men in the legal profession, and the professional, social and personal factors that enhance or impede legal careers;
3. A national study based on focus group data to understand factors that affect long-term careers for women lawyers;
4. A national study focusing specifically on women lawyers of color using focus group and individual data.

This report, “*WALKING OUT THE DOOR: The Facts, Figures and Future of Experienced Women Lawyers in Private Practice*,” reflects key contributions from several people affiliated with the American Bar Association Presidential Initiative on Long-Term Careers for Women in Law and ALM Intelligence. ALM Intelligence President Andrew Neblett shared our vision of conducting innovative research on women in large firm practice and provided practical, thoughtful advice throughout the research process. ALM Intelligence Senior Research Manager Carole Clark oversaw the data collection process with dedication and efficiency, and ALM Intelligence Director of Research Steve Kovalan conducted the initial analyses that were presented at the ABA Annual Meeting in August 2018. We are grateful for the many contributions made by Joyce Sterling, Senior Social Scientist at the American Bar Foundation and Professor at the University of Denver Sturm College of Law, who gave guidance for the research design and questionnaires. Research Associate Caroline Tipler, working through the American Bar Foundation, helped with the many administrative aspects of implementing this study and conducting a first round of data organization. We also recognize the contributions of Natalie Gallagher, Northwestern University Graduate Student, who worked with us to conduct the data analyses in this report.

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## Hybrid Work Models Are Key To Gender Parity In Law Firms

By **Roberta Liebenberg and Stephanie Scharf** (July 16, 2021)

The COVID-19 pandemic caused a profound paradigm shift for the legal profession, as law firms and other legal employers were compelled to transition almost overnight to near-universal remote work.

Despite widespread concerns at the outset, the vast majority of lawyers were able to work productively from home, and indeed many law firms reported a record year in 2020.

As COVID-19 vaccination rates rise and offices reopen, employers are crafting back-to-work policies.

Just as a remote work schedule was widely adopted during the many months of the prevaccine pandemic, we urge that a hybrid approach to work should be the new normal in post-pandemic law practice, providing lawyers with the discretion to decide for themselves how often to work in the office or at home.

### The Value of Hybrid Work Policies

New data from our national survey of thousands of practicing lawyers, "Practicing Law in the Pandemic and Moving Forward,"<sup>[1]</sup> show no consensus about whether and when to work remotely or onsite.

There is both a significant gender gap and a gap between senior and younger lawyers about preferences for remote or in-office work. The majority of female lawyers with children, and both male and female younger lawyers, report that they would like to retain the ability to determine for themselves how often they work from home, anywhere from one to five days a week.

Female lawyers, who are much more likely to be responsible for children and family care, greatly prefer options for remote working.

In-person schooling will not resume until late August or September. Significant percentages of adults still have yet to be fully vaccinated, and younger children have not been approved to receive vaccinations. The delta variant is continuing to spread, and health agencies are concerned about an increase in COVID-19 cases as we move into the cooler weather of the fall and largely indoor life.

In short, at this time it remains unclear whether the pre-pandemic routine of in-office work for the vast majority of lawyers is now prudent or desirable.

As firms grapple with how to frame their post-pandemic workplace policies, many different approaches have been adopted.

Some firms have stated that lawyers will be able to continue to work remotely at their discretion, with no prescribed amount of time in the office. Other firms are requiring a set number of days in the office per week.



Roberta Liebenberg



Stephanie Scharf

And some firms have sent mixed messages by formally allowing flexibility, while at the same time encouraging their lawyers to return to the office, signaling that in-person work is preferred.

Some law firm leaders have stressed the importance of in-office work in order to preserve their firm's culture.[2]

That justification, however, begs the question: What is the culture that a firm trying to preserve, and will that culture be an inclusive one in which female lawyers can advance and succeed?

Today's typical firm culture is one in which women are still grossly underrepresented in positions of real power and influence, accounting for only about 21% of equity partners — even though nearly 50% of graduating law students have been women for several decades, and women now outnumber men among law school graduates.[3]

At the same time, firm cultures have typically failed to recognize and address the disproportionate burdens and challenges faced by female lawyers with children.

Our "Walking Out The Door" study found that 54% of experienced female lawyers reported that they have full responsibility for arranging child care, compared to only 1% of men, and 58% of experienced women attorneys ascribed their decision to leave their firms to their caretaking commitments.[4]

Consequently, prior to the pandemic, law firms' workplace policies led to disproportionately high rates of attrition of female lawyers.

The flex-time and part-time policies in place before the pandemic were utilized primarily by women with young children — in fact, approximately two-thirds of the lawyers with such schedules were women.[5]

These policies were not successful and were not widely utilized[6] because they did not provide a pathway for advancement. Female lawyers who worked on a flex-time or part-time basis were rarely promoted to partnership positions,[7] were often overlooked for important matters and were incorrectly perceived as not sufficiently committed to their firms and careers.[8]

Based on our extensive research about the course of careers for female lawyers, we believe it is imperative to devise hybrid work policies that are more than mere hype and affirmatively embrace flexibility as a model, rather than an exception.

Hybrid work should be normalized so that the pre-pandemic gender divide, in which remote work was done primarily by female lawyers, does not recur.

In the current hypercompetitive legal market, firms that revert to a required five-days-in-the-office week may quickly lose a number of talented female and younger lawyers in whom they have made substantial investments, as those lawyers move to other employers who will allow a hybrid schedule.

Put bluntly, to successfully retain and advance a meaningful number of women, not just men, firms will need to:

1. Allow a great deal of flexibility in where work is done;

2. Provide technological support for remote work; and

3. Implement meaningful policies and practices that keep lawyers engaged and connected with the firm and each other regardless of where they work, and foster a culture in which remote work does not derail one's career.

### **Components of an Effective Hybrid Work Policy**

The pandemic has proven the success of remote work and created a unique opportunity for law firms to reconsider and reimagine their prior flex-time policies, as well as to adopt new ones that might finally succeed in moving the needle on gender equality.

The pandemic has also demonstrated that working at the office is not essential to ensuring innovation and creativity,<sup>[9]</sup> nor is it necessary to create high-quality work.

Also, firms and clients have grown accustomed to virtual meetings via Zoom, which save time and expense and provide the added benefit of allowing broader participation by younger lawyers, who in the past would be limited in their attendance because of travel expenses.

In crafting new work policies that entail hybrid schedules, firms should think outside the box and continue to ensure that those who work remotely stay connected with their team and office colleagues.

We recommend the following best practices for the development of hybrid work policies that will afford lawyers both the flexibility they seek as well as opportunities for social interaction, connection, business development, and other training.

#### ***Be intentional.***

Be purposeful in ensuring that all people who work remotely have a clear path forward and an equitable opportunity to advance and succeed.

Policies should be developed with a broad array of input from lawyers at all levels.

Firm leaders are typically past their child-raising years and consequently may overlook resources that are essential to those with child care and other family obligations. Enlist the input of female lawyers to determine the types of technological and administrative resources and support they need, such as flexible hours, shorter work weeks, backup child care resources or others.

Developing a hybrid work policy without such input will greatly reduce the chances for success.

#### ***Develop policies to maintain increased engagement at all levels.***

When lawyers work remotely, it is important for them not to feel left out or sidelined, for their own morale and for the benefit of the firm.

There are a number of strategies we recommend to ensure all lawyers feel connected, regardless of where they work.

Certain days each month can be designated for in-person meetings of practice groups, departments or the entire office.

In-person or virtual social events can also be held to promote social interaction, camaraderie and morale.

Firms can arrange one-on-one calls or other forms of pulse checks to discuss how lawyers are faring and what the firm can do to help them succeed.

Regardless of the specific practices a firm chooses, the key is to develop ongoing activities that are truly inclusive of all lawyers, whether they work remotely, in the office or on a hybrid basis.

***Use metrics to track results over time.***

Carefully track how many lawyers who avail themselves of hybrid work policies are being promoted.

Monitor the types of assignments and client opportunities obtained by lawyers who work mostly from home to ensure that they are not being disadvantaged and are receiving the experiences necessary in order to be promoted.

Track how often men and women take advantage of these hybrid work policies and their rates of promotion.

Careful review of performance evaluations is necessary to spot implicit bias and determine whether lawyers who primarily work remotely are receiving critical comments about their commitment to the firm or effectiveness.

Metrics can also allow a firm to show that a hybrid of remote and in-office working fosters success for individual lawyers.

***Develop transparent and specific guidelines around remote work.***

Guidelines and checklists should set forth expectations about working from home, and reasonable boundaries for when the work day begins and ends.

We continue to see many firm leaders who expect young associates to be available 24/7, regardless of circumstances at home that simply make that expectation untenable.

Establish policies with respect to after-hours meetings, phone calls and emails — for all lawyers, not just those who work remotely.

***Provide the necessary technology and administrative support for lawyers and staff to be productive regardless of their work locale.***

The firm should make it easy for any lawyer to attend group calls, contact administrative personnel, access documents online, and have their own online office meeting rooms and even a casual space for dropping by to chat.

The goal is to create a unified set of experiences, whether through a business office or home office.

Help lawyers set up an effective home office, with at least a high-speed printer and office supplies. The same resources needed to sustain business offices can be transferred to supporting a home office.

Firms can use the substantial cost savings resulting from a diminished need for office space for lawyers working from home and invest in additional technological and administrative support.

***Actively support hybrid work policies.***

Law firm leaders can advance the success of hybrid work by demonstrating their personal support.

They can set an example by personally working on a hybrid basis, sending communications that endorse remote work and lawyers who are successfully using hybrid policies.

Recognize lawyers who work remotely by publicly acknowledging a good result or praising the success of a team that includes lawyers working from home.

Remote lawyers can feel disassociated from the rest of the team, and recognition of their contributions boosts morale and sends a powerful message to others that remote work can lead to advancement.

**Conclusion**

The pandemic has fundamentally altered the practice of law, and the lessons learned during this difficult period should lead to more enlightened, family-friendly hybrid work policies that are long overdue.

Hybrid work policies that enable lawyers to continue to work from home, especially women with children, can be a win-win for both law firms and their lawyers.

Implementing well-framed hybrid work policies can ensure that, unlike the pre-pandemic era, lawyers working remotely are treated no differently for purposes of assignments, compensation and advancement than those who come into the office on a daily basis.

We believe that new and effective hybrid work policies can help stem the tide of attrition of women that has persisted for so many years, draining the profession of talented and experienced female lawyers, especially women with children.

Remote work has been widely embraced by large numbers of lawyers during the pandemic. As a result, law firms that are successful with hybrid work policies will enjoy a competitive advantage in recruiting and retaining top talent and obtaining business from the many clients who are increasingly looking to retain female lawyers to handle their matters.

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*Profession.*

*The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.*

[1] S. Scharf and R. Liebenberg, Practicing Law in the Pandemic and Moving Forward – Results and Best Practices from a Nationwide Survey of the Legal Profession, American Bar Association, April 26, 2021.

[2] See, e.g., "As Law Firms Set Post-Pandemic Work Policies, It Looks A Lot Like The Old Normal," American Lawyer by Dylan Jackson and Patrick Smith, June 10, 2021; "Kirkland Sticks To Office Workplace, While Firms Go Remote," Law360 by Sarah Martinson, July 12, 2021.

[3] S. Scharf and R. Liebenberg, "Law Firm Talent Must Reflect Shifting US Demographics," Law360, June 16, 2021.

[4] R. Liebenberg and S. Scharf, "Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice," American Bar Association, November 2019 at 12.

[5] 2018 Vault/MCCA Law Firm Diversity Report at 17.

[6] Before the pandemic, only 6-7% of lawyers regularly used flex-time or part-time policies. 2018 Vault/MCCA Law Firm Diversity Report at 17.

[7] Diversity & Flexibility Alliance, 2017 Flexibility Benchmark Survey Report, Executive Summary at 3.

[8] Our Walking Out the Door study found that 63% of experienced women lawyers stated that, on account of their gender, they have been perceived as not sufficiently committed to their career. Walking Out the Door at 8. Also, in our Moving Forward survey, nearly three times as many women as men expressed a concern that working remotely would be viewed by their employer as lacking a commitment to the employer. Moving Forward at 36-37.

[9] See New York Times, July 1, 2021, "Do Chance Meetings at the Office Boost Innovation? There's No Evidence of It."



# PRACTICING LAW IN *the* PANDEMIC *and* MOVING FORWARD

RESULTS AND BEST PRACTICES FROM A NATIONWIDE  
SURVEY OF THE LEGAL PROFESSION



AMERICAN **BAR** ASSOCIATION



# PRACTICING LAW IN *the* PANDEMIC *and* MOVING FORWARD

**RESULTS AND BEST PRACTICES FROM A NATIONWIDE  
SURVEY OF THE LEGAL PROFESSION**

**Stephanie A. Scharf and Roberta D. Liebenberg**

**with Natalie M. Gallagher and Destiny Peery**



AMERICAN **BAR** ASSOCIATION

**PRACTICE  
FORWARD**

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# Foreword

Patricia Lee Refo, President,  
American Bar Association

**A year ago**, when then-President Judy Perry Martinez and I created the Coordinating Group on Practice Forward, the pandemic had already caused unprecedented disruption in how we practice law and serve our clients. We went from seeing colleagues, clients and judges in offices and courtrooms to a virtual “Zoom” reality that allows us to peer into each other’s dining rooms and be entertained by each other’s pets. Courtroom proceedings also went virtual or were put on hold, causing delays in justice. Law schools and bar exams were upended. The shift was dramatic as we had to learn new technologies and skills, take on the role of educating our children at home—which had also become our workplace—and deal with the additional stress of COVID-19 affecting the health of our loved ones and fears that we might be next. During this *annus horribilis*, protests against racially motivated police violence ignited across the country and the globe in the wake of the brutal killing of George Floyd, causing a level of social unrest not seen since the 1960s and resulting in even more stress, especially for lawyers of color.

In the face of change and challenge, we do what American lawyers have done since lawyers helped found this country: we choose to get to work to help to solve the problems before us. Practice Forward is harnessing the power of the association and all its entities to help America’s lawyers, in all practice settings, navigate this new environment and thrive. Chaired by our long-time energetic and knowledgeable ABA leaders Bill Bay and Laura Farber, Practice Forward is taking on the challenge and providing thought leadership and recommendations for short- and anticipated long-term changes to the practice of law in light of the pandemic. After quickly setting up an extensive website featuring resources from across the ABA designed to help lawyers in every practice setting, the group commissioned this survey last fall to learn what resources would be most helpful to lawyers in a “new normal” and to understand the expectations for law practice as the pandemic dissipates.

What will “re-entry” look like post-pandemic? Will we ever go back to practicing in offices full-time or will we move to a hybrid model, working in the office part of the week and remotely part of the week? How will a different physical platform impact engagement and teamwork? How do we mentor and raise up young lawyers in a partly virtual or all virtual setting?

How can we best support the mental health and wellness of lawyers and team members working remotely? How does remote working impact diversity, equity and inclusion in the legal profession? What additional resources do lawyers need to thrive in a remote work setting? What resources do working parents need?

How can we help our courts develop procedures and best practices, and what new skills do lawyers need to learn to effectively represent clients in virtual proceedings? What new ethical and professional responsibility issues arise to the extent our profession stays virtual?

These are only a few of the many questions we as a profession have to answer.

Thousands of lawyers were surveyed about the challenges they are facing, and the results are telling. More than half of all respondents were working from home 100% of the time. While most reported that they are just as productive, they often feel overwhelmed.

Lawyers worry about their job security. They worry about client access and developing business. They worry about juggling billable hour requirements with work and home responsibilities. And although the transition to remote work has affected all lawyers, the survey found it has had a disproportionate impact on women lawyers with children and lawyers of color.

Concerns about mental health and wellness have long been and remain critical issues for our profession; unsurprisingly, they also emerged as a main concern in the Practice Forward survey. Due to the pandemic, women lawyers with children have been more likely to have increased childcare responsibilities and disruptions to their work. Male lawyers with young children are struggling as well. Women lawyers say they need more supportive, engaged employers; comprehensive plans for sick and family leave and subsidies for childcare, family care and tutoring.

The survey results also confirmed the continued urgency of our work toward racial equity, in our country and in the legal profession. We need to forge new paths to ensure that our laws and policies do not explicitly or implicitly harm or exclude any person on account of race, ethnicity, gender and gender identity, sexual orientation, disability, or other factors that create injustice.

Periods of major disruption are growth accelerators, offering tremendous opportunities for leaders to rethink paradigms. Now is the time to set new long-term goals and strategies. This report sets out a range of best practices for legal employers to consider moving forward. I hope you will take the time to read the full report and consider how you can play a role in building a better, stronger, more resilient legal profession and a justice system that moves us ever closer to the promise of equal justice under law.

My thanks go to President Martinez, Bill Bay, Laura Farber, Bobbi Liebenberg, Stephanie Scharf, Natalie Gallagher, Destiny Peery, the members of the Coordinating Group on Practice Forward, and all who contribute to positioning America's legal profession as a force for equality and justice.



Patricia Lee Refo  
President  
American Bar Association,  
2020–2021

# Note from the Authors

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**We are pleased to present** the results of this innovative nationwide survey of American Bar Association members, the largest assessment of the experiences of lawyers in the United States during the COVID-19 pandemic, and their expectations about how law practice is likely to evolve going forward. The so-called “new normal” ways of working that were adopted in the early days of the pandemic have become a practical reality far longer than many of us first envisioned.

Starting in March 2020, lawyers throughout the country were compelled to quickly and fundamentally change how they worked with each other, provided client services, handled their workload, developed business, and managed the people and processes that take place in every organization. At the same time, lawyers were reacting to the many personal and family disruptions that accompanied the pandemic, and which affected lawyers’ productivity, effectiveness and mental well-being in working from home.

Change is an inevitable part of the legal profession. But the speed and breadth of change we experienced this past year is unprecedented in our lifetimes. As lawyers sought to adapt to the constraints and limitations imposed by the pandemic and then looked forward to post-pandemic practice, it became clear that change is not straightforward or seamless, and that we have yet to create fully functional concepts about what our work and workplaces will look like in 2021, 2022 and beyond.

This Report helps to fill those gaps by providing a full range of information about what the practice of law has looked like during the pandemic and what lawyers and employers will need to do in order to thrive once the pandemic is finally behind us. This Practice Forward survey, which reflects input from over 4,200 ABA members, is a representative sample of the hundreds of thousands of ABA members who practice law in the United States, from all geographic areas, practice settings, sizes of firms, corporations, and organizations, levels of experience, age, family status, races and ethnicities, types of gender identity, and types of disabilities.

Our goal is for leaders and other members of the profession to assess the multi-dimensional data we collected, and the resulting data-based best practices that we recommend in this Report, and use that information to engage in conversations at all levels around the policies and practices that model highly functioning, engaged, and productive lawyers and law groups, on a broad platform of diversity, equity and inclusion.

This project has greatly benefited from the work of many ABA leaders and other colleagues. ABA 2019–2020 President Judy Perry Martinez and 2020–2021 President Patricia Refo had the vision to create and support the Coordinating Group on Practice Forward. Laura Farber and Bill Bay have provided leadership for the many Practice Forward activities and were fully available with ideas and leadership for this research. Their commitment is inspiring. We were especially benefited by the input and suggestions of Paulette Brown, who provided creative ideas about the scope of the survey and questions that enhanced the overall scope and usefulness of the questionnaire. Many other ABA members gave time and comments during the design and pretest process, with enthusiasm and dedication. We especially thank the members of the Survey Advisory Committee for their strategic input: Denise Avant, Michelle Behnke, Paulette Brown, Cyndie Chang, Alfreda Coward, Barbara Dawson, Jeannie Frey, James Holmes, Scott LaBarre, Patricia Lee, Victor Marquez, Maureen Mulligan, Justice Adrienne Nelson, Richard Pena, Traci Ray, Judge Peter Reyes, Mary Smith, Daiquiri Steele, Hilary Hughes Young, and Joseph West.

We are also grateful to the ABA's Katy Englehart, Deputy Director, Office of the President, who provided outstanding encouragement and support, consistently smoothing the way and coordinating ABA staff and ABA members; and ABA staff members John Dudlo and Chris Urias, who provided a range of technical support around identifying member platforms and facilitating data collection.

Our Red Bee colleague Destiny Peery contributed both key concepts and tangible ideas for questionnaire design and analysis. We greatly value her innovative thinking and commitment to the power of well-designed research. Natalie M. Gallagher managed the logistics of turning the paper questionnaire into the electronic format needed to field and analyze a wide array of data from thousands of respondents, and then analyzed the many questions in terms of main and subgroup responses. We very much appreciate her dedication and patience with this complicated process.

We give a special thank-you to Red Bee principals Kelly McNamara Corley, Anthony Austin, Sondra Haley, Christine Edwards, and Laura Austin, for their support and commitment to the ideals and ideas that underlie this work. They are wonderful colleagues and friends and we are inspired by all that they do.



We appreciate the opportunity to design, analyze and report about this unusually comprehensive survey of the legal profession. We are planning a range of follow-up actions focused on creating a stronger, more efficient, and more broadly diverse and inclusive profession. We hope you will consider our recommended best practices, and we welcome your comments and reactions.



Stephanie A. Scharf and Roberta D. Liebenberg

with Natalie M. Gallagher and Destiny Peery



# I

## The Purpose of the Survey and Data-Based Best Practices



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*This extended period of remote work  
will have a transformative and  
far-reaching impact on  
the legal profession.*

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**The COVID-19 pandemic** has had a profound impact on work at all levels, and the legal profession is no exception. The near-universal transition to remote work was unprecedented. It created daunting technological and logistical challenges for legal employers. Lawyers, staff and employers devised new ways to keep teams connected, engaged, and productive. Firms were forced to grapple with the economic consequences of the pandemic, including meeting often pressing demands by clients for legal services and implementing cost saving measures, such as salary reductions, layoffs or furloughs of attorneys and support staff, shortened intern and summer programs, and deferral of the start dates for new associates.

