

# BEYOND THE GLASS CEILING

Advancing and Retaining Women



May, 2012

# Final Report of the TBA Special Committee on the “Glass Ceiling Initiative” May 2012

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## **Letter from the Chair of the TBA Special Committee on the Glass Ceiling Initiative**

In August of 2011, I was asked by TBA President Danny Van Horn to Chair a Special Committee that was designated as the "Glass Ceiling Initiative." The purpose of the committee was to look for "practical suggestions and best practices" to increase the number of female partners in firms; to increase the number of women in leadership positions in firms and corporate legal departments; and to improve the economic performance of female solo and small firm attorneys. The report would be due to President Van Horn on May 1, 2012. It was an ambitious undertaking. The Committee had monthly conference calls and one face-to-face meeting in January at the offices of the TBA. The Committee divided into subcommittees that examined six specific topics:

- Mentoring and Sponsorship
- Business Development
- Balanced Hours
- Leadership, Advancement and Compensation
- Implicit Bias
- Improving Economic Performance of female solos and small firms.

The committee looked at thousands of pages of documents and reports. The committee did not assume that there was a glass ceiling without the research to back the hypothesis. The committee looked at the limited research and resources specifically about Tennessee lawyers and conducted focus groups of women in at least six meetings across the state graciously hosted by the Tennessee Lawyer's Association for Women. Finally, I interviewed several male, managing partners from firms located in Tennessee of various sizes about these topics.

I would like to acknowledge and thank the following individuals and groups:

- TBA President Danny Van Horn for his support and efforts to continue to strengthen our profession.
- Allan Ramsaur, Executive Director of TBA, who supported our efforts.
- Christy Gibson, TBA Assistant Program Coordinator, who provided tremendous organizational support and research for the committee.
- Tennessee Lawyer's Association for Women who organized and facilitated focus groups around the state to discuss some of the topics we were investigating. TLAW also generously agreed to cover the cost of two hours of CLE for each person who attended the focus group.
- Glass Ceiling Committee members without whom this work could not have been completed. They have full time jobs in firms, as solos, and in corporate legal departments and are also involved with family and community. Despite their "many hats," they took time from their busy schedules to support this project and prepare the substance of this report.

Finally, please note that the Committee made the decision to change the title of this report to "Beyond the Glass Ceiling: Advancing and Retaining Women." Clearly, in many cases women have been successful in their firms, in their in-house legal department and in their practices. However, while there are success stories, there are still many women who feel that they cannot freely discuss their concerns or pursue alternative careers. As such, this committee thought we should acknowledge the success of many women who have broken through the "glass ceiling" while recognizing that there is still work to be done.

Chair,  
Deborah C. Stevens

## THE BUSINESS CASE: Why we should care about this issue.

### The Firm's Perspective

On average, women constitute:

- 45.4 % of associates in 2011<sup>1</sup>
- In the 2009-2010 class, women made up 47.2% of J.D. students<sup>2</sup>
- In 2011, 19.5% of women are partners in law firms<sup>3</sup>

According to a study of Massachusetts law firms, nearly 80% of women who leave firm practice do not "opt-out" of the work force, but work often as lawyers in workplaces that provide better arrangements than law firms for combining work and time for families, including government, non-profit or in-house positions. *Women Lawyers and Obstacles to Leadership, A Report of MIT Workplace Center Surveys on Comparative Career Decisions and Attrition Rates of Women and Men in Massachusetts Law Firms (Spring 2007)*. Given that 82% of American women have children, and that 95% of mothers aged 25-44 work fewer than 50 hours a week, it is highly improbable that law firms will have a sufficient pool of women eligible for partnership until this scheduling tension is effectively addressed.<sup>4</sup>

Most firms invest approximately \$250,000 to \$300,000 in training new associates, and the loss of any attorney is a loss of the investment. Law firms that fail to provide better working environments will continue to bleed cash from partner's pockets, and talented lawyers will migrate from these firms.<sup>5</sup>

The "Pipeline Myth" creates a vague – and false – hope that issues will resolve automatically as more women graduate from law school. Since 1985, law school graduates have been divided at greater than 40% women and slightly greater than 50% men. Of those graduates, approximately 70 % of both men and women enter law firms. In 1995, 85.8% of law firm partners were men and 14.2% were women, and in 2005, 82.8% of law firm partners were men and 17.2% were women. Based on current rates, and assuming the pipeline alone will eventually cure the problem, it will take until 2115 to reach 50% women partners in firms. See, Women's Bar Association of the District of Columbia Initiative on Advancement and Retention of Women, *"Creating Pathways to Success, Advancing and Retaining Women in Today's Law Firms"*, (May 2006) at page 6.

