

Report of The Florida Bar Special Committee on Gender Bias

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SPECIAL COMMITTEE ON GENDER BIAS SUMMARY REPORT

BACKGROUND

In October 2015, the Young Lawyers Division of The Florida Bar released findings from its 2015 YLD Survey on Women in the Legal Profession, in which female attorneys reported that they have experienced gender bias. The survey, which was emailed to a random sample of more than 3,000 female members of the YLD, found that 43 percent of respondents reported experiencing gender bias during their legal career. Many of the more than 400 respondents indicated they had experienced one or more serious issues, such as gender bias and harassment from opposing counsel or an employer or the court; more than one-quarter reported resigning from a position because of a lack of advancement opportunities; a lack of work-life balance and/or employer/supervisor insensitivity. Thirty-two percent reported experiencing a lack of advancement opportunities, 21 percent felt that they were not paid comparatively to their male counterparts, and 42 percent cited difficulties in balancing work/life responsibilities as a challenge or concern they face as practicing attorneys.

As a result of the Young Lawyers Division survey, Florida Bar President William J. Schifino, Jr. appointed a special committee in July 2016, chaired by President-elect Michael J. Higer, to study gender and diversity issues, with the goal of making concrete recommendations to the Board of Governors. Shortly after its formation, this special committee sent out a broader survey on Gender Equality in the Legal Profession. The survey was sent to 3,000 males and 3,000 females. A total of 1,350 in-state Florida Bar members who are eligible to practice and members in good standing participated for a response rate of 22.5 percent. Respondents were asked, “Within the past three years, has there been an occasion at your workplace or within a law-related setting where you feel you were harassed or bullied due to your gender?” Approximately one out of every 25 male lawyer respondents and one out of every seven female lawyer respondents indicated that they have experienced harassment or bullying within the last three years due to gender. This amounts to an average of eleven lawyers harassed or bullied due to gender per work day. Only 23% of female respondents and 19% of male respondents who reported the incident to a supervisor indicated that the issue was resolved to their satisfaction.

Growing diversity within the legal profession presents opportunities to gain the resource of experience of a broad range of individuals from a variety of backgrounds, while strengthening the effectiveness of client representation through diverse perspectives and improving decision-making and communication with clients. This report outlines the committee’s work and resulting preliminary recommendations.

RELATED STATISTICS

- 48.7 percent of U.S. law students are women, compared with 47 percent in 2006 and 3 percent in 1947. (ABA, 2014-15 Academic Year Data)
- 38 percent of Florida's attorneys are women. (Florida Bar Membership Records Data, February 2017)

- 36 percent of United States attorneys are women. In 1970, women made up only 3 percent of the profession. (ABA Market Research Department, 2016)
- 15 percent of Florida's female attorneys are managing partners or partners/shareholders. 27 percent of Florida's male attorneys are managing partners or partners/shareholders. (2016 Florida Bar Economics and Law Office Management Survey)
- Median compensation for female equity partners in law firms that responded to a survey was 80 percent of median compensation for male equity partners. Lawyers of color constitute only 8 percent of the law firm equity partners and women lawyers of color constitute 2 percent of law firm equity partners. (National Association of Women Lawyers Survey; Vault/MCCA Survey)
- Women represent 39 percent of Florida judges (up from 28.8 percent in 2007). Women also make up 25 percent of appeals court judges and justices, 38 percent of circuit court judges and 44 percent of county court judges in Florida. (Office of the State Courts Administrator, February 2017)
- The median weekly earnings of female attorneys (full-time) in 2015 were 89.7 percent of those of male attorneys. In 2005, it was 77.5 percent. (Bureau of Labor Statistics)
- 52 percent of female attorneys who left the legal profession reported that it was due to either a toxic work culture, a job that demanded too much time, a job that was too stressful, work not being meaningful or not being able to do the type of work they want to do. (Montage Legal Group Survey)

COMMITTEE PREPARATION

The special committee worked through telephone conferences and self-study prior to the committee meeting on February 24 - 25, 2017 to enhance advanced understanding of agenda topics. The following materials were thoroughly reviewed prior to the meeting and synopsisized during the meeting for the benefit of the committee:

- Bar Association Considers Striking 'Honeys' From the Courtroom (New York Times)
- Center for Women in Law Publications (Center for Women in Law/University of Texas)
- Closing the Gap - A Roadmap for Achieving Gender Pay Equity in Law Firm Partner Compensation (ABA Presidential Task Force on Gender Equity and the Commission on Women in the Profession)
- Expanding the Pathways to Gender Equality in the Legal Profession (Digital Commons at Michigan State University College of Law)

- First Chairs at Trial - More Women Need Seats at the Table (ABA Foundation and the ABA Commission on Women in the Profession)
- Implementing Diversity in State Bar Associations (Lawpracticetoday.org)
- Implicit bias is a challenge even for judges (ABA Journal)
- In corporate America, women fall behind early and continue to lose ground with every step (Women in the Workplace)
- Law Firm Diversity: They All Talk the Talk But It's Harder to Walk the Talk (BCG)
- Minority Women Still Struggling to Win Top Law Jobs (The American Lawyer)
- Obama's Female Staffers Came Up With a Genius Strategy to Make Sure Their Voices Were Heard (New York Magazine)
- Power for Change (Center for Women in Law/University of Texas)
- Power of the Purse (ABA Presidential Task Force on Gender Equity and the Commission on Women in the Profession)
- Sheryl Sandberg: These Are the Biggest Obstacles For Women Trying to 'Lean In' ABA Program Descriptions Relating to Bias (Fortune Magazine)
- Sheryl Sandberg: Women Are Leaning In - but They Face Pushback (Wall Street Journal)
- Staying in the Game: Women, Leadership & the Law (Tampa Chapter of the Federal Bar Association)
- The Austin Manifesto (Center for Women in Law/University of Texas)
- The Gavel Gap: State Court Judge Data (Gavelgap.org)
- The GOOD Guys Program (National Conference of Women's Bar Associations)
- The Science of Equality, Volume 2: The Effects of Gender Roles, Implicit Bias, and Stereotype Threat on the Lives of Women and Girls (Rachel Godsil)
- The Unfinished Agenda: Women and the Legal Profession (Commission on Women in the Profession)
- Toolkit for Gender Equity in Partner Compensation (ABA Commission on Women in the Profession)

- Vox Just Disproved the Gender Pay Gap by Accident (Breitbart.com)
- Vox: The Truth about the Gender Wage Gap (Vox.com)
- White Paper: Retaining and Advancing Women in National Law Firms (Stanford Law School Women in Law Policy Lab Practicum)
- Why Diversity Programs Fail (Harvard Business Review)
- Women are leaving BigLaw (ABA Journal)
- Women in Big Law Where Firms are Succeeding and Failing (Law.com)
- Women Lawyers Continue to Lag Behind Male Colleagues (National Association for Women Lawyers)

THOUGHT LEADER RESOURCES

The following thought leaders presented to the committee either prior to, or at, the in-person group meeting held February 24 - 25, 2017:

Iris Bohnet

Iris Bohnet is a Professor of Public Policy at the Harvard Kennedy School and serves as director of the Women and Public Policy Program. Ms. Bohnet teaches organizational design, decision-making, negotiation and gender in public policy and leadership in degree and executive programs, and has been engaged in the teaching, training and consulting of private and public sector leaders in the United States, Australia, Europe, India and the Middle East.

A behavioral economist, she combines insights from economics and psychology to improve decision-making in organizations and society, often with a gender or cross-cultural perspective. Her most recent research examines behavioral design to de-bias how we live, learn and work.

Linda Bray Chanow

Linda Chanow is the Executive Director of the Center for Women in Law and a Specialist at The University of Texas School of Law. In these roles, Ms. Chanow convenes leaders and top academics at the Center's biennial Women's Power Summit on Law and Leadership. She teaches a class at Texas Law that explores the gap between the number of women law school graduates and the number of women who occupy leadership positions through the lens of leadership theory. Ms. Chanow recently co-chaired the American Bar Association (ABA) Toolkit for Gender Equity in Partner Compensation, an initiative of the ABA Presidential Task Force on Gender Equity, and is a liaison to the ABA Commission on Women in the Profession.