Individual lawyers made substantial adjustments to deal with the “new normal.” Lawyers began working from home at the same time that there was a lack of child care, in-person schooling, and ready access to the myriad of social, household and personal services that we routinely use. Juggling both professional and family obligations under these conditions was extremely difficult, and this was particularly true for women with children. The transition to remote work has also been challenging for more senior lawyers, who were unaccustomed to working from home. The considerable stress and anxiety caused by the pandemic, coupled with the sense of isolation as a result of not being in the office, has created well-being and health issues.

This extended period of remote work will have a transformative and far-reaching impact on the legal profession. No one can predict in a vacuum what the post-pandemic practice of law will look like. To address these issues, the American Bar Association, as the national voice of the legal profession, formed an innovative Coordinating Group on Practice Forward to examine the emerging challenges confronting the profession, and to provide answers, potential solutions and resources to meet them.

This Report stems from the Practice Forward ABA Member Survey (“Survey”), one of the largest surveys ever taken of ABA members. The Survey covers how the pandemic is currently affecting lawyers, and the plans and expectations for law practice as the pandemic eventually comes to an end. Because of the size of the Survey, we were able to collect data from women and men across many practice areas, practice settings, age groups, races and ethnicities. We use the data as the foundation for our recommendations about best practices for legal organizations as we move past the pandemic into an era when lawyers will be rethinking how they practice, their preferred practice settings, and, indeed, whether they will continue to practice law or quit the profession altogether.

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We have  
the unique  
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As we emerge from the pandemic, we have the unique opportunity to re-evaluate and reimagine all aspects of the practice of law. For too many years, law firms, companies, and other work settings that employ lawyers have defaulted to structures, policies, and practices that are a carryover from decades-old approaches to hiring, retention, advancement, compensation, and diversity. All too often, the profession struggles with the ways in which the practice of law intersects with the ability to recruit, retain and advance a diverse range of talent, promote resilient and effective teams, implement fair and equitable

compensation structures that fit business goals and strategies, and support lawyer health and well-being.

Legal workplaces should represent the full range of talent that exists in the legal profession. They ought to be diverse, equitable, inclusive, and draw upon the breadth of experiences and knowledge that the legal profession has to offer.

With all of this in mind, we structured the Survey around two compelling topics: (a) the transformation of law practice during the pandemic, and (b) the anticipated changes in law practice that our post-pandemic world will bring. Many in the profession believe that post-pandemic practice will not be the same as recently as a year ago. While it is unclear whether changes that occurred to meet pandemic needs will remain permanent aspects of law practice going forward, we believe that to plan for effective and successful post-pandemic practice, the first step is understanding how the pandemic affected lawyers at work and at home, including different subgroups



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Legal workplaces should represent the full range of talent that exists in the legal profession. They ought to be diverse, equitable, inclusive, and draw upon the breadth of experiences and knowledge that the legal profession has to offer.

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of the legal profession, and how well various employers provided effective resources and support. Only with that understanding can decisions be made about whether change is needed in specific areas of work, how such changes may improve the practice of law, and how they can impact the diverse array of people who make up the legal profession now and into the future.

The Report includes eight sections: (1) The Purpose of the Survey and Data-Based Best Practices; (2) Design of the Survey, Methods of Analysis, and Demographics of Respondents; (3) Impact of the COVID-19 Pandemic; (4) What's Been Happening to Diversity Initiatives?; (5) Expectations and Issues for Post-Pandemic Practice; (6) Moving Forward with Best Practices for Employers; (7) Recommendations for Individual Lawyers; and (8) Conclusion.

## II

# Design of the Survey, Methods of Analysis, and Demographics of Respondents

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*The Survey covers workplaces  
that range in size from one attorney  
to 250 attorneys or more.*

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**We designed the Survey** to enable analyses that are representative of the hundreds of thousands of ABA members who practice law in the United States. To our knowledge, this is the only national survey taken of the legal profession during the pandemic that (a) allows an analysis of practicing lawyers in every practice area, practice setting, and along major demographic characteristics; and (b) generated data across a range of subject areas, including many different types of reactions to the pandemic and expectations for the future practice of law well after the pandemic has subsided.

## A. Questionnaire Design

The first step was to design a questionnaire that (a) applied to the full range of ABA members; (b) would generate data about reactions to the pandemic along many different dimensions, and (c) would yield data about attorney expectations and recommendations for effective post-pandemic legal practice. The questionnaire was designed to elicit responses from ABA members who practiced in the United States in all types of practice settings.

Because the population of working lawyers is socially heterogeneous, any understanding of how the COVID-19 pandemic was affecting lawyers, and what post-pandemic practice would look like, requires the ability to understand whether personal and social factors impact responses and, if so, to what extent. We therefore designed the questionnaire to obtain demographic information about individuals (such as age, gender, race/ethnicity, disability), information about workplace factors (such as work setting, level of seniority), and information about household factors (such as members of the household, whether there were dependent children in the household, and who was responsible for their care). All of these factors were used to better understand how lawyers were faring during the pandemic and the expectations of various groups of lawyers for their post-pandemic practice.

After designing and pre-testing the questionnaire, it was uploaded into the ABA Qualtrics system for distribution to attorneys who are ABA members, had provided email contact information to the ABA, and allowed the ABA to contact them for projects like this one.

Between September 30 and October 11, 2020, over 4,200 ABA members responded to the Survey.



## B. Methods of Analysis

After the Survey closed, the data were downloaded into Excel and provided to The Red Bee Group for analysis. For purposes of this Report, we include lawyers who are currently working in a job that requires a law degree, whether they are working full-time, part-time, or on temporary leave or furlough. In performing data analyses, we weighted responses by member age and gender, thereby enhancing our ability to draw conclusions representative of all ABA members.<sup>1</sup> The only unweighted responses that we report are in Section C, below, describing gender, sexual orientation, race/ethnicity, disability, age, practice setting, areas of specialization, and level of seniority within the sample. Each question is analyzed based on all participants who responded to the question, allowing more robust analyses of each question.<sup>2</sup> Given the large size of the sample, and the relative ease in reaching levels of significance, we typically report on significant differences only if a difference has a p value of .0001 or less. We also note that several demographic groups did not yield enough respondents to analyze that group's independent effects.

For this Report, we do not address every possible Survey result. Instead, we present the data that we believe have particular impact for understanding (a) how the COVID-19 pandemic has impacted lawyers and their practice of law; (b) how lawyers across all practice settings and levels of seniority expect the legal profession to change and operate differently as we emerge from the pandemic; (c) what types of resources and support are needed by lawyers to function effectively now and in the future; and (d) how lawyers believe the practice of law will change. For certain variables, we analyzed breakdowns by gender, race/ethnicity, or other population characteristics that might be expected to impact responses. When there was no meaningful difference among sub-groups, we report the results for the larger group as a whole.

## C. Demographics of the Survey Respondents

While the ABA has some demographic information about its members, there are also gaps. We therefore decided to ask each Survey participant basic demographic questions. We note that participants in the Survey were far more likely to respond to questions about their race/ethnicity, age, sexual orientation and disability status in this Survey than members typically provide in ABA membership forms.

**Gender and Sexual Orientation.** 54% of the sample identified as male, 43% of the sample identified as female, and the remaining respondents identified either as other/nonbinary or did not respond.

With respect to sexual orientation, 88% identified as heterosexual, 3% identified as gay/lesbian, 1% identified as bisexual, less than 1% responded “other”, and 8% did not respond. We note that, in contrast, 89% of respondents do not report their sexual orientation to the ABA.

**Race/Ethnicity.** Approximately 81% of the Survey sample identified as White, approximately 15% identified as lawyers of color, and less than 4% did not identify their race or ethnicity. As a further breakdown, 2.8% of the sample identified as Asian/Asian American, 5.3% of the sample identified as Black/African American, less than .2% of the sample identified as Hawaiian/Pacific islander, 3.7% of the sample identified as Latinx/Hispanic, .5% of the sample identified as Native American, and 2.7% identified with a race or ethnicity not listed.

**Disability.** 91% of our respondents said they did not have a disability, while approximately 6% said they did. That disability could be a physical, cognitive or mental health disability.

**Age.** The vast majority of our sample (90%) reported their age (compared to 83% who report their age to ABA membership). The age distributions were similar in our sample and in the membership as a whole. ABA membership skews towards more experienced lawyers. Men in this sample were significantly older than women, and White lawyers were significantly older than lawyers of color. These numbers generally reflect the demography of the legal profession.

**Practice Setting.** Two-thirds of our Survey respondents (almost 67%) work in private practice. The remaining one-third work across a range of practice settings, including corporate law departments, government, the judiciary, academia, not for profits, and public interest organizations.

Men were much more likely to be in private practice settings than women (74% of men compared to 61% of women). At the same time, White male lawyers were more likely to be in private practice than lawyers of color (70% of White men compared to 56% of lawyers of color).

Employment settings differ greatly in size. While the national legal press focuses largely on private firms with over 100 lawyers, many lawyers practice in smaller private law firm settings and outside of private practice entirely. Indeed, fewer than 15% of lawyers practice in large firms. It is also the case that many lawyers leave the profession and do not work in a job that requires a law degree.

To reflect the broadest array of practices and practice settings, the Survey covers workplaces that range in size from one attorney to 250 attorneys or more. While the Survey collected data from lawyers in settings of every size, it is not surprising that close to half of the lawyers in our sample work in settings (whether private firms, corporate law departments, government, NGOs or others) where there are fewer than 20 lawyers.

**Level of Seniority.** The Survey respondents cover a range of positions. A substantial number of respondents in private practice (33%) were in the position of partner. Men who responded to this Survey were significantly more likely to be partners than women (39% versus 28%). White lawyers were significantly more likely to be partners than lawyers of color (White 36% compared to lawyers of color 21%). We note that the Survey percentage of lawyers of color in partner positions, which covers a wide range of private firms, is substantially higher than the partner percentages found in surveys of BigLaw firms. In fact, the Survey showed that for lawyers of color, practice in a smaller firm significantly predicts being in a leadership position compared to practice in a larger firm. For White lawyers, firm size does not predict likelihood of being in a leadership position.

For those respondents in settings other than private practice (such as corporate law departments), approximately 19% of the sample were in a leadership position either as chief legal officer or equivalent role, or deputy general counsel or equivalent role.

**Areas of Specialization.** Our sample covered lawyers who practiced in a wide range of specializations, across the spectrum of sections, committees, commissions, and other member groups in the ABA.



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We designed the Survey to enable analyses that are representative of the hundreds of thousands of ABA members who practice law in the United States.

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## *Employment Status and Impact of COVID-19*

One threshold question is whether the pandemic had a meaningful impact on employment status. Overall 93% of ABA members are currently working as attorneys in jobs that require a law degree. Women and men and White lawyers and lawyers of color did not differ significantly on the likelihood that they are in jobs requiring a law degree. Not surprisingly, the percentage of lawyers working in jobs requiring a law degree is higher (95%) for the newest members of the bar (between 0 and 10 years) and lowest (85%) for those members who passed the bar four decades ago or more.

Among ABA members who are not working as attorneys, over half (59%) are retired; and another large percentage of them are working in non-law jobs (31%).

Given the timing of the Survey (which was fielded in late September 2020 through early October 2020), we asked those members who reported they were on temporary leave, furloughed, terminated from their jobs, or had resigned or retired—7% of ABA members—if COVID-19 had affected their employment status. The large majority (93%) did not consider COVID-19 to be a factor in their current job status. This result did not differ significantly by gender. There were, however, differences by race and ethnicity: 27% of Black lawyers, 31% of Latinx/Hispanic lawyers, 7% of White lawyers, and 0% of Asian/Asian American lawyers attributed their temporary leave, furlough, or not working as an attorney to COVID-19.

Perhaps not surprisingly, among those lawyers who reported that COVID-19 affected their employment status, junior lawyers were more likely to report this effect. Among those negatively affected lawyers who had been members of the bar 10 years or less, 50% answered “yes,” that COVID had affected their employment status. Among those lawyers graduating between 11 and 20 years ago, 44% indicated that COVID affected their employment status. There is a very large drop-off for those lawyers who graduated 21 years ago or longer, with only a small minority reporting that COVID affected their employment status.

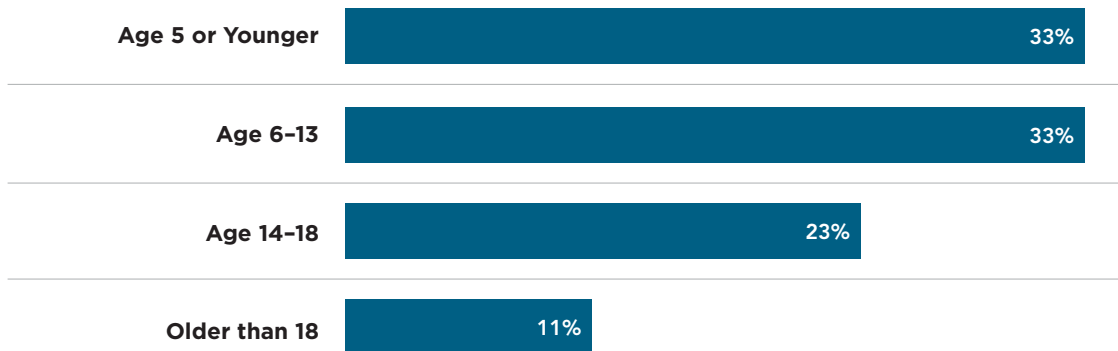
## *Household Composition and Responsibilities for Child Care*

Overall, the majority of ABA members (84%) live with a spouse or partner. There is a gender effect for these statistics. Men are significantly more likely to live with a spouse or partner (89% for men compared to 76% for women). It is also the case that women are significantly more likely than men to live alone. While on average, 11% of ABA members live alone, 15% of women members live alone compared to 8% of male members.

About one-third of ABA members (34%) live with one or more dependent children. We found gender differences in this variable: women are significantly more likely to live with a dependent child or dependent children than men (42% women compared to 30% men). In addition, for those members who have a dependent child at home, 33% report that their youngest child is 5 years old or younger; 33% report that their youngest child is age 6 through 13; 23% report that their youngest child at home is age 14 through 18; and about 11% report that their youngest dependent child at home is older than 18.



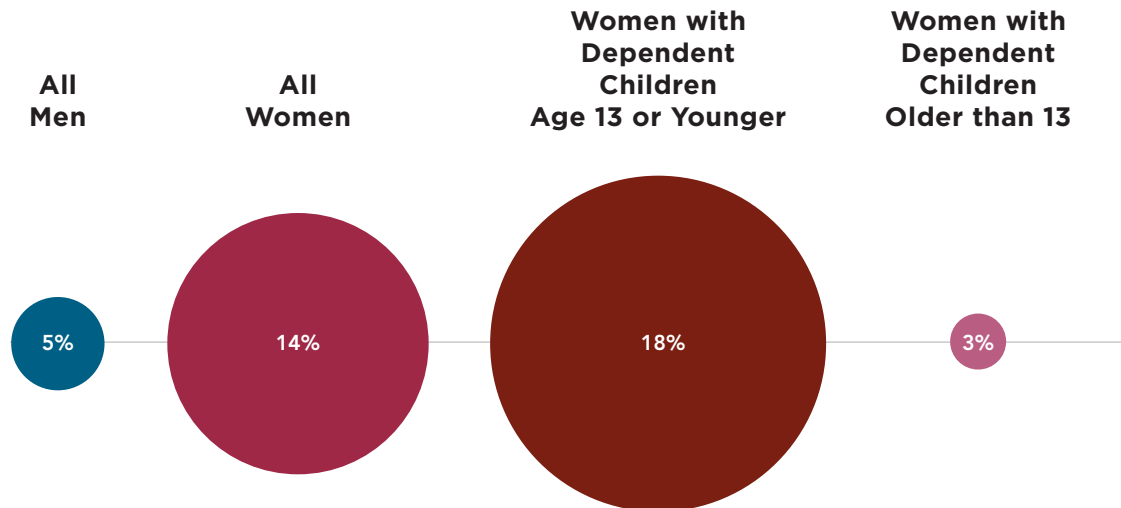
## AGE OF YOUNGEST DEPENDENT CHILD IN HOUSEHOLD



The pandemic has exacerbated the already-disproportionate child care burden on women lawyers.

The pandemic has exacerbated the already-disproportionate child care burden on women lawyers. We asked those lawyers with dependent children at home about their child care responsibilities before the pandemic and at the time of the Survey. We found a significant gender effect in both time frames: women were significantly more likely than men to have personal responsibility for child care both before and during the pandemic. In addition, women were significantly more likely to have taken on *more* child care responsibility during the pandemic. That increased responsibility for child care is especially pronounced for women with pre-school children or children age 6 through 13.

### PANDEMIC: TAKEN ON MORE CHILD CARE



Lawyer gender and age of child interact such that the younger the child, the more likely it is that women will have increased responsibility for child care. At the same time, the Survey results show a significant decrease in use of day care from a third party provider when comparing the pre-pandemic (25%) to the current time period (15%).

### III

# Impact of the COVID-19 Pandemic

Increased Stress from Trying to  
“Do It All,” Worry About Employer Support,  
and Reduced Client Access

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*The pandemic has influenced women,  
even more than has been usual, to  
consider whether to step back from  
or leave the profession.*

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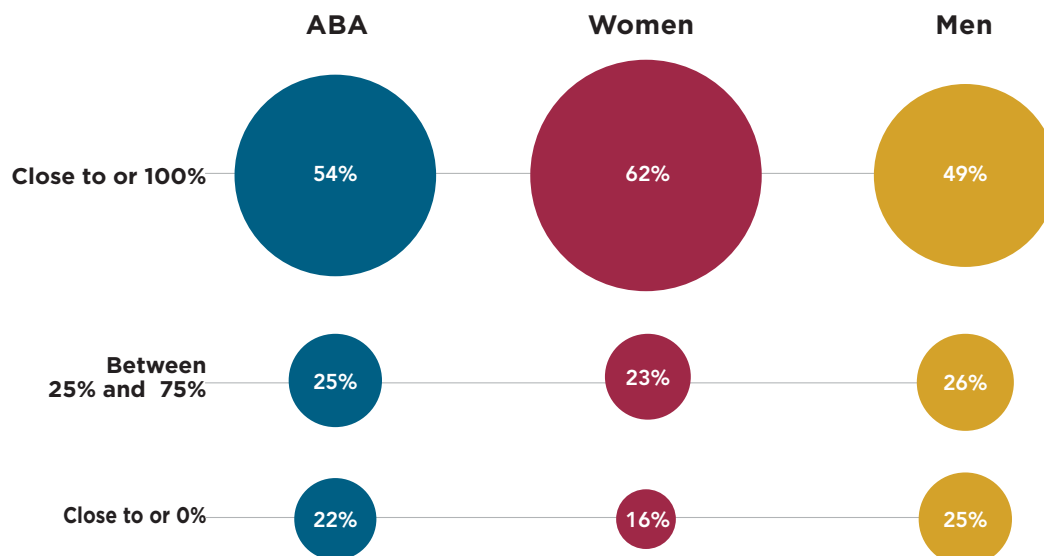




**The COVID-19 pandemic** has had a significant effect on virtually all segments of the legal profession, regardless of age, gender, race/ethnicity, level of seniority or practice setting. This is not to say that all lawyers experienced the pandemic in the same ways. Far from it, as many factors can impact our professional and personal lives. That said, one of the most prominent effects of the pandemic was the merging of work life and home life. We asked a series of questions about how work and home life had changed compared to a year ago and these are the main results.

It should be no surprise that the place of work has markedly changed for large numbers of lawyers. Slightly over half of all lawyers (54%) reported that they now work from home close to 100% of the time. That said, a substantial number of lawyers continue to go to the office. About 25% of lawyers reported working from home between 25% and 75% of the time and another 22% reported working from home close to 0% of the time. Women on average were working a greater proportion of their hours from home than men.

### TIME WORKING FROM HOME



The majority of lawyers (60%) are more likely to be working on a flexible schedule, especially those lawyers with dependent children at home (65%).

Lawyers have made other adjustments—sometimes successful, sometimes less so. Over 90% of lawyers are spending *more* time on video or conference calls, but about 55% are spending *less* time on developing business or reaching out to clients. The presence of younger children in the household predicts even less outreach to clients. About 70% of lawyers reported spending more time with the people they lived with than a year ago. This result was especially true for lawyers with dependent children at home (approximately 79%). Somewhat to our surprise, lawyers generally reported no meaningful change in their efficiency doing work, although lawyers with young children at home experienced a greater decrease in their efficiency.



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It should be no surprise that the place of work has markedly changed for large numbers of lawyers.

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In light of these and other changes in work life and home life, we aimed to find out how lawyers were holding up. Here are the results.

## A. Lawyers, Especially Those with Young Children at Home, Are Overwhelmed with All They Must Do

We asked a number of questions to determine how it felt to be working from home in a time of stress and disruption. While we expected some increase in negative feelings, we were surprised at the broad extent to which lawyers reported much greater levels of stress and disengagement from work than a year ago.