Many attorneys believe that an attorney working a part-time schedule cannot adequately service their clients. The accounting firm of Deloitte Touche found that their part-time associates *better* served their client needs because the associates were not turning over as quickly as their full-time counterparts. The accounting firm found that their clients were developing meaningful and long term relationships with their part-time associates. See, Deloitte LLP's *The Women's Initiative: Living the Lattice*. Michael Nannes, Deputy Managing Partner at Dickstein, Shapiro, Morin & Oshinsky, noted at a D.C. Bar Convention that the unavailability of attorneys working in an alternative schedule is a "red herring." He explained that many full-time attorneys have many clients and are rarely available 24 hours for any one client, thus the fact that an attorney works an alternative schedule does not necessarily make the attorney less available than an associate with a full-time schedule.

This committee strongly recommends reading *"The Corporate Lattice: A Strategic Response to the Changing World of Work,"* Deloitte Review, Issue 8 (2011). The report challenges the standard of the "corporate ladder" and concludes that ladder assumptions limit the ability to respond to a changing corporate landscape. The ladder represents a corporate approach that assumes employees are more

alike than different, and with similar wants and needs. However, the workplace and the workforce have changed dramatically. A corporate "lattice" is more adaptable and aligns with changing, needs, norms and expectations in today's workplace. Law firms should be ready to address similar flexibility.

### **The Client's Perspective**

Many women attorneys who leave private firms, leave for the in-house arena and the opportunity for flexible work arrangements that have been more readily accepted in the corporate world. These women have not forgotten the issues in law firms and may look more favorably and refer work to firms that are successfully integrating women into their business teams at all levels.

Clients find high attrition disruptive and expensive, and continue to insist that law firms bring attrition levels under greater control. The Associations of Corporate Counsel's (ACC) Value Challenge summarizes client's concern over uncontrolled attrition.<sup>6</sup>

Many corporate legal departments have been asking questions about the diversity of the firms that they hire. Now, those same in-house counsel are asking more in-depth questions. They not only want to know the percentage of women or attorneys of color that are working on their matters, they want to know the percentage of billable hours attributable to women or attorneys of color. They may also ask questions about the management of the firm and the diversity of attorneys involved in the management of a firm.

## THE GOOD, THE BAD OR THE WELL-INTENTIONED

The *Project for Attorney Retention* (PAR) is a Non-Profit Initiative at the UC Hastings College of Law. PAR has played a leadership role in linking gender equality with law firm business mandates based on high quality academic research to produce pragmatic solutions. PAR has offered advice about firm practices and whether they are good, bad or well-intentioned. PAR seeks to re-frame work-life policies from an accommodation to a business strategy. Firms that have followed many of the key policies suggested by PAR have benefited from the model. For example, Fulbright and Jaworski increased its retention of senior female associates from 29% in 2002 to 47% in 2006 and the percent of women partners went from 13% in 2002 to 17% in 2006.<sup>7</sup> The PAR findings can be summarized as follows:

### The Good

- Successful Balanced Hour Programs. Unlike "part-time" programs, balanced hour programs allow attorneys to work individually-tailored, reduced schedules designed to meet the firm's business needs while maintaining the attorney's ability to work and to develop professionally without stigma.
- Formation of Women's groups (with clear purposes and goals such as increased business development).
- Assignment systems where firms make conscious decisions of matter assignments and monitor the assignments, versus the typical system of grabbing the first attorney that is seen or systems in which partners give work to favorites, including those who "look like they do."
- Time-off for volunteering. This will ease work-family conflict by allowing parents time to volunteer in schools but to be successful, it must be allowed for all to avoid resentment by attorneys without children.

### The Bad

- Part-time policies. For most firms, part-time is well-intentioned and ill-defined. Many firms actually discourage the use of part-time schedules and many women do not see part-time as a true option.

### The Well-Intentioned

- Women's groups without clear purpose and strong firm support. Such groups can create discomfort when it is seen as giving a certain group special treatment. Additionally, without a good purpose, women may not come to the meetings and the firm decides that the women do not need the assistance.

## **Balanced Hours**

Catalyst is an organization dedicated to providing research and consulting with businesses to address the recruitment, development and advancement of women. In January of 2012, Catalyst produced a report entitled "*Women in Law in the United States*". The report notes that the Best Law Firms for Women as identified by the National Association for Female Executives (NAFE) have made great strides in work life policy: 100% have reduced hour policies, 78% offer telecommuting, 94% of firms allow their reduced-hour lawyers to be eligible for equity partnership and 78% provide backup childcare at a facility.<sup>8</sup>

In the TLAW focus groups with woman attorneys, it is clear that many women seek information about a firm's commitment to Balanced Hour programs on the front end—during the recruitment process. Managing partners of many firms indicated that "if the circumstances are right" they are open to a balanced hours, flex-time or part-time arrangements; however, they do not have a formal policy and would prefer to discuss on a case by case basis. There is a clear disconnect, but the good news is there should be plenty of room for discussion and compromise. Managing partners need to become more aware of the complexity of the issues and address them as a matter of policy and on an individual basis. Similarly, women attorneys need to recognize that there are still significant commitments and expectations in working a balanced hour schedule, and they should discuss the plan on the front end and seek continuous feedback on issues unique to a balanced hour schedule.

