

Taking Matters into Your Own Hands: Key Steps Women Can Make to Combat Gender Disparities in the Legal Profession.

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I. Introduction

Since the 19th century, “women [have] struggled against professional and societal barriers that largely prevented them from working in the legal field.” *In Re Lady Lawyers: The Rise of Women Attorneys and the Supreme Court*, Sup. Ct. of the United States, <https://www.supremecourt.gov/visiting/exhibitions/LadyLawyers/Default.aspx> (last visited Jan. 11, 2022). Although over 40 years have passed “since women began entering the legal profession in large numbers,” the identifiable gender disparities between attorneys in the appellate process has remained largely unaffected over the past decade. Roberta D. Liebenberg & Stephanie A. Scharf, *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice*, ABA Comm’n on Women in the Profession 1 (2019), <https://www.americanbar.org/content/dam/aba/administrative/women/walking-out-the-door-4920053.pdf>. Recently, legal scholars have suggested it will take nearly four decades, until 2059, before women constitute half of the attorneys arguing before appellate courts. See Amy J. St. Eve & Jamie B. Luguri, *How Unappealing: An Empirical Analysis of the Gender Gap among Appellate Attorneys* 14 (2021), https://www.americanbar.org/content/dam/aba/administrative/women/how-unappealing-f_1.pdf.

These disparities chip away at the foundation of perceptions that the legal industry is fair, impartial, and inclusive. Rather, they affirm notions about the legal industry being disproportionately advantageous to men. As lawyers, we are all tasked with a responsibility to ensure the legal community that we participate in reflects the communities we serve. To this point, the representation of women attorneys for local and federal governments provides hope that, although slow, such equity can be achieved. *Id.* at 15 (recognizing that “one-half of all the women (50%) [attorneys] represented” government clients. Unfortunately, the representation of women attorneys for non-government clients have not seen similar improvements. *Id.* at 15–16.

Scholars and practitioners have called on law schools, law firms, clients, and courts to make intentional efforts to close the gender gap. *Id.* at 23–28. This article adds to the conversation by providing women entering, new to, or established in the legal profession with guidance as to how they can make intentional efforts to close the gap themselves. Beginning with an analysis of the data collected by Judge Amy St. Eve and Attorney Jamie B. Luguri, this article provides women in the law with tools and resources needed to give them the confidence to step-up and take advantage of professional development opportunities to when they arise.

In *How Unappealing: An Empirical Analysis of the Gender Gap among Appellate Attorneys*, Judge Eve and Attorney Luguri discuss the leaking pipeline of “talented and dedicated women entering the legal profession.” *Id.* at 5. “While there is gender

parity among those entering the profession, a disparity emerges among those who stay.” *Id.* Building on the “chorus of prior calls to action and ideas for change,” this article seeks to focus on providing women in the law with the building blocks needed to take advantage of opportunities unfamiliar and often unavailable to them. *Id.* at 23. The methodology involved studying “two years a decade apart—2009 and 2019—[to gain] . . . a fuller picture of how things have changed and how they have stayed the same when it comes to women attorneys arguing at the appellate level.” *Id.* at 7–8.

Recently, “women have begun to slightly outnumber men in law school and make up almost half of all associates entering law firms.” *Id.* at 5. Despite this competitive growth, “[w]omen attorneys are much more likely to report negative work experiences due to their gender.” *Id.* at 6. Such negative experiences include reports of “being overlooked for promotions, lacking access to business development opportunities, and being denied salary increases or bonuses (compared to men).” *Id.* With all the data collected recognizing the gender disparities, women in law cannot afford to wait until the other players involved catch up. Particularly when research indicates doing so may take more than four decades. *Id.* at 1; *see also* Roberta D. Liebenberg & Stephanie A. Scharf, *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice*, ABA Comm’n on Women in the Profession 1 (2019), <https://www.americanbar.org/content/dam/aba/administrative/women/walking-out-the-door-4920053.pdf>.

II. Utilizing Knowledge of Gender Disparities to Combat Imposter Syndrome.

In this section, we discuss the importance of recognizing the gender disparities that exist between the types of clients women attorneys represent and the practice settings in which women attorneys work. We do so with the aim of providing women in the law with the baseline knowledge needed to combat insecurities often attributable to “imposter syndrome,” insecurities that are only exacerbated by the lack of representation discussed throughout this article. *Imposter Syndrome? 8 tactics to combat the anxiety*, ABA (Oct. 2018), <https://www.americanbar.org/news/abanews/publications/youraba/2018/october-2018/tell-yourself- yet--and-other-tips-for-overcoming-impostor-syndr/>.

