



STATE BAR of NEW MEXICO

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Ernestina R. Cruz
President

July 29, 2020

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The Honorable Michael E. Vigil
Chief Justice, New Mexico Supreme Court
P.O. Box 848
Santa Fe, N.M. 87501

Re: Gender Diversity Report

Dear Chief Justice Vigil:

Pursuant to the Court's request, enclosed are the Gender Diversity Report and Executive Summary for the Court's meeting on August 12th with U.S. Magistrate Judge Laura Fashing, the representative for the Committee on Women and the Legal Profession.

The Report and Executive Summary have also been sent today to the Board of Bar Commissioners ("BBC") for their initial review and comment. At our upcoming September meeting, we hope to have the Committee on Women and the Legal Profession present the Report and Executive Summary to the BBC. During the meeting, or at some point soon thereafter, final approval of the report recommendations should be provided by the BBC. We will continue to consult with the Court as the BBC moves forward with its internal process.

Please let us know if you have any questions or need additional information. The State Bar appreciates the Court's efforts in meeting with the Committee on Women and the Legal Profession and supporting this important initiative.

Respectfully submitted,

Ernestina R. Cruz
President

Enclosures

cc/encs.: Senior Justice Barbara J. Vigil
Justice Judith K. Nakamura
Justice C. Shannon Bacon
Justice David K. Thomson
U.S. Magistrate Judge Laura Fashing
Jeffrey Young, Esq., Administrative Counselor to the Chief Justice
Richard B. Spinello, Esq., Executive Director, State Bar of New Mexico
Board of Bar Commissioners, State Bar of New Mexico
Jeffrey H. Albright, Co-Chair, Committee on Women and the Legal Profession
Patricia M. Galindo, Co-Chair, Committee on Women and the Legal Profession

Committee on Women and the Legal Profession

Executive Summary of American Decision 2020 Gender and Diversity Report

Background – Creation and Initial Actions of the Committee on Women in the Legal Profession:

In December 1987, the State Bar of New Mexico, under the direction of the late Judge Sarah M. Singleton, as chair, organized the Task Force on Women and the Legal Profession (hereinafter “Task Force”). The Task Force was charged with investigating and reporting to the State Bar the extent to which gender bias was affecting women who participated in the legal system as litigants, witnesses, or attorneys. The Final Report, titled “The Status of Women Attorneys in New Mexico” was dated November 2, 1990 (“Task Force Report”). The Task Force Report looked at issues affecting women as lawyers and judges, as well as substantive issues in the areas of civil justice, domestic violence, criminal law, juvenile justice, and family law. It also identified gender bias issues affecting female litigants, witnesses, and court employees. Following its publication, the State Bar replaced the Task Force with a permanent committee: the Committee on Women and the Legal Profession (hereinafter the “Committee”).

Initial Tasks of the Committee:

When the Committee began meeting in 1991, its first task was to write a report for the Board of Bar Commissioners and the Supreme Court recommending actions to implement the recommendations of the task force. Following the issuance of the Committee’s report, the Board of Bar Commissioners and later the New Mexico Supreme Court took most of the actions recommended by the Committee. As summarized in the September/October 1996 issue of the *Bar Journal*¹ these included:

1. Appointment by the Board of Bar Commissioners of an ad hoc committee charged with drafting a Rule of Professional Conduct prohibiting invidious discrimination.
2. Amendment of the Code of Judicial Conduct by the adoption of a rule that included specific prohibitions against invidious discrimination.
3. Issuance of a statement by Chief Justice Seth D. Montgomery on April 12, 1994 to all judges, court employees and members of the bar prohibiting gender biased behavior in the courtroom, charging judges with the responsibility of prohibiting such behavior by lawyers, and adopting a Handbook as a guide to the creation of a “bias free environment throughout New Mexico court system.
4. Revision of uniform jury instructions and court rules to eliminate gender biased language.
5. In 1991, the creation of the Judicial Education Center to provide training to judges in New Mexico on the issues of gender bias and ways to eliminate it in the operation of the courts.
6. At the request of the Committee, promulgation of policies by the University of New Mexico School of Law prohibiting gender bias in interviewing by firms that use its

¹ See Bar Briefs Sections and Committees, “Five Years Later: An Update of the Report of the Task Force on Women and the Legal Profession,” *Bar Journal* – September/October 1996, pgs. 44-51.

- placement services, including grievance provisions for students if they feel they were adversely affected by gender bias by a firm using the placement services of the law school.
7. Amendments made in 1993 by the Family Law Section of the State Bar concerning changes in laws relating to spousal support. (NMSA 1978, §40-4-7 (Repl.Pamp. 1994)).
 8. Through support of the Committee, the Judicial Education Center conducted workshops on domestic violence issues in various judicial districts. Training on domestic violence was also held at district attorney conferences.
 9. Many recommendations of the Committee dealt with the need to educate about the problems faced by female colleagues, including alternative work schedules to accommodate family responsibilities.
 10. During 1995, the Committee suggested substantive revisions to the judicial branch rules regarding sexual harassment, many of which have been adopted.

Substantive Developments Over the Next 29 Years:

During the next 29 years, the Committee continued the work from the initial study. In September 2000, Chief Justice Pamela B. Minzner made reference to Chief Justice Montgomery's letter of April 12, 1994, and she and all members of the Chief Judges Council endorsed the reprinting and redistribution of the Handbook. The Handbook was updated and revised again in 2005, including procedures to follow under Local Rule 83.12 for the United States District Court for the District of New Mexico.

The Committee, during the same period, conducted various CLE's related to gender bias, initiated workshops, initiated rule changes by the Supreme Court, and with the assistance from the Board of Bar Commissioners and support from the Supreme Court, implemented statutory changes to provide for gender neutral language in the drafting of new and replacement court rules and statutes.

"Ask Pat" columns in the *Bar Bulletin* addressed issues of bias arising from both private workplace and courtroom experiences, some taken from real life experiences of practitioners and court employees and others from hypothetical situations. The Committee worked on several updates of the domestic violence card, a ready reference provided to various professional and community organizations to assist women (and men) who might be subject to domestic violence in the community. The Justice Pamela Minzner Award was created and became etched in stone at the New Mexico Court of Appeals building named in her honor that is next to the law school. Coordination and co-sponsorship of addresses and CLE's at the New Mexico State Bar Annual Convention have been common, including panels consisting of members of the New Mexico Supreme Court and other notable speakers. In 2016, the Committee presented a plenary session at the New Mexico State Bar Convention entitled *Gender and Justice: New Mexico Women in Robes*, moderated by the late Judge Singleton that provided the history of the Task Force, its finds and the continued relevance of the Committee on Women and the Legal Profession. Clothing drives, a clothing closet for new attorneys, paralegals and domestic violence organizations, a fashion show, scholarships for UNM students, mentorship programs, furnishing

and decorating an apartment for a Saranam family, hosting golf clinics, partnering with the Women's Bar on joint projects and the Young Lawyer's Division for a new attorney reception, and hosting regular lunch speakers addressing the needs and competing demands of "working attorneys" were initiatives taken on by the Committee over the years.

Status of Women in the Law – 2020 Diversity and Gender Bias Report(s):

The Committee held an Executive Summit with members of the original Task Force, including Judge Singleton, on June 23, 2012 at the State Bar Center. Discussions included a review of results from the previous report and an inquiry as to whether additional efforts needed to be made to address issues that were identified in the original Task Force

On September 12, 2017, Supreme Court Justice Judith Nakamura sent a letter to Scotty A. Holloman, President of the New Mexico Board of Bar Commissioners. To quote Justice Nakamura,

Much has changed in the twenty-seven years since the Task Force's final report and yet national data indicates that women attorneys continue to lag behind men in private practice, academia, and in the the judiciary. (See, *A Current Glance at Women in the Law, January 2017*, https://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_january2017.authcheckdam.pdf). And there is evidence from other states that female lawyers are given the "lead: counsel role only about 25% of the time, leading one of our federal colleagues to issue a rule making it easier to allow younger lawyers, including women, to participate in court proceedings. (Internal cite omitted.) While we hope that is not the case here in New Mexico, my colleagues and I are aware of cases where women lawyers after writing the briefs are not seated at counsel table or given an opportunity to argue the case.

The Chief Justice went on to say that she understood that the Committee on Women in the Legal Profession has indicated an interest in re-examining and updating the 1990 report. "We would support that effort and would welcome any additional recommendations for determining the current status of women legal professionals in New Mexico."

Under the leadership of the Chief Justice, and funding from both the Board of Bar Commissioners and the Supreme Court, the Board of Bar Commissioners supported the Committee's request to conduct a survey of all active and inactive members of the New Mexico State Bar to update and evaluate the data from the original Task Force Report. American Decisions was hired to conduct the survey. The details of the methodology are addressed in the American Decision's May 2020 Diversity Study. A total of 1,564 members of the New Mexico Bar Association elected to participate in this survey. The survey was conducted on-line and was available in English and Spanish. It is statistically valid, and it has a margin of error of +/-2.5%.

American Decisions also held five focus groups following the survey. The focus groups participants were recruited from a database of all members of the New Mexico Bar Association through live phone calls and e-mails and were screened to meet the target audiences of female

members, and members from the Native American, Asian American, and African American communities. Group meetings were approximately two hours in length and contained 6-8 participants in each group. Half of the focus groups were comprised of only female participants in order to encourage a more open dialogue.

Major Overarching Themes Emerging from the Data in the Report to the Committee

While there are many issues that are embedded within the report, the May 2020 Draft Report lists three major themes that emerged from the survey data:

1. “Female Members of the Bar Face Significant Challenges Achieving a Balance Between Professional and Family Obligations.”
2. “Income Inequality Facing Female Members of the Bar Remains a Major Challenge.”
3. “Intersectionality of Race/Ethnicity and Gender Reveals Challenges Women of Color Face in New Mexico’s Legal Community.”

Actions by the Committee on Women in the Legal Profession in Response to the Report

The Committee formed a subcommittee to analyze the results of the analysis received in May 2020. Three meetings were held with seven member of the Committee who formed a subcommittee to identify key issues raised by the data and to develop some preliminary general recommendations. These were circulated to all members of the Committee as a whole, and then vetted by members of the Committee during a meeting on Friday, July 24, 2020. A list of the proposed areas of concern are attached as Attachment A to this Executive Summary.

Similar to the initial Task Force Report, some of these recommendation/areas of concern will be considered by the Committee. Recommendations for projects that are properly before the Board of Bar Commissioners, the Courts, or are within the purview of the Committee will be further defined over time, with the ultimate goal to address the concerns that were raised in the report and to correct gender bias and related issues that face our legal professionals in New Mexico.

In summary, the mission of the Committee on Women in the Legal Profession is to secure full and equal participation of women in the State Bar of New Mexico, the profession and the justice system. The newest survey by American Decisions examines the unique experiences and challenges faced by women lawyers and offers concrete recommendations to address intersectionality and make the legal profession more inclusive.

Very Respectfully,

The Committee on Women in the Legal Profession

New Mexico State Bar Association 2019 Gender Diversity Report



May 2020

American  **Decisions**

Project Overview and Methodology

American Decisions conducted a comprehensive analysis of the membership of the New Mexico State Bar Association (referred to as the “Bar” often in the report) with a specific focus on whether the experiences of Bar members differ in any important way based on their gender, race, ethnicity, sexual preference or other aspect of their identity. The overall research design included a survey of Bar members. The survey was disseminated to members via email on July 26, 2019 and closed on September 6, 2019. American Decisions interviewed 1,564 members of the New Mexico Bar Association with the sample drawn from a representative file of 10,068 active or retired members, yielding an overall response rate of 15.5%.¹ The size of the sample allows for comparisons to be made across the most prominent sub-groups of the Bar’s membership, and in some cases, inter-sectional analysis among sub-populations. This included analysis of women of color, a community the data reveals have distinct experiences from both White women and men of color.

The survey was available in English and Spanish, and the average completion time was 20 minutes. Upon completion, the data were weighted to the State Bar Association’s database of members so that the survey data is reflective of the overall membership in regard to gender, race, and region of the state. The survey data carries a +/-2.5% margin of error. The database of active or retired members includes demographic information about members of the Bar in the state that are referenced in our report to make inferences regarding our sample and the broader legal community in the state. The database of members suggests that the survey sample prior to weighting was an approximate match to the distribution of the membership database across key demographic factors (see table below). We utilize the active members administrative data in the opening section of our report that discusses the demographic profile of the Bar association and any changes in the representation of women and racial and ethnic minorities within the Bar over time.²

The sample of survey participants varied in a meaningful way from the membership’s overall demographics on both gender and region. Consistent with the general norm in survey research that suggests female Americans are more likely to respond to surveys than males, we had a slightly higher number of female respondents to this survey than their share of the overall membership.

There was a notable regional difference between the bar membership database and the un-weighted survey sample. More specifically, we had a much smaller percentage of members who lived outside of the state of New Mexico in our sample compared to the overall membership database. This was based on a strategic decision to focus our research primarily on lawyers who live and work in New Mexico. Therefore, while we included participants who might live outside of the state of New Mexico currently, but work primarily in the state, we excluded participants for whom New Mexico represents a small component of their overall workload. We believe that

¹ We utilized an invitation memo provided by the state’s Chief Justice stressing the importance of this study and outreach conducted during the Bar Association’s state-wide meeting to help with participation in the study.

² Inactive members and those who work primarily outside of the state of New Mexico are excluded from the analysis of administrative data.

approach led to the report's ability to speak to the range of experiences members of the bar have here in the state of New Mexico.