## **Best Practices**

1. Measure hours and productivity over an extended period of time. When flexible arrangements are working, lawyers remain accessible to clients and work longer hours when needed. Balanced hours cannot be measured in days or weeks. Measure hours quarterly, semi-annually or on a yearly basis.
2. Prepare balanced hour lawyers for advancement. Balanced hour programs should not limit opportunity—formally or informally. Non-billable work, committee and administrative assignments, professional development, and partnership status are equally important for balanced hour lawyers.
3. Educate supervisors and practice group leaders on:
  - a. the business case for balance hours
  - b. strategies for respecting the individual's schedule while managing work and how to communicate expectations accordingly
  - c. separate the lawyer's ability from the lawyer's schedule; distinguish the need for "face time" at the office and the quality of work and client relationships, skill and judgment
4. Put the plan in writing. While many law firms and lawyers feel that the lack of a written policy actually allows for more flexibility, a written policy forces consensus and requires everyone to sit down and agree to the parameters of the arrangement.
5. Be open to discussion. Younger lawyers want to discuss the availability of balanced hours during recruitment and want to know if a policy exists as part of their long-term planning. Encourage

- more seasoned attorneys to be open to this idea and not frightened of the prospect. Encourage balanced hour attorneys to raise questions about their schedules on a regular basis.
6. Provide regular evaluation of balance hour policies. Regularly review how and when the program is being used. Encourage use of the policy and obtain feedback from lawyers and clients as to how it is working and evaluate the impact.
  7. Provide proper technological support. Ensure that attorneys are able to work seamlessly from home. Supply the tools and support for at-home work to be successful.
  8. Provide balanced hour mentors or supervisors. Mentors can monitor schedules, help avoid "hour creep" and offer a willing ear. The size and structure of each firm will dictate who and to what extent the program is monitored.
  9. Support flexibility in when and where attorneys work.
  10. Balanced hour programs should be available to all. Eliminate any stigma. Attorneys working balanced hours should not be the subject of negativity. Firms should discuss whether or not to impose a minimum length of employment to apply for balanced hours and whether (or how) the partnership track is altered for those on a balanced hour schedule.

The Project for Attorney Retention has a "model" balanced hours policy on its website at [www.attorneyretention.org/BestPractices/BH ModelBalancedHoursPolicy.shtml](http://www.attorneyretention.org/BestPractices/BH%20ModelBalancedHoursPolicy.shtml).



## **MENTORING, SPONSORSHIP and NETWORKING**

### **Definitions**

A. Mentoring--[A] mentor is a person who helps a lawyer develop professionally to achieve the lawyer's desired professional goals, and mentoring is the process by which the mentor and protégé work together to identify and help the protégé work toward those professional goals. Michele C. Mayes and Kara S. Baysinger, Courageous Counsel 46 (2011), quoting Ida Abbot, The Lawyer's Guide to Mentoring (2000)

B. Sponsorship - Sponsorship is advocacy for the attorney. A sponsor fights for the attorney and also may be a critic. "A sponsor is someone who helps you get paid, gets you promoted, gets you hired—they're in the room when the decisions are being made." Id. at 128, quoting Priya Truaber from Knowledge@Wharton.

C. Networking - Networking is the art of cultivating mutually beneficial relationships. These relationships establish a supportive system for exchanging information and producing meaningful business opportunities.

### **TLAW Focus Groups**

The TLAW focus groups held around the state to discuss these issues indicated that Tennessee women lawyers are not different from lawyers around the country. They want access to mentors. They believe in both formal and informal mentoring. Formal mentoring provides an opportunity to institutionalize mentoring and requires both the mentor and mentee to give mentoring the time it deserves. They want access to female role models and mentors but they agree that there are, and have been, great mentoring relationships that occur across gender lines.

Formal mentoring programs need to differentiate between supervision and mentoring. In order to be successful a mentee must believe that the mentor has her best interest in mind and will maintain confidentiality about her concerns.

In a similar initiative by the Women's Bar Association of the District of Columbia, participants overwhelmingly agreed that male and female mentors are critical to the success of any lawyer. However, the participants expressed frustration with the implementation of effective mentoring programs:

"We all know that women are excluded from the benefits of strong mentoring networks where those relationships are informal....Today's comments about the issue of mandatory partner mentoring versus non-mandatory approaches really got to the heart of the issue itself. Can you have good mentoring from somebody essentially being told they have to mentor?"

The D.C. initiative goes on to find that "until junior women lawyers develop an increasing number of informal mentors—both male and female—formal mentoring programs are a necessary step." Firms need to develop strategies to counteract the "natural tendency to feel more comfortable working with lawyers like themselves, and to reject judgments not to invest their limited time and political capital in lawyers who they subjectively guess—based on gender—are destined to leave the firm anyway." *Creating Pathways to Success, Advancing and Retaining Women in Today's Law Firms*, Women's Bar Association of the District of Columbia: Initiative on Advancement and Retention of Women (May 2006) at 24.

