



“Diversity is good. Pass it down.”

## Gender Diversity Lacking at Partnership Levels in Firms Nationwide

Cynthia Blevins Doll & Ashby Angell

### **Women are the new majority in law schools nationwide...**

Women are applying to law school and graduating in larger numbers than ever before. In the 1990-1991 school year, 42.5 percent of law students were female. With few exceptions, this number continued to rise every year thereafter. In fact, in 2016, 19,032 women graduated from law school, versus 18,057 men.

On top of overtaking their male peers in terms of law school attendance and graduation, once they graduate, women are being hired as associates at rates nearly proportional to their law school attendance rates. According to the National Association for Law Placement's (NALP) 2017 Report on Diversity, the number of women at associate levels in law firms has increased steadily each year, with a slight dip following the Recession, from 38.9 percent in 1993 to 45.48 percent in 2017. Of note, that number drops to 12.86 percent when only accounting for minority women.

### **...but they are not making partner...**

However, even with the steady uptick of female law students and female associates entering law firms throughout the last few decades, women account for less than 23 percent of partners in the nation's major law firms. With this rise of women entering the legal profession in the last 30 years, one might expect to see more female leadership at the highest levels of firm hierarchy, specifically at the elusive “equity partner” level.

However, women are simply not reaching equity partnership levels at the same rate as their male counterparts, with white men still making up the majority of partnership seats in firms nationwide. “White male attorneys are more than 27 times as likely to be an equity partner as minority women, while white women are almost seven times as likely and minority men are twice as likely.” Minority women are the least represented group at the top, according to Law360's 2018 Glass Ceiling Report.

Should we simply sit back and wait seven to 12 years for these women who are now populating law school classrooms to graduate and work their way to partner status? It may help, but the increase in female law school graduates has done little to move the bar toward increasing partnership diversity in the last decade. The likelihood that a female associate will rise to partner level has increased since 2006, but only from 15 percent (2006) to 20 percent (2018).

When examining the numbers of female equity partners even closer, the lack of racial diversity is astounding. Minority women only accounted for 2.9 percent of partners in 2017, “the most dramatically under-represented group at the partnership level, a pattern that holds across all firm sizes and most jurisdictions.” Including men, people of color make up only 8 percent of equity partners, though they are 26 percent of the associate pool.

### **...or making as much money when they do.**

Even once women reach equity partner status, they are, as a whole, paid *significantly* less than their male counterparts. According to Law360's 2018 Partner Compensation Survey, “the average compensation for male partners was \$959,000, compared to \$627,000 for women.” This pay gap has only *increased* in the last eight years; in 2010, male partners made 32 percent more than their female counterparts, compared to 2018's reported 53 percent gap.

Like associates, female equity partners bill roughly the same number of hours per year as male equity partners. In fact, according to the National Association of Women Lawyers (NAWL), there is “essentially no difference in median billable hours” between male (1,542 hours) and female (1,532 hours) equity partners. For total hours billed, there is no significant difference either, at roughly 2,232 total hours billed by male equity partners versus 2,215 total hours billed by female equity partners. One study suggests the common claim that parenting responsibilities may impact a woman's pay is largely without merit. “[O]nce we control for labor supply, childless women earn no more than mothers, and single women earn no more than married women.”

### **Where is the disconnect?**

Why are women getting associate-level jobs at a rate proportional to their representation in school, only to be left behind while their male peers are significantly more likely to achieve partnership status? Are female associates working less than their male counterparts, thus making them less likely to look like “partnership material?” Certainly not. NAWL reports there are “no significant differences in total or billable hours recorded based on attorney gender” at the associate level. Moreover, male and female associates start out with largely identical billing rates, achieving statistically similar year-end billings.

So, if women are working as much as the male associates in their offices, billing the same amount of time at largely the same rates, why aren't they making partner?

While firms are slowly making progress supporting their female interns, applicants and associates at the recruiting, hiring and early associate stages, that support often fades away as women advance their careers past the early associate level. One reason could be the lack of female representation in the higher echelons of traditional firm structure, not just at the equity partner level.

In addition to the lack of gender diversity in equity partnership, women are underrepresented in firm leadership across the board. On average, women make up 25 percent of representation on firm governance committees, a number that is unchanged from 2017. On the bright side, this number has nearly *doubled* since 2007. It should be noted, however, that the same increase in representation has not been achieved by people of color, either for men or women. The average

governance committee of 12 people only has one person of color.