In October 2018, the ABA published an article recognizing the exacerbating impact the “imposter syndrome” has on women and attorneys of color. *Imposter Syndrome? 8 tactics to combat the anxiety*, ABA (Oct. 2018), <https://www.americanbar.org/news/abanews/publications/youraba/2018/october-2018/tell-yourself- yet--and-other-tips-for-overcoming-impostor-syndr/>. In 1978, psychologists Pauline Rose Clance and Suzanne Imes first identified “imposter syndrome” “as a feeling of ‘phoniness in people who believe that they are not intelligent, capable or creative despite evidence of high achievement.’” *Id.* When asked why imposter syndrome is commonly associated with women and attorneys

of color, Amy M. Gardner, a certified professional coach, discussed recent research indicating a deep impact imposter syndrome has had on minority groups. *Id.* According to Gardner, “[t]his in due part because a lack of representation can make minorities feel like outsiders.” *Id.*

How Unappealing notes that in both 2009 and 2019, “[w]omen who argued before the Seventh Circuit were much more likely to represent the government at the federal, state, and local levels.” Amy J. St. Eve & Jamie B. Luguri, *How Unappealing: An Empirical Analysis of the Gender Gap among Appellate Attorneys* 14 (2021), <https://www.americanbar.org/content/dam/aba/administrative/women/how-unappealing-f 1.pdf>. This difference only increased over time. *Id.* at 14–15. In 2009, women attorneys comprised of “only 20% of all attorneys who represented non-governmental clients,” whereas “nearly one-third (32%) of all attorneys who represented a governmental entity were women.” *Id.* “In 2019, . . . women comprised only 22% of all attorneys who represented non-governmental clients,” and “40% of all attorneys who represented” government clients. *Id.* at 15. *How Unappealing* further analyzed the clients women represented, coding whether non-government clients were individuals or business and whether government clients were on the federal, state, or local level. *Id.* at 15–18.

Between 2009 and 2019, women attorneys represented individual clients at a relatively consistent rate, averaging 22% and 23% respectively. *Id.* at 15–16. Further, the rate of women attorneys representing business clients did not considerably increase. *Id.* at 16. “[I]n 2009 only 14% of all attorneys who represented businesses were women,” a percentage which “increased to 19% in 2019.” *Id.*

The federal government comprised “about two-thirds of all governmental clients.” *Id.* “In 2009, 31% of all attorneys who represented the federal government were women,” which “increased to 40%” in 2019. *Id.* “For state governments, the percentage of women actually decreased over time: from 39% to 29%.” *Id.* “Local government clients showed the opposite trend—30% of all attorneys who represented a local government at oral argument were women in 2009, and this increased to 44% in 2019.” *Id.* While “[i]n 2019, about one-third (29%) of all men who argued in front of the Seventh Circuit represented” government clients. *Id.* at 18–20. “In contrast, one-half of all women (50%) represented” government clients. *Id.*

Also relevant to this analysis was the practice setting in which women attorneys worked. *Id.* at 18–20. “In both 2009 and 2019, the percentage of women was higher among attorneys who worked for the government.” *Id.* at 18. “Specifically, women made up 34% (in 2009) and 41% (in 2019) of all attorneys who worked for the government.” *Id.* “Conversely, they comprised only 18% (in 2009) and 21% (in 2019) of all attorneys who worked for non-governmental entities.” *Id.* When looking at the women attorneys working in “the non-governmental practice

settings, women comprised a slightly higher percentage of lawyers from AmLaw 100 and 200 firms compared to smaller firms or solo practitioners.” *Id.* at 19. For example, in 2019, “22% of all AmLaw 100 and 29% of all AmLaw 200 attorneys who argued before the Seventh Circuit were women.” *Id.* On the other hand, “19% of all attorneys who worked at smaller private firms and 18% of solo practitioners were women.” *Id.*

Recognizing the disparities between the types of clients most frequently represented by women attorneys and the practice setting in which they work provides a foundation for understanding that although certain roads are less traveled by women, it is not because women are less qualified.

An attorney’s decision to work in the governmental or non-governmental practice setting may be impacted by many factors; however, women in the law should not let insecurities about their capabilities prevent them from seeking a job they are particularly passionate about. Given the lack of representation among women attorneys, it is important for women in the law to pursue a practice and clients who comport with their passions, not limiting themselves based on insecurities related to the lack of female representation. As discussed below in Section III, women can leverage interview opportunities to understand which practice setting is best suited based on the work culture and institutional policies in place.

III. Leveraging Interviews to Understand Law Firm Culture and Policies.

In this section, we discuss the importance of understanding the various structures and policies affecting women representation in law firm practice setting. By doing so, we seek to provide women in the law with a baseline understanding of what to look out for and what to avoid when choosing an associate position. One of the few ways women attorneys can take matters into their own hands in terms of rectifying gender disparities is by recognizing and choosing law firms with systems in place to provide them with transparent and equitable opportunities.