Robert J. Grey, Jr., ABA President, 2004-2005, once said that the most crucial ingredient for career advancement—especially for a woman or minority attorney—is having an advocate; someone with power who will have the young attorney's back and campaign for her behind the scenes. (as quoted in "Senior Male Mentors Help Women Lawyers Get Promoted to Shareholder" found at [www.the-completelawyer.com/senior-male-mentors-help-womenlawyers-get-promoted](http://www.the-completelawyer.com/senior-male-mentors-help-womenlawyers-get-promoted)).

Decision makers always have imperfect information about candidates for advancement. In the absence of sufficient, objective information to allow for discrimination among aspiring attorneys, having a powerful male mentor signals to the predominantly male leadership that a woman lawyer possesses those sought-after competencies and qualities typically associated with her male peers.

Formal mentoring programs are unlikely to help women reap the benefit of this sponsoring function. Rather, the voluntary selection of a protégé by senior male signals to other firm leaders that she possesses those qualities believed to be requirements for success.

In the TLAW focus groups, most women had experienced and had seen the value in a strong mentoring relationship, but they were unfamiliar with sponsorship. There was agreement that women lawyers need "someone in the room" with the decision makers to support their advancement. Very few women in these groups had actually experienced "sponsorship."

## **Best Practices for Mentoring**

### **1. Best Practices for the Mentee**

- Connect carefully.
- Make the most of the opportunity. Ultimately, the mentee must take personal responsibility for the mentor-mentee relationship, whether it is by participating fully in a formal mentoring program or seeking out a more established attorney for an informal mentoring relationship. The saying 'you only get out of [a relationship] what you put in' summarizes the best practice for a mentee.
- Remember that you are ultimately responsible for your own career.
- Manage your expectations. Sometimes the best mentors are the busiest and they may only have five minutes. Sometimes the best mentors have a hectic schedule and are frequently away from the office. Those mentors may only have a chance to meet on an infrequent basis but can provide valuable insight on a big-picture overview of your career.

### **2. Best Practices for Mentor**

- Take the Role Seriously. Due to the time demands placed upon us as practicing attorneys who may also have a second 'full time' career caring for children and elderly parents, it is difficult to find time for a long lunch or after work get together to informally mentor a younger associate. If your firm has a formal mentoring program and you are asked to participate, carefully consider if you will take the time and do justice to the role. The mentee is looking to you for guidance and as a sounding board. Remember back to when you were a young associate and what having a mentor meant (or would have meant) to your career. Reach out to the mentee, who may be reluctant to ask you to set aside time for the relationship. Take the initiative and make the time.
- Create structure. Learn what your mentee hopes to gain from the mentoring relationship: does she want to learn how to navigate the sometimes foreign world of firm politics and administrative matters; does she want to focus on honing her skills, or both? "Helping someone navigate the environment is just as important as skill development and you need to create a structure to encourage and respond to questions about the environment." (Wendy Warner, *ibid*).
- Respect Confidentiality. Many mentees are reluctant to discuss their concerns regarding the firm due confidentiality concerns. Honor the relationship by keeping confidences, and be upfront if there is a confidence you cannot keep (i.e., a harassment situation).

- Embrace the value of being a mentor. There is value in knowing that you have had the opportunity to help develop a young associate. Additionally, if you develop a good bond with a young associate it is more likely that the associate will want to stay with the firm and will also help recruit good new associates to the firm.

### 3. Best Practices for Firm Formal Mentoring Plans

- The firm must have a Mentoring Champion or the Program must be fully supported by the leadership of the firm.
- Put discipline and process to the relationship.
- Mentors can and sometimes should be senior associates particularly for the youngest associates.
- Develop and articulate billing guidelines for mentoring:
  - Create "office/admin" account to bill mentoring activities—minimums and maximums.
  - Bill as normal but allow time to be written off to client while crediting the time toward billing targets. (i.e for "tag-along time to attend client meeting, deposition, etc.)
  - Create a bank of professional development hours: 50-100 hours for the first year; 25-50 hours for the second year, etc.
- Develop new mentoring plans and relationships for new partners. Without a mentor to facilitate career development as a partner, an attorney may not be prepared for assuming the role of a partner. With few female partners in the ranks, there are few mentors to provide social support, role-modeling and advice on work-family conflict.

#### Sample Mentoring Plan

##### At first Meeting:

1. Establish goals for the relationship. Goals should be specific, attainable and measurable.
2. Set parameters and agreement on time commitment as well as logistics for meetings
3. Discuss how to deal with confidential questions/information.
4. Discuss any topics or issues outside the scope of the relationship
  - Advice on personal, non-professional issues
  - Advocating for career advancement
  - Lending money
5. Be alert for conflict of interests, particularly in mentoring relationships with lawyers outside your firm.

## Sample Mentoring Agreement

Term of mentoring relationship is \_\_\_\_\_ to \_\_\_\_\_.