New Mexico Attorneys Demographic Data		
	<u>Bar Database</u>	<u>2019 Survey</u>
<i>Age</i>		
<i>Under 34</i>	11%	12%
<i>35-44</i>	21%	25%
<i>45-54</i>	21%	20%
<i>55-64</i>	22%	23%
<i>65+</i>	25%	20%
<i>Race/Ethnicity</i>		
<i>Non-Hispanic White</i>	51%	53%
<i>Non-Hispanic Minority</i>	10%	10%
<i>Hispanic</i>	16%	19%
<i>Not Reported</i>	23%	18%
<i>Regions</i>		
<i>Metro</i>	44%	48%
<i>North</i>	19%	22%
<i>South</i>	10%	18%
<i>Outside NM</i>	27%	12%
<i>Gender</i>		
<i>Male</i>	41%	49%
<i>Female</i>	59%	51%
<i>Sexual Orientation</i>		
<i>LGBT</i>	3%	5%
<i>Practice Type</i>		
<i>Corporate</i>	1%	1%
<i>Government</i>	27%	32%
<i>Legal Service Org</i>	2%	3%
<i>Other</i>	1%	1%
<i>Private</i>	69%	65%

Several items on the 2019 survey were worded either identically or very closely to the language used in the 2009 survey to allow for some comparisons to be made between both surveys. This allows for the identification of any important shifts in the experiences and attitudes of NM Bar members over the past decade. However, not having the same respondents across both samples limits our ability to make direct comparisons. Therefore, throughout the report we note important differences between the two surveys in procedure and participation. Overall topline results from the survey and topline results isolating women, Latinas, and other women of color are available in the appendix.

The research design also includes qualitative data to support the survey. Following the survey, American Decisions conducted five focus groups with members of the Bar Association to dig deeper into some of the themes that emerged from the survey, and to bridge any gaps in the populations covered by the survey sample. This included facilitating two on-line groups to allow

for members from rural areas to be able to participate without having to drive a significant distance to participate from a more urban area where focus group facilities are more readily available. There were also groups comprised of Native American, African American, and Asian American members, sub-groups of the larger Bar Association that had fewer than 100 completed surveys. The lead facilitator was chosen to reflect the primary demographic profile of the focus group to improve trust between the research team and the focus group participants. The focus groups were professionally transcribed prior to analysis.

The five groups had the following characteristics:

- Focus group participants were recruited from a database of all active members of the NM Bar Association through phone calls and emails and were screened to meet the target audiences of female members, and members from the Native American, Asian American and African American communities.
- Groups were facilitated by professional moderators with deep experience in the content area and in facilitation.
- The groups were approximately 2 hours in length and contained 6-8 participants in each group, with a total of 28 participants across all sessions.
- To ensure that female members of the Bar were able to discuss their experiences freely and with some depth, half of the focus groups were comprised of only female participants. Those all-female sessions were facilitated by female members of our research team to ensure that there were no interviewer effects. See the appendix for a summary of the focus group participants.

This year's diversity report represents a formal partnership between the Committee on Diversity in the Legal Profession and the Committee on Women in the Legal Profession. Our research team worked closely with leadership of both committees to ensure that our research design and analysis met the goals of both organizations. This approach led to a more comprehensive research design that resulted in the production of two separate, but complimentary, reports. The report that follows focuses primarily on differences in the experiences of bar members based on gender.

Major Themes That Emerged From the Data

Female Members of the Bar Face Significant Challenges Achieving a Balance Between Professional and Family Obligations

The extra challenge female members face having to balance career demands with family obligations was one of the more salient themes to emerge from both the survey and the focus groups. This was reflected in a significantly higher percentage of women in the survey reporting that they have made difficult life decisions to advance their career opportunities, including not getting married and delaying having children. For example, 27% of women in the sample reported that working in the legal profession in New Mexico had an impact on their decision to get married. The survey also found that 28% of female respondents have decided to work part-time positions due to family obligations compared to only 3% of male part-time workers.

For members of the Bar who are parents, the career implications of having children is viewed much differently based on the gender of the respondent. Nearly half (48%) of female Bar members with children think that having children has had a negative impact on their career, compared to only 12% of male members.

Income Inequality Facing Female Members of the Bar Remains a Major Challenge

The survey identified that women in the legal profession in New Mexico make significantly less income than men. For example, women respondents to the survey are more likely (+11%) to report that they make \$75,000 or less when compared to male respondents, and are less likely (-11%) to report that they make more than \$100,000. Women are much less likely to be among the highest income bracket, as men are more than twice as likely to report that they make \$200,000 or more than women – 6% for women compared to 14% of men. Furthermore, female attorneys who are married to an attorney are much more likely to report that they are paid less than their husbands.

The Intersectionality of Race/Ethnicity and Gender Reveals Challenges Women of Color Face in New Mexico's Legal Community

Intersectionality theory suggests that social categories such as race, gender, and class act as interlocking systems of oppression that work together to produce inequality³. As social scientists we utilized this framework for our analysis to improve our understanding of members of the Bar who may have overlapping experiences based on race and gender. This intersectional framework revealed that the combined impact of race and gender provides significant obstacles for women of color in the state. For example, women of color are more likely to report being mistaken for a paralegal, administrative, or custodial staff-person than not only men, but also White women. Latinas are more likely than both Latino males and women from other racial backgrounds to report unfair treatment or discrimination. Nevertheless, the survey data show Latinas report higher incomes than women from other racial and ethnic backgrounds, including Whites.

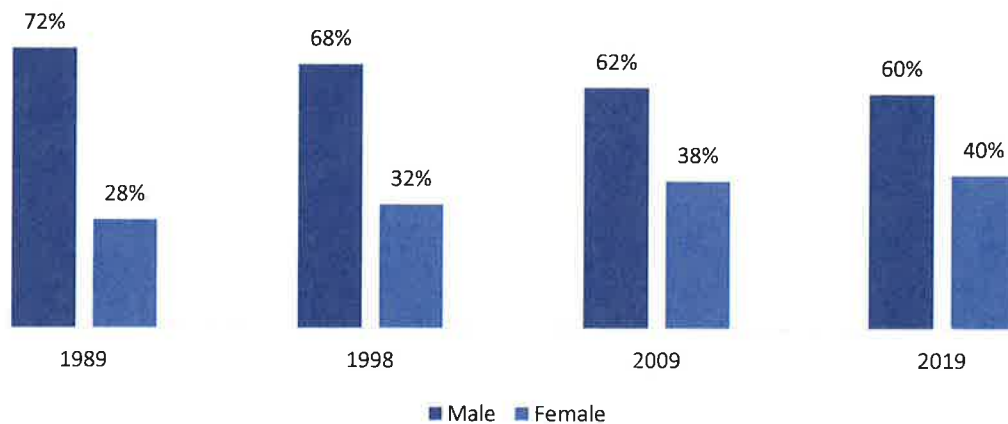
³https://www.researchgate.net/publication/327148933_Intersectionality_Identity_Politics_and_Violence_Against_Women_of_Color

Full Report- Results from New Mexico Bar Association Demographic Data, Member Survey, and Focus Groups

Demographic Profile of Attorneys in New Mexico- Steady Increase in Gender Representation Over Time

The percentage of women within the Bar association is an important indicator of gender representation in the legal profession. The New Mexico Bar Association's state reports over the past four decades allow for gender comparisons in representation over time. As reflected in the figure below, there has been a steady increase in the percentage of female members of the state's Bar, with the biggest increase (+6%) from 1998 to 2009.⁴ However, the 2019 data show this rise in gender representation has slowed more recently. In the past 10 years the proportion of women attorneys in New Mexico has only grown by 2% to reach a high of 40% in 2019. For some context, the American Bar Association's national population survey finds that 36% of active attorneys are women⁵. New Mexico is therefore more diverse based on gender than the national average.

State Bar Membership and Gender
Trending Analysis

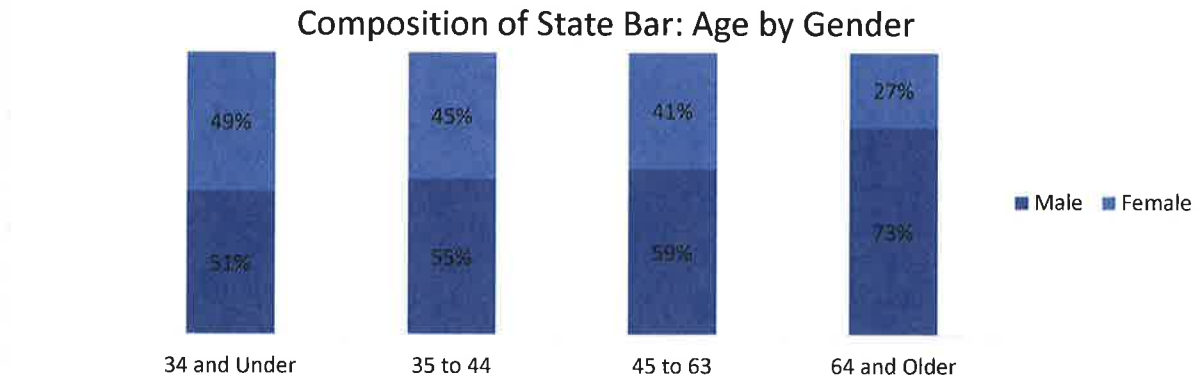


When we examine the representation of women across different age groups from the administrative data, we see important variation. The proportion of women among active attorneys in New Mexico is dramatically lower among the oldest age category. As reflected in the figure below, in the 64 and older age group only 27% of members are female. However, the gender distribution is nearly equal in the youngest age bracket (49% female and 51% male for

⁴ Report: *The Status of Minority Attorneys in New Mexico—An Update 1999-2009*. The 2009 and 1989 reports can be reviewed and downloaded at https://www.nmbar.org/Nmstatebar/Publications___Resources/Status_of_Minority_Attorneys_in_NM.aspx?WebsiteKey=687d8cd9-4ff9-4f83-a12f-6657211dab17

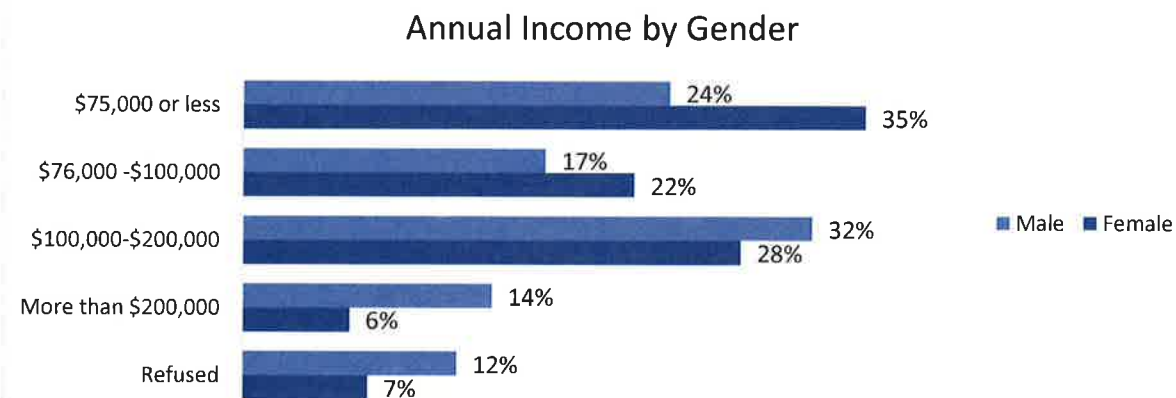
⁵ https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-demographics-2009-2019.pdf

those aged 34 and younger). This is consistent with national numbers, which show that law schools across the country currently have slightly more women than men in their enrollment, but that in older cohorts the drop in female representation in the legal profession is consistent with the fact that earlier generations of lawyers were more male.⁶



Gender Inequality in Income

The survey asked respondents to provide their income which provides an opportunity to explore differences in earnings based on gender. As reflected in the figure below, women are more likely (+11%) to report that they make \$75,000 or less when compared to male respondents, and are more likely to report that they make between \$76,000-\$100,000 annually (+5%). However, women are less likely to report that they make between \$100,000 and \$200,000 annually. When we look more deeply at the highest earners in the sample we find that the proportion of men reporting that they make \$200,000 or more is twice the proportion of women reporting those earnings – 6% for women compared to 14% of men.



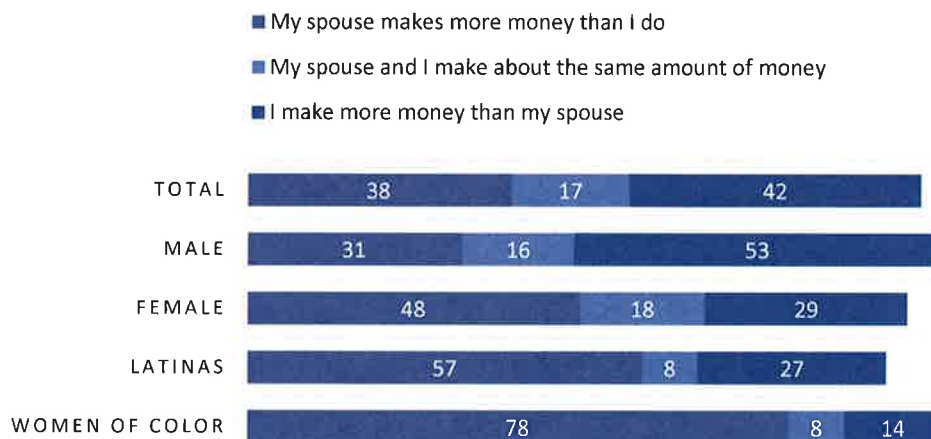
Income illustrates the importance of intersectional analysis, as there are interesting differences in reported income based on race and ethnicity. While White female attorneys report an average

⁶ https://www.americanbar.org/groups/business_law/publications/committee_newsletters/bcl/2019/201902/fa_7/

annual salary of \$75,543, Latinas earn \$83,037 annually, making Latinas the highest paid racial and ethnic group among women. This compares to \$71,500 in average annual salary among non-Hispanic minority females. The nearly \$12,000 gap between Latinas and women of color from other backgrounds is an early indicator that women from racial groups who are small in number in the state, including Asian American and Native American, may face obstacles unique to their demographic background.