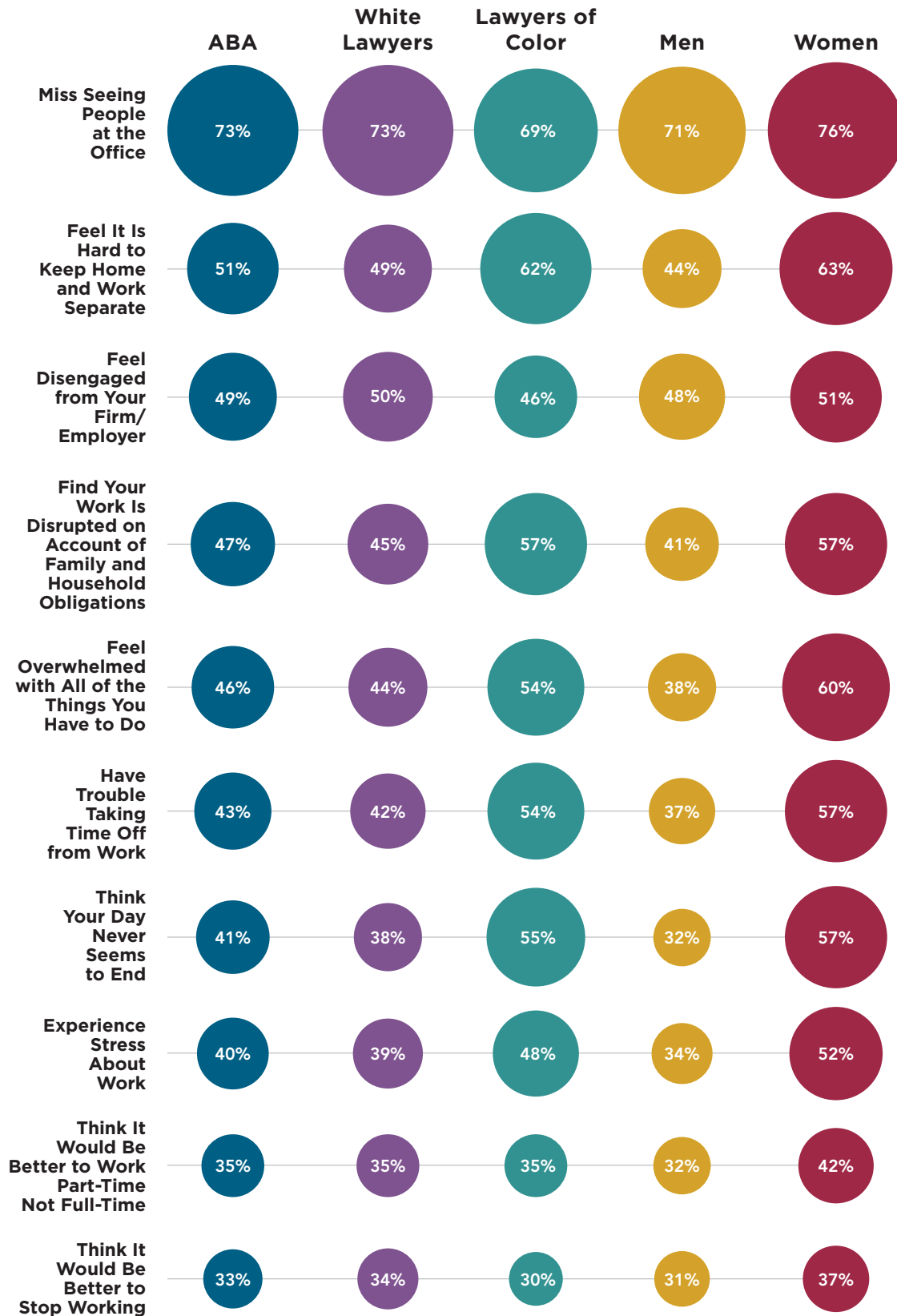
More specifically, we asked how often, compared to a year ago, lawyers experience these feelings:

- ▶ Work is disrupted more often now than a year ago on account of family and household obligations.
- ▶ Miss seeing people at the office.
- ▶ Feel disengaged from their firm or employer.
- ▶ It is hard to keep home and work separate.
- ▶ Feel overwhelmed with all the things they have to do.
- ▶ Experience stress about work.
- ▶ Have the feeling their day will never end.
- ▶ Have trouble taking time off from work.
- ▶ Think it would be better to stop working entirely, or to work part-time and not full-time.

The results were eye-opening. On every single one of these questions, lawyers generally were experiencing and feeling these sentiments significantly more often than a year ago.

As shown by the data, ABA members generally show much higher levels of stress in trying to manage work and home; higher levels of disengagement with the social aspects of work; and more frequent thoughts about whether full-time work is worth it.

## COMPARED TO A YEAR AGO, ABA MEMBERS MORE OR MUCH MORE OFTEN:



For many of these questions, race and ethnicity showed an even greater impact. Compared to a year ago, lawyers of color have even higher levels of stress about work; are more likely to think the day never ends; have greater difficulty taking time off from work; feel overwhelmed with all the things they have to do; feel it is hard to keep work and home separate; and find work disrupted by family and household obligations. In contrast, White lawyers were significantly more likely than lawyers of color to miss seeing people at the office, feel disengaged from their firm or employer, think it would be better to work part-time, or to stop working entirely. These differences may reflect the greater engagement that White lawyers typically feel in the workplace,<sup>3</sup> the comparatively greater economic flexibility enjoyed by many White lawyers,<sup>4</sup> and the older age of White lawyers.

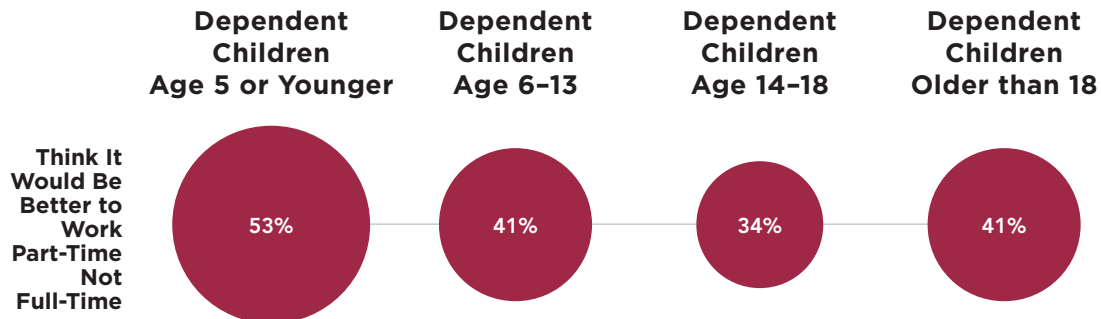
We also found significant gender differences in levels of stress and disengagement around work. Women experienced greater disruption in work than men. Thus, women were more likely to report increased frequency of work disrupted by family and household obligations, feel it is hard to keep work and home separate; feel overwhelmed with all the things they have to do (an effect especially true for women with younger children), experience stress about work, think their day never seems to end, and have trouble taking time off from work. Lawyers with children at home also report increased feelings about these same factors; and women with children, and especially younger children, report even greater levels of feeling work is disrupted on account of family and household obligations.

These pressures are compounded by the fact that, regardless of other increased obligations, workloads have not been substantially reduced during the pandemic. More than half of lawyers (57%) worked 41 or more hours per week. Another 25% worked between 31 and 40 hours a week, 7% worked 21 to 30 hours, 5% worked 11 to 20 hours and the remaining 6% worked 10 or fewer hours per week.

All that said, close to 80% of the sample continued to work full-time or close to full-time. The presence of children in the household did not significantly reduce worktime. About 91% of lawyers with children at the preschool age are working at least 31 hours a week, and 60% of lawyers with preschool age children are working 41 or more hours per week.

Given these increased stresses and strains, it is not surprising that many lawyers (35%) are thinking significantly more often this year than last year about working part-time. Women with children age 5 or younger (53%) and women with children age 6–13 (41%), were even more likely to be thinking about part-time work. The pandemic has influenced women, even more than has been usual, to consider whether to step back from or leave the profession.<sup>5</sup>

## THINKING ABOUT WORKING PART-TIME: WOMEN WITH DEPENDENT CHILDREN



## B. Stress Around Workplace Resources, Recognition, and Job Security

At the same time that lawyers have increased stress about care for children and other household obligations, there has also been a marked increase in stress concerning support from employers. Regarding workplace resources and recognition, we asked lawyers whether, compared to a year ago, these experiences were more frequent:

- ▶ get overlooked for assignments or client opportunities
- ▶ not receive enough recognition for work you do
- ▶ get help with business development
- ▶ receive training and coaching
- ▶ worry about advancement
- ▶ worry about salary reduction
- ▶ worry about getting furloughed or laid off

The results are telling. *First*, every one of these seven concerns was experienced significantly more often now compared to a year ago, regardless of gender, race/ethnicity, or practice setting. At the top of the list were (a) more worry about a salary reduction (55%), (b) worry about getting furloughed or laid off (40%), and (c) worry about advancement (28%).

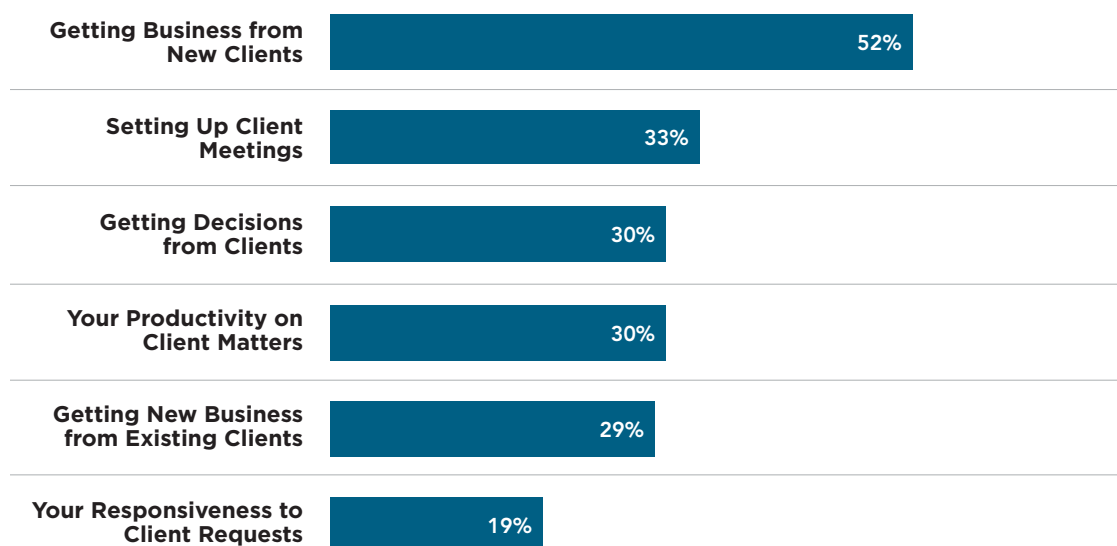
*Second*, some groups of lawyers had even higher levels of concern. Specifically:

- ▶ Women generally worried more often about advancement, receiving a salary reduction, and getting furloughed or laid off.
- ▶ Women with children felt more often than others that they were overlooked for assignments or client opportunities.
- ▶ Lawyers of color, regardless of gender, worried more often about advancement.

## C. Obtaining New Business and Providing Client Service Has Become Substantially Harder Than a Year Ago

We asked how much harder it was to obtain new business from existing clients or new clients, to get decisions from clients, be responsive to client requests, be productive on client matters, and set up client meetings. The greatest increase in difficulty was getting business from new clients—which 52% of lawyers reported as harder or much harder than last year. The results for all of these aspects of client service are as follows.

### NEW BUSINESS AND CLIENT SERVICE BECAME HARDER OR MUCH HARDER





Unlike many other questions we asked, responses about the difficulty of providing client services reflected a wide range of lawyers, with no meaningful differences by gender or race/ethnicity. The exception was the question about setting up client meetings, where women and lawyers of color reported the same level of difficulty as they experienced a year ago—suggesting that setting up client meetings has typically been more difficult for women and lawyers of color, and that level of difficulty continues.



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The COVID-19 pandemic has had a significant effect on virtually all segments of the legal profession, regardless of age, gender, race/ethnicity, level of seniority or practice setting.

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One of the most prominent effects of the pandemic has been the merging of work life and home life.

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## IV

# What's Been Happening to Diversity Initiatives?

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*The past year has brought an increased focus on meaningful equity and inclusion for people of color in the United States, with no exception for the legal profession.*

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## A. Race and Ethnicity Initiatives

Whether there are meaningful opportunities for lawyers of color in all areas of the legal profession is not a trivial question. While lawyers of color have represented over 20% of law school graduates for a number of years, the statistics about entry hires, advancement and movement into leadership roles are more discouraging. The past year has brought an increased focus on meaningful equity and inclusion for people of color in the United States, with no exception for the legal profession.

The Survey asked a number of questions about diversity initiatives in corporate law departments and law firms, specifically (a) what diversity, equity and inclusion (“DEI”) strategies and tools are being used, (b) has this past year’s increased public awareness of racial and social injustice affected the use of certain strategies, and (c) is it more likely that lawyers are discussing issues of racial justice today than a year ago? Here is a summary of the results.

### *1. Employer Strategies Around Race and Ethnicity*

We asked lawyers in private practice and corporate law departments about whether certain DEI strategies exist in their workplace and, if so, the extent to which those strategies continued to be used during the pandemic.<sup>6</sup> Our focus was on the following strategies, which are often the basis for DEI programs in law firms and corporations:

- ▶ a mentorship or sponsorship program,
- ▶ assigning lawyers of color to significant matters,
- ▶ including lawyers of color in opportunities for business development,
- ▶ introducing lawyers of color to current clients,
- ▶ unconscious bias or implicit bias training,
- ▶ increasing the number of lawyers of color who are partners, and
- ▶ increasing the number of lawyers of color in leadership roles.

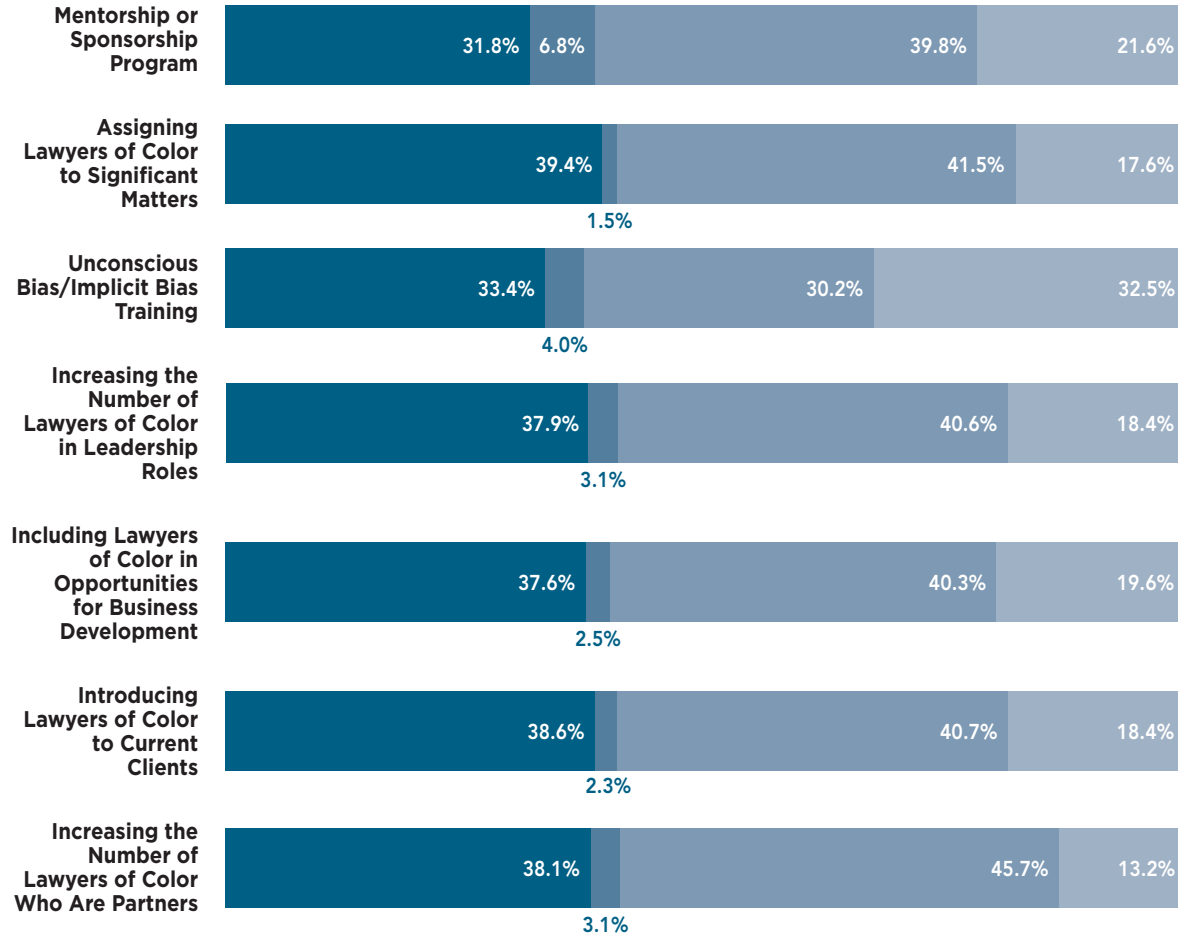
*First*, we found that these policies exist in many different private law firms and corporate law departments. It would be unusual for a mid-sized to large firm, or corporate law department, not to have at least some of these strategies for retaining and advancing lawyers of color. If we exclude solo practitioners (as for the DEI strategy questions), 43% of lawyers in private practice were in firms with 50+ lawyers, with the other 57% in smaller firms. Looking specifically at private firm settings, at least 61% of lawyers in private practice are in firms where each strategy is in place.

At the same time, many lawyers in corporate settings also reported the existence of comparable DEI policies: mentorship or sponsorship programs (53%); assigning lawyers of color to significant matters (47%); unconscious bias/implicit bias training (71%); and increasing the number of lawyers of color in leadership roles (46%). (Questions about opportunities for business development, introducing lawyers to current clients, and increasing the number of lawyers of color who are partners does not clearly apply to corporate settings.)

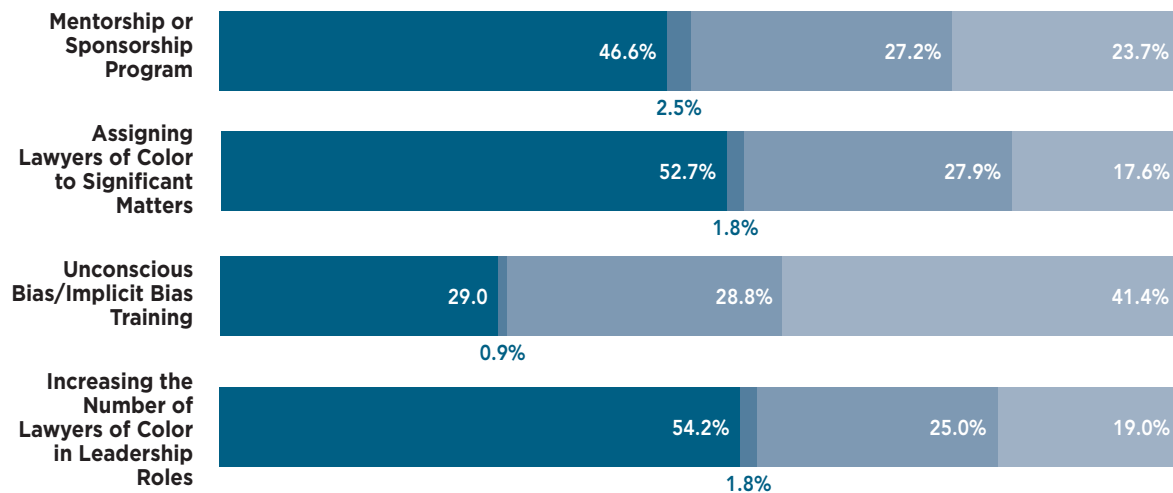
## EXISTENCE OF STRATEGIES AROUND RACE AND ETHNICITY

No Such Strategy
  Largely Put on Hold
  Stayed the Same
  Increased

## Private Practice

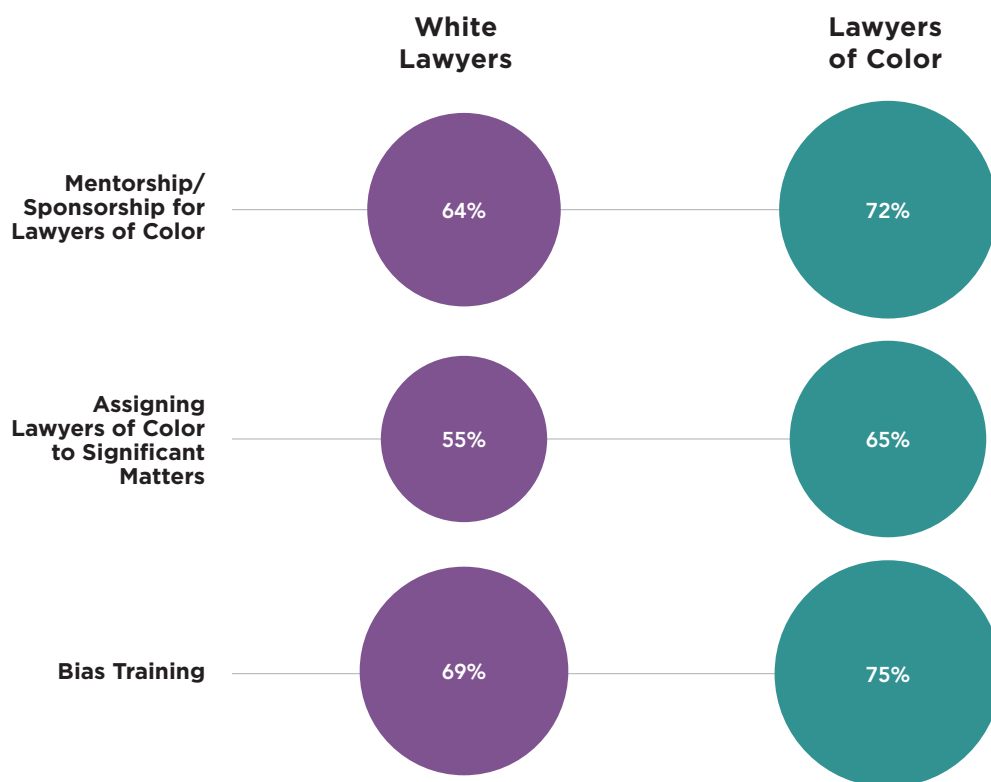


## Corporate



*Second*, as shown by our data, DEI strategies for lawyers of color continue to be active. The vast majority of lawyers in both private practice and corporate settings report either the same level of activity or *increased* strategies compared to a year ago. Indeed, relatively few employers had put their DEI strategies on hold. In both firms and corporate law departments, the greatest increase was around unconscious bias/implicit bias training.