A prime example of topics women should be asking about to determine law firm transparency and equity includes a law firm’s compensation system. Roberta D. Liebenberg & Stephanie A. Scharf, *Walking Out the Door: The Facts, Figures, and Future of Experienced Women Lawyers in Private Practice*, ABA Comm’n on Women in the Profession 7 (2019), <https://www.americanbar.org/content/dam/aba/administrative/women/walking-out-the-door-4920053.pdf>. If a firm’s compensation system is “shrouded in mystery, where unwritten rules and relationships determine equity shares, origination credit, salary, and bonuses,” it is best to uncover this information before accepting an associate position. *Id.* Another distinguishing factor related to compensation systems is “the lack of a critical mass of women on many firm compensation committees, coupled with a lack of women sponsors in the compensation process, [which] contribute[s] to the continuing and significant

gender pay gap for women partners.” *Id.* Applicants can uncover this information by inquiring into whether firms have a compensation committee and/or use “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.” *Id.* Ultimately, women applicants want to ask questions targeting whether a firm’s compensation system will implicitly prevent them from achieving compensation equitable to their male counterparts.

Another topic women should be asking about is how long the attorneys interviewing them have been working in a particular setting. Although there are many factors that contribute to a lawyer’s decision to choose (and change) practice settings, understanding a law firm’s retention rate of women to male attorneys will provide context as to whether the firm’s culture is inclusive. Women applicants should also ask whether the law firms they are interviewing with have internal resources dedicated to supporting women attorneys. This can take the form of mentorship programs, women’s initiatives, diversity and inclusion committees, and client-facing events supporting working women.

Before and during the interview process, applicants should research the available statistics of each law firm related to women representation. “[O]rganizations [have begun] tracking the progress of women in private practice through regular surveys conducted by The American Lawyer, the National Association of Women Lawyers, Vault/MCCA, and NALP.” *Id.* at 1. These surveys are publicly available and provide comprehensive information regarding legal employment and recruiting. *Research & Statistics, Nat’l Ass’n for Law Placement, <https://www.nalp.org/research>* (last visited Jan. 11, 2022). For example, the NALP Directory of Legal Employers shows key factors such as lawyer demographics and compensation data that female applicants should take note of in preparation for their interviews. NALP Directory of Legal Emps., <https://www.nalpdirectory.com> (last visited Jan. 11, 2022). Not only does visiting this directory prove extremely helpful for the individual applicant when conducting due diligence for an interview, but it also holds the law firm to a higher standard by showcasing how it compares to others across the nation. Applicants should spend time looking at these resources prior to accepting an associate position to ensure they are devoting their talents to a law firm that will support them in a manner that is equitable to their male counterparts. Applicants should spend time looking at these resources prior to accepting an associate position to ensure they are devoting their talents to a law firm that will support them in a manner that is equitable to their male counterparts.

Rather than wait on the other players to fix these decades-long gender disparities, women in the law can leverage interview opportunities to ensure they choose a practice setting that has made intentional efforts to be transparent and equitable when it comes to female representation. Taking the time to utilize the resources available will help women in the law choose practice settings in which they are properly represented.

IV. Seeking Organizations, Mentorships, and Other Opportunities Supporting the Development of Women Attorneys

In this section we discuss steps women in the law can take to invest in their professional development. This includes joining organizations supporting the professional development of women, seeking mentorships from female attorneys in various areas of law, and preparing one's self to take advantage of the work opportunities that will increase women representation among clients and courts.

A rising number of law school and professional organizations have been created to support the professional development of women in the law. The Women's Law Caucus is an example of a law school organization aimed at the professional development of women in the law. Law schools like the University of Texas at Austin, the University of Chicago, and the University of Colorado Boulder have established Law Women's Caucus organizations. *See, e.g.*, Univ. of Tex. Austin, <http://sites.utexas.edu/wlc/> (last visited Jan. 11, 2022); *Law Women's Caucus*, Univ. of Chi. Sch. of Law, <https://www.law.uchicago.edu/studentorgs/lwc> (last visited Jan. 11, 2022); *TAB- Student Group: WLC*, Univ. of Colo. Boulder, <https://www.colorado.edu/law/tab-student-group-wlc> (last visited Jan. 11, 2022).

Professional organizations dedicated to this development can also be found at the national and state level. The National Association of Women Lawyers and the Houston Association of Women Attorneys are just two examples of organizations supporting efforts to empower women in the law. Nat'l Assoc. of Women Lawyers, <https://www.nawl.org/> (last visited Jan. 11, 2022); Houston Assoc. of Women Attorneys, <https://awahouston.org/> (last visited Jan. 11, 2022). In addition to giving women in the law a platform to inquire about the real life experiences of women attorneys, these organizations provide opportunities to get involved with a community of women lawyers dedicated improving the representation of women attorneys overall.