The survey asked respondents who were married to another attorney to evaluate their income relative to their spouses.⁷ As reflected in the figure below, there is a significant difference based on gender. Female respondents are more likely (+17%) than male respondents to report that their spouse makes more money than they do, and are much more likely to report that they make less than their spouse. When we apply an intersectional framework to this question to examine potential variation based on race among women, we find that women of color are much more likely to face pay inequities relative to their spouse. More specifically 57% of Latinas and 78% of women from other racial and ethnic minority backgrounds report that they make less money than their spouses who also work within the legal profession.

INCOME COMPARED TO SPOUSE



The gender gap in wages has been a salient issue for the legal profession nationally, with the American Bar Association reporting that female attorneys make nearly \$500 less per week than male attorneys. The ABA has suggested that this gap in pay equity is at least partially due to female attorneys not negotiating as aggressively for higher pay, or being more likely to work in part-time positions (see the next section of our report).⁸ However, even with differences in income level that could be attributed to negotiation, this significant gap in pay cannot be explained by only focusing on individual level behavior of attorneys. In fact, using the 2014 U.S. Census Bureau data that isolates full-time employees within specific fields of the legal

⁷ 21% of survey respondents report that they are married to a member of the Bar Association, among female respondents that rate increases to 23%.

⁸ https://www.americanbar.org/groups/young_lawyers/publications/tyl/topics/professional-development/attorney-salary-negotiations/

profession, researchers found that female attorneys only make 77% of the salary of their male counterparts in the same position.⁹

The focus group discussions provided additional insights into the issue of pay inequities based on gender. Below are some of the quotes that are reflective of what our team heard from female focus group participants regarding their income and their views on how women are paid overall in the legal profession relative to men.

“Female attorneys in New Mexico still face gender and pay discrimination. I have had judges make inappropriate comments. Other attorneys, male, have called me honey or asked me to get coffee. Most is institutional sexism but every day being treated differently adds up and makes women want to leave the profession. Government attorneys are paid significantly less as women than male attorneys. The state and AOC itself discriminate on pay as evidenced multiple pay actions at UNM, State of New Mexico, the National Labs, and the Court. Women who complain about disparities in pay or other bad conduct are ignored. Many women attorneys particularly litigators face intense scrutiny. Most partners are male. The advancement of women in the judiciary has been positive but many of those advancements have not trickled down to the average attorney. Voluntary Bars like the NM Women’s Bar are helpful to hang out and socialize with other female attorneys to create work- life balance.”

“Living in a small town and not a local and on top of that a woman, it is sometimes difficult to succeed as a lawyer. Clients often expect women lawyers to charge less”

“The basis of my discrimination came from unequal pay. I was paid 25k less than male colleague for the same position”

“Even in this day and age you men are paid twice the amount for the same amount of work. So women where I work have to sacrifice more time with family to be considered for promotion.”

The Survey Suggests That Working in the Legal Profession in New Mexico has Posed Some Challenges Finding a Work-Life Balance for Female Members of the Bar

Family Planning Decisions Among Bar Members

One major goal of the research project was to learn more about how having a career in the legal field has influenced several aspects of Bar members’ personal lives outside of their professional environment, including interpersonal relationships and issues related to family planning. The survey therefore asked several questions aimed at learning more about work-life balance, and career choices that may differ based on gender.

⁹ https://www.abajournal.com/news/article/pay_gap_is_greatest_in_legal_occupations/

One of the more important career decisions that a legal professional can make to achieve work-life balance is to not work full-time. While there is not a gender gap in full-time status across the sample—82% of female members of the Bar work full-time compared to 83% among Men—there is an important difference based on gender in the reasons why participants are working part-time positions provided by respondents. For example, 28% of female respondents who work part-time report they do so due to family obligations compared to only 3% of male part-time workers. A focus group participant elaborates on this sentiment in her comment below.

“The bar does very little to support equality based on sex. I have seen no advocacy on equal pay for female lawyers or addressing discrimination against women who are child bearing age or that have children.”

“My time with my family is very important to me, I would like to serve more but the drive time and the extra hours away from my kids are not worth it to me at this point in my career.”

When it comes to personal relationships and marriage, roughly a quarter of all participants in the survey indicated that working in the legal profession in New Mexico has made it difficult to get married (26%). There were only slight differences in this measure by gender. For example, 27% of women in the sample reported that working in the legal profession in New Mexico had an impact on their ability or decision to get married compared to 24% of men. The intersection of race and gender reveals that a greater percentage (38%) of non-Hispanic women of color report that they have difficulties getting married due to their work as a lawyer here in New Mexico.

When focus group participants were asked if they would be comfortable sharing personal experiences where family planning decisions were in opposition to a lucrative career in the legal profession, several female participants emphasized the challenges many women face in New Mexico.

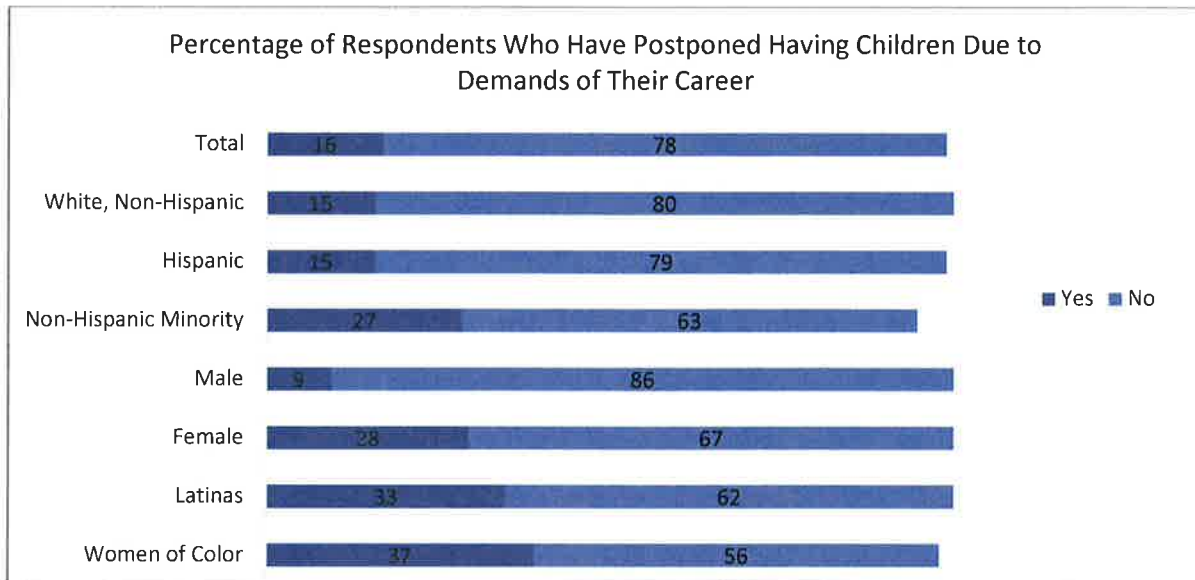
“I decided to leave private practice when I had to leave for a meeting and couldn't take my husband home from a medical procedure. I was also hesitant to start a family while in private practice because of the difficulty in maintaining work-life-balance, and the low wages offered in NM. Ultimately, we decided to leave the state to find an opportunity in the legal profession that was conducive to our desire to have a family and be present.”

“Being asked to work hours that conflicted with being able to be a mom and demands of the job that meant I choose being a good attorney or a good mom but not both”

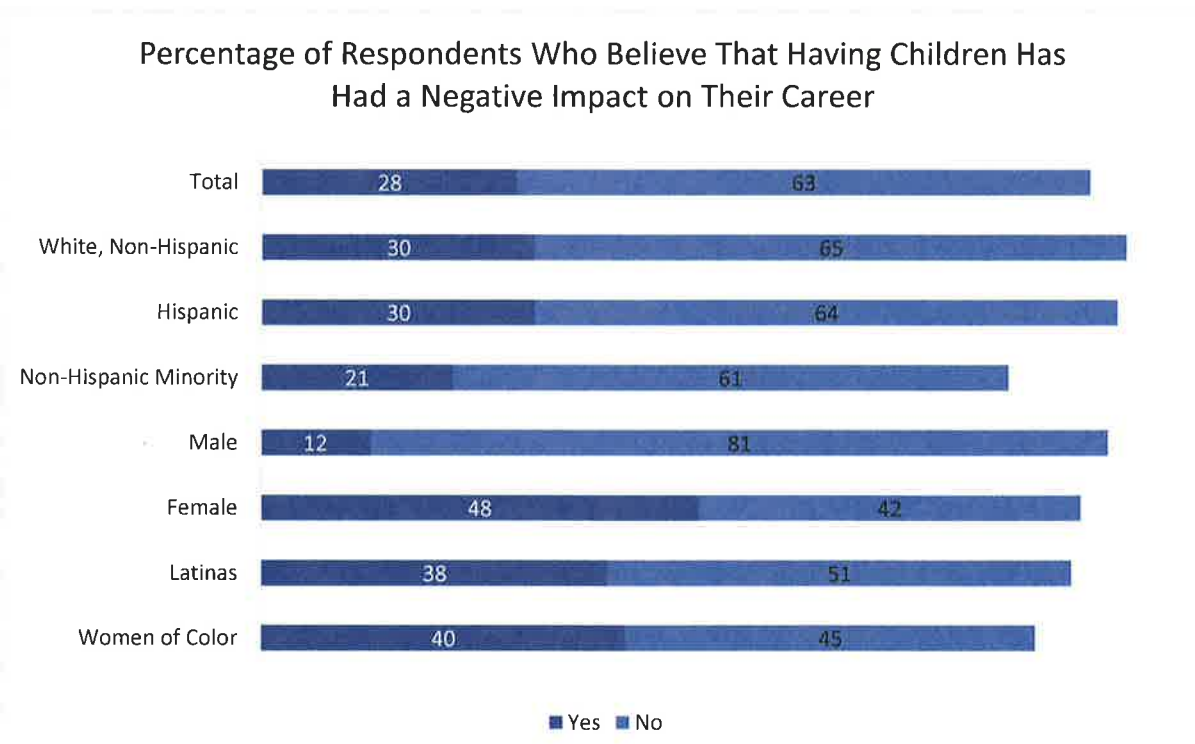
“Working to prepare for trials or responding to other time-sensitive matters has impeded parenting and caregiving for parent duties in which I also wished to participate.”

Along the same lines, respondents who indicated they were divorced or separated also noted that their career in the legal profession had some impact on this unfortunate outcome. More specifically, 42% of respondents indicated that the challenges of their legal career impacted their

divorce or separation. Men were more likely than women (45% to 40%) to report that their career had an impact on this outcome, and among women, Latinas were the sub-group most likely (49%) to have had the demands of their legal career contribute to a divorce or separation.

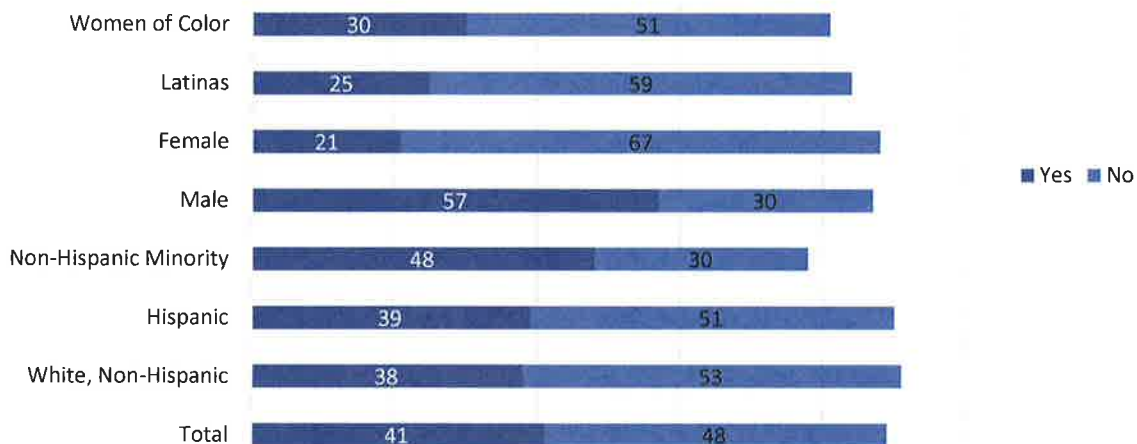


Maintaining a sense of balance for professional women who are mothers has been a salient topic nationally for not only the legal sector, but all professions. The survey therefore included a set of questions intended to assess the experiences of lawyers with children, including a question that asked respondents who are parents whether having children has impacted their career, either positively or negatively.



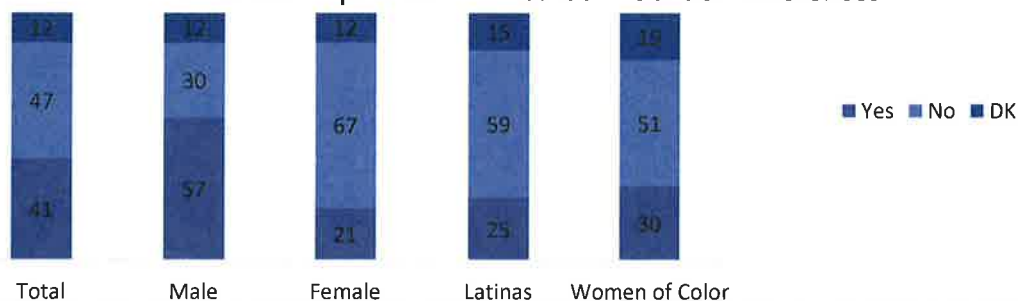
The survey identifies some positive news in this regard for lawyers in New Mexico, namely, that 41% of survey respondents said that having children has had a positive impact on their career, such as being viewed as a more stable employee or as someone who will stay with their employer for a long time. This is in contrast to the 28% of respondents who reported that having children has had a negative impact on their career, such as being turned down for partner. Furthermore, most members of the Bar in New Mexico report that having children has not made a particularly positive or negative impact on their career outcomes.