## LIKELIHOOD OF REPORTING THAT DEI POLICY EXISTS



These general results vary, however, depending on race/ethnicity, as shown above. For three strategies—mentorship or sponsorship program, assigning lawyers to significant matters, and unconscious bias/implicit bias training—lawyers of color compared to White lawyers are more likely to report that the policy exists in their workplace. This result may be because lawyers of color are more focused on these programs and more likely to be aware of whether these strategies are used in their workplace.

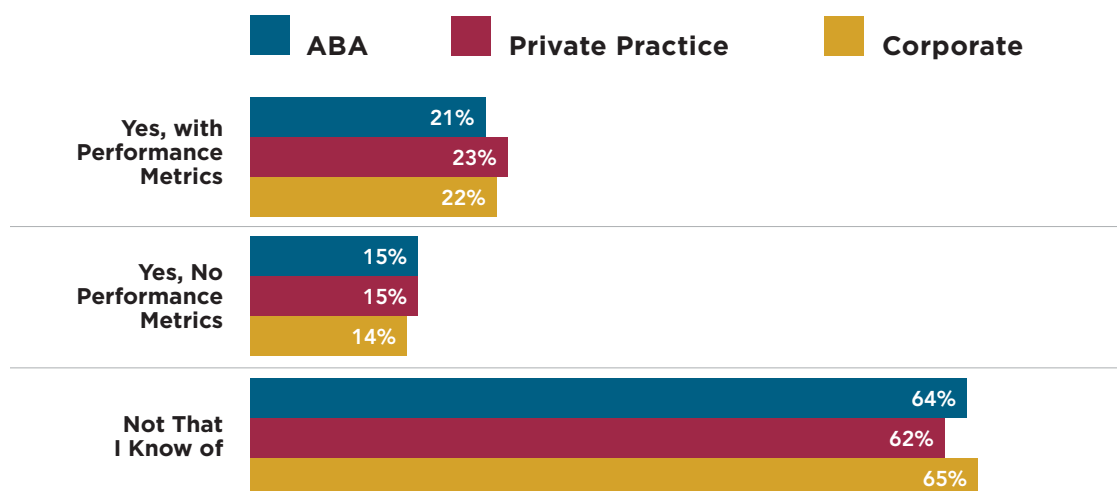
For those lawyers who perceived a change in these strategies over the past year, White lawyers were significantly more likely to report that these strategies had increased during the past year. That result was true for all seven strategies, suggesting that over the past year, White lawyers have become more aware of how race and ethnicity impact careers in the law, and the value of addressing the reasons why, including implicit biases. It may also be that lawyers of color look with a more jaundiced eye at what it means for a strategy to increase and whether any superficial increase in activity has a meaningful impact.

## 2. Use of Accountability Tools

Closely aligned with DEI strategies are “accountability tools” used for assessing results of DEI initiatives. Change takes time and sustained effort. It is difficult to understand and explain the results of strategies without measuring performance over time. There is no one right measurement “tool” but the absence of any tool should raise a red flag. The Survey asked participants (a) whether their firm or employer used an accountability tool to assess the results of diversity and inclusion strategies in their firm or workplace, and (b) if an accountability tool existed, did it include performance metrics?

The majority of ABA members (64%) are not aware of an accountability tool for diversity and inclusion strategies in their work settings. Lawyers in leadership positions are slightly more likely than others to report that such a tool existed. Of the approximately 36% of ABA members who work in places where an accountability tool is used, more than half of them report the use of tools with performance metrics. These results varied little between lawyers in private practice versus lawyers in corporate law departments.

### ACCOUNTABILITY TOOLS AROUND DEI STRATEGIES



One type of accountability tool that is often used in corporations is an impact analysis of proposed pay cuts or layoffs, at a minimum comparing White lawyers and lawyers of color. When we asked about that tool, slightly less than half (47%) of private practice lawyers said such an analysis is done, while 57% of lawyers in corporate law departments said such an analysis is done. We note with some irony that impact analyses are almost routinely advised by employment lawyers counseling their corporate clients who face a reduction in force or furloughs, to avoid the risk of litigation and to make sure that there are no implicit biases shaping decisions. In the legal profession, the risk of litigation has been historically lower; selective reductions may also cover departments or certain levels of seniority that make decisions more straightforward; and layoffs appear to be rarer than in other employment settings.



### ***3. Conversations About Race and Ethnicity***

2020 brought front and center an array of issues around race, including simply talking to each other about racial justice. We asked ABA members how often, compared to a year ago, they had conversations with colleagues about racial justice issues; and whether, compared to a year ago, it has been easier or harder to have such conversations.

The large majority of lawyers (82%) answered this question, and reported that this year (compared to a year ago), they had conversations with colleagues about racial justice more or much more often (60%), with about 37% reporting that such conversations were easier or much easier. About half of lawyers (51%) reported that the ease of such conversations was about the same as a year ago. Interestingly, there were no strong differences between White lawyers and lawyers of color, or between those in leadership positions or other members.

## **B. Gender Initiatives**

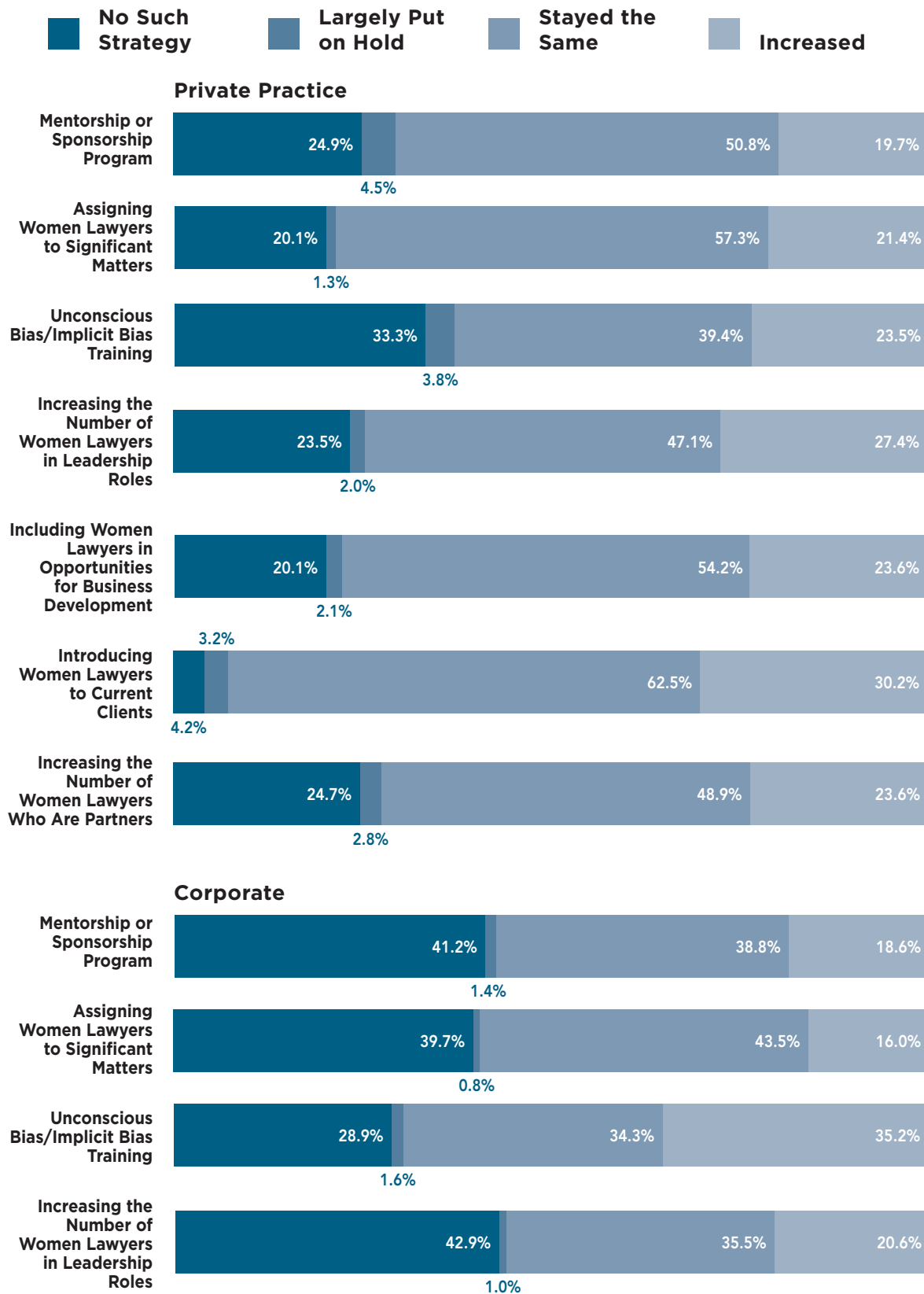
Just as there have been more DEI efforts focused on lawyers of color, women lawyers have also been actively pushing for greater advancement in all practice settings, especially in law firms and corporate law departments. While there has been some progress over the several decades that increasing numbers of women have worked in the legal profession, there continues to be a wide gender gap between the number of women law school graduates and the number of women who are equity partners of firms and leaders in law departments. The data beg the question: what are law firms and corporate law departments doing today to improve gender diversity?

### ***1. Employer Strategies Around Gender***

In both private practice and corporations, the majority of lawyers reported that the seven DEI strategies listed above for advancing race and ethnicity initiatives also exist in their workplace for advancing gender initiatives.

In firms, it is unusual for any program to have been put on hold and, for many, the past year has seen increases in strategies concerning gender diversity. For law firms, there were significant increases for strategies focused on unconscious bias/implicit bias training and increasing the number of women lawyers in leadership roles. In corporations the situation is similar. Programs either stayed the same or increased, with unconscious/implicit bias training showing the greatest increase.

## EXISTENCE OF STRATEGIES AROUND GENDER



## 2. Use of Accountability Tools

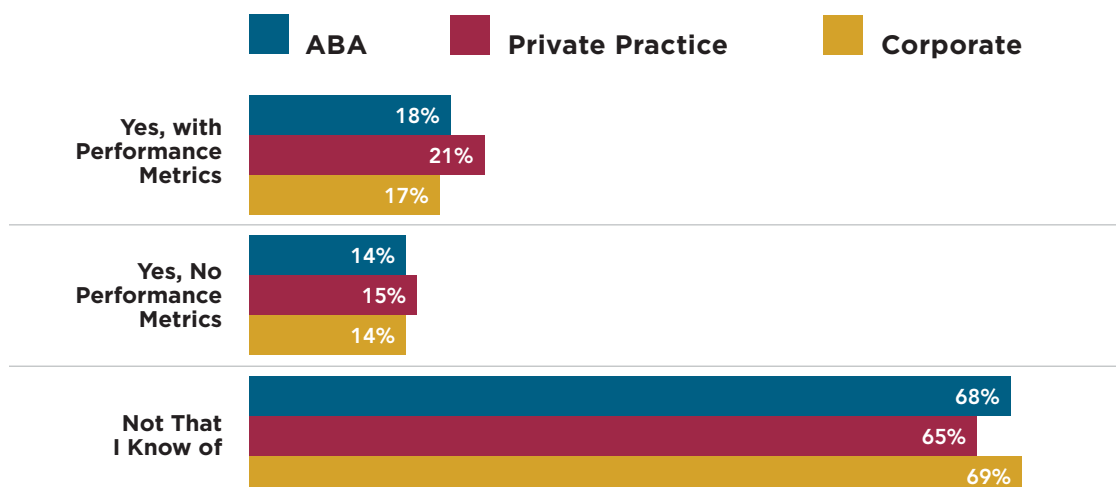
In response to questions about the use of a gender accountability tool, roughly two-thirds of members (68%) stated that they did not know of the use of such tools when assessing the results of diversity and inclusion strategies for women lawyers. That result was substantially the same for lawyers in private practice and corporate law departments.

Regarding the use of performance metrics for gender strategies, for those lawyers in private practice who report that their firms use an accountability tool, 58% report the use of performance metrics as part of their firm's assessment. The number is similar in corporate settings: 55% of lawyers whose corporate employers use an accountability tool report the use of performance metrics as part of the assessment.

One type of accountability tool used is an impact analysis of proposed pay cuts or layoffs, comparing men and women. When we asked about that tool, 45% of private practice lawyers said such an analysis is done in their firms, while 65% of lawyers in corporate law departments said such an analysis is done in their workplace.

Overall, accountability tools do not appear to be highly used techniques in the legal profession, even though such tools are considered sound methods for tracking how various policies and practices impact the advancement of diverse groups and how well an employer is meeting stated goals. The lack of accountability tools is in stark contrast to the much larger number of lawyers who report various diversity strategies in use at their firm or corporation. It is hard to say how any given organization will know whether goals are being met without the use of accountability tools, and organizations will have trouble discussing how successful they have been with diversity initiatives if results are not being measured and discussed on a broad basis within an organization.

### ACCOUNTABILITY TOOLS AROUND GENDER STRATEGIES



## C. Stress at Work Traced Directly to Race, Ethnicity, and/or Gender

Anecdotally, women and lawyers of color often feel additional stress at work simply because of their gender, race or ethnicity. The stress comes from a number of sources, including the feeling of standing out in a negative way from others at work; of having to represent your race or ethnicity or gender as the perfect role model; of not being accepted for who you really are; of having to hide your authentic self; of not being heard to the same extent as others; and much more. Higher levels of stress, feelings of social isolation, and always feeling “different” are reasons why women and minorities leave law firms more often and sooner than majority lawyers and men.

While there have been many anecdotal reports and commentary about the extra burden of race, ethnicity, or gender, to our knowledge there has not been a large scale survey of the legal profession on the issue. To better understand the scope of the stress experienced by minority and women lawyers, we asked ABA members two questions (1) do they feel stress at work because of their race, ethnicity or gender; and (2) how often do they feel that their voice is heard in work meetings, including virtual meetings? To those steeped in efforts to enhance DEI, the disappointing results below will unfortunately not be surprising. Employers still have a long way to go to build inclusive work environments for lawyers of color and women.



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Women and lawyers of color often feel additional stress at work simply because of their gender, race or ethnicity.

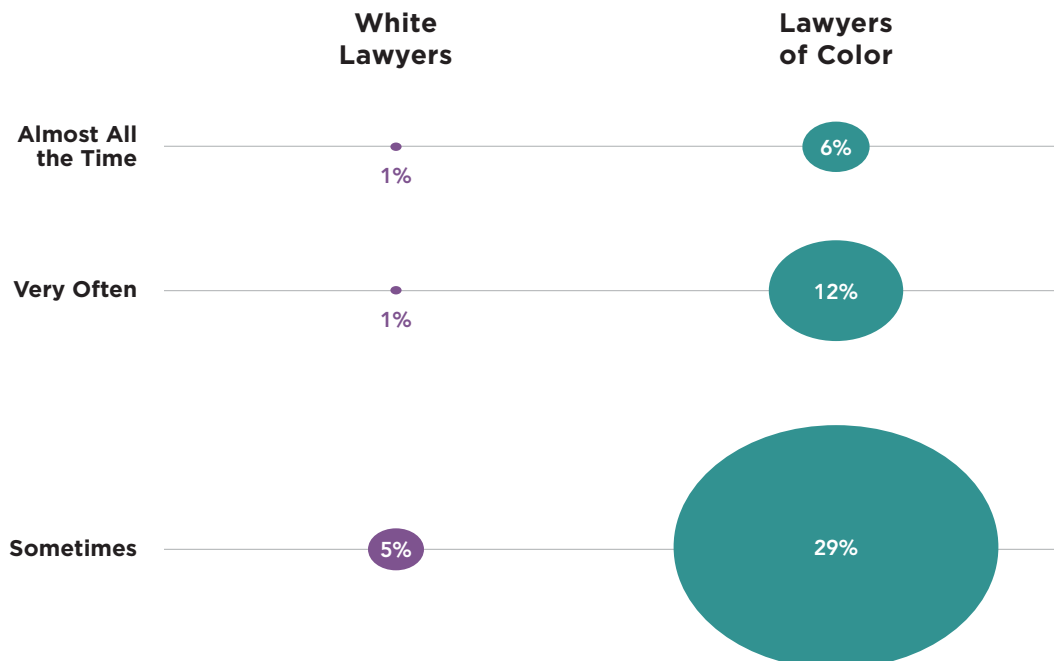
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## 1. Stress at Work Because of Race and Ethnicity

With regard to race and ethnicity, the key findings are that:

- ▶ Lawyers of color are significantly more likely to feel stress at work because of their race or ethnicity compared to White lawyers. While 7% of White lawyers feel stress at work at least sometimes on account of their race, in contrast, 47% of lawyers of color feel stress at work at least sometimes on account of their race/ethnicity.
- ▶ Race interacted with gender, such that women of color were significantly more likely to experience stress at work on account of race at least sometimes (54%) compared to White women (6%) or men of color (41%).
- ▶ Within various racial and ethnic groups, Black lawyers are more likely to experience stress at work very often or almost all the time on account of race or ethnicity (34%) compared to Asian lawyers (12%) or Hispanic lawyers (5%).

### FREQUENCY OF STRESS AT WORK BECAUSE OF RACE AND ETHNICITY



Some of these effects may be a consequence of heightened awareness from the Black Lives Matter movement, which became prominent in the middle of 2020. From a larger perspective, the feeling of stress on account of race and ethnicity—feeling “left out and left behind,” socially isolated, and other reactions to the work environment—is not a new phenomenon. The stark differences we found show that there is much work to be done before the large majority of lawyers of color feel comfortable on an everyday basis in their workplace without feeling stress simply on account of their race or ethnicity.

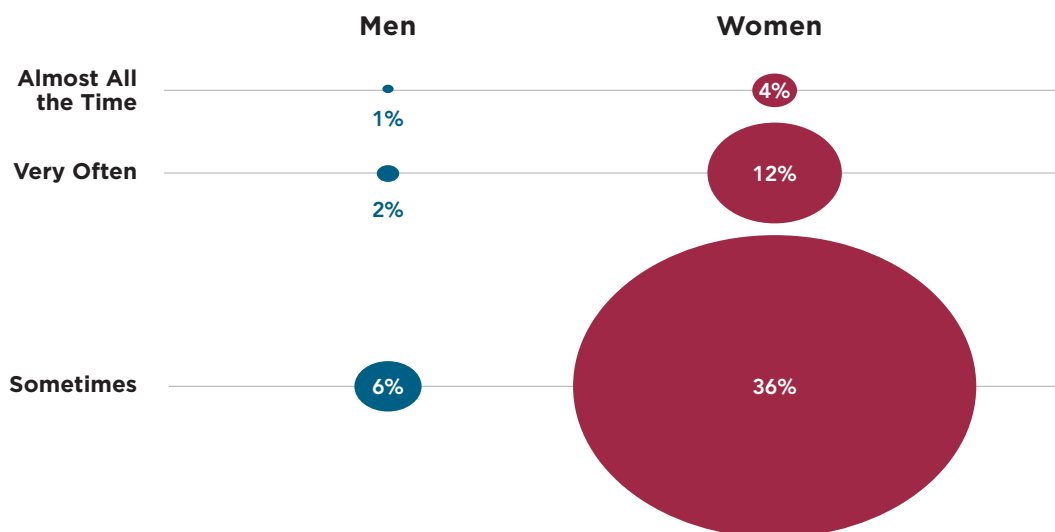
A similar phenomenon exists around “being heard” in work meetings. 43% of White lawyers report feeling heard “almost all the time” in work meetings compared to 33% of lawyers of color. Women lawyers of color are even less likely to feel they are heard “almost all the time” in work meetings: only 25% of women lawyers of color report that experience.

As with attorneys of color, women, even those with considerable experience, often speak of “not being heard” in work meetings. A common, almost stereotypical example of “not being heard” is the experience of offering a suggestion in a group meeting but having it ignored until later in the meeting, when a man suggests the same idea and receives kudos for the suggestion. Unfortunately, our data show that this phenomenon has not abated. Women respondents were significantly less likely to feel they are heard “almost all the time” in work meetings (32% of women compared to 47% of men).

## 2. Stress at Work Because of Gender

We have heard countless anecdotes and commentary about how women experience stress at work simply on account of their gender. The results from this national Survey reinforce the point: 52% of women respondents feel stress at work on account of their gender, with 16% feeling that stress very often or almost all the time. In contrast, just under 10% of male respondents report stress at work on account of their gender, with only 3% feeling that stress very often or almost all the time.

### FREQUENCY OF STRESS AT WORK BECAUSE OF GENDER



## D. Putting It All Together

The practice of law entails many stresses and strains, some of which are under a lawyer's control and some of which are not. We all face clients who can be demanding, tensions with colleagues, second-guessing about the quality of our work, worry about billable hours, and myriad other worries.