### Mentee's Goals

*Become better litigator*

*Improve skills for cross-examination*

*Improve skills in cross-examination of experts*

### Parties Acknowledge and Agree:

- To be available for consultation by phone or email
- Meet in person quarterly to review progress and review value of relationship
- Mentor agrees to look for opportunities to introduce mentee to other members of the bar and for opportunities for professional development
- All matters discussed during course of relationship are confidential, unless both parties agree to disclosure

### Sponsorship

As a woman attorney moves through her career, the role of the mentor changes. Having a mentor that serves as a sponsor is essential for career advancement. In the absence of sufficient, objective information to allow for a rational means of discriminating among aspiring attorneys, having a powerful male sponsor signals to the leadership that a woman lawyer possesses those sought after competencies and qualities typically associated with their male peers.<sup>9</sup>

This is not to say that female partners cannot serve as mentors, however, it is a recognition that in most firms the number of women who "have a seat at the table. And, senior woman are often concerned about the risk to their career in spending political capital on those that have not been proven.

### Networking

Women sometimes feel constrained by social influences from actively networking, leading to reduced rainmaking efforts. This in turn translates into reduced access to clients or potential clients and reduced income or advancement. Networking is largely viewed as the responsibility or choice of the individual attorney because the results most often directly benefit that individual. While this is largely true, an attorney's employer also stands to benefit from the stability of an increased client base, the potential for even more work to come, well-rounded attorneys who are also community leaders and greater retention rates when the rainmakers are compensated for their efforts. Networking is an art and effective rainmaking is not inherent to many individuals. Because those skills are typically not taught in law skills, they are particularly well-suited for CLE programming.

## **Best Practices for Individual Networking**

- The number one best practice is to GET INVOLVED, in professional AND community organizations. Getting involved does not mean merely membership, but active participation. The list of possibilities is endless. To name only a few, consider active service in the Tennessee Bar Association and its committees or sections such as the solo/small firm section or law practice management section, the Tennessee Lawyers' Association for Women, your local bar association or women lawyers' group, the Chamber of Commerce, executive women's organizations, non-profit Boards, business organizations whose members you wish to target as potential clients, charitable organizations and fund-raisers, libraries, and schools.
- Create a networking plan.
- Reduce the plan to writing.
  - Include concrete, measurable short (monthly and quarterly) and long-term (annual) goals. Again, the possibilities are endless and you can be as creative as your comfort level will permit, but examples might include:
    - Writing an article for a bar association journal or newspaper
    - Speaking at a CLE
    - Speaking to a community organization
    - Creating a Facebook Page or joining a LinkedIn group
    - Volunteering to serve on the Board for a Theatre
    - Writing three personal notes to clients
    - Making a new contact each week
    - Write a press release for a project you volunteer with
    - Offer tickets to an event (e.g., museum showing) to a client and her/his spouse or family to enjoy on their own
- Set a budget for your networking efforts.
- Commit to monitoring and evaluating your progress and your budget at regular quarterly intervals.
- Educate yourself on how to network. There are numerous great books and articles on the subject, such as Women Rainmakers' Best Marketing Tips, Theda C. Snyder, ABA Law Practice Management Section (2010) and Guerilla Marketing, Jay Conrad Levinson, 4<sup>th</sup> edition. The internet is replete with marketing tools and websites. Attend targeted CLE programming on networking.
- Consider consulting a public relations or marketing expert.
- Let your employer know about all the networking efforts you are making.

## **Business Development**

Studies show that year after year women are dropping out of the practice of law at higher rates than men and are less likely to be promoted to equity level positions in law firms. It should come as no surprise that the key factors to promotion within law firms are client development, collections and billable hours. As previously stated, the percentage of women partners with a large book of business is small. A firm can help their female attorneys achieve success and the firm has the reward of fostering retention and increasing business and revenue.

### **Best Practices for Business Development**

- Fund a female lawyers' client development initiative, i.e. a female lawyers' networking group. Within the firm, female lawyers should gather on a regular basis to talk about client development issues, tips and how to work together to generate business. Female lawyers should be encouraged to host networking events for female clients, potential clients and referral sources. Several firms within Tennessee have adopted this approach with great success.
- Assign client development mentors (male or female) to female associates to demonstrate client-building skills. Mentors should assist female associates with the creation of marketing plans and a system should be implemented for female associates to track their client development efforts.
- Find special ways to reward business development within the firm's compensation/pay system.
- Fund the cost to send female lawyers, including associates, to client development training conferences and fund business development coaches to instruct female lawyers in the art of client development.
- Compile and provide a list of all trade associations/bar organizations in which the firm has a membership to female lawyers, and fund the cost for female lawyers to become active in them.
- Fund public speaking training opportunities for female lawyers to provide them with the technical skills necessary to generate credibility while presenting in front of audiences, and procure speaking engagements for female lawyers.
- Purchase and distribute client development resources for female lawyers and reimburse lawyers for buying similar materials.
- Adopt and implement a policy requiring female lawyers to be present for new-business calls and responses to RFPs, and require the assignment of a percentage of any resulting work to the female lawyers.
- Adopt and implement a multi-tiered client development credit system which promotes the "sharing" of work among numerous lawyers and require the assignment of female lawyers within the tiers.