Percentage of Respondents Who Believe That Having Children Has Had a Positive Impact on Their Career



However, gender had a marked impact on how Bar members feel about how having children has influenced their careers. While 57% of male members think that having children has had a positive impact in their careers, including being seen to be more stable employees, only 21% of female members share that belief. Conversely, 48% of female members think that having children has had a negative impact on their career, compared to only 12% of male members. The data strongly suggests that female members of the bar appear to face very challenging trade-offs when evaluating whether to have children that their male colleagues do not have to consider based because cultural norms associated with having a family differ within the legal profession.

Percentage of Respondents Who Believe That Having Children Has Had a Positive Impact on Their Career - Gender Differences



Family-related matters were a major topic of discussion across our focus groups, particularly those comprised of only female members of the Bar. The following quotes below highlight a few instances where female focus group participants felt that family planning was not conducive to a successful career in the profession.

“Generally, I feel that young women are discouraged from having children and I do not feel like it would have been possible to start a family when I was in private practice at my firm, which was one of many, many reasons why I left and chose to work in the government sector.”

“Now I work for the State but when I was in private practice you were looked down on for leaving work at 5pm, especially if it was to pick up kids from daycare. If your kid got sick, even though you had sick leave the firm did not want to allow you to use it to take care of your sick child. I was given a very hard time for doctor appointments I needed when I was pregnant. The firm did not see you as valuable if you wanted to put your time with your family above time at the firm.”

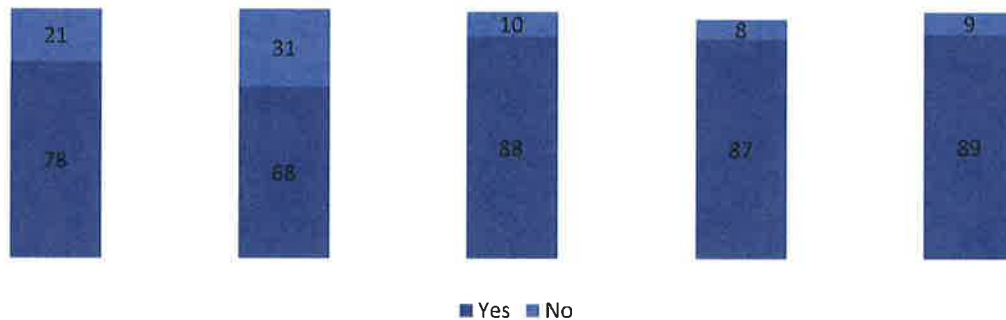
“I do not see how any woman attorney can consider raising a family outside of the government sector unless they have a really engaged partner or husband.”

“If we chose to work part-time during child-raising we had to get off the partner track. This was some years ago. I chose to get off the partnership track. There was no paid maternity leave and unpaid time off was limited to 90 days and when I had my last child I was fired while pregnant.”

“Timing child-bearing in between jobs was very difficult so I took huge pay cuts on purpose. Gave me flexibility and I could raise my children. My child got terminally sick. I went full time after the passing of my child 10 years later, but getting back into the groove was hard.”

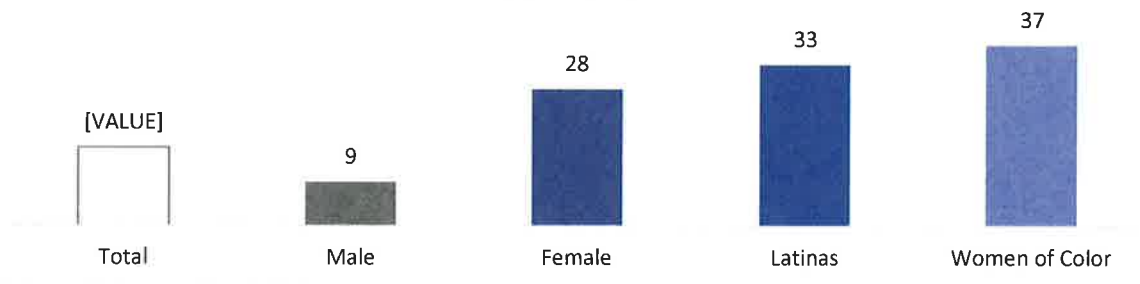
The overwhelming majority of Bar members who have children report that they find it difficult to balance the demands of their career with being a good parent (78%). The biggest gap we see in responses to this question across sub-groups of the overall Bar members is based on gender, with a 20% difference between women who have greater concerns balancing work demands with parenting (88%) than male members (68%).

Percentage of Respondents Who Have Found it Difficult to Balance the Demands of Their Career and Being a Good Mother or Father



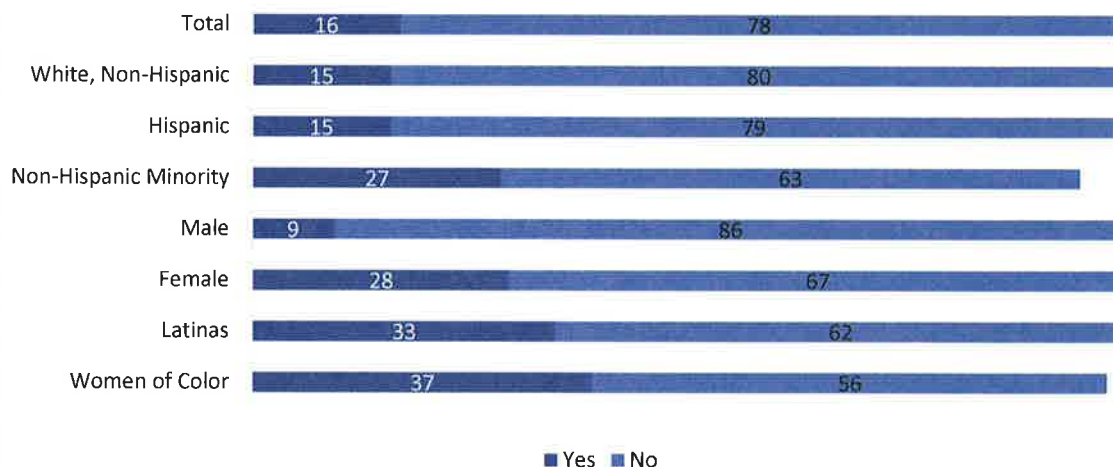
Despite the difficulties of balancing career obligations with parental demands, less than 20% of members overall said they had actively postponed having children due to the demands of their career, as indicated in the figure below. Similar to other family planning indicators in the survey, we did see a notable difference based on the gender of the respondent. Compared to 9% of male members who indicate they have actively postponed having children due to the demands of their careers, female members were three times as likely to say they have postponed having children (28%).

Percentage of Participants Who Have Decided to Not Have Children or Postponed Having Children Due to the Demands of Their Career or Reaching a Career Milestone



Furthermore, we also see an intersectional pattern in the data based on gender and race. Latinas and women of color are even more likely to have delayed starting a family due to career demands than women overall (33% Hispanic; 37% women of color). This intersection of race and gender tells a more complete story about the experiences of Bar members. Clearly, mothers face greater challenges balancing parental responsibilities and the demands of a legal career than fathers do, and that these challenges are compounded by the intersectionality of race and gender.

Percentage of Respondents Who Have Postponed Having Children Due to Demands of Their Career



Work-life challenges were a major component of the focus groups of female members of the Bar, with many women providing insights on this issue even after this part of the focus group sessions was completed. The following quotes reflect some of the larger discussions we had with members in the focus groups.

"I don't feel that a work-life balance is in any way promoted or encouraged in any of my work in or after law school. Vacations are viewed as laziness at both my husband's and my firm. My husband worked on our wedding day because of his firm's demands and inability to be flexible; we are not having kids largely as a result of this culture."

"I decided to wait to get pregnant until I was 36 and now there are infertility issues. My stress was so high I left the firm. I had to decide if I wanted to be a mother or a career woman. There's a burden on you. For a long time it was a career strategy and all about making money. I think women have to plan no matter what... you have to strategize for how you want your life to be and I don't think men have to. Most women I know had to step down or make less money. Most work in government because they have kids."

"It is difficult to have a personal life. When a woman doesn't have children, she's expected to be more available for work, regardless of whether she is single, in a relationship, or married. This devalues intimate relationships and the important role they have for mental, emotional, and physical health. It also devalues a woman's decision to not have children, or inability to have children. When a woman does have children, the demands are still very high and there may be resentment or frustration with women who take time off for family-related reasons. I firmly believe that it's very important to have a balanced life. A

balanced life makes one more productive and keeps a person healthier for longer, which in turn keeps them a productive member of society for a longer period of time. I think women in New Mexico have to fight against cultural and gender stereotypes with clients and in the courtroom, and in other professional interactions.”

Furthermore, respondents felt that judges do not accommodate the challenges lawyers who attempt to balance family practices with career aspirations. A few focus group participants provided commentary specific to this issue.

“Judges have refused to reschedule hearings even though they are made aware of family emergencies or family vacations that were planned well in advance. Judges also refuse to honor Notices of Non-Availability filed in cases.”

“As a woman, I’m treated differently. I believe that I am an equal to my male peers, but it seems that judges and other attorneys don’t believe the same.”

We close this section of the report with a question in the survey that asked participants what family related amenities employers make available across the state. Family health care coverage is the most widely available amenity across Bar members: 62% of respondents said their employer makes family health coverage available to them. Family health coverage is much more prominent among lawyers who work in large firms (87%), government sector lawyers (86%), and those who work in the non-profit sector.

Roughly one-third (34%) of respondents noted that having the ability to work from home or in other off-site arrangements was available to them, with 25% reporting that they had access to paid parental leave, and another 19% who had access to unpaid parental leave. The survey also revealed that 31% of lawyers have the ability to work part-time or in a flex-time arraignment following pregnancy. Finally, only 4% of lawyers in the sample have access to on-site childcare or other childcare assistance.

Approximately one-fourth of all respondents (24%) stated that they do not have access to any of these family-oriented amenities through their current employer. Similar to family health care, all of these amenities are more likely to be afforded to lawyers who work in large firms, the non-profit and government sectors. Lawyers who are in small firms and who are sole-practitioners with children find themselves with fewer resources to find a balance between work demands and raising children.

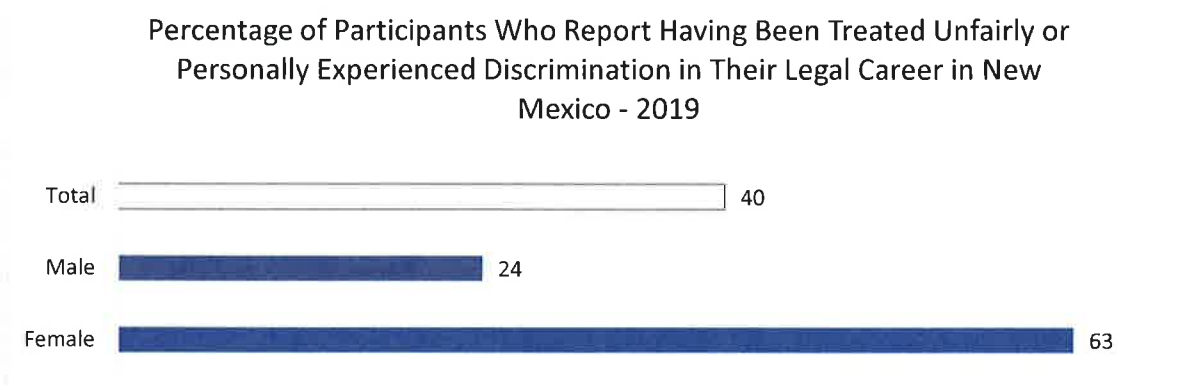
The Survey Offers Insight into the Different Perspectives of State Bar Members on Gender Inequalities in the Legal System and the Consequences Associated with Experiences of Discrimination

Unfair Treatment and Discrimination

The survey utilizes several approaches to evaluate whether the experiences and attitudes of Bar members specific to discrimination or unfair treatment is influenced by their personal

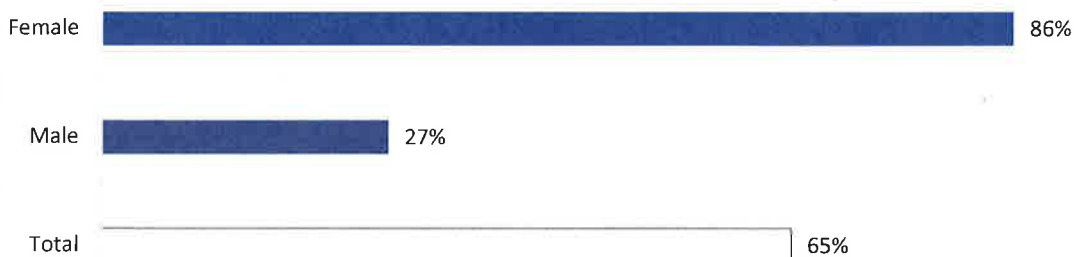
demography. This includes questions that directly ask respondents about their experiences with discrimination across the legal system, as well as the potential consequences associated with those experiences. This section of the report also includes perceived inequities in the judicial system across the Bar's membership.

The survey of Bar members reveals that 40% of all respondents report having experienced discrimination in their legal career in New Mexico. As reflected in the table below, gender differences in experiences of discrimination are markedly apparent, with female attorneys being more likely to report experiencing discrimination or unfair treatment. When asked about personal experience of discrimination in their legal career in New Mexico, 63% of female respondents report personally experiencing discrimination whereas only 24% of male respondents did. This 39% gap is one of the greatest disparities on any item in the survey.



Discrimination or unfair treatment can be based on a wide variety of factors. The survey therefore asked those respondents who reported that they have faced discrimination or unfair treatment what caused their unfair treatment, with respondents able to identify as many factors as they felt were relevant. Among all options available, at 65% gender was the most commonly cited basis for discrimination. This was 23% higher than race or ethnicity, the next most commonly cited factor. Furthermore, women were much more likely to report that their discrimination experience was due to their gender than men (+59), with an outstanding 86% of women who reported that discrimination experiences attributing that unfortunate event to their gender.