The Survey, however, has identified an additional stress for some members of the profession, which cannot be ignored: the extra everyday burdens shouldered all too often by lawyers of color and women simply because of their race, ethnicity or gender. Implicit or unconscious biases impact how lawyers of color and women lawyers are faring with respect to recruitment, assignments, evaluations, compensation, being promoted into senior roles and attaining leadership positions. Implicit biases can also affect the perceptions of how committed women lawyers are to their jobs because they may have to focus on children and family at critical times of their careers. There is often unequal access to important networks within a firm or a lack of mentors or sponsors to teach lawyers of color and women “the rules of the road.” Many lawyers of color and women also face the “you don’t look the part” problem, “the idea that the norms of success, ability, and competence are tied to looking a certain way,” or going to a certain school or coming from a certain background.<sup>7</sup>

The Survey shows that too many members of the profession are working in settings that are not laser focused on the necessary strategies to develop a truly diverse group of talented lawyers, who reflect the breadth of backgrounds, training, and experiences that lead to successful teams of lawyers. The data reinforce that the future of the profession—and any organization that employs lawyers—hinges on the ability to retain, advance and include the full range of women and lawyers of color who have entered the profession in large numbers over the past 20 years, and will continue to do so in the future.

By understanding more about the obstacles faced by women and lawyers of color, there will be more effective ways for firms, corporations and other legal employers to frame strategies, policies and practices that are fundamentally more inclusive and equitable than those used in the past—a subject to which we return in our section below about post-pandemic best practices.



# V

## Expectations and Issues for Post-Pandemic Practice

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*There continues to be a noticeable level of concern about how the economics of practicing law will shake out over the next two years.*

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A core focus of **Practice Forward** is to advise and respond to concerns about how the profession will emerge from the pandemic, and whether there will be a long-term impact based on adaptations and changes made during this time. To make those predictions, a large portion of the Survey was directed to the future of law practice: Is it feasible to return to largely office-based work? What health and safety concerns are likely to remain? What technical resources will be required? What will the economics of a post-pandemic law practice look like? How will firms, corporate law departments and other legal employers provide the practice support and personal support that lawyers are demanding?

The results show that lawyers have already accepted a number of changes that took place in the past year, and are not likely to seek a return to many of the pre-pandemic policies and practices.

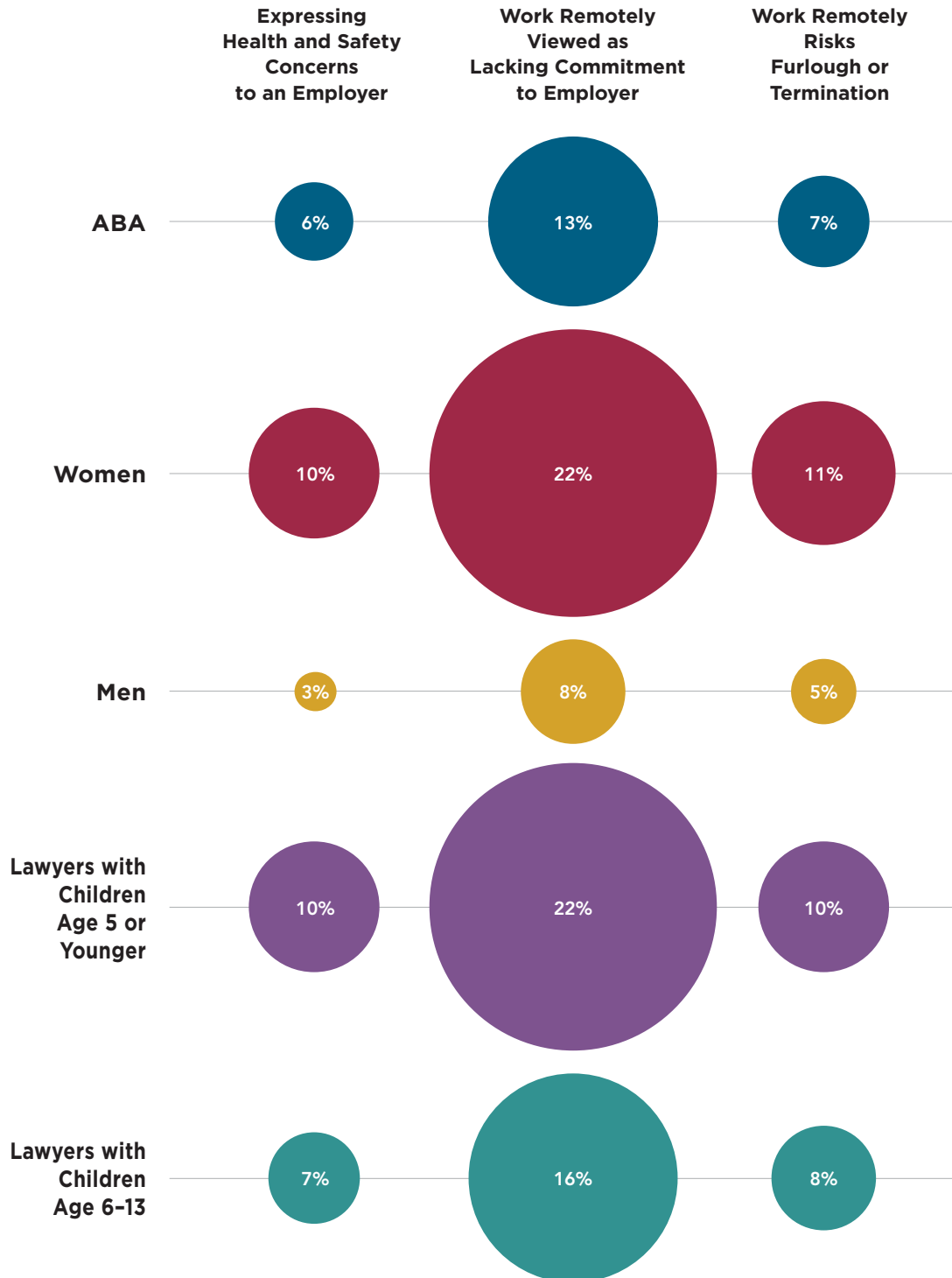
## A. Is It Feasible to Return to the Office?

### 1. Health and Safety

Looking to 2021 and 2022, a large majority of lawyers (74%) were either “not at all concerned” or only “slightly concerned” about returning to the office before a safe and effective COVID-19 vaccine is available, and had similarly low levels of concern about adequate safety protocols being put into effect by an employer, colleagues not following safety protocols like wearing masks and social distancing, or even being inside an office building which may lack good ventilation or have poor security in public places. At the same time, an even larger majority of lawyers (81%) thought it likely or highly likely that their employer will implement appropriate safety procedures in 2021 and 2022.

Women were more cautious about these factors than men but not substantially so. The largest gender difference was over concern about whether colleagues would follow safety protocols, with 20% of women reporting they were very or extremely concerned, compared to 11% of men.

There was a somewhat different result, however, on questions around how employers would *perceive* an attorney’s concerns about health and safety. Although the majority of lawyers were generally not worried about expressing health and safety concerns to their employers, there was a significant gender effect. More women than men reported being “very concerned” or “extremely concerned” about expressing health/safety concerns to an employer (10% of women versus 3% of men); that working remotely would be viewed as lacking commitment to an employer (22% of women versus 8% of men); and that working remotely would create a risk of being put on furlough or having their job terminated (11% of women versus 5% of men). Lawyers with younger children, both women and men, were more likely to be very or extremely concerned about each of these three issues.

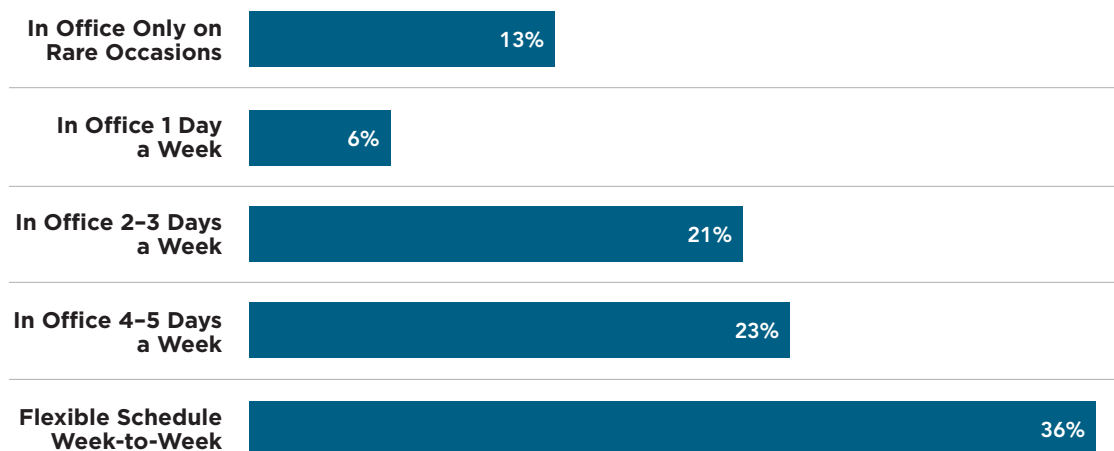
**VERY OR EXTREMELY CONCERNED ABOUT:**

## 2. Viability of Remote Working and Resources Needed

We surveyed attorney preferences about working remotely on an ongoing basis into 2021 and 2022, including whether they favor a mix of remote and in-office work. The results differ considerably from how most lawyers worked before the pandemic. The majority of respondents (66%) believe it is likely or very likely that many lawyers in their particular workplace will continue working mostly or entirely remotely in 2021 and 2022. In that context, a sizeable number of respondents—36%—reported that their personal preference is to have the flexibility to choose their own schedule from week to week. The remaining lawyers split roughly evenly between the option of working 4–5 days a week in the office (23%), or 2–3 days a week in the office (21%) or 1 day a week or rarely in the office (19%).<sup>8</sup>

### IDEAL MIX OF OFFICE + REMOTE

#### ABA



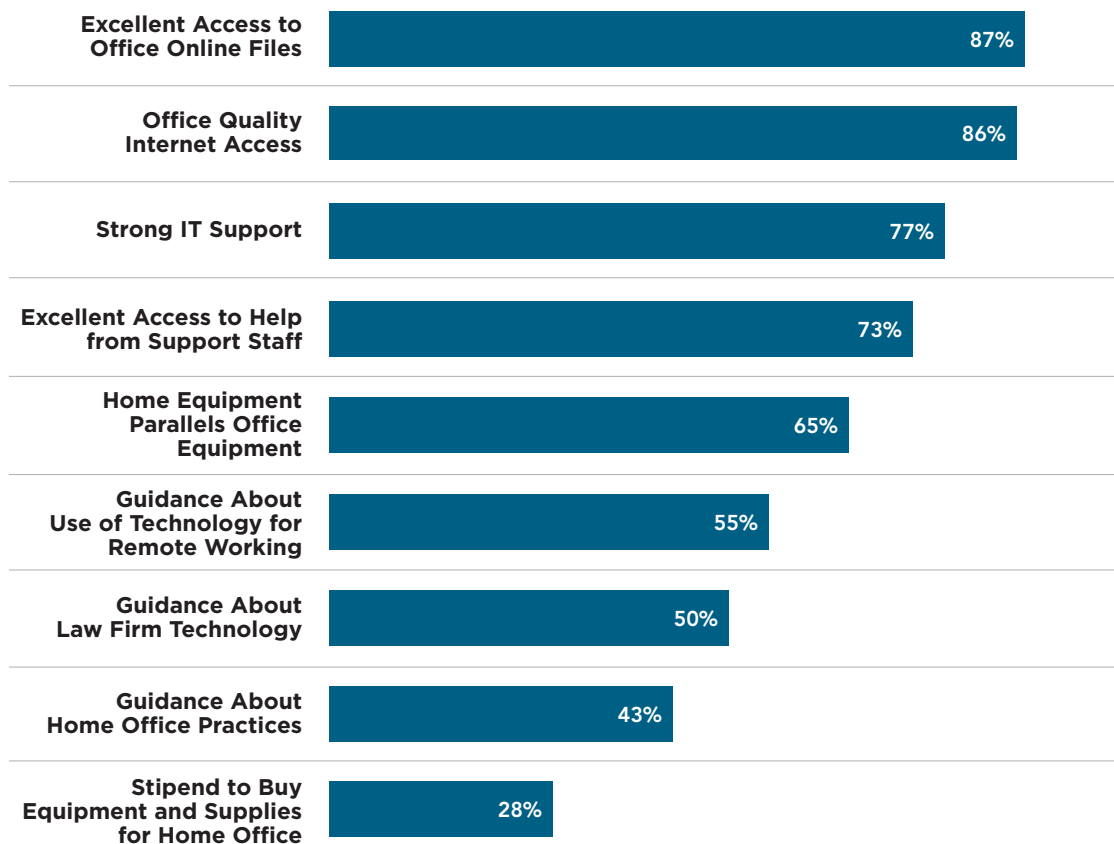
In spite of an expectation of continued remote working, the responses show some uncertainty about how employers will implement a remote working plan. The majority of lawyers anticipate that in 2021 and 2022, there will be “substantially less need for office space.” On the other hand, the large majority of respondents reported that their employer was *not* considering an office space plan without dedicated physical offices, including respondents in leadership roles (79%) and those not in leadership roles (84%). There is no doubt some tension between the desire to work remotely and the cost of renting office space not used on a full-time basis. Hoteling or shared offices are not new concepts, although they are much more typical of corporate offices than law firms. Balancing a number of factors, we will not be surprised to see law firms taking a more serious look at the use of their space and dedicated private offices.

We also asked a series of questions about who should bear the cost of remote working if it continues into 2021 and 2022. The large majority (77%) would consider maintaining a defined home office. A number would consider seeking reimbursement from an employer for equipment or technology (40%) or office space (11%). A minority (23%) would likely consider living beyond commuting distance from the office. Some 6% of the sample would consider paying for office space close to home. These responses suggest that many lawyers developed an affinity for remote working which, pre-pandemic, was simply not the norm.

At the same time, lawyers have strong feelings about the technical resources needed for post-pandemic practice. The large majority of lawyers report that it is either “very important” or “extremely important” (1) for home equipment to parallel office equipment, such as printers/scanners, computers, and ergonomic equipment (65%); (2) to have “office quality internet access” (86%); (3) to have “excellent access to office online files” (87%); and (4) to have strong IT support (77%). A number of lawyers (28%) viewed a stipend to buy equipment and supplies for a home office as very or extremely important. Along these same lines, a large proportion report it would be helpful in their practice going forward to have guidance about the use of technology for remote working (55%), guidance about law firm technology (50%), and guidance about home office practices (43%). In this vein, lawyers also value “excellent help” from support staff: 73% rated this help either “very important” or “extremely important” for an employer to provide.

Many lawyers developed an affinity for remote working which, pre-pandemic, was simply not the norm.

## RESOURCES LAWYERS SAY THEY NEED FOR REMOTE WORKING



Lawyers are also optimistic that their employers will provide the enhanced technical support needed for remote working, with 72% of respondents reporting that such support is either likely or very likely in 2021 and 2022.

## B. Concerns About the Economics of a Post-Pandemic Law Practice

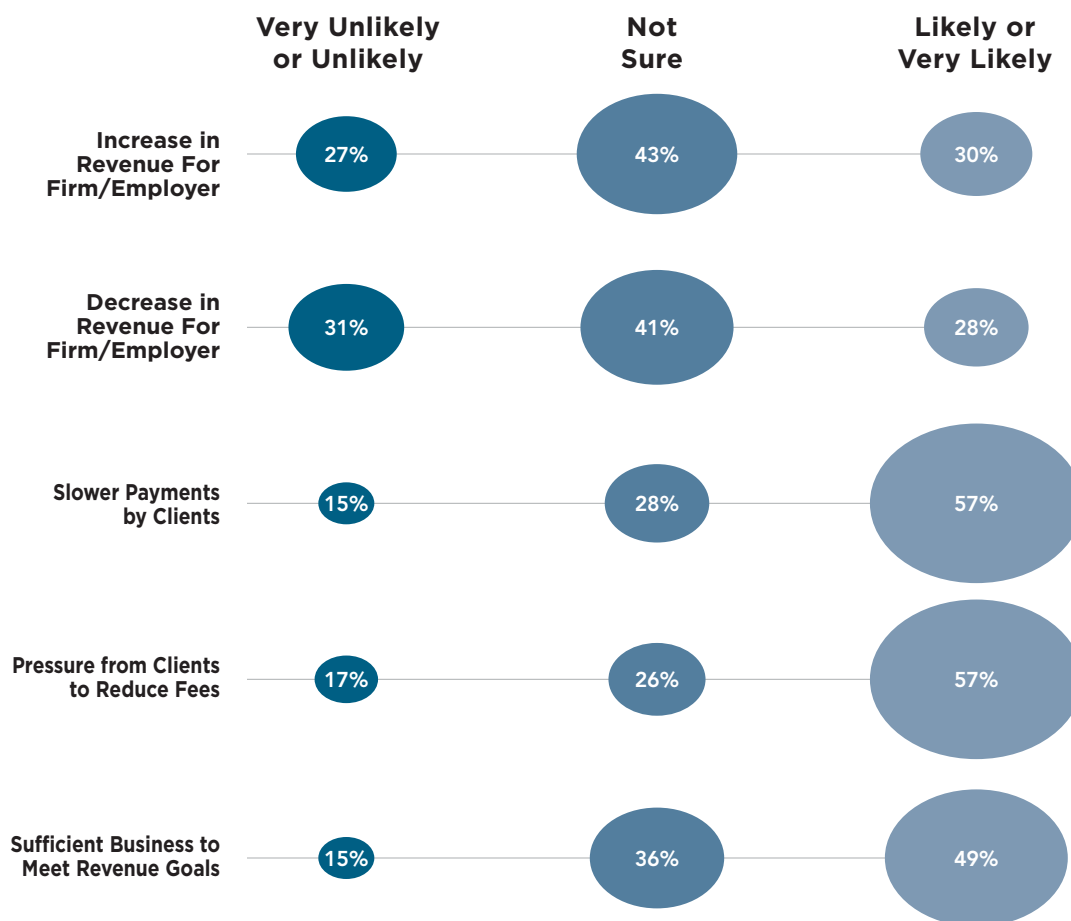
We asked a series of questions to elicit how lawyers feel about the business of law in their specific workplace as they emerge from the pandemic in 2021 and looking ahead to 2022. The majority of respondents expressed mixed feelings about what the near future would bring. First, most lawyers anticipate that their employer would not make reductions in force for lawyers,

either at the junior or senior level. Regarding non-lawyer support staff, there are two dominant and conflicting responses: 42% of lawyers think that such reductions in force are likely or very likely at their workplace, while another large segment, 35%, anticipate that such reductions are unlikely or even very unlikely.

There were also mixed predictions about increased or decreased revenue for a lawyer's firm or employer. Roughly 30% of lawyers anticipate that revenue is likely or very likely to *increase* in the next two years, while 27% believe that revenue is unlikely or very unlikely to increase, and 43% are not sure. Predictions about a *decrease* in revenue over the next two years show a mirror image: about 28% of lawyers believe that a decrease is likely or very likely, 31% believe that a decrease is unlikely or very unlikely, and 41% are not sure.

The same kind of dichotomy exists around the issue of meeting revenue goals. About half of all lawyers (49%) believe it is likely or very likely that their employer will have sufficient business to meet revenue goals in 2021 and 2022, while the other half (51%) are not sure or believe it is unlikely or very unlikely that their revenue goals will be met. In the same vein, most lawyers (57%) believe that it is likely or very likely that clients will pay more slowly, and 57% believe that it is likely or very likely that there will be increased pressure from clients to reduce fees.

## ECONOMIC CONCERNS OF POST-PANDEMIC LAW PRACTICE





In short, there is no one consensus among respondents as to how the business of law will emerge from the pandemic. While there is a level of optimism among some lawyers in firms and other work settings, there continues to be a noticeable level of concern about how the economics of practicing law will shake out over the next two years.

## C. Will Employers Provide the Support That Practicing Lawyers Are Asking For?

Many respondents report a preference for continued remote working for at least some if not most of the time. However, for remote working to truly be effective and successful, a firm or corporation will need to step up and provide resources that were not typical before the pandemic. While there can be substantial cost savings from leasing less office space and using fewer office-based resources, it would be a mistake to view those savings as a windfall. Clearly, employees are looking to legal employers to invest in providing services and resources that are essential to making remote working successful.

We asked a wide range of questions about the resources that lawyers believe they need going forward, and focused those questions into three areas: what is needed for personal well-being, how to sustain employee engagement, and adjustments to firm-wide or company-wide policies and practices.