- Adopt and implement a policy requiring partners to introduce female associates to senior executives of client companies, and encourage them to cultivate relationships with client's junior executives.
- Adopt and implement a formal succession plan requiring a percentage of client reassignment to female lawyers.



## **LEADERSHIP, COMPENSATION AND ADVANCEMENT**

Certainly, female attorneys have made significant professional advancements since Marion Griffin became the first female member of the Tennessee bar in 1907. However, current statistics are sobering: for the past 20 years, women have comprised nearly half of all law school graduates yet still occupy only 15% of law firm equity partnerships; and women currently hold just 8% of managing partner positions and 15% of the seats on firm governing committees.<sup>10</sup> Indeed, at each higher rung up the ladder of law firms, women occupy an increasingly smaller and less visible role. The Tennessee Bar Association gathers statistics on firm demographics every three years or so. There is no data in those reports regarding the progression of women to the ranks of partnership or leadership positions within their firms or legal departments. From anecdotal information obtained through the focus groups it would appear that women lawyers in Tennessee are not progressing in significant numbers to leadership positions within their firms or in-house legal departments.

Although the state of the economy has led to continuing challenges to law firms, the enduring gap between male and female attorneys who achieve partnership and who occupy firm or corporate leadership positions illustrates a widespread and systemic problem. According to several comprehensive surveys of the profession conducted by various bar associations and affinity groups, most notably the National Association of Women Lawyers, the following issues characterize the current fragmentation of our industry<sup>11</sup>:

### **1. A shrinking pipeline.**

- a. Women represent a decreasing percentage of lawyers in firms.
- b. Female attorneys have a far greater chance of occupying positions with diminished opportunity for advancement or participating in firm leadership (e.g., staff attorney, of counsel, fixed-income partner).

### **2. Marginalization.**

- a. Women are much more likely than men to occupy a "counsel" position (as opposed to income or equity partner) in firms; therefore, women are often more likely than men to be viewed as not suitable for partnership or not having sufficient business for partnership.
- b. Most firms employ some level of nontraditional "staff" attorneys, which are not partner-track positions. Women represent 55% of staff attorneys, the highest percentage of women lawyers in any law firm position.

### **3. Less credit for book of business.**

- a. Women partners are less likely than men to receive credit for their book of business.
- b. Parallel research shows numerous problems that women experience within firms in obtaining credit for business development, opportunities for team development of new business, credit for new matters from existing clients and other similar measures of who is deemed to be a rainmaker.
- c. Almost half of large firms count no women at all among their top ten rainmakers.<sup>12</sup>

**4. Underrepresentation in leadership positions.**

- a. The majority of large firms have, at most, two women members on their highest governing committee.
- b. A substantial number of large firms have either no women (11%) or only one woman (35%) on their highest governing committee.
- c. Only 5% of large firms place women in the role of overall managing partner.

**5. Depressed earnings.**

- a. Women at every stage of legal practice earn less than their male counterparts, with the biggest difference at the equity partner level.
- b. In 2011, women equity partners are earning only 86% of the compensation earned by their male peers. In a typical firm, therefore, male equity partners are earning roughly \$70,000 more than female equity partners.

**Best Practices**

Most firms surveyed have expressed a commitment to advancing women in private practice, yet the statistics and state of the profession remain discouraging. The following suggested best practices are meant to move law firms toward parity in the advancement of male and female attorneys:

**1. Buy-in from the top.**

- a. Express the firm's commitment (by the Board, senior management, etc.) to the retention and advancement of women in the profession to other stakeholders in the firm.
- b. Create a culture of awareness through diversity training for practice group leaders and firm management.

**2. Representative leadership.**

- a. Consider female attorneys, in addition to male attorneys, for firm positions of leadership, especially those wherein professionals are compensated for concomitant leadership duties.
- b. Be cognizant of benign discrimination and hidden gender bias in making leadership assignments and related compensation decisions.
- c. Evaluate whether female attorneys are assigned or invited to lead initiatives, teams and steering committees that are disproportionately non-power appointments, pursuant to which compensation does not adequately reflect levels of responsibility.
- d. Consider structuring executive committees in a banded fashion, such that positions include representatives from income and equity partnership, as well as junior and senior ranks.

**3. Transparency.**

- a. Communicate consistently the expected core competencies, pathways to partnership and compensation policies to all attorneys.
- b. Participate in surveys, including those of the TBA, requesting demographic information about law firm talent to help establish benchmarks for the profession that will enable the identification of appropriate goals for law firms and the bar.

**4. Mentoring culture.**

- a. Assign mentors to associates who can also serve as sponsors and advocates for those mentors as they progress in their careers.
- b. Establish and support a women's initiative and/or diversity initiative (whose membership counts at least one representative from the board) and meet regularly to stay abreast of salient issues and concerns of firm talent.