Discrimination Experience is Due to my Gender



The disproportionately higher rates of experiences with discrimination among women led to the recruitment of focus groups intended to probe this issue in detail. Participants in the focus groups were shown the results of the survey to help generate a discussion among the group of participants regarding their own experiences. In general, the participants confirmed that they had experienced unfair or discriminatory treatment in their own careers here in the state. One common theme across participants from these sessions was a perception that while overt racism was not always an issue they had to overcome, there were more subtle forms of discrimination, including not being included in many formal or informal discussions within their firm or place of employment that was perceived to be a result of their gender.

The quotes below reflect this theme in the discussions. The view that there be a more dedicated focus on inclusion and not just diversity was common across participants.

"I would say that there would be some instances where, for whatever reason, I'm not brought into the fold. I'm not part of the important discussions happening, and I don't know why. I don't know if it's because I'm a woman, if it's because I'm older, but more often than not I believe it's because of my race. I still try to think my merit or if I show action, that therefore I can participate or be part of the big picture discussions in my firm." It's almost like, "OK, let's be diverse," but there's no inclusion, and I think that's kind of key. It's the inclusion part."

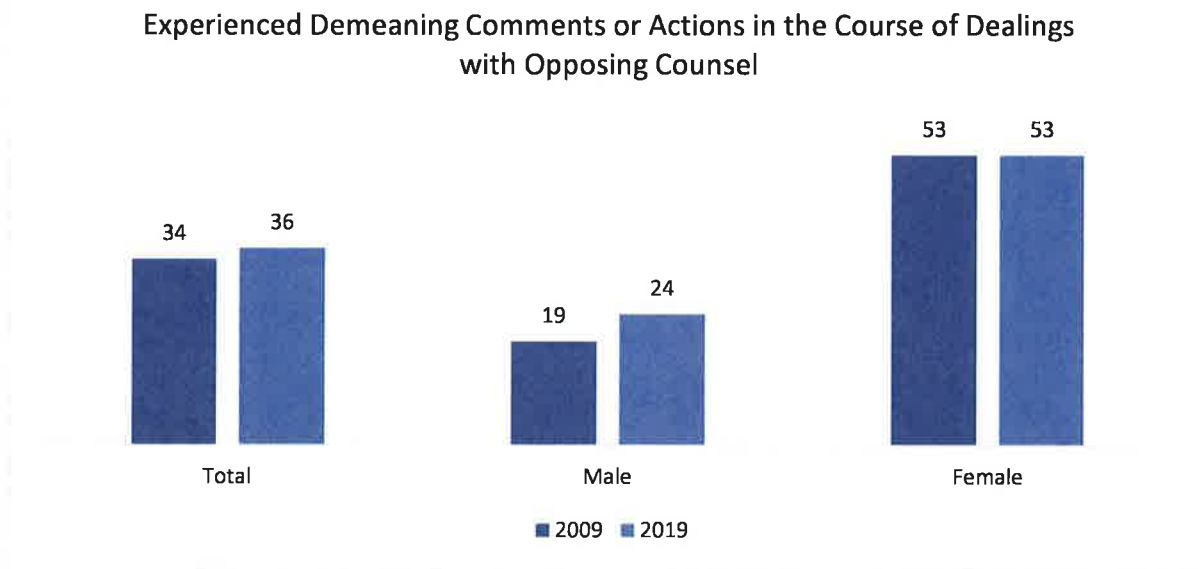
"Assumptions were made about my return to full time litigation post maternity leave. Partners assumed I would not want to work full time. Other assumptions were made about my ability to continue with a strong work ethic given my status as a single mother"

Experiences with Demeaning Comments or Actions

In addition to the general patterns of discrimination or unfair treatment, the survey also included a battery of questions focused on the more specific context in which discrimination may occur for members of the Bar Association. These questions were designed to be able to measure perceptions of the extent to which discrimination occurs in different contexts across the state. The survey also asks respondents who indicated that they have faced discriminatory treatment why they felt that this happened to them, allowing for analysis of whether discriminatory

treatment is more likely to occur due to gender, or other factors such as race or sexual orientation. Finally, respondents were asked about the demographic profile of the person who discriminated against them.

Discrimination in the workplace is an unfortunate and on-going problem that tends to be more persistent for minority employees¹⁰. As reflected in the figures below, 36% of members of the Bar Association report having personally experienced discriminatory actions against them from opposing counsel, such as demeaning comments or actions. When we compare the results from the 2019 survey to those from 2009, we see that there has not been much of a shift over the last decade, particularly among women.



There are, however, important gender differences in the 2019 survey data. While 45% of the full sample reported that they have witnessed demeaning comments or actions directed at someone else (see figure below), women were more likely to report being a witness to this behavior (+16%). Women were also much more likely to report that they have personally experienced demeaning comments or actions from opposing counsel, 53% for women compared to 24% among men.

¹⁰ <https://pubmed.ncbi.nlm.nih.gov/16551193/>

Experienced or Witnessed Demeaning Comments or Actions in the Course of Dealings with Opposing Counsel - Gender, 2019



Furthermore, when female respondents were asked to indicate they felt they were treated unfairly by opposing counsel, the overwhelming majority (83%) reported that they felt it was due to their gender, compared to 15% who said they felt it was due to their racial or ethnic background. However, when we take an intersectional approach to the data, we see that Latinas and other women of color were more likely to believe that their experiences were a result of both their gender *and* their racial or ethnic background: 32% of Latinas and 39% of other women of color indicated race or ethnicity was relevant, while having similar percentages to women overall of this treatment being based on gender.¹¹

During the female focus group sessions participants were asked about experiences of discrimination from opposing counsel based on gender. The quotes below illustrate sentiments provided by multiple female attorney focus group participants, including the quote from a female respondent who wanted to make sure we included her thoughts about how judges can also discriminate against female attorneys.

“I often experienced discrimination by opposing counsel...I was bullied in negotiation by a male attorney in my office earlier on in my career”.

“Male opposing counsel would try intimidation tactics. One time I tried to negotiate an order of protection...opposing counsel sized me up for what they could get away with, which happens to almost every female attorney. At first, we were talking in English...He steps forward and looks down on me and starts talking to me in Spanish. He’s taller than me. I stood up to him. He’s an officer of the court. I thought, ‘why is he doing this to me, he’s also an attorney and he’s required to be ethical and fair...all things I have to be...why is he not doing these things I have to do’. He was a lot more respectful of my position when I stood up to him and did not become too emotional or raised my voice which would have

¹¹ Respondents could provide multiple reasons for this treatment so the overall percentages on this item equal greater than 100%.

made him feel more empowered and forceful. I made very real efforts to control my demeanor which I think pushed him back a little”

“This is largely based on my gut feeling, so take this with a grain of salt; however, female judges seem to be defensive and hostile to male attorneys. In particular, if I correct or argue with a female judge regarding a point of law, I’m immediately met with fierce opposition and agitation. I haven’t experienced this with male judges. I believe the pernicious idea of ‘mansplaining’ has apparently infected the New Mexico bench. It’s my job to explain points of law, and I cannot do so when female judges react angrily to my efforts. I’m explaining not mansplaining. I should point out that I am using the terms male and female on purpose, as I do not know what genders these judges identify as.”

“Some male members of the bar try to bully and defame females and the court will not stop it.”

Though not specifically addressed through the survey, sexual harassment is a specific form of discrimination that has been identified as a challenge disproportionately facing women within the legal profession.¹² Several respondents utilized the open-ended opportunities in the survey to provide comments regarding their experiences with sexual harassment, and multiple focus group participants also spoke about this specific form of discrimination. Below are some of the quotes from participants on this issue.

“I was treated in a demeaning way like sexual harassment from defendants, judges, opposing counsel. Especially when I was pregnant. Judges called me ‘honey’ and ‘darling’ which felt demeaning. People commenting on the way I look, ‘pretty, tired, I like your outfit’.. never felt the compulsion to do this to my male counterpart. Felt an obligation to be thankful that I was complimented.”

“I was told once, ‘You’ll really like her she built like a brick house.’ I don’t know what that meant but it felt really creepy to me. We didn’t even talk after. What do you say after that?”

“I’ve been bullied and people did think I was an assistant, but this was 40 years ago which was very typical of the time... but that has changed and gotten much better. Working in workers comp and children’s court there was a lot more acceptance that attorneys come in many shapes, sizes, and colors. I do not feel the same sexual harassment environment that I did when I was younger”

“I witnessed sexual discrimination/harassment against females in the profession by older, White male attorneys. It is uncomfortable and if the female were to complain, she probably would have been shunned and labeled with a pejorative. It is so pervasive in the rural communities of New Mexico that maybe the State Bar should have a mandatory retraining of these older attorneys.”

¹² https://www.americanbar.org/groups/labor_law/publications/ebc_news_archive/spring-2019-issue/professional-ethics-in-metoo-era/

Experiences with Discrimination from Court Staff

Gender inequality also arises when we look at gender differences in experiences with discrimination from court staff. Female members were more likely to have witnessed and experienced discrimination from court staff than male respondents - 19% of female attorneys reported having witnessed discrimination and 14% reported having direct experiences with discriminatory actions or comments from court staff. The numbers are even higher among women of color, with 18% of Latinas reporting direct experience with discrimination from court staff, and 23% of women of color from other racial and ethnic backgrounds.

The survey reveals that discrimination from court staff is likely to occur, but not as frequently as by opposing counsel. Overall, Bar members are less likely to report they directly experienced discrimination (10%) than to have *witnessed* (15%) discrimination by court staff during the course of their legal career in New Mexico, with both numbers being considerably lower than what we found for opposing counsel.

When asked about what personal characteristic they believed might have been the reason why they were treated unfairly by court staff, those who experienced discrimination indicated four main characteristics: gender and gender identity (49%), racial background and ethnicity (37%), skin color (19%), and sexual orientation (9%). The perceived reason for facing discrimination from court staff varied significantly based on the identity of the respondent. For example, 54% of lesbian or gay respondents believed that their sexual orientation was the basis for the discrimination they faced. Non-Hispanic minority members were twice as likely to say that they experienced discrimination from court staff on the basis of their racial background/ ethnicity (65%) and skin color (40%), compared to Hispanic (28% and 17%) and White members (20% and 12%) of the Bar.

Basis of Discrimination among Respondents Who Have Experienced Discrimination from Court Staff

	Total	White	Hispanic	Non-Hispanic Minority
<i>Racial background/Ethnicity</i>	37	20	28	65
<i>Skin Color</i>	19	12	17	40
<i>Gender/Gender Identity</i>	49	54	50	31
<i>Sexual Orientation/Sexuality</i>	9	8	8	10

The final question in this battery of items asked respondents who reported that they had experienced unfair treatment which jurisdiction their experience took place in. At 66%, state courts were the overwhelmingly the location in which discrimination occurred, compared to 18% in Federal Court, which was the second highest reported jurisdiction.¹³

¹³ 43% of respondents report practicing in Federal Courts and 71% of respondents report 32% or less of their practice is done in Federal Courts.

Discrimination Experiences Among Women Can Be Internally Focused

Another important insight that emerged from the research we conducted was that we should not assume that all discrimination experiences are driven by male offenders. The survey asked all respondents who reported that they had experiences with discrimination from opposing counsel or court staff what the race and gender of the person who treated them unfairly during their most recent experience. While women were more likely to report that they had experienced discrimination or unfair treatment from a male member of the court staff, nearly a third (31%) of women who reported negative experiences with court staff said that this experience happened with a female member of the court staff in their most recent experience.

However, it is important to note that negative experiences with opposing counsel varied much more based on the gender of respondents. Nearly all (93%) female members of the Bar who have been discriminated against by co-counsel reported that this experience happened with a male co-counsel in their most recent experience. The data therefore makes clear that while it is true that internal discrimination happens among women, this is not nearly as common when female members of the Bar are interacting with male co-counsel.

The quote below reflects this theme which stood out in the focus groups from a Native American female respondent.

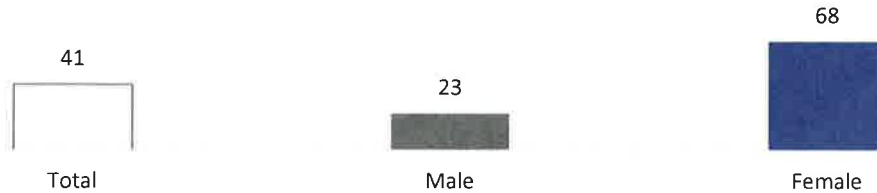
“I have experienced discrimination by other men and women of color—particularly Hispanics. Two of the most helpful individuals in my law career have been White males.”

A Large Percentage of Bar Members are Mistaken for Non-Attorneys and asked to Perform non-Legal Tasks

In addition to being asked whether they have been treated unfairly or faced discrimination, respondents were asked about more specific negative experiences in their professional lives, such as being mistaken for a non-lawyer member of the staff or being asked to perform administrative tasks. This has unfortunately happened to a large percentage of Bar members in the state and, as focus group data suggests, is often an experience interpreted to be based on gender. This issue was one of the most salient across the full study, as many of the open-ended comments in the survey were focused on this issue, and a large segment of the focus group discussions as well.

Overall, 40% of respondents report having been mistaken for a paralegal, administrative, or custodial staff person. As the figure below makes clear, there is a significant gender inequality in this experience, as female Bar members were the most likely to report being mistaken for a non-attorney staff person (68%) across demographic sub-groups. In fact, women are 45% more likely than men to report this experience. For some context, women were followed by LGBT members of the Bar (57%), and minority respondents from the Asian American, Native American, and African American communities (61%) who also had high rates of being mistaken for non-lawyer members of the court staff or legal team.