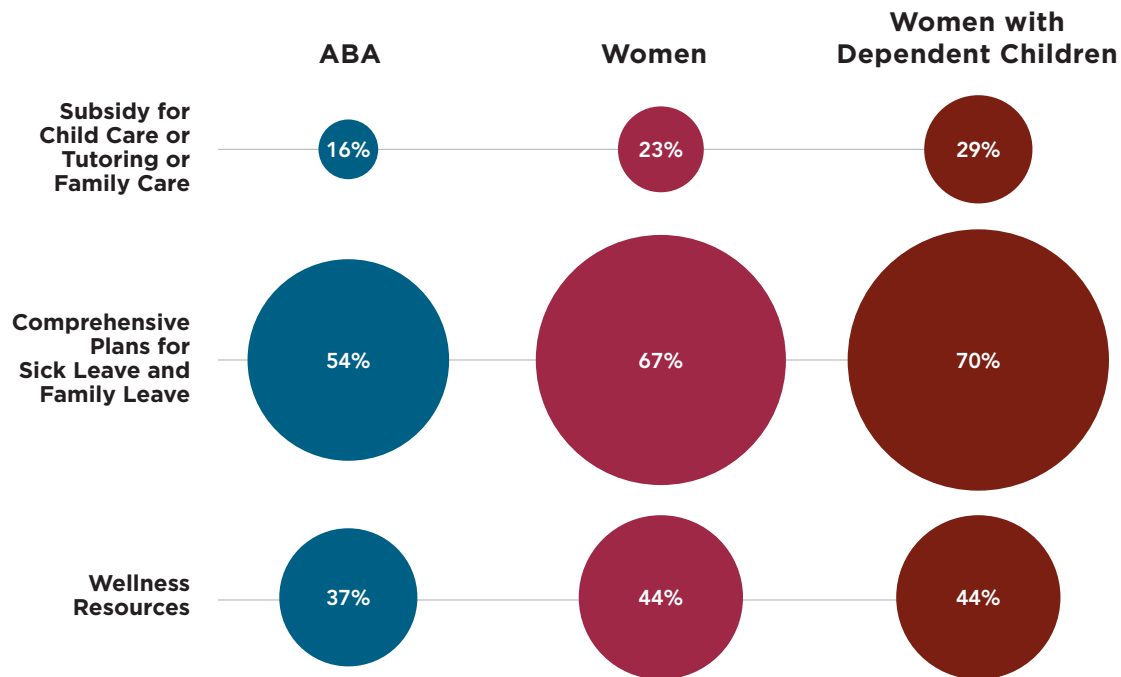
### *1. Personal and Family Well-being*

Ten years ago, there was scarcely any focus on the need to support well-being and mental health in the legal profession. Today, the pandemic has substantially heightened both the awareness of and need for employers to provide policies and programs that target well-being and mental health. We examined three aspects of personal and family well-being: subsidies for child care, tutoring, or other family and elder care; comprehensive plans for sick leave and family leave; and wellness resources.

A substantial number of lawyers (34%) report that guidance about enhancing mental health and well-being would help them in the practice of law going forward. Over one-third of respondents (37%) think that wellness resources are “very important” or “extremely important.” Interestingly, 33% of respondents report that guidance about enhancing mental health and well-being would help them in the practice of law going forward. More women lawyers (44%) than men (33%) thought wellness resources were very or extremely important.

Comprehensive plans for sick leave and family leave were of even greater interest. Over half of ABA members (54%) view the availability of those plans to be very or extremely important. For women, the percentage rises to 67%. Of less interest was obtaining a subsidy for child care, tutoring, or family care: 16% view that option as very or extremely important, although lawyers with dependent children (20%) and especially women with dependent children (29%) thought a subsidy was very important.

## WELLNESS AND FAMILY RESOURCES: VERY OR EXTREMELY IMPORTANT



At the same time, while about 20% of lawyers report that better resources for working parents would help them in the practice of law, the need is substantially higher for three significant subgroups: 32% of women generally, 59% of women with children, and 81% of women with young children age 5 or younger, would like better resources for working parents.

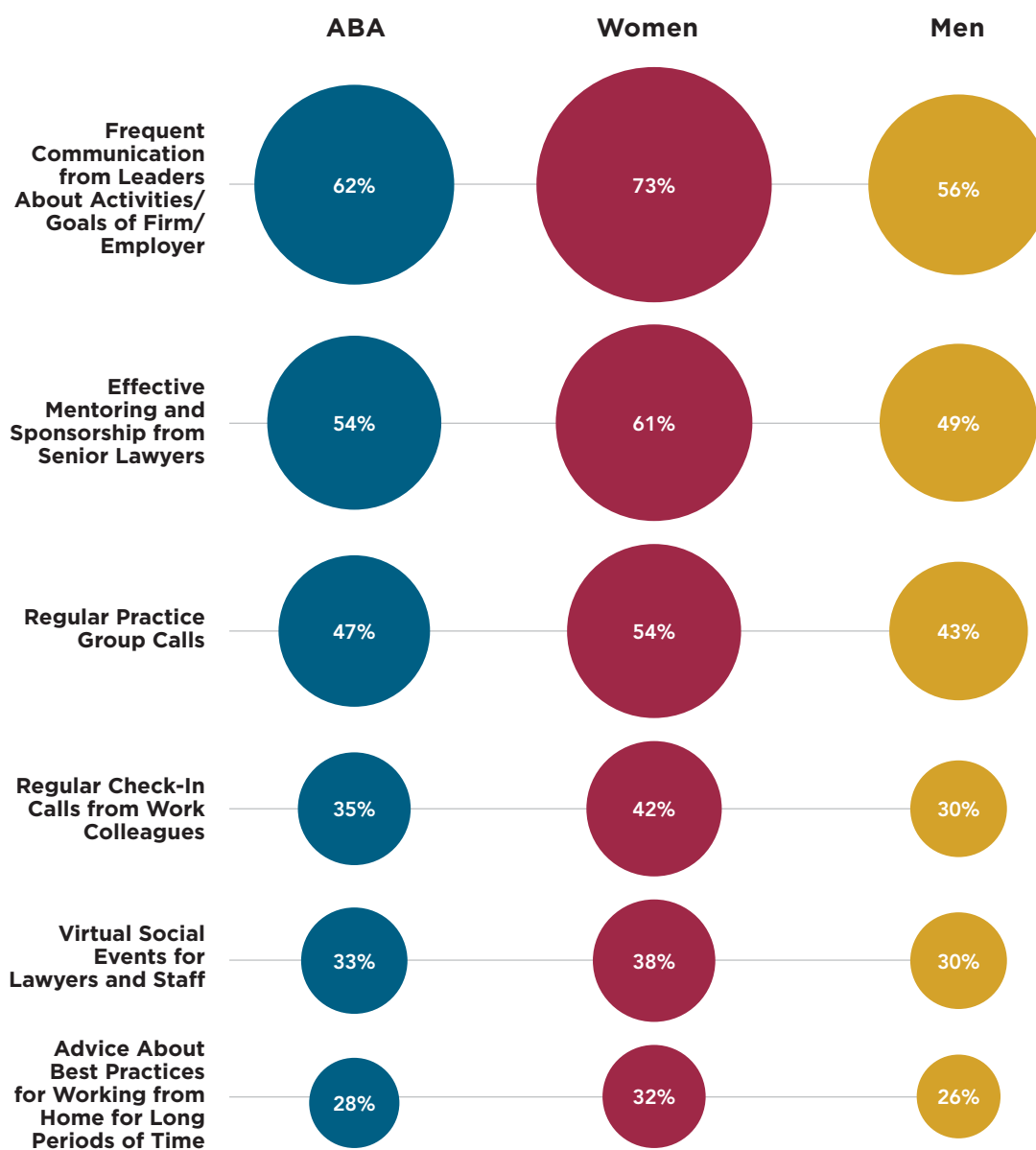
## 2. Employee Engagement with Their Firms, Companies, and Other Employers

For a number of years, employers have focused on the concept of employee “engagement,” the idea that employees’ effectiveness depends on their level of commitment to their work, enthusiasm about the workplace, and connection to their organization. Engagement is a two-way street, with the actions, commitment and resources provided by the employer a key driver of employee engagement, at both the organizational level and the level of day-to-day management and supervision.

With many anecdotal reports about reduced employee engagement during the pandemic, including in the legal profession, we looked to measure what types of support from their workplace will be needed by lawyers in 2021 and 2022.

The results show that lawyers value a culture that fosters engagement through personal connections by leaders with their teams; interest in lawyers as people, not simply as fungible professionals; and an individual's sense of inclusiveness and value. More specifically, many respondents report that it is either "very important" or "extremely important" for their firm or employer to provide: frequent communications from leaders about firm activities and goals (62%); effective mentoring and sponsorship from senior lawyers (54%); regular practice group calls to see what practice group members are doing (47%); regular check in calls from colleagues about how the lawyer is doing (35%); virtual social events for lawyers and staff to get together and to keep people engaged (33%); and advice about best practices for working from home for long periods of time (28%).

### EMPLOYEE ENGAGEMENT PRACTICES: VERY OR EXTREMELY IMPORTANT



Women lawyers were particularly attuned to the need for their employers to engage in these ways. A greater proportion of women than men reported that these employer actions were very or extremely important. We take note that women especially value frequent communication from leaders about activities and goals, effective mentoring and sponsorship from senior lawyers, and regular practice group calls. Lawyers of color were generally at the same levels as White lawyers on these responses, except that lawyers of color were significantly more likely than White lawyers to view effective mentoring and sponsorship from senior lawyers as very or extremely important (61% for lawyers of color, 52% for White lawyers).



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Lawyers value a culture that fosters engagement through personal connections by leaders with their teams.

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### 3. Policy Adjustments to Be Made by Firms and Corporations

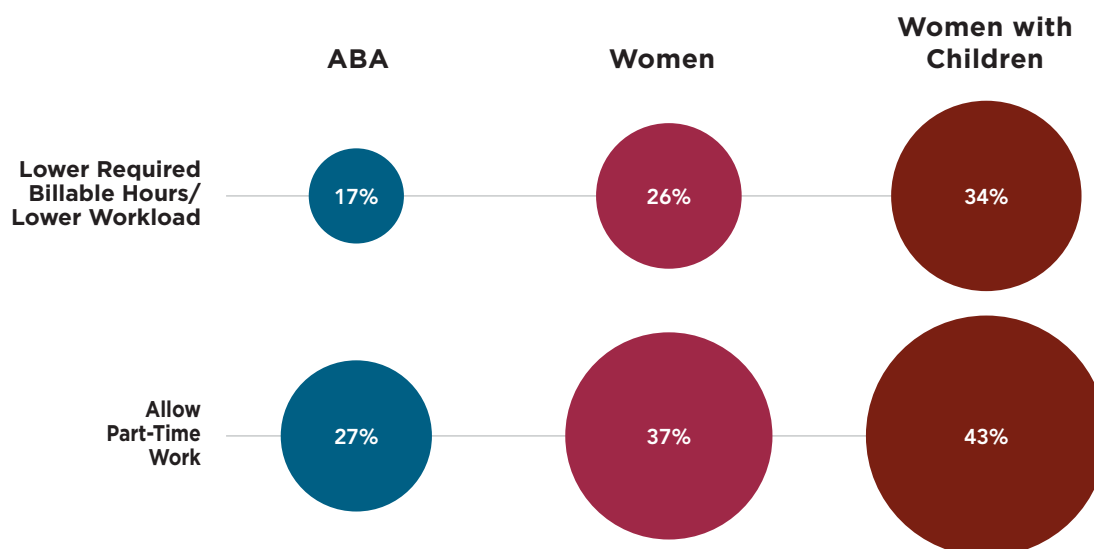
There is still another aspect to successful post-pandemic practice: employer policies and practices that foster high quality work while at the same time providing the information, flexibility and support that a diverse profession requires.

We asked about certain of these factors in a series of questions looking forward to 2021 and 2022, specifically, how important is it to lawyers for employers to (1) lower required billable hours or workload; (2) allow part-time work; (3) have excellent access to help from support staff; (4) use written criteria for advancement; (5) have a clear pathway for advancement to a more senior level; (6) provide opportunities for training and development or professional skills; and (7) give support for business development.

Somewhat to our surprise, the majority of respondents did not consider a policy that lowered required billable hours to be all that important: only 17% of all respondents thought the policy was “very” or “extremely” important to provide. Consistent with this view, however, 68% of respondents think it is unlikely or even very unlikely that their employer will reduce the number of required billable hours or overall workload in 2021 or 2022.

However, there were significant differences for women, and, in particular, women with children. 26% of all women respondents and 34% of women respondents with children reported that a lower billable hours policy was “very” or “extremely” important. We note that women lawyers who are shouldering the disproportionate burden of child care and home schooling are more anxious about meeting billable hour requirements and that their performance evaluations and compensation will be harmed because of an inability to manage their workload during the pandemic and meet client demands.

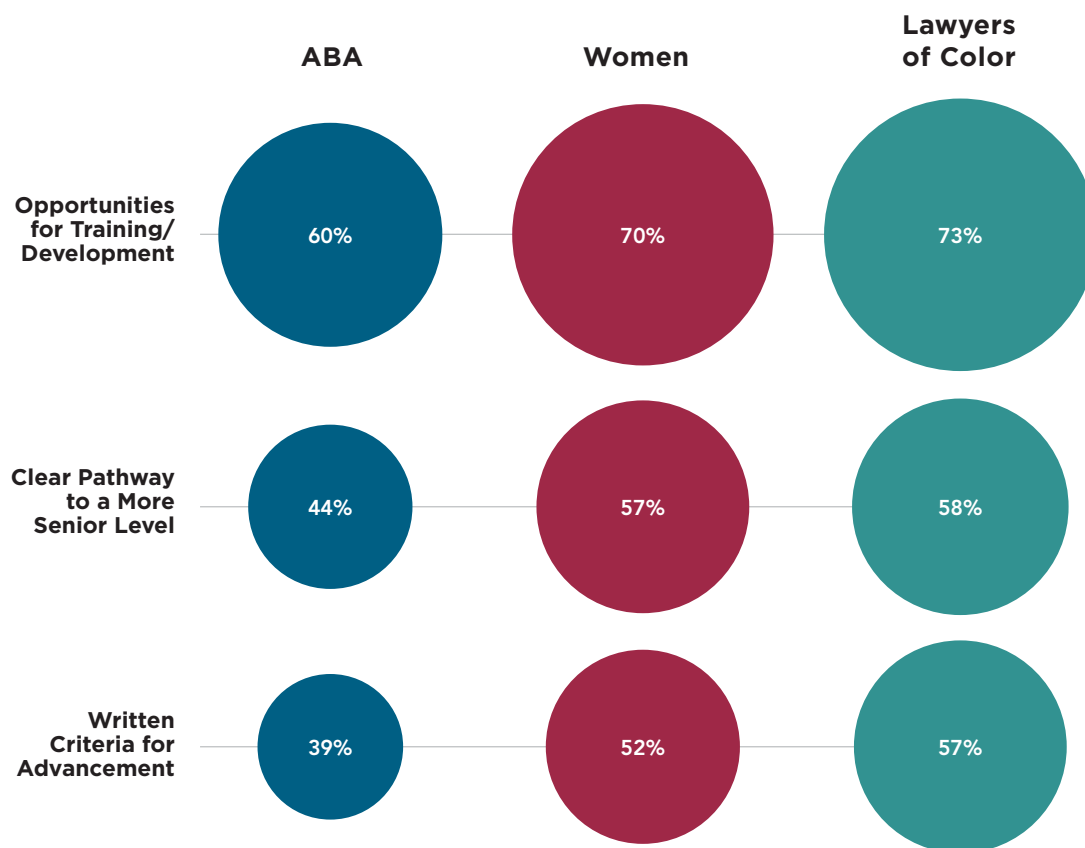
#### REDUCED WORKLOAD OR PART-TIME WORK: VERY OR EXTREMELY IMPORTANT



Allowing part-time work, however, was important to many lawyers: 27% of respondents viewed that policy as “very” or “extremely important” to provide. Part-time work had even greater importance to women (37%) and women with children (43%).

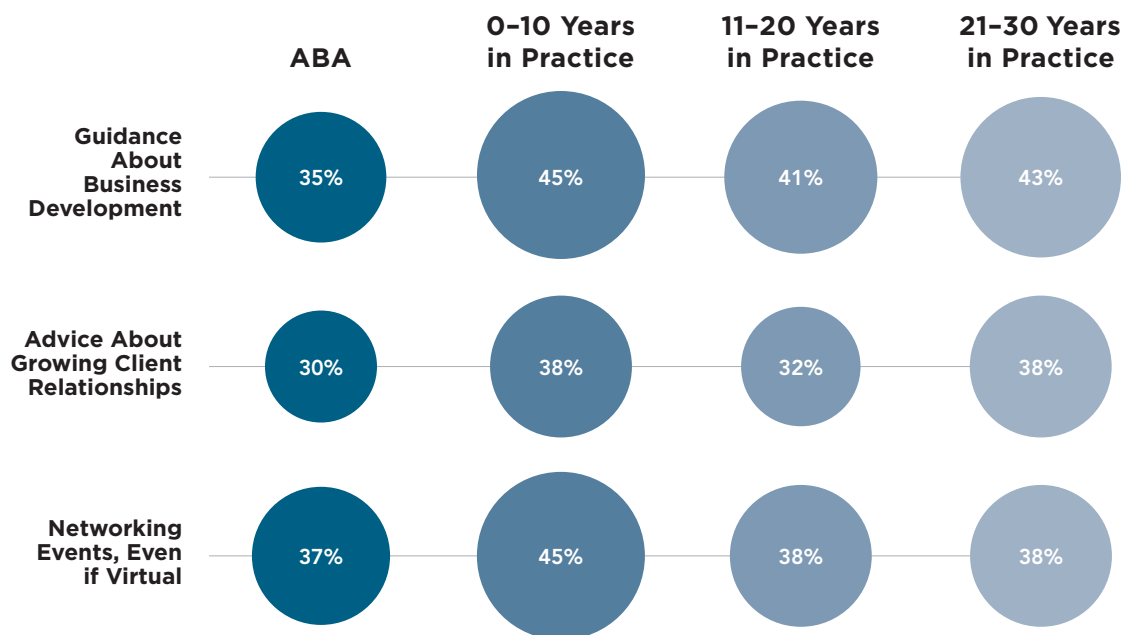
The majority of lawyers also responded that it is “very important” or “extremely important” that part-time policies are transparent, and that employers provide written criteria for advancement, a clear pathway to advancement to more senior levels, and opportunities for development of professional skills. Moreover, a greater number of women and lawyers of color hold the view that these policies and practices are “very” or “extremely important.” At the same time, there are questions about whether paths to advancement will be readily available. Some 14% view it as likely or very likely that there will be a reduction at their workplace in the number of junior lawyers. It is also the case that the majority of lawyers (62%) believe it is either unlikely or they are not sure that their employers will provide more training and development of junior lawyers.

### PATHWAYS TO ADVANCEMENT: VERY OR EXTREMELY IMPORTANT



Lawyers also say they need help with business development. Some 59% of respondents view support for business development as very important or extremely important. Over one-third of all lawyers (35%) report it would help them in the practice of law if they received guidance about business development; and 30% would like advice about growing client relationships. Over one-third of respondents (37%) report that networking events, even if virtual, with other members of the bar in the same area of law would help them in the practice of law. An even larger percentage of young lawyers view networking as a key to their practice.

### WOULD LIKE HELP GOING FORWARD WITH:





## VI

# Moving Forward with Best Practices for Employers

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*There is no one policy that fits all, and soliciting ideas from lawyers through town halls, surveys, and pulse checks will no doubt reveal best practices that are a good fit for the culture of your workplace.*

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As this Report is being written, the profession, along with the entire country, is poised to move past the COVID-19 pandemic and forward to a work environment that all agree will

not be the same as before. Views about what is essential for the practice of law are very different now than they were a year ago. No longer do the vast majority of lawyers feel that they must go into the office on a daily basis. Many lawyers have now become more adept at using office technology in their homes and have come to value remote working. At the same time, legal employers have become increasingly aware of the need to act on their commitment to diversity, equity, and inclusion for under-represented groups as a core value of their organization's culture. Further, the concepts of well-being, engagement, burn-out, and similar social psychological constructs have entered mainstream discussions throughout the profession. It is fair for all lawyers to ask: What type of workplace will provide the greatest satisfaction, allowing organizations and their lawyers to thrive?

This Survey provides data-driven recommended best practices that we believe are essential to move the legal profession forward so that lawyers are engaged with their work, have the support they need to succeed, and work in settings where leaders advance policies and practices that attract and reward a diverse array of professionals. We recognize that many different policies and initiatives can be adopted in any given workplace, depending on the employer's particular culture and objectives. In light of the Survey results, however, we are especially focused on the following best practices.

It is fair for all lawyers to ask: What type of workplace will provide the greatest satisfaction, allowing organizations and their lawyers to thrive?

## ***1. Insist on Leadership That Is Engaged, Transparent, and Accountable***

Leaders help shape the culture of their organizations. As we stand on the cusp of the post-pandemic era, now is the time for leaders to pause and rethink the structure, policies and practices of their firm, department or organization. Core questions begin and end with the fundamental values that bind the organization. These include:

- ▶ What type of culture and values do we want in our everyday practice of law?
- ▶ What do we want to look like two, three, and five years from now?
- ▶ How we will get there?
- ▶ Who will be accountable for making sure that the policies and practices that we value are implemented and are experienced the way we intend?

- ▶ How will we move forward to achieve meaningful diversity, equity, and inclusion?
- ▶ What types of communications should take place with lawyers and staff?
- ▶ What goals and expectations do we have for our lawyers, and how can we help them enhance their performance and job satisfaction?
- ▶ What are the types of policies that can accommodate flex-time and part-time, and still allow for advancement?
- ▶ Is our compensation system aligned with our values?
- ▶ If we downsize our office space, and move away from assigned offices, how will this impact the culture of the firm? What steps will be needed to maintain our culture?

These are not always easy questions for leaders to ask and they will undoubtedly elicit a wide range of responses. But organizations whose leaders reach out, listen, and act on what they hear will be greatly advantaged by having engaged in this dialogue, which should help foster a more productive and collegial workplace. Any review will benefit by taking advantage of the Survey results, and decisions should be based on the factors that lawyers feel are essential to their practice and their well-being. Large organizations may wish to conduct their own internal study to better understand their culture and their lawyers' specific concerns, and thus tailor more effective strategies and goals for the future. If a broad approach is not feasible, it is worth engaging in a narrower analysis, such as focusing on a core policy. For example, the pandemic has underscored the importance of collaboration, communication, and teamwork. Going forward, organizations need to better understand how to foster resilient, effective and gritty teams that can work well together, rather than a culture where lawyers are siloed, rarely interact at a personal level, and are prone to hoarding work or clients for themselves.