**5. Developmental training.**

- a. At the practice group level, establish core competencies by which associates will be evaluated.
- b. Institute a procedure for law firm talent to write formal practice development plans.
- c. Train attorneys to develop strategies to be rainmakers and maximize their, and the firm's, earning potential.
- d. Monitor assignments to be certain of parity in the nature and scope of assignments.

**6. Bias-free performance evaluations.**

- a. Weigh individual core competencies similarly for all attorneys.
- b. Invite attorneys to disclose whether, and to what extent, they should be attributed the origination of, or responsibility for, certain clients and matters. Incorporate an appeals process for attorneys to express concerns with advancement, compensation and/or leadership opportunities.
- c. Provide feedback as to where an attorney stands in terms of partnership or other advancement.
- d. Review performance evaluations at the practice group level before submitting them to the next level. Look for consistency among the evaluations, accuracy, and biased comments.
- e. Check for implicit gender bias by looking objectively at (i) the ratings given to male and female attorneys to see if certain competencies are given greater weight in the evaluations of males; (ii) whether the actions of female attorneys were reviewed more harshly; and (iii) whether female attorneys' achievements were not accorded the appropriate level of significance.

**7. Identify systemic obstacles to advancement.**

- a. Conduct an internal processes audit to root out institutional obstacles to advancement. With the goal of mitigating implicit bias, consider outsourcing the audit to reassess the processes for evaluating attorneys, assigning work, building client pitch teams, electing officers and compensating talent.
- b. Set specific goals and conduct follow-up audits to track firm performance.

## **IMPROVING ECONOMIC PERFORMANCE OF SOLO/SMALL FIRM**

Statistics concerning Tennessee practitioners consistently reveal that most Tennessee lawyers are solo practitioners or are in small firms. Those solo/small firm lawyers who also happen to be women have special concerns relating to their practices. In particular, these lawyers are faced with unique challenges regarding how to enhance the economic performance of their practices.

As a subcommittee of the Glass Ceiling Initiative, an effort has been made to identify concerns or issues specific to the female solo/small firm practitioner in Tennessee. At the outset, the group identified a number of factors which are believed to impact the profitability of women in Tennessee who are engaged in the private practice of law in solo or small firms. The following items merit further discussion concerning the improvement of economic performance for female solo/small firm practitioners:

- Effective Firm Management
- Time Management/Efficiency of Practice and Management
- Successful Collection of Fees
- Hiring Effective Staff and Effective Management of Staff
- Marketing and Rainmaking Activities (participation in community, Bar, traditional marketing, etc)
- Development of Referral Sources
- Strategic Attendance at CLEs/Seminars
- Work/life balance-Quality of Life Issues

After identification of these topics, the Tennessee Lawyers' Association for Women conducted a series of focus groups in conjunction with the efforts of the TBA's Glass Ceiling Initiative. The focus groups, which were conducted in four cities across the State of Tennessee, served to further cement the need to address the issues listed above.

In the report of the TLAW focus groups, the following was noted:

Many participants felt that it was still a man's world where men can play golf with clients or take on coaching responsibilities for his family and not be penalized. This disparity frequently manifests in networking, marketing and access to clients wherein male attorneys have more socially-oriented encounters with clients and one another. While interpreted as completely benign for men to take male clients to dinner or a football game, women are constrained by societal influences and a perception that this is somehow inappropriate. Women have to be more creative about taking out male clientele or coming up with different ways of networking.

Regarding focus group participants specifically practicing in a solo/small firm setting, the following was noted in TLAW's report:

For the lawyers who have already established solo practices, the biggest area of interest and/or concern was networking and having an influence within the network....

Accordingly, the focus groups have confirmed that issues regarding networking for solo/small firm female practitioners are at the forefront of their concerns, with flexible scheduling listed as the second concern. Thus, while women may choose a solo or small firm practice due to the flexibility the environment affords, once in the practice, networking and the goal of improving access to clients and, accordingly, increased profitability, become primary.

In light of these primary concerns, the group has endeavored to identify ways in which the TBA could respond to provide assistance to women who are in a solo or small firm practice setting. We have also discussed the propriety of TBA-sponsored CLEs or seminars targeted to women-only audiences. Our subcommittee believes that there might be topics of value to be addressed in a single-gender CLE. However, we are also sensitive to concerns which might arise from our state bar organization offering a benefit only to a particular segment of the legal community. We believe that the entire group should consider this issue in conjunction with our other tasks.

#### **Best Practices**

- Create budgets for networking and provide training on how to utilize those budgets;
- Provide training on networking opportunities, recognizing discrepancies in opportunities due to type of activity, tradition, influence, gender, etc;
- Consider creative compensation structures (where applicable in the small firm setting) that encourage, measure and reward networking efforts. For example, give billable hour credit for hours recorded for business development activities, bar activities, pro bono work, etc;
- Create transparency on all these policies in interviews of potential candidates and on employer websites;
- Gather and provide statistical information on billings, collections and hourly rates – both within the firm and the community.