Gender Differences in Percentage of Respondents Who Have Been Mistaken for a Paralegal, Administrative, or Custodial Staff-Person



Given the high percentage of members of the Bar who have been mis-identified, we focused a segment of the focus groups on this issue. Participants indicated this is a common occurrence for too many members of the legal community in New Mexico. Participants in the focus groups noted that although mis-identification is not often intentionally directed at members of the Bar who are from racial or ethnic minority groups or women, it happens to them more than White male attorneys.

The participants also noted that while this might not seem like a major issue, even a slight loss of status can be very damaging to an attorney, where perceived competence is an absolute necessity to a successful career. When asked to expand on these experiences in the focus group setting, many suggested that this was a gendered experience that they interpreted to be driven by differences in how women are viewed in the legal community. The quotes below are reflective of what we heard from many women in the focus groups who were eager to share their experiences.

"I've had this happen my entire career. Opposing counsel always thought I worked in the law firm as an assistant. This didn't really happen if I was with another female attorney. But there was a presumption if I was with a man that I was an assistant. They would direct eye contact to the male. I chalk it up to, "maybe I look young".

"I thought, maybe I should dress better. Maybe I should wear something different, wear a suit or a better suit, then it occurred to me that it is not my responsibility to alert these people that I am not a receptionist, which that's a hard conversation to have with your boss and co-workers."

"Has it almost just become accepted or is it something that when it happens you feel something that causes you to say, this is structural, this should be changed? This should not happen to people."

"I feel it every time. I feel it every time it happens but I can't engage in spending my energy engaging with someone over this every single time it happens. That's not a good use of my energy and we have to pick our battles. So while it affects me and I might spend a little time thinking about it, I can truly move on to try to

get to my work and get to other things. But, of course, I am thinking about this issue when I wonder why I might not get a raise or get promoted. But what is it?

“Yes, when you put that up on the screen, I was like, totally. I have had this happen to me a lot in both a public and private firm I have worked in. And my paralegal was a White male. And I even had to carry my evidence box with me into court and they would still think he was the attorney. I think this is a female thing myself.”

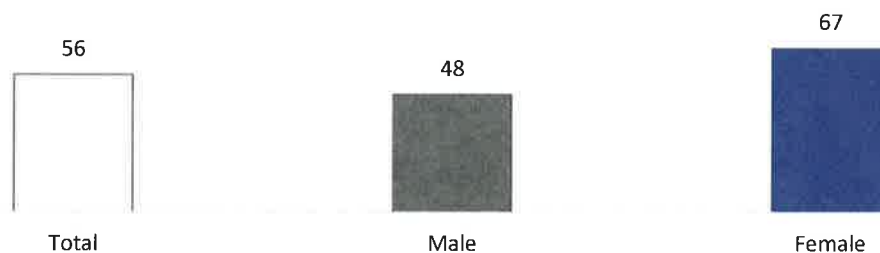
“I know if this really goes into it, but what's really difficult is when you work so hard to be an attorney and you pass that darn bar so you're a lawyer and other women who are paralegals or administrative assistants, or support staff treat you like that's what you are. And whether it's male of whatever color, Hispanic, Non-Hispanic, Indian, they're the lawyer and I just don't like women treating other women like that, that's so difficult.”

“Let's not forget that this mistaken identity issue comes from women too.”

Similar to the numbers for being mistaken for a non-lawyer in the workplace, over half of all respondents report having been asked to perform non-legal or administrative tasks, such as scheduling meetings, taking minutes, and planning office parties on more than one occasion in their legal careers in New Mexico. Interestingly, there was not a major difference in being asked to perform these tasks by racial group, and only a small gap in sexual orientation, with LGBT (61%) Bar members being more likely to be asked to perform these duties than non-LGBTQ respondents (56%).

However, the gender gap was greater than differences driven by either race, sexual orientation, or other demographic factors. Female Bar members are much more likely to be asked to perform administrative tasks (+39%) such as scheduling meetings, taking minutes for meetings, and planning office parties. Among women, Latinas (73%) were the racial group most likely to report being asked to perform these duties.

Respondents Who Have Been Asked to Perform Non-Legal or Administrative Tasks on More Than One Occasion



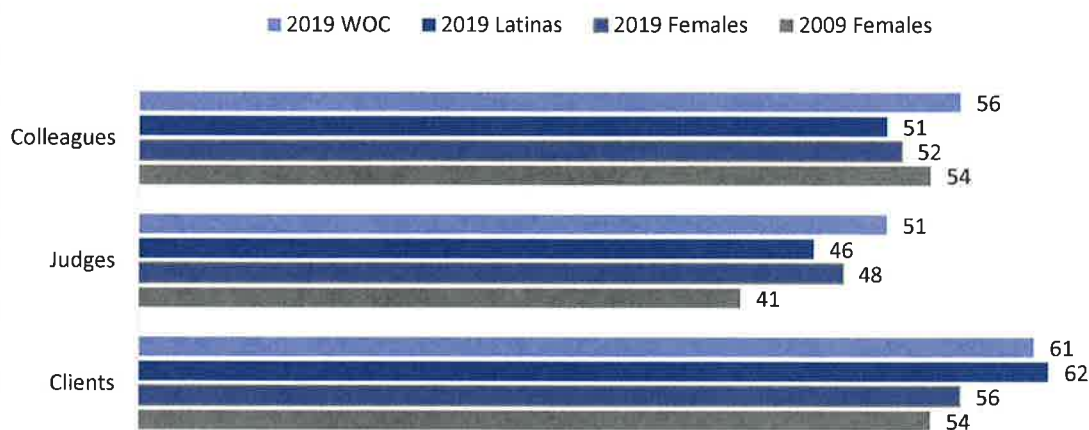
Differential Evaluation of Work Conducted Based on Gender

The survey also asked members to comment on whether they felt that the work of female attorneys is judged differently than the work of male attorneys. To assess whether gender inequality in work product evaluation occurs across different contexts, the survey asked respondents whether they feel the following groups judge the work of female attorneys differently than male attorneys: clients, judges, and colleagues. This question was asked of respondents of the 2009 survey so we are able to look at any changes in views over the last decade.

Perceptions that “colleagues” evaluate the work of attorneys differently based on their gender has remained stable over time and is viewed similarly across women of all races. More specifically, 52% of all females in 2009, and 54% of all females in 2019, believe that the work of female attorneys is viewed differently than the work of male attorneys.

There has been a 7% increase in the percentage of women who believe that judges evaluate the work of attorneys differently based on their gender, up to 48% in 2019. This attitude is highest among non-Hispanic women of color at 51%. And finally, clients are the constituency most likely to be perceived to rate the work of female attorneys differently than their male counterparts- 54% in 2009 and 56% in 2019. Both Latinas and other women of color are more likely to report that they believe clients evaluate work differently based on the gender of the attorney.

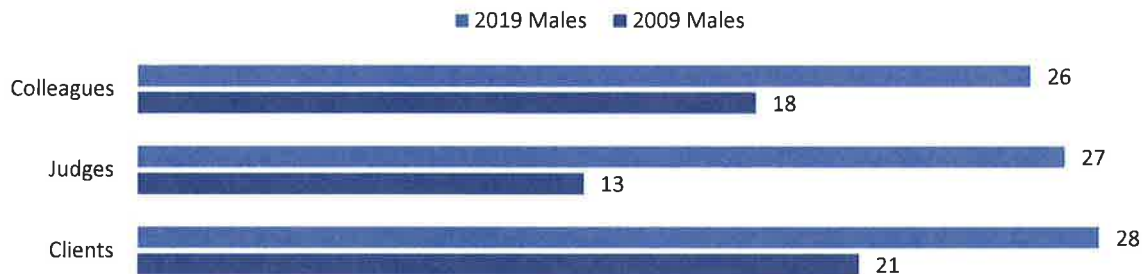
Percentage of Female Members of the Bar that believe the work of female attorneys is judged differently than the work of male attorneys



The responses from men on this item suggest that gender has a marked impact on perceptions of gender equity in the evaluation of work quality. On a positive note, the percentage of male Bar members who believe that the work of female attorneys is judged differently from the work of men has increased over the last 10 years across all three groups: (+8% for colleagues, +14% for judges, and +7% for clients). However, the overwhelming majority of men do not believe that

there is any gender inequality in the evaluation of attorney's work quality, regardless of which group is being cued for their opinion.

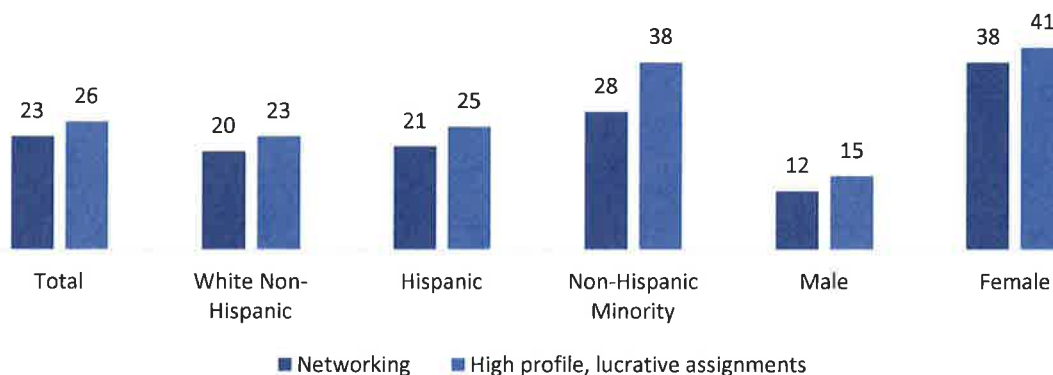
Percentage of male Members of the Bar that believe the work of female attorneys is judged differently than the work of male attorneys



Career Advancement Opportunities

To assess members' perceptions about career advancement opportunities available in the legal field, respondents were asked a series of questions focused on whether they felt they were not provided with the same opportunities as other attorneys at similar stages in their career. As reflected in the figure below, female attorneys in New Mexico are more likely to report being denied access to high profile or lucrative assignments (41%) or networking opportunities (38%) at this stage of their career, compared to males (15% and 12% respectively).

Percentage of Respondents who have been denied access to professional opportunities

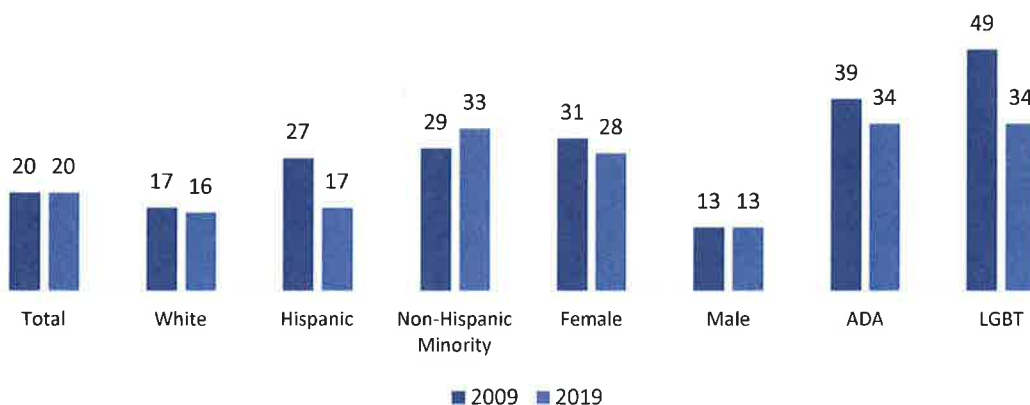


Beyond networking and high-profile opportunities, respondents were also asked to comment on activities or tasks they had been asked to perform, including service-oriented tasks such as serving on boards or committees on behalf of their company. A majority of respondents

indicated they felt that they had been asked to perform such tasks to represent the company and felt they had been asked to do so at a similar stage in their career as their peers (56%), with no significant difference between men and women.

One of out every five members of the Bar believes that their professional opportunities as an attorney over the past five years were limited because of discrimination. As reflected in the figure below, this view is higher among women (+15% in 2019), with men and women's attitudes on this subject not changing much over the past decade. The 2019 survey reveals that Latinas (34%) feel that their professional opportunities were limited due to discrimination to a greater extent than either Hispanic men or White females. However, an even higher percentage of women of color who are not Latina expressed concern that their professional opportunities have been negatively impacted by discrimination (39%). The view that career advancement opportunities are limited due to discrimination is also high among ADA (34%) and LGBT (34%) members of the Bar.

Percentage of Respondents Who Feel Their Professional Opportunities as as Attorney Were Limited Because of Discrimination in the Past 5 Years



When respondents who reported that they felt discrimination limited their professional opportunities were asked why they felt they were discriminated against, a robust 82% of female respondents indicated that the discrimination they experienced was due to their gender. In fact, 74% female respondents to the 2019 survey believe that male attorneys attain partnership faster than female attorneys, compared to 36% of male respondents. There has also been a sharp increase (+16%) in the percentage of Bar members who believe gender influences the time required to make partner over the last decade across both male and female attorneys. This result suggests there is increased awareness of this inequality which is an important first step toward resolving the obstacles that create the delayed advancement for female attorneys.

Percentage of Respondents Who Feel that Male Attorneys Attain Partnership Status Faster than Female Attorneys					
	Total	Male	Female	Latinas	Women of Color
2009	36	21	56	--	--
2019	52	36	74	71	78

The focus groups conducted following completion of the survey included a focus on this area given the high concern raised in the survey regarding the potential for discrimination to impact career mobility. Several focus group participants said they felt their own career has been limited by their race, gender, or a combination of both.

“They will never be, if they feel like they want to give you, for example, in any of I will never get invited to any of the conferences our firm has access to. I will never get a promotion ever - that's my constant complaint. I'm probably the highest biller in there but they just overlook me- it just does not work. Right in front of me people get the top tier pay but I was never given the same opportunities and same chances.”

“And you're doing more, you're probably getting more work and not having to do those tasks that the rest of us are asked to do. My experience is that maybe as a minority they want you there at the firm so you're there but you don't feel like you're advancing, that's the difference. They want you there to show that they're diverse, but you're not going to be in that same space with little room for advancement.”

