

INTRODUCTION

By Attorney Beth A. Deragon

The New Hampshire Bar Association's Gender Equality Committee (GEC) latest 10-year survey sought to poll the widest population in its quest to assure that any conclusions reached and inferences drawn were well supported by the results obtained. For the first time, the survey was made available electronically to all members of the NH Bar, including the judiciary. While the average response rate for surveys of this type is approximately 25 percent, we were fortunate to gain a 35 percent response rate that was evenly split between the genders. In order to ensure the integrity of the process and of the results, the GEC did not collect or interpret the raw data; rather, a professional survey firm conducted the survey and an economist, Dennis Delay, synthesized and analyzed the raw data and presented the results to the GEC.

In addition to our presentation of the survey results, this issue provides a fuller picture of issues involving women and the profession in New Hampshire. While we are closer than ever before to the ultimate goal of equality, the articles in this issue, recounting stories by more experienced female judges and lawyers, describe acts of disrespect and inequality that while predictable then, rarely exist today. Data from this survey shows an almost negligible amount of such overt conduct. If all this is so, why should the GEC continue to exist? Sadly, the survey also revealed patterns of continuing inequality. That inequality continues both in thought and practice.

One of the most disconcerting findings of the survey was that optimism is slipping among female attorneys regarding their opportunity for advancement within their firms. In 2009, less than half of the female attorneys (49 percent) reported feeling optimistic about their opportunity for advancement while 21.9 percent felt pessimistic. Ten years ago, 59 percent of female attorneys surveyed felt optimistic about the opportunity for advancement, and 19 percent felt pessimistic. No such change was reported among male attorneys. If the legal profession has made so much progress toward gender equality, why are more female attorneys markedly less optimistic about their own career outlook?

Part of the answer may be contained in survey data that exposed an inequality of thought among genders. Statistically unchanged since the first survey in 1988 is that there is a 20 percent gap between the share of male attorneys who participate in their law firm's management decisions (e.g. setting rates for legal services, determining which clients will be accepted, determining who will handle cases and hiring decisions) compared to the percentage of female attorneys who are decision-makers. The survey data supports the inference that although the number of female attorneys has increased over the past 20 years, female attorneys are not participating in management decisions in their firms in the predicted percentages. Thus, female attorneys may not think of themselves as having a role in their own advancement. This year the GEC aims to address this issue by creating programs for law firms and for female attorneys with the goal of increasing opportunities for women to participate in management decisions and encouraging women to require their firms to provide that opportunity.

This inequality of thought also presented itself in observations by more than half of the female attorneys responding to the survey. They reported routinely observing condescending treatment of female attorneys by male attorneys and inappropriate use of titles or names. In addition, 41 percent of female attorneys routinely observed inappropriate comments on the apparel or appearance of female attorneys, and 47 percent of female attorneys reported routinely hearing sexist jokes. Based on this data, it is likely that female attorneys who regularly observe this type of behavior would feel pessimistic about their career opportunities. The GEC hopes to address this issue by working with law firms to ensure that appropriate training is provided to attorneys to raise awareness of this issue.

In practice, pay disparities between male and female attorneys continues to exist and is likely to be attributed to the disparity between billable hour rates among the genders. The ongoing pay disparity and the negative impact of the billable hour billing method are discussed by Attorneys Joni N. Esperian, Karyl Roberts Martin and Erin Sterns in their article, "The Glass Ceiling Reinforced: Ten Years Later and the Pay Disparity Continues." Attorneys Kristin Mendoza and Katherine Brown, in their article, "Ending the Tyranny of the Billable Hour: A

Mandate for Change for the 21st Century Law Firm,” provide justification for abandoning this system and offer an implementation roadmap for law firms willing to unchain themselves from the billable-hour straitjacket. Further support for this proposition is the escalating burden of law school debt. Of the recent law school graduates surveyed, the *average* law school debt is \$80,000. The burden of debt, perhaps not felt by prior generations, informs the employment paths of many new lawyers.

Further, the disquieting disparity in the proportion of female judges in New Hampshire is analyzed by Attorney Holly Haines in her article, “Balancing the Scales of Justice—Achieving a Critical Mass of Women on the New Hampshire Judiciary.” Attorney Haines’s discussion of the critical-mass theory as applied to gender equality suggests more accountability is needed for both those who appoint and those whose applications are a necessary first step to effectuate change.

Also in this issue:

- Jennifer L. Parent, New Hampshire Bar Association President-elect, looks at women in the profession from a nationwide perspective, noting that progress has been made, but not enough.
- Insights on how to survive and even prosper in a law firm that is a menagerie of personalities, advice that will be of value to newer lawyers regardless of their sex, is offered by Eleanor MacLellan.

- Maureen Manning and Jennifer Farrell provide historical perspective on the slow pace of acceptance of women and advancement into leadership in the profession, and comment on persistent traditional perceptions of women’s commitment to their profession versus their families.
- Attorney Jane F. Taylor interviews several female attorneys who have made an affirmative choice to practice in a non-firm setting.
- And, Plymouth State University history professor Marcia Schmidt Blaine takes a historical journey back to colonial America where, despite the legal subjugation of women, female tavern-keepers were entrusted with the responsibility of keeping order within their places of business. Some female tavern keepers held influential community and provincial roles as they supervised meeting places that were literally at the center of public life and government.

The analysis of these recent survey results and the thoughtful articles in this issue aim to create an awareness of the existing obstacles to our profession’s continuing quest for gender equality. The GEC is committed to working together with Bar members, Bar leadership and law firms to overcome these obstacles. We are persuaded, based on the progress of the last 100 years, that it is the quest for this ideal that sets our profession apart.



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