Rachel Godsil

Rachel Godsil is a law professor at Seton Hall College of Law who also serves as the Director of Research and Co-Founder of Perception Institute. She collaborates with social scientists on empirical research to identify the efficacy of interventions to address implicit bias, racial anxiety, and stereotype threat. She regularly provides trainings and lectures to a wide range of private and public institutions seeking to address the role of bias and anxiety associated with race, ethnicity, religion, and gender and has provided trainings on implicit bias to state judges across the country on behalf of the National Association of State Judges.

Deborah Rhode

Deborah Rhode is the Ernest W. McFarland Professor of Law, the director of the Center on the Legal Profession, and the director of the Program in Law and Social Entrepreneurship at Stanford University. She is the most frequently cited scholar on legal ethics. She is the former founding president of the International Association of Legal Ethics, the former president of the Association of American Law Schools, the former chair of the American Bar Association's Commission on Women in the Profession, the former founding director of Stanford's Center on Ethics, a former trustee of Yale University, and the former director of Stanford's Institute for Research on Women and Gender.

Wilhelmina Tribble

Wilhelmina Tribble has been working as an OD consultant to the private and public sectors since 1985, and has been with Global OD Solutions since 2004. Her premier expertise is in diversity, retention and coaching. Her years of diversity work in the Florida and New York legal communities, including judges, court staffs, bar associations, law schools and law firms, led to her position on the faculty of the Florida College of Advanced Judicial Studies, where she developed a course, "Dealing with Differences: Understanding the Experiences of Litigants Before You" and cofacilitated it with two judges. The Florida Supreme Court appointed Ms. Tribble, the first lay person, to The Florida Bar Board of Governors for two terms, the Florida Supreme Court Standing Committee on Fairness and Diversity, and the Florida Supreme Court Commission on Professionalism.

COMMITTEE RECOMMENDATIONS

A professional facilitator led the special committee through discussions designed to capture ideas and concepts that The Florida Bar could implement. Through a series of activities, the committee distilled its learnings into twelve recommendations. (Recommendations are *not* ranked but presented in random order.)

Many of the gender bias issues that have created inequalities for women are similarly causal to diversity inequality in general (e.g. race/ethnicity, disability, LGBTQA) and the following recommendations may similarly address these inequalities. Therefore, the committee recommends the broader application.

RECOMMENDATION 1

The Florida Bar's Diversity and Inclusion Committee will create a subcommittee on Women in the Profession that will be responsible for overseeing implementation efforts for all of the following recommendations.

ACCOUNTABILITY:

Diversity and Inclusion Committee.

RECOMMENDATION 2

The Florida Bar and its Sections will seek to initiate continuing legal education courses that address gender bias topics such as implicit bias; the business case for gender inclusion; gender neutral hiring and evaluation criteria; conflict avoidance and resolution; and fixed vs. growth mindset. The Florida Bar will promote ethics credit allocation toward diversity training and civility, as well as gender bias and other discriminatory issues and practices. Such topics should also be addressed within the Wm. Reece Smith, Jr. Leadership Academy curriculum.

ACCOUNTABILITY:

Florida Bar Sections; Continuing Legal Education Committee; Standing Committee on Professionalism; Leadership Academy Committee; Voluntary Bar Associations.

RECOMMENDATION 3

The Florida Bar will identify, assess and promote Gender Bias toolkits featuring, but not limited to identifying: implicit bias obstacles and institutional disrupters; micro aggressions and created bias interrupters; best practices for maternity/paternity/family leave; best practices for onboarding after parental leave; fair and transparent compensation and promotion practices; gender neutral hiring; the NFL Rooney Rule; and the importance of critical mass. In those instances where successful toolkits and other resources are already in place, the Bar will seek to utilize and promote those resources. The Bar will assemble links to those resources and make available in a consolidated space online.

ACCOUNTABILITY:

Practice Resource Institute; Diversity and Inclusion Committee; Standing Committee on Professionalism; Florida Bar Sections.

RECOMMENDATION 4

The Florida Bar will review its ethics rules and rules of professional responsibility to determine if additional rules or policies are necessary.

ACCOUNTABILITY:

Professional Ethics Committee; Florida Bar Ethics Counsel.

4-8.4(d) of Rules Regulating The Florida Bar 4-8.4 states:

A lawyer shall not engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic.