“If you identify a particular way the field narrows in terms of what others think you're capable of. I've worked in law firms because I've identified as Native or a woman, only certain work has come my way. Somehow domestic relation cases would be directed towards me when I have no expertise or practice in this area. I wasn't getting opportunities I wanted, so I had to be assertive and then when you're assertive you're seen in a particular way. There's got to be a balance.”

Playing Down my Gender to Get Ahead

One of the best indicators of the overall climate of an organization or association in regard to diversity is the extent to which individuals feel it is necessary to play down their own identity in order to advance within the organization. The survey therefore asked respondents directly whether they felt that they had to play down their gender identity to get ahead or advance in the legal profession. A majority (57%) of female respondents report that they have to minimize their gender in order to get ahead, compared to only 9% of male respondents. When asked to elaborate in the focus group setting, participants provided a few examples of how they downplay their gender identity.

“You are penalized for being a strong advocate and are expected to let other attorneys’ staff run you over or be labeled as a problem because you aren’t in a position to agree”

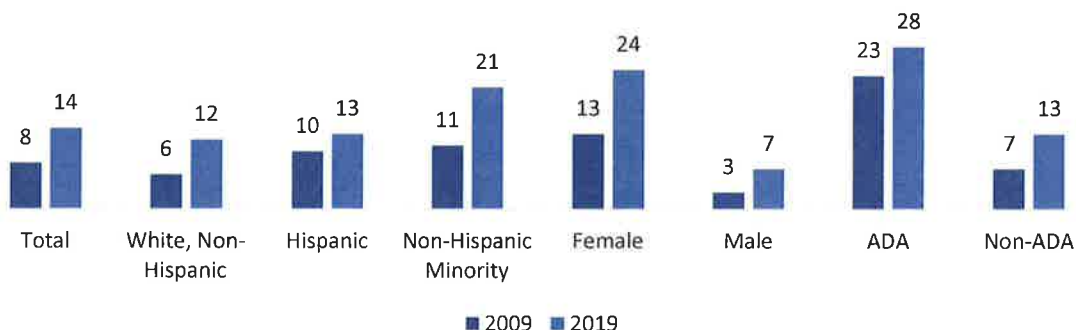
“In situations with some adverse counsel I did not feel comfortable as a woman or as a lesbian. I also hid my sexual orientation.”

Leaving a Position Because of Discrimination

One of the most powerful indicators of the workforce climate in the survey was a question that asked all respondents if they have gone as far as to leave a position due to discrimination that they have faced with that employer. Overall, 14% of the sample reported that they have actually left a position as an attorney because of discrimination. However, this percentage is much higher among female attorneys (24%), non-Hispanic racial and ethnic minorities (21%), respondents from the LGBT community (21%) and ADA respondents (28%). Reflecting the power of intersectional discrimination that women of color face in the legal profession, both Latinas (27%) and women of color more broadly (30%) reported having to leave a position due to experiencing discrimination.

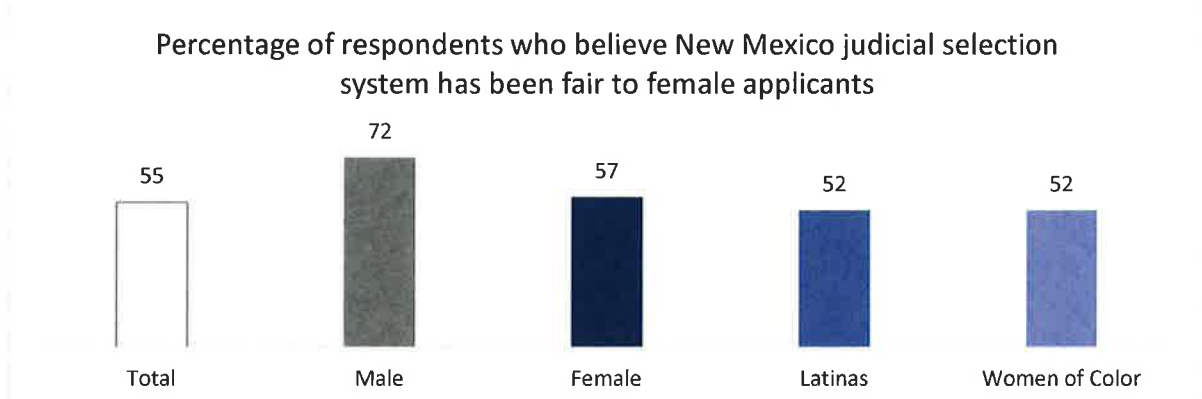
Across all demographic groups, leaving a position as an attorney because of discrimination has increased over the last decade. Compared to 2009, leaving an attorney position due to discrimination has doubled among White (+6), non-Hispanic minorities (+10), and female (+11) respondents in particular. However, we note that the 2009 survey specifically asked if members had left a position during the previous 5 years, whereas the 2019 study asked about leaving a position during their legal career overall. To gain some leverage on how this might influence the results generated from this question we asked all respondents who reported that they had left a position due to discrimination approximately when this happened to them? The most common response at 47% was within the last 5 years, with 20% reporting that it occurred between 5 and 10 years ago. A somewhat positive indicator that the climate in the state has improved over time is that 32% of those who left a position due to discrimination reported that this happened more than 10 years ago.

Percentage of Respondents Who Left a Position as an Attorney Because of Perceived Discrimination

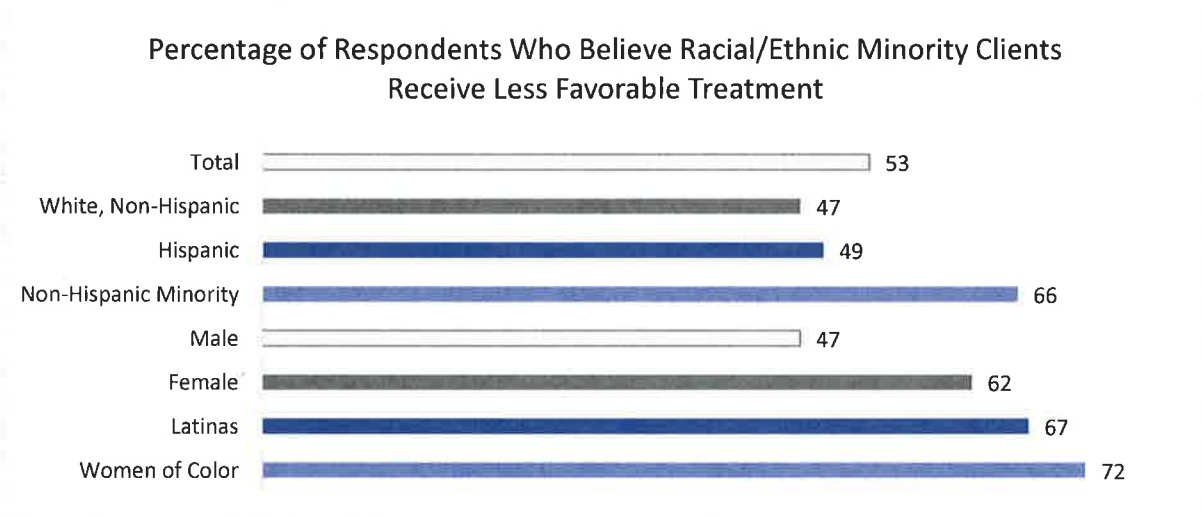


Perceived Fairness of the Judicial System

In addition to perceptions of individual level differences in experience across the Bar membership, the study also included some indicators of the perception that the legal system itself within New Mexico is fair or equal. Most important to this report, members were asked if they feel that the New Mexico judicial selection system has been fair to female applicants. As reflected in the figure below, although the majority of all sub-groups of attorneys believe the system is fair to female applicants, female attorneys are more likely to believe that there is differential treatment of applicants based on their gender.



Male members are less likely to believe that minority clients receive less favorable treatment (47%) compared to female members (62%). Across all sub-groups of the data, women of color were among the most likely to believe that the state's legal system is biased toward minority clients with, 67% of Latinas and 72% of other women of color reporting racial bias in the system faces clients of minority backgrounds.



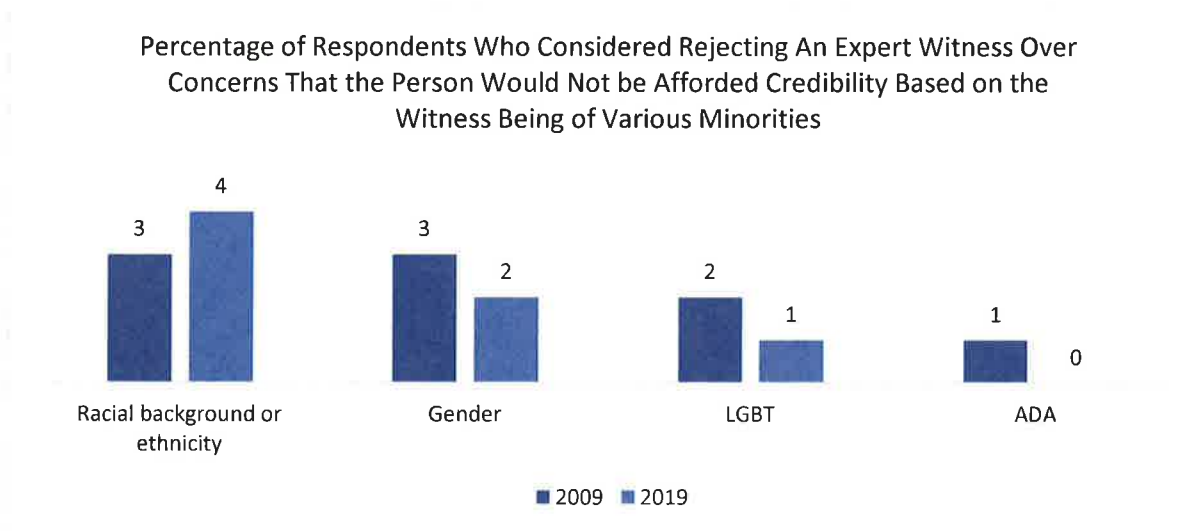
This section of the survey strongly suggests that many members of the State Bar acknowledge the differential treatment minority clients face within the judicial system. This is largely due to the growing research among both legal scholars and social scientists over the last decade identifying the clear pattern in racial inequalities that have led to severe disparities in

incarceration rates based on the race of defendants. This has included the New York Times bestselling book authored by Michelle Alexander, *The New Jim Crow*, which helped to generate more in-depth discussion of the challenges minority defendants face in the legal system.¹⁴

Potential Bias in Expert Witness Rejection

The survey also captured respondents' disparate perceptions of racial dynamics in the judicial system involving expert witnesses. Respondents were asked if they have considered rejecting an expert witness over concerns that the person would not be afforded credibility based on the witness being from a minority racial or ethnic background, or the gender, sexual orientation, or disability status of the witness.

As shown in the figure below, only a small percentage of respondents indicated that they have considered rejecting an expert witness over concerns about credibility. Percentages have remained below 5% over the last decade when we compare results from the current survey to those of the previous study in 2009. Although the very low reported numbers here do not warrant further analysis, the high stability on this item provides confidence that the wider shifts in views across other items discussed in the report over time are not being driven by differences in survey design or sampling approaches.



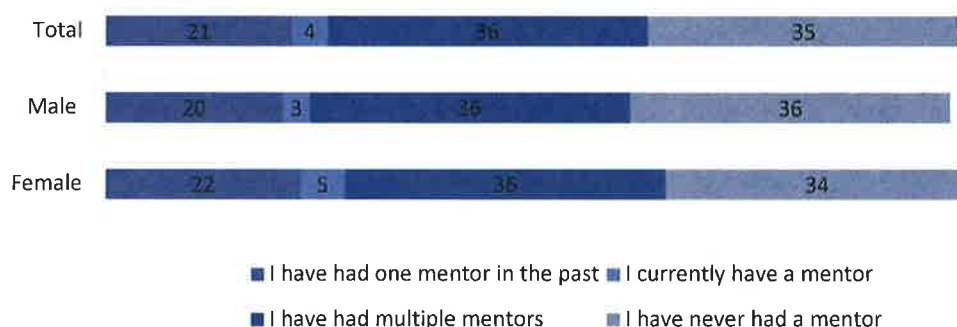
Mentorship and Participation by Minorities in Leadership Roles and the State Bar

The survey also asked respondents to reflect on their experiences with mentorships during their course in the legal field. Overall, we found that about 1 in 3 members have never had a mentor in their career, with 36% of respondents indicating that they have had multiple mentors and 21% reporting that they have had one mentor. While only 4% of the sample report that they currently have a mentor, that number is four times higher (16%) among layers who are under 35, reflecting the trend in the data that lawyers earlier in their career are more likely to be assigned a formal or

¹⁴ <https://newjimcrow.com>

informal mentor. There were no major differences on this question based on the gender of respondents.

Mentorship During Career in Legal Profession by Gender



Given that mentorship can be an impactful experience, particularly at the onset of an attorney's career, the lack of mentorship resources or awareness can be an inhibiting and limiting factor for professional development. Among those who indicated that they have never had a mentor in the past, among the top reasons provided for why they did not have a mentor was because there were no mentors or mentorship programs available (28%). Similarly, about 1 in 5 members indicated that they were simply unaware that mentorship programs were available in the first place, with 29% of members also indicated that they had simply never thought about it.

<i>Reasons for not having a mentor by gender</i>					
	Total	Male	Female	Latina	WOC
<i>Did not need one / not interested</i>	24	27	24	19	17
<i>Not aware of mentorship program(s)</i>	21	20	21	22	23
<i>No mentors/programs available</i>	28	26	28	30	34
<i>Did not have time to commit to being a mentee</i>	4	4	4	4	7
<i>Apprehensive about the implications of having a mentor</i>	3	2	3	3	9
<i>Never thought about it</i>	29	33	29	24	26
<i>I was not able to find someone willing to serve as a mentor</i>	10	8	10	13	7
<i>Don't know / NA</i>	5	5	5	6	2

Beyond availability and awareness of mentorship programs, the nature of a mentor-mentee relationship can also vary by various characteristics, including gender. As the table below illustrates, most lawyers who have had experience with mentoring programs in the legal profession had positive experiences. However, female attorneys were less likely (-6%) to report that their mentor helped them become a better lawyer and improved their career.