These organizations also provide women in the law with the opportunity to invest in creating authentic relationships with other female attorneys practicing in various areas of law. Another place women in the law may seek mentorship is their law school professors, many of whom have the benefit of lived-experience and the experiences of their previous students. Lastly, women in the law may reach out to women practitioners in their area for the purpose of conducting an "informational" interview. Informational interviews provide individuals with an opportunity to ask questions related to one's live-experiences in a particular practice setting. They also provide women in the law with the opportunity to create authentic relationships, which will form the basis of their legal network.

Lastly, women in the law should seek out opportunities generally available to junior lawyers seeking to gain experience and training. For example, the Bankruptcy Court for the Northern District of Texas operates the FBA Young Lawyers in Court Initiative that "recognizes the importance of providing opportunities for junior

lawyers to gain experience and training in courtroom skills.” *Judge Edward L. Morris*, U.S. Bankr. Ct. N. Dist. of Tex., <https://www.txnb.uscourts.gov/content/judge-edward-l-morris-0#FBA%20Young%20Lawyers%20in%20Court%20Initiative> (last visited Jan. 11, 2022). The goal of this Initiative is to “create[] an opportunity for a junior lawyer to argue,” by making the court “amenable to permitting more than one lawyer to argue for a party,” which naturally allows for a junior associate to gain experience under the tutelage of a more senior colleague. *Id.* While this is not a common-trend among courts, looking into whether such opportunities are available is one way women in the law can take matters into their own hands while awaiting courts to answer the call to action based on the “important role [courts] play in decreasing the gender imbalance among the . . . attorneys who argue before them.” Amy J. St. Eve & Jamie B. Luguri, *How Unappealing: An Empirical Analysis of the Gender Gap among Appellate Attorneys* 28 (2021), https://www.americanbar.org/content/dam/aba/administrative/women/how-unappealing-f_1.pdf.

This section names a few of the many incremental steps women in the law can take to resolve the gender disparities discussed throughout this article. Despite the calls to action made on law schools, law firms, clients, and courts, women in the law cannot afford to wait four decades, at minimum, to achieve gender equality. Amy J. St. Eve & Jamie B. Luguri, *How Unappealing: An Empirical Analysis of the Gender Gap among Appellate Attorneys* 23 (2021), https://www.americanbar.org/content/dam/aba/administrative/women/how-unappealing-f_1.pdf. Justice Ruth Bader Ginsburg once said, “Real change, enduring change, happens one step at a time.” *Id.*; Li Cohen, *Ruth Bader Ginsburg’s Iconic Quotes on Law, Love and the Fight for Equality*, CBS News (Sept. 19, 2020), <https://www.cbsnews.com/news/ruth-bader-ginsburgs-iconic-quotes-on-law-love-and-the-fight-for-equality/>. While the rest of the legal industry plays catch-up, we seek to provide women in the law with a foundation of resources and knowledge giving them the confidence to take steps to make real and enduring change.

V. Conclusion

In order to accelerate the equitable resolution of gender disparities between attorneys, women in the law should seek available resources and information aimed at remedying the same. As discussed throughout this article, recent authority suggests that it will take nearly four decades before women constitute half of the attorneys arguing before appellate courts. Amy J. St. Eve & Jamie B. Luguri, *How Unappealing: An Empirical Analysis of the Gender Gap among Appellate Attorneys* 1 (2021), https://www.americanbar.org/content/dam/aba/administrative/women/how-unappealing-f_1.pdf. It is clear women are not sitting on the sidelines of the legal profession. So, rather than waiting for the other parties at play to resolve these disparities, women in the law can take matters into their own hands.

The goal of these efforts should be to enforce the perception that the legal industry is fair, impartial, and inclusive, and at the same time disaffirm notions that the legal industry may be disproportionately advantageous to men. Studies and reports such as those provided by Judge Eve and Attorney Luguri in *How Unappealing* advance the tools and resources available to women in the law, giving them the confidence to thrive in a male-dominated industry.

To promote the professional development of talented and dedicated women outnumbering “men in law school and [that] make up almost half of all associates entering law firms,” women in the law need to familiarize themselves with the various levels of transparency and equity available to them. *Id.* at 5. By taking matters into their own hands, women in the law can arm themselves with the knowledge and understanding needed to withstand inequities they are bound to experience. Doing so will not only make their own path more clear but will pave the way for the next generation of women lawyers who we hope will see a legal industry reflective of the societies in which they serve.