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## ***2. Make Decisions Which Will Have a Real Impact on Diversity, Equity, and Inclusion***

The Survey data show that legal organizations should employ strategies and policies that will actually make an impact on achieving greater diversity, equity, and inclusion. The Survey found striking differences in how lawyers view their workplaces and the opportunities to succeed and advance, depending on whether they are male or female, and whether they are White or a lawyer of color.

It would be a mistake to believe that leaving the pandemic behind will mean leaving behind the challenges and barriers that continue to confront women and lawyers of color. It was distressing that the Survey revealed that over 47% of lawyers of color feel stress at work on account of their race or ethnicity, and 52% of women lawyers feel stress at work on account of their gender. Our data should raise alarm bells that there is a real potential for an exodus of diverse talent if implicit biases and differential treatment are not redressed.

It is time for organizations that do not have a meaningful number of women or lawyers of color at senior levels to ascertain the reasons why, and determine what they will do to remedy the disparity. The demography of this country, and the demography of graduating law school classes in the last 10 years and going forward, means that an organization that does not retain and advance a critical mass of women and lawyers of color into senior positions will very soon—in the next five years and certainly the next 10—look entirely different from the profession as a whole and from their clients. Organizations that lack diversity will not benefit from the better decision-making that diverse teams provide, and will lack the robustness to achieve strong economic results.

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There are many strategies, benchmarks, metrics and goals to choose from, and leaders and their organizations can achieve meaningful progress if they truly commit themselves to the objective of increasing diversity, equity, and inclusion.

### ***3. Have Frequent, Transparent, and Empathetic Communications***

A striking set of Survey results center on how lawyers feel about their employers and the reduced level of engagement between lawyers and their firm, corporate law department or other organization. As discussed above, there has been increased stress for lawyers with respect to evaluations, compensation, recognition, and job security. Many lawyers felt not only overwhelmed with everything they had to do but also reported a lack of support from their employers. That is especially true for women lawyers with children, who are disproportionately shouldering child care and family care along with home schooling. They want their employers to be more supportive and show true understanding of the challenges they are facing.

The fact that billable hours and workloads during the COVID-19 crisis were, for the most part, not reduced while salary reductions or furloughs took place at many firms, simply heightened the sense of disillusionment and disenchantment. Communications on an ongoing basis by firm leaders can keep lawyers connected with their work and their workplace even in tough times, and should be a best practice at all times. More specifically:

- ▶ A key to effective engagement is a leader's transparent and clear communications to apprise attorneys and staff of the organization's current and future goals, opportunities, and challenges.
- ▶ Leaders who communicate with empathy allow lawyers and all employees to feel valued, appreciated, and understood. Supervising attorneys, department chairs, and practice group leaders should reach out to all team members to ascertain whether they need any accommodations in meeting work deadlines. Regular pulse checks will demonstrate real caring and, in and of itself, just asking how employees are feeling will boost morale and build trust and loyalty. Such communications help to reduce anxiety and promote productivity.
- ▶ As offices re-open, it will be important that leaders communicate that they will be prioritizing health and safety concerns and will be taking all necessary precautions. Specific guidance should be provided as soon as possible about when lawyers and staff will be expected back in the office. By announcing clear opening plans, lawyers and other employees will have certainty and can make all necessary arrangements for returning to the office. Leaders should also communicate available options for lawyers to continue working remotely, particularly since, as our data shows, many women lawyers have concerns about health and safety in returning to the office.

#### ***4. Create Clear Written Policies About Work Expectations***

The pandemic has amplified the need for written policies to help set clear boundaries and address work-from-home expectations. This is not simply a matter of setting standards for billable hours, or times when a lawyer is expected to be available during the day. The Survey results paint a picture of too many lawyers experiencing never-ending demands and deadlines that are not possible to meet or which can be met only at great personal cost. It appears that the absence of office-based work has eliminated the former understanding of a “work day” and “work week,” instead imposing the assumption of availability on a 24/7 basis. The fact that so many law firms and corporations have lawyers in more than one time zone, or internationally, makes the problem even worse. And a culture of “I must answer every e-mail or call right away” or “My job always has to come first” can hardly lead to thoughtful, high-quality work, no matter how talented the lawyers are. It will also result in increased stress, anxiety, and burnout.

One set of best practices is to implement written policies to establish reasonable times for meetings, phone calls, and responses to emails received outside normal business hours and to encourage lawyers to take vacation days and time off. There is no one policy that fits all, and soliciting ideas from lawyers through town halls, surveys, and pulse checks will no doubt reveal best practices that are a good fit for the culture of your workplace. One employer we spoke with recently implemented a “quiet time” policy, allowing employees to designate an entire week when they were not expected to respond to emails or telephone calls. This practice was both well received and found to be extremely effective. As policies are written and revised, feedback loops should be developed as well as other methods of communication to ensure that leaders are receiving ideas, reactions and valuable input from their lawyers and staff.

#### ***5. Take the Long View About Retaining Lawyers Through Part-Time and Flex-Time Policies***

The pandemic has highlighted a number of outdated policies and practices that are simply inimical to the career interests of lawyers and the interests of their employers in attracting, developing and maintaining a cadre of diverse and highly talented lawyers. Based on the responses to questions we asked about billable hours and part-time work, we suggest it is time to seriously review and revise part-time and flex-time policies.

It has long been the case that while most legal employers allow lawyers to work part-time or flex-time, the majority of lawyers who take advantage of these policies are women. Unfortunately, their advancement opportunities have often been limited, as they are frequently viewed as simply being on the “mommy track.” Likewise, male lawyers who want to take the opportunity to work on a flex-time or part-time basis may also face implicit biases and adverse career consequences.

It is clear from the Survey that lawyers want the flexibility to choose their own schedules. Remote work has been de-stigmatized and it will become part of every legal organization’s



culture as many lawyers may never return to the former five-days-at-the-office model. A more modern approach to flex-time and part-time is especially critical because women now make up half or more of law school classes, and the absence of flexible work policies poses a genuine impediment to recruiting and retaining women lawyers. When the pandemic eases, and legal employers are once again hiring at the pre-pandemic rate, many lawyers will have the opportunity to decide whether to stay or leave. For women lawyers, we predict that a driving factor will be the extent to which an employer allows part-time and flex-time work with specific pathways for advancement to partnership or more senior levels of an organization.

That same degree of flexibility should apply when a lawyer may wish to take a sabbatical or leave of absence, with the expectation that they will return to the job after a specified time. It strikes us as short-sighted for employers to balk at allowing their highly trained and highly skilled lawyers to take a personal leave for six months, or a year or even two years, and then return to the organization. The lawyers that large firms reject because of a time gap in their employment end up benefitting small firms and companies, which hire those lawyers when they return to the work force. We expect opportunities for lawyers to work outside of the law or in non-traditional law jobs to grow, putting increased pressure on firms and companies to be creative and flexible about their leave policies.

With these considerations in mind, and as the profession moves forward, we recommend that:

- ▶ Leaders should implement policies that encourage the use of flex-time and part-time policies, and recognize that lawyers' careers span many years and are worthy of the organization's substantial investment in them. Lawyers who work part-time or on a flex-time schedule want to be assured of opportunities to handle important matters; to be considered for business development and training; and remain on a path for partnership and other advancement.
- ▶ Leaders should not only communicate their support for workplace flexibility, they should themselves model flexibility in their own work schedules. This will send a strong message to their subordinates and make it less likely that lawyers, especially women with children, will elect to leave their organization or consider abandoning the profession altogether.

The pandemic has highlighted a number of outdated policies and practices that are simply inimical to the career interests of lawyers and the interests of their employers



- ▶ While many Survey respondents did not consider reduced billable hours to be important, 26% of women and 34% of women with children viewed the reduction of billable hours or workload to be “very” or “extremely” important. Given the many challenges that lawyers with children have faced during the pandemic, at a minimum, legal organizations should consider whether billable hours should now be de-emphasized or possibly even eliminated as a significant criterion in performance evaluations and compensation. Indeed, mothers are more likely to worry about their performance and whether they will be judged negatively because of their child care responsibilities. Carefully constructed flex-time and part-time policies will allow lawyers to work where and when they can be most productive.

## ***6. Use Metrics to Measure the Success of Policies, Practices, and Efforts to Implement Change in the Workplace***

The old adage continues to be true: You can’t change what you don’t measure. Metrics are now more important than ever to track how lawyers are faring in terms of the opportunities they receive from their employer to work on important matters for significant clients, as well as opportunities for training, client “pitches” and development, “stretch” assignments, compensation, and prospects for advancement. As the Survey data show, women and lawyers of color have much higher levels of concern about their advancement, and employers should use metrics to assess how they are actually faring. Employers are well served by having a solid empirical basis to assess whether disparities exist, their extent, and whether efforts to improve are actually working.

For law firms, metrics are especially important to monitor associate development. Firms typically lose a large majority of their associates, including large numbers of women and lawyers of color. Core metrics are even more important where there is a substantial amount of remote working, which increases the risk of an “out of sight, out of mind” approach to personnel. All too often, an associate can simply be overlooked, particularly when in-person meetings and interactions have been diminished or eliminated. As a prime example, the Survey found that many women lawyers with children believe that they are being ignored for assignments or other development opportunities.

Questions to monitor in a law firm setting include: Are all associates getting the types of experiences they will need to advance? Are they working directly with clients? Taking and defending depositions? Attending hearings? Taking key roles on deals? Working directly with a partner? Do they have sponsors and mentors? Have they been told what skills they need to advance? Are they being groomed to take over client relationships?

In a corporate or organizational setting, similar questions need to be asked, appropriate to the dynamics of the workplace. These questions may include: Are the lawyers getting regular and meaningful feedback about their work? Does feedback include a career path to promotion? Is the lawyer getting stretch assignments? Does the lawyer get exposure to business clients? Is the lawyer

in charge of a project that provides leadership and supervisory experiences? Metrics are also necessary to examine decisions about who may be laid off or furloughed, to ensure there is no disproportionate impact on women and lawyers of color.

Other useful metrics include data about which lawyers are engaged as sponsors and mentors, and which lawyers have meaningful sponsors and mentors to help advance their careers. Who is taken on client pitches and subsequently assigned work? How is credit for a new matter or client allocated? Who is moving up to the next level of compensation? To leadership roles? By carefully tracking these data, an organization can develop a clearer picture of how lawyers are actually progressing, so as to ensure that the results comport with the organization's goals and expectations.

## 7. Reassess Compensation Systems

The pandemic has provided legal organizations with a unique opportunity to reconsider and re-evaluate their compensation policies, what those policies should reward, and how they are to be implemented. We believe that compensation systems should mirror the culture of the firm. For example, if the firm wants to encourage collaboration, cross-marketing in the origination of business, and teamwork on matters once they are brought in the door, the firm's compensation system should reward those who demonstrate those attributes. Likewise, good firm citizenship should be rewarded to encourage mentoring and sponsorship, training lawyers, work on behalf of firm committees, and taking on *pro bono* matters.

Significantly, many law firms are reassessing their compensation systems in order to place a greater emphasis on efficiency, quality of work, and teamwork. By according less significance to billable hours in performance reviews and compensation, and ascribing more importance to the quality and efficiency of the work performed, law firms will be acting in greater conformity with their clients, who are increasingly moving beyond the billable hour and looking to alternative fee structures that reward efficiency and high-quality work.

Finally, especially for partners, law firms need to communicate the specific factors that determine compensation. All partners should be apprised of the "rules of the road" for the determination of income and bonuses. The use of a transparent, metric-based compensation system can also assist in the equitable allocation of origination credit and help to ameliorate the

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long-standing and growing pay gap between male and female partners, which increases with seniority and has led to the continued attrition of experienced women lawyers.

## ***8. Provide Greater Parental Resources and Support***

Better support for working parents is essential. Indeed, 42% of women Survey respondents live with one or more dependent children at home, with the majority of them living with children younger than high school age. Lawyers with children, and especially mothers with young children, are facing daunting hurdles as they juggle work, schooling, and child care responsibilities in the virtual work environment. As organizations continue with remote paradigms, they would be well-advised to survey their lawyers to identify the types of resources that would be most helpful and use feedback as part of any decision-making.

Survey respondents, particularly women with children, want to see their legal organizations adopt innovative resources and policies, including: back-up child care and tutoring support; stipends or bonuses to help defray child care costs and help with elder care responsibilities; parental support workshops; adding more months of paid parental leave that can be taken to cover child care gaps; and adding more days to personal time off. Seeking input from lawyers about how best to address the challenges they face will help to determine how resources can be reallocated to assist them.

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working parents  
is essential.

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We are aware, of course, that there are varying levels of cost involved in providing benefits like those listed above, and it may not be feasible for small firms to provide them. Our perspective is that the investment made in providing these resources will pay dividends because it will reduce attrition, increase productivity, boost morale, and help in recruiting talented lawyers who see an organization dedicated to their lawyers' professional and personal well-being.

### ***9. Strengthen Wellness and Mental Health Programs***

Practicing law has always been difficult and stressful, and the Survey found that lawyers are feeling higher levels of anxiety, depression, and even burnout due to the pandemic. As our data show, today's lawyers, more than ever before, expect employers to provide wellness resources, including guidance about enhancing mental health and well-being, additional support for working parents, and personal outreach by their employers. A number of resources can be provided at relatively low cost to a firm, such as: (a) workshops or lectures by specialists in techniques for well-being; (b) a platform for working parents to share ideas and group-solve problems; (c) social events for groups of lawyers, such as a happy hour or a cooking lesson. There are literally dozens if not hundreds of websites and publications about what employers—including law firms—can do to improve employee wellness and reduce stress. Employee well-being is often a direct reflection of the organization in which a lawyer works. Invest in ways to build more collaborative and resilient teams, drawing on other lawyers with subject matter expertise.

Creative and innovative wellness programs have been implemented in many legal organizations. For example, some have held meditation and mindfulness programs and organized exercise and yoga classes. Organizations can also promote third-party counseling services. It may be beneficial to offer these resources in the context of affinity groups within an organization. The ABA Practice Forward website provides a myriad of wellness resources, as do many state and local bar associations.

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Today's lawyers, more than ever before, expect employers to provide wellness resources, including guidance about enhancing mental health and well-being, additional support for working parents, and personal outreach by their employers.

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## ***10. Provide Excellent Technical and Administrative Support for Remote Work***

The Survey results show that there are many lawyers frustrated with the lack of “excellent” technical and administrative support from their employers. All of the bits and pieces of technology gone wrong can combine to create hours of frustration and lost time. For example, many lawyers have experienced problems with Zoom calls on unstable home internet connections, which were not designed for use by several people simultaneously working in the same household. There are many other technical problems that have come to the fore, such as working with administrative, secretarial or paralegal staff who are themselves working at home with poor access to firm systems; working with equipment that is not office quality; experiencing difficulty accessing online files, and more. If the profession is to move forward to more remote working, employers need to provide both state-of-the-art technology and readily available staff to help out when glitches arise. It could, for example, be a good investment for firms to provide stipends that help lawyers, as well as staff and paralegals, to obtain the resources that they need to sustain a home office, such as a printer and other supplies.

## VII

# Recommendations for Individual Lawyers



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*Success at work depends not only on a  
supportive employer but also actions  
by an individual lawyer.*

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**Success at work depends** not only on a supportive employer but also actions by an individual lawyer. Here are several suggested best practices about what individual lawyers can do to keep moving forward in times of stress and uncertainty, and to ensure a successful, productive, and long-term legal career.

### ***1. Set Realistic Expectations for Yourself and Others Around You***

Adjust your goals for what can reasonably be accomplished, especially if you have primary responsibility for child care or helping elderly relatives. Let your supervisors or clients know of any particular personal issues you may be dealing with that may be interfering with completing work assignments. That way, there will be no surprises and an agreed-upon timetable can be fashioned.

### ***2. Negotiate Boundaries at Work and at Home***

If you are receiving numerous assignments after normal office hours or are asked to respond to phone calls and emails at all hours of the day, evenings, and weekends, try to set boundaries with your supervising attorney or client. Enlist sponsors or other colleagues to help devise an approach that will not be viewed negatively.

Negotiate with your spouse or partner to divide child care, home schooling and other household tasks more equitably. Ask children and relatives to help out so that the entire family is working together. Avoid feeling guilty about not getting things done that are either not important or have a distant deadline. For women, try not to let gender expectations about home responsibilities overwhelm you. This will only lead to increased frustration, anger and burn-out. Simply put, this is not the time to try to maintain an unrealistic “picture perfect” household.

Maintain a separate work area. Men are often allocated the home office for their work while women are more likely to work at the kitchen or dining room table, where they are prone to be interrupted frequently by children and others in the household. In addition, try to create a daily schedule and routine. This will give a sense of control and normalcy. Understand when you are the most productive, and try to arrange your work schedule in that block of time.



### ***3. Know When to Ask for Support***

Reach out to ask for resources that you may need. Keep supervisors and clients informed about the status of work and try to ensure that deadlines are real and not artificial, which can create undue pressure and may result in an inferior work product.

### ***4. Stay Visible with Clients, Partners, and Other Lawyers in the Firm, and in the Legal Community***

Reach out to clients to see how they are doing, and ask if you can be of assistance. Inquire as to whether clients have a particular area where they might like to receive more information. Reach out to mentors and sponsors. Think of partners and other lawyers in your firm as your clients with whom to check in, ask for work, or offer to write an article or newsletter. Given that remote working provides few if any opportunities for in-person interactions, stay in communication preferably by video or phone, rather than only by email. Attending a range of activities online will help you to feel connected and will likely give you a fresh idea or perspective that you can use with clients or your colleagues. If your organization is big enough, try to orchestrate or participate in virtual social get-togethers.

### ***5. Be Pro-Active About Your Career***

The pandemic has provided a unique opportunity to re-assess your career. Have you set out your goals and identified your strengths, weaknesses, and the steps and resources you need in order to achieve your goals? Are you getting the skills and training necessary for you to advance and succeed? If not, try to figure out what you will need to do to achieve them. Now may be a good time to identify and become involved in new practice areas that are developing. More senior lawyers may want to consider taking advantage of an early retirement program and assess other lifestyle changes and opportunities.

### ***6. Take Care of Yourself***

These have been stressful and difficult times and it is important to take steps to promote your own resilience. Get exercise. Try to avoid catastrophizing, sending your thoughts spiraling into worst case scenarios. If you find yourself struggling with depression, anxiety, lack of sleep, stress, loneliness, drinking or substance abuse, do not hesitate to seek out assistance.

## 7. Volunteer

The pandemic has demonstrated how lawyers can be instrumental in providing *pro bono* services to the increasing number of people who are in true need. Research shows the many psychological benefits that can result from helping others. The ABA has a variety of ways in which lawyers can get involved, and your work will make a significant difference. Volunteering can also provide additional networking opportunities with lawyers who may share similar interests.

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Stay visible with clients, partners, and other lawyers in the firm, and in the legal community.

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## VIII

# Conclusion

**The thousands of ABA members** who responded to the Practice Forward Survey have made it clear that the pandemic has had a profound impact on each of them as well as their employers. The unprecedented transition to remote work has truly created a “new normal,” and this paradigm shift will have far-reaching consequences for the profession well after the pandemic has abated. The Survey also confirmed the continuing barriers that confront women lawyers and lawyers of color, many of which have been compounded as a result of the transition to remote work. The significant changes over the past year will provide a unique and historic opportunity for legal employers to reassess and re-evaluate themselves, and to implement meaningful changes to the practice of law moving forward. It is our fervent hope that the data-driven best practices suggested herein will be a win-win for both legal organizations and their individual lawyers.

The ABA’s Coordinating Group on Practice Forward, and the many Sections, Divisions, Commissions, Forums, and other member groups, stand ready to provide targeted resources and programs to help ABA members meet on-going challenges and opportunities into the future. With creativity, strong leadership, and laser focus, we can all lead the profession to more inclusive, diverse and flexible workplaces.



# Endnotes

1. Analyses were conducted using weighted survey techniques within the R statistical computing language. Though we were initially interested in also weighting by race/ethnicity, the data did not require us to do so because 96% of our participants indicated their race/ethnicity (and the ABA has this information for about only 40% of their members). It is also the case that there were not enough respondents in certain categories to generate stable group estimates or comparisons. As examples, there were too few respondents who identified as Native American or Hawaiian/Pacific Islander to conduct separate analyses of those groups. As another example, the respondents who identified as LGBTQ+ or disabled were not large enough groups to generate statistically meaningful comparisons.

2. Every respondent did not necessarily answer every question. In addition, there were several “skip” patterns in the questionnaire so that respondents received only those questions that applied to their situation. As examples, certain questions not appropriate to solo practitioners, or respondents without dependent children living at home, were not directed to those respondents.

3. See, e.g., D. Peery, P. Brown and E. Letts, *Left Out and Left Behind: The Hurdles, Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color* (American Bar Association June 2020).

4. *Id.*

5. Longitudinal research by the American Bar Foundation shows that even in non-pandemic times, close to 20% of law school graduates were working in settings where they were not practicing law some 15 years after graduation. See <https://thebarexaminer.org/wp-content/uploads/PDFs/BE-Sept2015-AftertheJDIII.pdf>. See also McKinsey & Company/ *Lean In, 2020 Women in the Workplace: Corporate America is at a Critical Crossroads*. [https://wiw-report.s3.amazonaws.com/Women\\_in\\_the\\_Workplace\\_2020.pdf](https://wiw-report.s3.amazonaws.com/Women_in_the_Workplace_2020.pdf) (1 in 4 women are considering down-shifting their careers or leaving the workforce. Black women are more likely to think about leaving the workforce).

6. There were sufficient data to compare lawyers in private firms with lawyers in corporate law departments. Lawyers in other settings such as not-for-profits were asked these questions but there were not enough responses to focus on that sector for this series of analyses. These questions were not asked of solo practitioners, lawyers in academia, or judges.