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<sup>1</sup> The National Association for Law Placement, "*Law Firm Diversity Wobbles: Minority Numbers Bounce Back While Women Associates Extend Two-Year Decline*" (November 3, 2011)

<sup>2</sup> American Bar Association, "*Enrollment and Degree Awarded 1963-2010*"

<sup>3</sup> The National Association for Law Placement, "*Law Firm Diversity Wobbles: Minority Numbers Bounce Back While Women Associates Extend Two-Year Decline*" (November 3, 2011)

<sup>4</sup> The Project for Attorney Retention, *Diversity and Flexibility Connection: Best Practices* (October 29, 2009) at page 2.

<sup>5</sup> Lisa Gold, *How to Improve Associate Retention: Old Reward System No Longer Effective*, The Legal Intelligencer, Apr. 19, 1999 at 7. These costs include interviewing time spent by partners and associates at the firm, hiring bonuses, lost training costs for the departed attorney, and additional costs of training the new hire. The Hildebrand Institute, *Changing Approaches to Lawyer Training: The Latest Battleground in the Growing War for Talent*, (2006)

<sup>6</sup> The Project for Attorney Retention, *Diversity and Flexibility Connection: Best Practices* (October 29, 2009) at page 2.

<sup>7</sup> Email from Joseph Small, Partner, Fulbright & Jaworski, LLP to Jan C. Williams, Director, Center for WorkLife Law, University of California, Hastings College of Law (July 11, 2006 01:18 P.M. PST) on file with Project for Attorney Retention

<sup>8</sup> NAFE and Flex-Time Lawyers, "*Executive Summary, Best Law Firms for Women 2011*" (2011)

<sup>8</sup> The Complete Lawyer, "*Senior Male Mentors Help Women Lawyers Get Promoted to Shareholder*".

<sup>10</sup> National Association of Women Lawyers and The NAWL Foundation, *Report of the Sixth Annual Survey on Retention and Promotion of Women in Law Firms* (October 2011).

<sup>11</sup> National Association of Women Lawyers and The NAWL Foundation, *Report of the Sixth Annual Survey on Retention and Promotion of Women in Law Firms* (October 2011).

<sup>12</sup> The Project for Attorney Retention and the Minority Corporate Counsel Association, "*New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women*" (July 2010).

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## RECOMMENDATIONS TO THE TBA

1. There was insufficient time and resources for this Committee to obtain valid statistics regarding the percentage of women as partners in firm, the percentage of women in leadership/management positions in firms or in-house legal departments, salary comparisons of men and women in law firms, or other information that might be useful to track. It is the understanding of this committee that the TBA does collect statistical information from its membership every few years. The committee would suggest that the TBA consider gathering some or all of this data and monitor the data going forward.
2. The Committee has hope that some of the findings of the Committee will be published to the TBA general membership in some format and that there be a recognition of firms that adopt some or all of the practices.
3. Based upon anecdotal information gathered in the focus groups, there are limited female role models in leadership positions in firms, limited female role models in business development and limited female role models who have obtained a successful practice built around a "balanced-hour" schedule. As such, it may be helpful to provide a feature on such women in future editions of the TBA Journal so that there is broader dissemination of the pool of role models who are in the profession that would be willing to share their stories.
4. The TBA consider providing seminars on some or all of the following:
  - a. Discuss some or all of the best practices included in the report and how they can be implemented in firm or corporate legal department.
  - b. A seminar targeted toward women that focuses on business development and networking. (TLAW will be offering a seminar at June 2012 TBA convention that may address this topic.)
  - c. "The Mentor Relationship, How to be an Effective Mentor and Mentee. A seminar that addresses the role of a Mentor and Mentee and the creation of a formal mentoring program. The seminar may also address the need for a "personal advisory board" . See discussion of personal advisory board in the book , "*Courageous Counsel: Conversations with Women General Counsel in The Fortune 500*" by Michele Coleman Mayes and Kara Sophia Baysinger, published by Leverage Media, 2011.



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5. The TBA consider including a session at the annual meeting or other forum, that would bring together firm managers and female attorneys in a facilitated discussion regarding some of the topics addressed in the report.
  6. The TBA assist in the creation of a series of podcasts or webinars that address and provide assistance on structuring a profitable solo or small firm.
    - a. Effective Firm Management
    - b. Time Management/Efficiency of Practice Management
    - c. Establishing Fees, Retainer Agreements and Successful Collection of Fees
    - d. Hiring and Managing Staff
    - e. Marketing and Rainmaking
    - f. Development of Referral Sources
    - g. Strategic Attendance at CLEs/Seminars
    - h. Balance and Quality of Life/Back-up plans for solo-practioners
  7. While this Committee was established as a special task, one-year committee, all of the members stand ready to assist in any way possible to move forward the discussion of the best practices and recommendations in this report.