Most firms responding to a 2018 NAWL survey on retention and promotion of female lawyers had zero individual office level female managing partners firm-wide. Only 20 percent of those firms surveyed had a female managing partner. For firms that did report having a female managing partner, that attorney is almost certainly a white woman. “White women represent 89 percent of female equity partners and 18 percent of equity partners overall.” Other firm leadership positions are similarly lacking.

However, among those firms with female managing partners, female attorneys enjoyed slightly better representation throughout every level of firm structure. Women-led firms employ 38 percent female attorneys, as compared to the 35 percent under the direction of male managing partners. This lead increased for female non-partners: 47 percent at women-led firms, versus 44 percent at all firms. Though women-led firms have higher rates of female partners and equity partners, the numbers are still low. For total female partners, women-led firms have 28 percent female partners, versus 25 percent for all firms.

Moreover, that number decreases in both categories once you get to equity partner: 25 percent of women-led firms have female equity partners, versus 20 percent of all firms surveyed. Overall, women-led firms are better, but only just, in helping to advance their female associates through to partnership.

### **What can firms do to support their female attorneys in their path to partnership?**

NAWL suggests a number of ways firms can support their female attorneys from associate to partner. An important inclusion for the success of some (but not all) female attorneys is the implementation of family-friendly policies. Most firms that responded to NAWL’s survey reported offering flexible and part-time work schedules (including the option to work from home). The authors’ firm, Fisher Phillips, offers the option for attorneys to slowly ramp down their workload (with a corresponding reduction in the billable hour standard) in the weeks prior to taking leave for the birth or adoption of a child and to ramp back up upon returning to work.

Many firms, in the past, prohibited part-time lawyers from becoming partner or equity partner. That is slowly changing as well and allowing more women to advance. Firms that implement these types of flexible policies reported that, in theory, use of such flexible or part-time work schedules would not interfere with an attorney’s track toward partnership. It should be noted that, where firms have two partnership tracks (equity and non-equity), attorneys who take advantage of such flexible schedules are more likely to be promoted to non-equity partner than equity partner.

Some firms also offer women’s intra-firm initiatives, which can provide a number of resources for their female attorneys, both partners and associates alike. For instance, Fisher Phillips has the Women’s Initiative and Leadership Council (WILC). The WILC focuses on recruiting, developing and retaining women attorneys and fostering female leadership within the firm. WILC also seeks to foster mentoring relationships among the firm’s female attorneys and sponsors outside programs promoting the advancement of women in law.

The NAWL survey also showed many firms have initiated policies and initiatives designed to diversify their firms in leadership roles firm-wide. Examples of some of those policies include the use of objective criteria in partnership determinations; diversified decision-making teams for all roles; and training on implicit bias for decision-makers.

Recognizing the need for attention to more diverse leadership, Fisher Phillips appointed a Chief Diversity Officer in 2018 to assist the firm in advancing the cause of diversity in hiring and retention among the firm’s many offices. The CDO works closely with WILC and the firm’s Diversity and Inclusiveness Committee, which is made up of a diverse panel of members, including both partners and associates, from offices across the country.

### **Change is coming.**

The climb up the legal ladder for women has been slow and gradual, but change is coming. More and more firms are responding to the demand for diversity in both race and gender, as well as hiring and retention. With the spotlight on increasing diversity of all kinds, the legal profession must keep up or suffer the consequences, including fiscal consequences. For example, some major companies are issuing “diversity mandates” to their outside counsel, either refusing to do business with firms that have low diversity numbers, or withholding fees from firms they feel do not show an appropriate commitment to diversity.

In 2017, HP issued a diversity holdback mandate, in which its general counsel informed outside law firms that the company could hold back up to 10 percent of invoiced fees if law firms did not meet minimal diverse staffing requirements. MetLife issued a similar order. MetLife’s general counsel requested formal plans from its outside law firms relating to the advancement and retention of diverse attorneys.

Firms cannot simply hire diverse attorneys. They must implement strategies for retaining those employees. Firms will be forced to examine the diversity, or lack thereof, among their attorneys, and determine how best to recruit and retain those attorneys.

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