7. See T. M. Melaku, *Why Women and People of Color in Law Still Hear “You Don’t Look Like a Lawyer.”* <https://hbr.org/2019/08/why-women-and-people-of-color-in-law-still-hear-you-dont-look-like-a-lawyer>.

8. The result for lawyers is not extreme. See, e.g., earlier report from O.C Tanner, <https://www.octanner.com/covid-19/pulse/may-18-22.html>, showing that 28% of office-based workers generally hope to work from home 4 or 5 days a week and, at the other end of the spectrum, 33% hope to work in their offices 5 days a week.



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# Law Firm Talent Must Reflect Shifting US Demographics

By **Stephanie Scharf and Roberta Liebenberg** (June 16, 2021, 4:09 PM EDT)

As this article is being written, the U.S. is in the midst of a demographic change that will have enormous consequences for all businesses, including the business of law.

Women have remained around 50% of the U.S. population for many decades and, as shown in Chart 1, are projected to stay at that level going forward.[1]

Substantial increases, however, are taking place in levels of racial and ethnic diversity. By 2030, approximately 45% of the U.S. population will be people of color.[2] Over time, by 2046, the minority population will become a majority.[3]

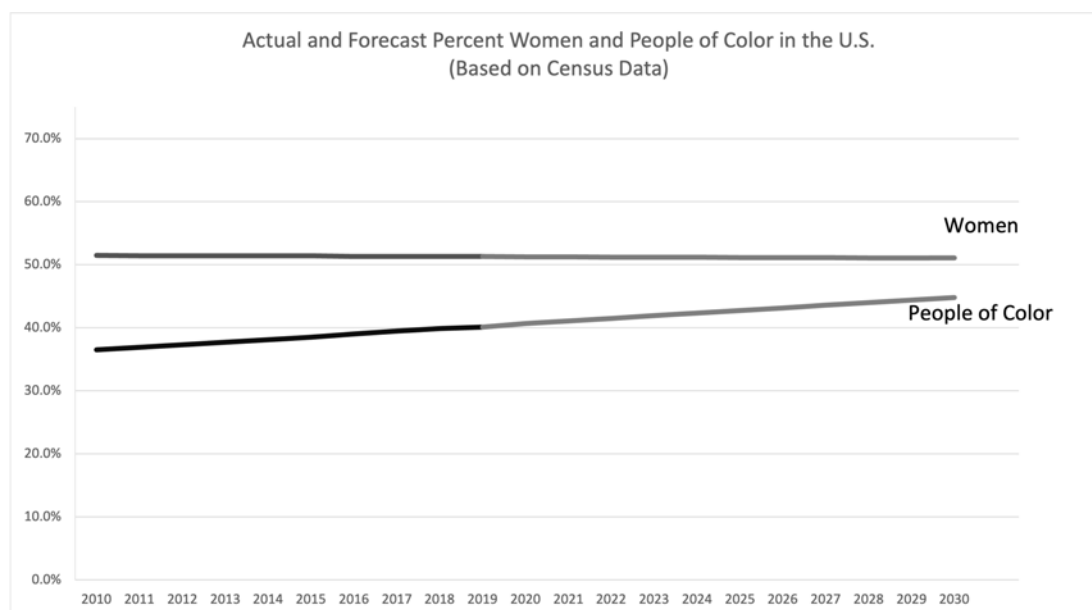
## Chart 1



Stephanie Scharf



Roberta Liebenberg



The legal profession will see comparable demographic changes.

Today, over 50% of law school enrollees are women and over 30% are students of color. We expect those trends to continue.

One result will be that any organization unable to recruit, retain and advance female lawyers and lawyers of color into midlevel and senior roles will — in short order — be starved for the diverse talent that will make up a large segment of the legal profession.

Understanding the broader culture in which a business operates, including how to recruit and advance personnel from diverse backgrounds, has become imperative.

Why is diversity important to the success of a business? More than a decade of studies and commentaries consistently show that people from diverse backgrounds, working together, produce more innovation and achieve better solutions and results.

Even the conflicts arising from diverse perspectives, if managed correctly, will increase innovation as well as improve creativity and the quality of the work. As sociologist Cedric Herring put it so well, "Diversity is related to business success because it allows companies to think outside the box by bringing previously excluded groups inside the box. This process enhances an organization's creativity, problem-solving, and performance." [4]

There is also the cumulative impact of successful diversity initiatives: The organization that effectively promotes personnel from diverse backgrounds will be increasingly able to attract and retain a broad range of diverse talent.

The current and projected demographic statistics demonstrate the increasing diversity of our society and the talent pool that will be available in the legal profession, particularly to law firms.

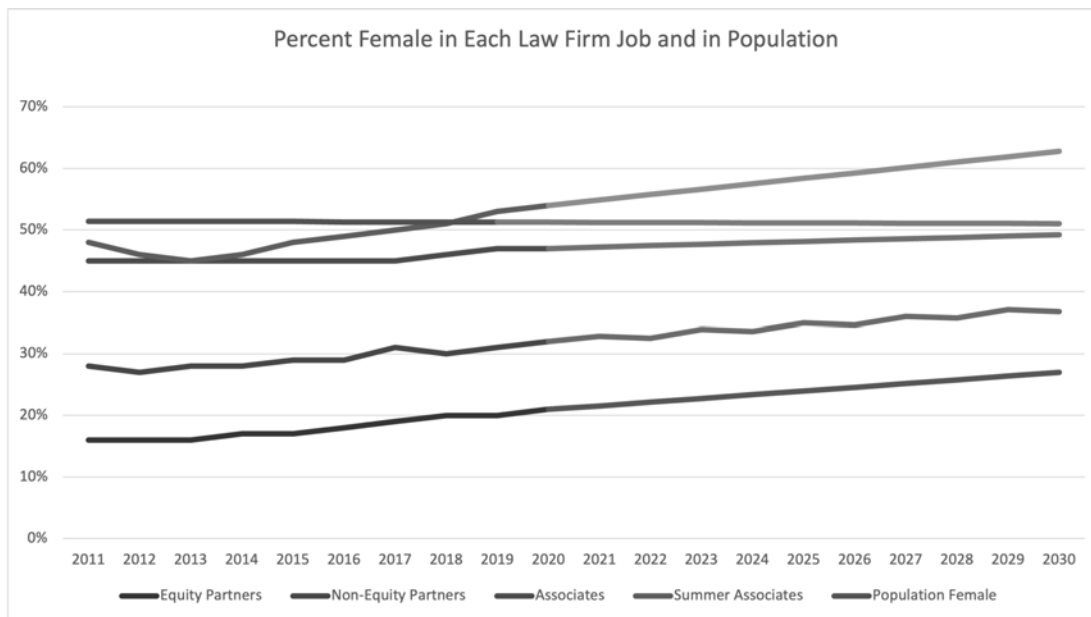
Firms that are able to successfully hire, retain and advance female lawyers and lawyers of color will have a competitive advantage.

Over the past few decades, law firms did not necessarily take a long-term view of recruiting and advancing lawyers into senior positions, instead relying on the idea that lawyers can be recruited when needed and that it is mostly a matter of compensation.

But while some lawyers may go to the highest bidder — which carries its own long-term risks — our research suggests that many female lawyers and lawyers of color care as much, if not more, about the culture of firms where they work, and whether that culture is genuinely inclusive, welcoming and appreciative of the differences they bring to the table. [5]

Below we show data and percentages of female lawyers and lawyers of color in law firms from the past 10 years, which we used to forecast future percentages of female lawyers and lawyers of color at junior and senior levels. [6] Chart 2 shows past data and future projections for women in positions as summer associates, associates, nonequity partners and equity partners. We used the female population statistic as the context for these projections.

## **Chart 2**



As shown in Chart 2, it is anticipated that women will represent more than 50% of summer associates, and that percentage will continue to increase over time.

Women will also represent nearly 50% of associates, although these numbers are slightly lower than the percentage of women now graduating from law school. That is because the category "associate" covers six or more years, and female associates begin to leave law firms more often and earlier than men, even before partnership decisions are made.[7]

But at the partner level, especially the equity partner level, women are projected to remain woefully underrepresented: Women are forecast to represent only 37% of nonequity partners and 27% of equity partners in 2030.

These disappointing projections are not attributable to a pipeline problem, as women have comprised approximately 50% of law students for the past several decades. Instead, there are many policies and practices in law firms that create obstacles to the advancement of women.

For example, in our 2019 "Walking Out The Door" report, we found that more experienced female lawyers reported that they were treated less favorably than their male peers in terms of access to business development opportunities, allocations of origination credit, salaries and bonuses, access to sponsors and opportunities to inherit clients as senior partners retire.[8]

These gender-based differences in work experiences amount to a "death by a thousand cuts"[9] and cause women to disengage from their firms in much larger percentages than men, ultimately walking out the door.

Many commentators, including the authors of this article, have noted the glacial rate of progress for promoting women into law firm leadership roles.[10] Clearly, unless there are intentional and meaningful changes in how firms treat their female lawyers, the future will not be much different from the past.

Moreover, our forecast does not factor in the very real possibility that the pandemic may result in more women, especially those with younger children, electing to downsize their careers by working part-time or leaving the practice of law altogether.[11] A possible exodus of female attorneys would undo even the modest gains that were made prior to the pandemic.

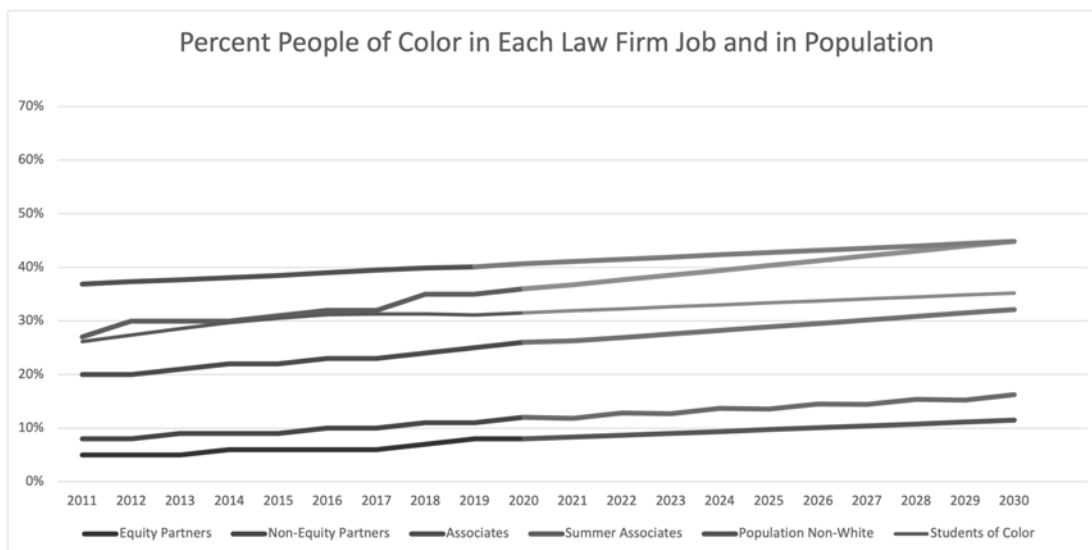
Chart 3 shows past data and future projections for lawyers of color. For the past 10 years, law school classes have increased their levels of racial and ethnic diversity so that today, over 32% of students enrolled in law schools are students of color.[12]

We forecast that trend to continue, with students of color representing 35% of all law students in 2030.



Today, 36% of summer associates are students of color,[13] and we project that number will also increase to 45% by 2030. Summer associate hiring of law students of color is robust. In fact, more students of color are hired in law firms at the summer associate level than would be expected by their law school numbers.

### Chart 3



Both past and projected data show that the decline begins at the associate level. Lawyers of color now account for 26% of associates, fewer than the population of law students of color would predict.

There is a projected increase in the percentage of nonequity partners of color between today (11.8%) and 2030 (18%), although that increase is still far less than would be expected by the percentages of law students and associates of color.

The forecast is more discouraging at the equity partner level. Today, the typical firm's equity partnership is 8.1% lawyers of color,[14] and that is projected to be 11% in 2030.

These forecasts show consistently fewer female lawyers and lawyers of color in the upper ranks of firms than are available to recruit and advance.

If your firm falls below the norm for hiring, retaining and advancing female lawyers and lawyers of color, there should be real cause for concern as to how it will fare long-term. And even if your firm is somewhat above the norm, there is still cause for concern.

Why? Because the demographic trends show the need to recruit and retain substantially more female lawyers and lawyers of color to truly represent the increasingly diverse general population and legal profession.

As we explain below, there is still time for firms to change the course of their own trajectories, although there is no time to waste in doing so.

### Closing the Gaps

In 10 years, a far larger number of lawyers than ever before will be women and people of color. By 2030, the majority of baby boomer lawyers — who entered the profession before 1989, and were largely white and male — will be over age 70 and typically retired from the practice of law.

It is no exaggeration to say that these demographic changes will frame a law firm's destiny — if not today, then surely in the next five to 10 years.

Our forecasts, however, are not written in stone. On the contrary, we present them as a wake-up call for firms to adjust their current course in ways that will enhance their ability to hire and retain the

diverse range of lawyers that the legal profession has to offer.

Our research and consulting work have led us to focus on specific techniques to foster change. We have seen that even small adjustments can make a large difference.

The process is straightforward and transparent. It does not take years. It does not have to be perfect, and it will yield results. The most important step is to get started.

The core principles we set forth below can be used to define, measure and meet goals for change.

### ***1. Set a two-year goal.***

Our experience is that one year is not enough and three years or longer can be affected by changes in leadership or other internal factors. We strongly recommend setting a specific goal with a concrete, measurable outcome.

For example, a goal could be established to ensure the retention of double the number of midlevel lawyers of color. Another goal may be to increase by 25% the retention of midlevel female lawyers.

Depending on an analysis of why lawyers leave, there are many possible strategies that can be formulated with appropriate metrics.

Whatever specific diversity goals are adopted, the organization should make them a priority with focused attention by those in charge.

### ***2. Be proactive about getting multiple perspectives from all levels of the firm.***

Take advantage of multiple viewpoints from lawyers at all stages in their careers, and do not rely only on lawyers in leadership. By doing so, there will be a greater likelihood of obtaining creative and innovative ideas, insights and suggestions.

Moreover, there will be less impact from unconscious biases, such as those in leadership hearing only from lawyers who share similar viewpoints.

Our experience is that eliciting viewpoints from lawyers at all different levels of the firm can lead to unexpected and positive ideas for a firm to implement.

### ***3. Start early.***

Many firms continue to operate under the traditional sink-or-swim notion that lawyers will either learn or they won't, and those that learn will stay.[15] Often firms view junior and even midlevel lawyers as easily replaceable and believe that if an associate does not work out, there are always more to hire.

But that is the outdated mentality that has left firms with the conundrum they now face: their lack of senior female attorneys and senior lawyers of color.

Ironically, it is those very lawyers that clients are increasingly insisting on using for their major matters. Indeed, by the time lawyers reach senior associate or partner-ready levels, it is typically too late to change their minds — and the firm's — about a long-term career with the firm.

Many firms, for example, seem flummoxed when female lawyers and attorneys of color are promoted to nonequity or equity partner, but then leave to go elsewhere.

That is why we especially emphasize both informal and formal methods to support associates as early as possible. These methods will enable firms and their associates — including women and people of color — to engage with each other in ways that benefit both client matters and mutual long-term commitments.

Some of the many ways in which firms can offer career support to associates from diverse backgrounds include making sure they have stretch assignments, the opportunity to be lead on a

part of a case or deal, the guidance needed to learn from their mistakes, or recognition to the client for their work.

Steps can also be taken to help female lawyers and lawyers of color increase their visibility both within the firm and in the wider legal community. It may be as simple as inviting a lawyer to join a client dinner, speak at a CLE webinar or co-chair an event in the firm. These concrete actions cumulatively send the message that leaders are invested in the careers of female lawyers and lawyers of color.

Reconsidering how to recruit at the most junior levels is another approach to advance attorneys from diverse backgrounds. Firms can readily broaden their recruitment of students from law schools that may have a more diverse student body. Research has shown that many rainmakers tend not to have graduated from the top tier law schools. Life experiences, grit and ambition can translate into long-term success in firms.

#### ***4. Decide on what you will measure and track results.***

To enable the firm to assess whether progress is being made and goals are being met, it is fundamental to measure what the firm seeks to change.

Some goals are measured with readily available data. As one example, if your goal is to hire more lateral female partners and partners of color, you can easily keep track of who is interviewed, from what sources, and who is hired. Or, if your goal is to eliminate disparities in compensation and promotions, a first step could be to review compensation and promotion histories to understand the points where implicit biases may come into play.

Other goals may require more nuanced measures of success.

We have found tailored surveys to be enormously helpful in formulating goals that can be prioritized and then to measure the extent of change over a certain time period. Surveys are particularly useful when they span a range of levels within an organization.

As an example, a firm could assess whether members of a team from diverse backgrounds are advancing with respect to assignments and working with clients, so they will have the necessary experience to be promoted to partner. The most effective team leaders could receive increased salaries and/or bonuses for advancing female lawyers and lawyers of color into key roles for clients and leadership positions.

#### ***5. Pivot when needed.***

Success is rarely a straight line. Our experience is that some new policies or practices will immediately take hold. But that is not always the case, and adjustments are often necessary.

After six months, you should have a sense of how your colleagues at all levels are reacting and whether the change process should continue as is, or if adjustments should be made.

#### ***6. Just do it.***

There is no silver bullet and no one way to meet your goal.

The first six months will slip away sooner than you think. If there is no discernible change early in the process, it will send a contrarian message, and you will lose valuable time and momentum.

Build in milestones for short-term wins. A good deal of effective change turns on leadership, communication and follow-up. The particular technique is less important than what leaders say and do — which may include frequent communication, using metrics for regular assessments, reporting throughout the organization about progress, determining where you need help and continuing positive focus on long-term goals.

### **Conclusion**

The past year has seen a strongly renewed focus on the need for racial equality in our country, and law firms have been outspoken in their professed commitment to that objective, just as they have long expressed support for gender equality.

But the reality is that the pace of progress for both gender and racial equality at law firms has been unacceptably slow, and the numbers of female lawyers and lawyers of color in positions of leadership are still far too low.

More and more clients are increasing their demands that female lawyers and lawyers of color play meaningful roles on matters. Firms that fail to meet that need will find themselves losing business to others that are able to successfully recruit, retain and promote the widest range of talent that the legal profession has to offer.

The substantial demographic changes in the country and the legal profession can no longer be ignored. The future is now, and this should compel firms to take specific and concrete actions to disrupt the traditional paradigm of hiring, support and advancement.

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[2] U.S. Census Bureau. (2021).2010-2019American Community Survey 1-year Public Use Microdata Samples[CSV Data file]. Retrieved from <https://data.census.gov/cedsci/table?q=United%20States&tid=ACSDP1Y2019.DP05&hidePreview=false>.

[3] Id. Based on current reproduction trends, most non-immigration population growth will come from growth in the Hispanic, Asian and Black populations. Vespa J, Armstrong DM, Medina L. Demographic turning points for the United States: Population projections for 2020 to 2060. [https://www.census.gov/content/dam/Census/library/publications/2018/demo/P25\\_1144.pdf](https://www.census.gov/content/dam/Census/library/publications/2018/demo/P25_1144.pdf). Even today, the underage 18 population is about 50% children of color. Child Trends, Racial and Ethnic Composition of the Child Population (December 13, 2018).

[4] Cedric Herring, "Does Diversity Pay? Race, Gender, and the Business Case for Diversity." American Sociological Review, 2009, Vol. 74:208-224 (April) at 220.

[5] Stephanie A. Scharf and Roberta D. Liebenberg, "Practicing Law in the Pandemic and Moving Forward." (American Bar Association, April 2021) at 42-48.

[6] Data in Charts 2 and 3 about legal positions in 2011-2020 are from National Association for Law Placement, Inc. (NALP), 2020 Report on Diversity in Law Firms (February 2021). [https://www.nalp.org/uploads/2020\\_NALP\\_Diversity\\_Report.pdf](https://www.nalp.org/uploads/2020_NALP_Diversity_Report.pdf). Forecasts for 2021-2030 were generated using an Exponential Smoothing (ETS) algorithm, which uses observed values at regular increments to predict continuation of trends through a specified date. Forecasts were implemented with the Excel FORECAST.ETS function.

[7] The National Association of Women Lawyers, 2020 Survey Report on the Retention and Promotion of Women in Law Firms, at 1; Roberta Liebenberg, "Too Many Senior Women Are Leaving The Profession," Law Practice Today, Nov. 14, 2018 ("glacial pace of progress"); "The 2020 Diversity Snapshot," Law360, Sept. 1, 2020 ("a legal industry determined to move the needle but succeeding at a glacial pace.").

[8] R. Liebenberg and S. Scharf, Walking Out the Door: The Facts, Figures, And Future Of Experienced Women Lawyers In Private Practice (American Bar Association, November 2019) at 5-8.

[9] Id. at 9 ("death by a thousand cuts").

[10] Id. at 7-9.

[11] Id. n. 6, Practicing Law in the Pandemic and Moving Forward at 19.

[12] 2011-2021 Enrollment DataSet, Analytix By Accesslex (2021), <http://analytix.accesslex.org/DataSet> (follow instructions posted on webpage to access Enrollment DataSet).

[13] Id. n. 7, 2020 Report on Diversity in Law Firms at 16.

[14] Id. at 18 (Feb. 2021).

[15] For a similar approach in the financial services industry, and how it is changing, see Merrills' New Training Sheds Sink Or Swim Mentality That Hampered Diversity. <https://www.advisorhub.com/merrills-new-training-sheds-sink-or-swim-mentality-that-hampered-diversity-exec/>.