RECOMMENDATION 5

The Florida Bar should seek to establish a reporting mechanism for individuals and small and large firms, with confidentiality protections for lawyers who are victims of gender biased misconduct, both for the reporting phase and during the process until and unless a decision for public discipline is made. The collection of data should be kept and compiled. The Bar should research and affirm that existing gender bias training programs are in place for the judiciary.

ACCOUNTABILITY:

Florida Supreme Court Commission on Professionalism; Florida Supreme Court Standing Committee on Fairness and Diversity; Department of Research, Planning & Evaluation.

RECOMMENDATION 6

The Florida Bar should create and promote a “Blue Ribbon Firm” designation to be awarded to law firms committed to gender diversity. The designation will set targets and best practices for legal employers interested in such a designation to meet, tailored to different firm sizes, and may provide for levels of success. The designation should be expanded beyond law firms to include categories for other legal employers.

ACCOUNTABILITY:

Diversity & Inclusion Committee.

RECOMMENDATION 7

The Florida Bar will embark on an initiative designed to seek better information regarding compensation and promotion best practices, family leave, advancement and leadership statistics, and other data designed to establish baseline metrics that can be used for informational purposes and measured at intervals to determine progress.

ACCOUNTABILITY:

Florida Bar President; Executive Director; Department of Research, Planning & Evaluation.

RECOMMENDATION 8

The Florida Bar will continue to make a concerted effort to reach out to and recruit women for leadership positions within the Bar and encourage local and voluntary bar associations to do the same. Additionally, the Bar will more frequently spotlight successful women and organizations.

ACCOUNTABILITY:

Florida Bar President; Board of Governors; Diversity & Inclusion Committee.

RECOMMENDATION 9

The Florida Bar will study law school activities designed to address gender bias, other state bar association programs and other industry initiatives to identify successful programs that can be implemented by the Bar.

ACCOUNTABILITY:

Student Education and Admissions to the Bar Committee; Young Lawyers Division; Diversity and Inclusion Committee; Standing Committee on Professionalism.

RECOMMENDATION 10

The Florida Bar will promote the benefits of family and paternity leave, in addition to maternity leave, through continuing legal education, promotion of data and best practices, and articles in its publications.

ACCOUNTABILITY:

Young Lawyers Division; Voluntary Bar Associations.

RECOMMENDATION 11

The Florida Bar should coordinate with leaders of small and large law firms, as well as thought leaders in relevant fields, to continue the conversation and study of eliminating gender bias, with a particular focus on issues impacted or influenced by law firm economics.

ACCOUNTABILITY:

Florida Bar President; Florida Bar Immediate Past President.

RECOMMENDATION 12

The Florida Bar will research and identify member benefits (such as emergency child care resources) designed to support family responsibilities.

ACCOUNTABILITY:

Member Benefits Committee; Diversity & Inclusion Committee.



CONCLUSION

Gender bias is deeply embedded in our culture. Its impact has far reaching economic and social consequences and has continuously disadvantaged women in our profession. The Florida Bar has long recognized that all lawyers are entitled to a bias-free opportunity to achieve success unhampered by artificial barriers. The Florida Bar, however, cannot eliminate these barriers by itself. The Florida Bar is committed, through the implementation of sustained and multi-layered strategies, to lead our profession toward the elimination of the professional and economic impact of gender bias on its members.

The Florida Bar is grateful to the attorneys, judges, staff, and gender bias experts nationwide who helped create and inform this report. As noted in Recommendation 1, a subcommittee will be created within the Diversity & Inclusion Committee that will be charged with the responsibility of implementing and overseeing the recommendations outlined in this report. The committees and sections assigned accountability should immediately begin work on the initial recommendations. We recognize that further study and additional recommendations will likely be necessary, and encourage those ongoing efforts. The work of implementation subcommittee and the other entities assigned accountability within each of the recommendations contained in this report will be subject to review by The Florida Bar Board of Governors Program Evaluation Committee every year, beginning no later than the end of the fiscal year 2018, so that The Florida Bar can continue to serve its members and achieve equality of opportunity.

SPECIAL COMMITTEE ON GENDER BIAS MEMBERS

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