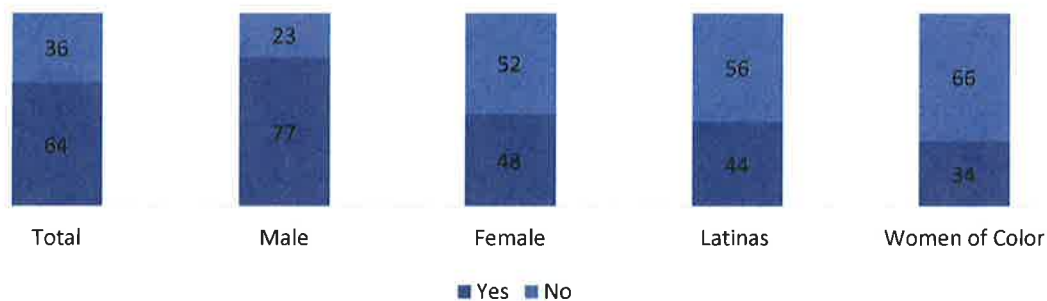
One focus group participant quoted below specifically noted the positive value of mentoring programs.

“I was not fortunate enough to have a mentor especially since Bridge the Gap was after my time...I was so ignorant, I was dumb, but no one explained how I was supposed to make a career. But I have participated in a mentorship program. These mentorship programs don't teach the BAR, it's really for those who have questions or need support or encouragement. Part of the mentoring was making sure they're studying regularly and holding them accountable.”

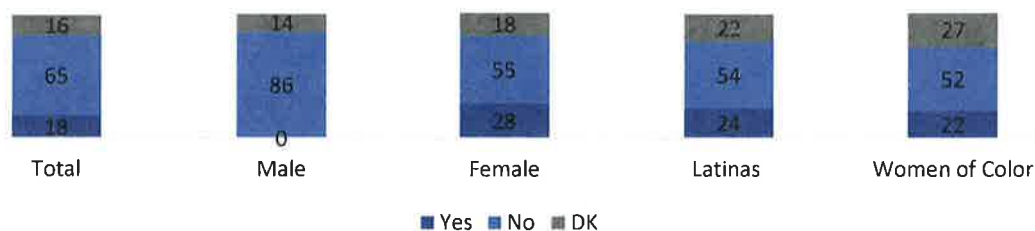
Experiences with Mentoring During Career in Legal Profession by Gender					
	Total	Male	Female	Latinas	WOC
<i>I had a great experience / my mentor helped me become a better lawyer and improved my career</i>	76	79	73	80	74
<i>I had a negative experience / the mentorship was not worth my time investment</i>	3	1	4	4	6
<i>While generally positive, I could have had a better experience</i>	21	19	22	16	21
<i>Don't know</i>	1	1	0	-	-

Moreover, among those who indicated that they have had a mentor over the course of their career, female attorneys are less likely to report that their mentor was of their same gender, with 28% of those female respondents indicating that they would have preferred to have a mentor of their same gender.

Was your mentor of your same race or gender?



Would you have preferred to have a mentor who was of your same gender?



Above and beyond personal experiences as a mentee, the survey also asked members to reflect on their experiences serving as mentors for others during the course of their legal career. A plurality of members shared that they have mentored several attorneys in the past (41%), while only 10% said they had mentored only one other attorney. Among those who have never served as a mentor, an equal number of members indicated that they would like to be a mentor in the future (21%) as those that indicated that they would prefer not to be a mentor (22%).

<i>Have you ever been a mentor for another attorney?</i>					
	Total	Male	Female	Latinas	WOC
<i>Yes, I have mentored one attorney</i>	10	10	11	14	11
<i>Yes, I have mentored several attorneys</i>	41	43	37	36	44
<i>No, I have never served as a mentor but would like to</i>	21	21	23	24	20
<i>No, I have never served as a mentor and would prefer not to in the future</i>	22	21	25	33	21
<i>Don't know/NA</i>	5	5	5	4	4

When asked in the focus group setting, two participants quotes below are indicative of the discussion within the groups overall.

"I never was mentored but I did mentor. One was a male, he was a father. It was a good experience. The most recent one was from someone who wanted to learn SS Law. She was a young woman. We actually became friends. To this day I still mentor her when she has hard issues. Mentors are hard to find because of the commitment."

"I have had to concentrate and focus on my sole practice in balance with raising a family and other obligations to aging parents and grandchildren, but I did informally mentor other sole practitioners with whom I shared office space and who were starting out their careers. For 8 years I seized the opportunity to mentor as many of the assistant district attorneys who were open to such mentoring and the position more easily led to mentoring as a part of the job description. It has been my privilege to see many of the young attorneys who I mentored become very successful and happy in their practice and lives, hopefully at least partially because of my mentoring. I mentored because that was the culture I was fortunate to have been exposed to. I do not think I would have been a lawyer if it had not been for other lawyers who made themselves available, even during law school to mentor me and answer question after question that I had."

Another female focus group participant expressed that although she did not have the privilege of being a mentee during her career when she needed one, she was able to provide support and mentor those who appreciated her guidance.

“I was not fortunate enough to have a mentor in my life...I was so ignorant, I was dumb, but no one explained how I was supposed to make a career. I did mentor informally through ADVOCACY INC. Experiencing issues of still not getting paid equally and other frustrations and being a mentor helped me talk to mentees about those things. Part of the mentorship was keeping them on track and encouraging them.”

Finally, we asked members to reflect on their current or past leadership experiences and roles during their professional careers. Men and women members have had different experiences in participating in various leadership roles. Participation in the State Bar of New Mexico Board of Bar Commissioners, practice section, or division was the area with the most common participation across both men and women. Female attorneys were less likely (-6%) to have a leadership role on the NM Supreme Court board or committee, or to be asked to be a CLE presenter. However, women are twice as likely to be asked to serve in a leadership role specific to diversity.

<i>Leadership Roles by Gender</i>					
	Total	Male	Female	Latinas	WOC
<i>State Bar of New Mexico Board of Bar Commissioners, practice section, division, or committee</i>	19	18	19	25	23
<i>New Mexico Supreme Court board or committee</i>	18	21	15	11	15
<i>Local county, or district bar association</i>	15	18	10	10	9
<i>Local diverse bar association</i>	6	4	8	16	14
<i>CLE presenter</i>	42	44	39	37	32
<i>Any other leadership role</i>	25	27	22	25	24
<i>No Leadership Role</i>	34	33	36	36	35

New Mexico Bar Evaluated Positively Regarding the Effort to Address Issues faced by Various Population Groups

The final sections of the report focus on evaluating how the Bar Association itself is viewed by the membership in regard to addressing issues faced by various segments of the diverse association. Respondents were specifically asked to evaluate the job the New Mexico Bar Association is doing to address issues important to female members of the Bar.

Bar members were mostly positive in their assessment of the New Mexico State Bar’s efforts in addressing issues relating to racial and ethnic minority members. A plurality of respondents rate the efforts of the State Bar as “good” (38%), followed by a “fair” (19%) and “excellent” rating (19%), while only 5% give the State Bar a “poor” rating and 3% a “very poor” rating. However, there was a significant difference in the Bar’s performance based on gender, with female respondents being less likely to give the Bar an “excellent” rating (-16%), and more likely to rate the Bar’s performance as “fair” (+11%) or “poor” (+4%).

One of the main findings from this part of the focus group discussions was the perception that discrimination experiences have become less common over the last decade. The quotes below are indicative of the overall commentary we heard across all sessions which suggested that there

appears to be more attention paid to these issues, including within the Bar Association. This was generally viewed as a very positive outcome, which reflects that the Bar has come a long way in regard to diversity challenges. Below are several quotes from our focus group of non-Hispanic minority members of the Bar.

"I'm in my 33rd year of practice in Albuquerque, and I think I kind of fit in that last core category you described. I recall instances of, maybe not overt discrimination, but I felt like there was something going on in certain situations and a whole lot of people the last decade or so, I'm not getting that vibe as much as it did in the 80s or 90s."

"It is great to hear that the Bar Association is conducting this study, which I think is a good sign that we are being conscious of the challenges many members of the Bar face due to their race or gender."

"This research project being commissioned and conducted by your team helps in and of itself"

"The Bar seems appropriately concerned with remedying historic and current discrimination."

In an effort to collect recommendations to improve and address issues relating to diversity, we closed each focus group session with an opportunity for participants to provide specific recommendations and also had an open-ended question in the survey to allow those respondents to do the same. The following quotes provide multiple suggestions for advancing equity and inclusion in the legal profession that are reflective of the wider set of similar suggestions across both mediums of data collection.

"We should have more inclusion at the State Bar conference and other events... even on topics and outside speakers. For leadership positions, folks that the Bar brings in they are already groomed and not diverse."

"The focus on promoting women has been demeaned to events that are "for women." Like spa days. These types of gender focused events only further the discrimination within the Bar. The outreach for members with non-physical disabilities is diminimus and require practically announcing any disability, often branding one in an unfortunate light."

"The Bar does a far better job than the national norm and has unique challenges due to NM's Spanish American history and relationship to Indian country. The discrimination I have experienced in NM has been in the inverse; clients generally assuming I had more power than realistic because of being White woman in navy blazer with well-educated way of speaking."

"Need to consider how to engage women that are not in large firms to participate in State Bar activities. For example, providing discounts for events, since a "firm" is not picking up the tab."

"Create more women, Natives, and women in leadership."

"It seems like when we have CLEs or we have some sort of training it's all the same people and they're all usually minorities. Minorities already kind of know what needs to happen, but the people who don't know and need to know are not the people who think, 'I need to go to diversity training'...Maybe we can have a short session on cultural competency on the New Mexico requirement"

"I just want to add what I'd like to see the Bar do is to do more about training lawyers to be on the judiciary. What are we doing to train enough people of color so they know what it takes to get those appointments? I don't see enough of that in the state bar and it really does need to be more."

"I think the bar could also do a little bit better job in having a conversation with attorneys and with people in law firms about what it takes to move up into these positions, to be a partner...the claim is made that it's racial neutral, but it's not racial neutral at all. Ask them when's the last time they invited a Black person to dinner. When's the last time anybody's been to their house. I ask that question all the time and it's amazing the response. Somebody's never had a Black person at their house. How can you interact with people, and not just to have them at your house, but what has been your interaction and how does the Bar create that inaction to occur?"

"It is imperative that new attorneys receive unbiased and supportive mentorship during their first few years in practice. To the extent it can, I think the State Bar should encourage collaboration between experienced and inexperienced attorneys and provide incentives for more experienced attorneys to mentor newer lawyers. Once incentive could be offering CLE credit for volunteering as a substantive mentor."

"Keep raising this awareness. We have a progressively more polarized national dialogue, and someone has to focus on community—we rise and fall together."

"Making it easier for lawyers from other States to become full-members of the New Mexico Bar. Specifically it is fairly easy and straight forward to obtain a limited license in the state of New Mexico but completely counterintuitive to have a limited license applicant restart the process from scratch to go from a limited license to full licensure in the State of New Mexico."

"New Mexico is still a terribly sexist place, and the State Bar needs to do more to ensure equal opportunities for women. This does not include ghetto-izing them in

women's bar groups. To the extent possible, the Bar should promote policies that actually help women obtain leadership roles."

"I haven't heard much of bar activities helping the rights of attorneys with disabilities compared to helping minorities and females."

"I practiced my first 20 years in Alabama and have been in NM for five years. NM is light years ahead of Alabama when it comes to equity and diversity in the bar, particularly when it comes to women, LGBT and Hispanic practitioners. I suspect this is a result of the more open, libertarian culture in New Mexico in general rather than of particular actions by the bar. I'm not a minority myself and am not involved in any diversity initiatives through the bar, so I can't speak to any particular effectiveness."

"Right now there does not seem to be any recourse for government lawyers who are fired for gender-based reasons beyond civil litigation. I do not feel the State Bar has resources designed to assist/support women lawyers who are actively being discriminated against by other members of the Bar."

"The State Bar does not seem to see or understand the dynamics that impact our daily lives and practice. White female and male counterparts are always treated as experts and afforded credibility that is undeserved. They don't see how some of these White experts actually bully POC in law especially, WOC and try to attack our competency and credibility - not because we lack competency but because they 1. are competing against us 2. want to maintain their power and access in hierarchy and keep us in subservient positions. The White savior models are the worst and are truly threatened by our presence in the legal field. Also, we have internalized colonialism and do some of this to ourselves and each other."

"The state bar serves Albuquerque and Santa Fe. It does not serve me. I would do away with the mandatory bar."

"The Judiciary is completely removed from the Bar. There needs to be more events where the judiciary is required to be present and interact with members of the Bar. The Judges also need more training with ADA-related disabilities and sensitivity overall."

"The Diversity Bar's CLE topics and presentations have been laughable. The presentations seem to be coming from people whole unqualified to speak on the topic, and some of the topics seem to be quite antiquated. The bar needs to get qualified speakers, even if from nationally, to address these topics."

"I think the Bar is making reasonable efforts, but many members are either reluctant or refuse to confront their own biases when dealing with each other. The people who need to attend trainings on privilege, implicit bias, etc. are precisely the people who will not attend those trainings because they seem them as

irrelevant or having nothing to do with them. I realize this would create an additional burden on Bar staff and procedures, but it may want to consider allowing folks to report civil rights related concerns to the Bar and then have the responding person attend a mandatory training/conference to address the concerning behavior.”

“I suggest the Bar consider raising awareness of the contributions of disabled/differently abled attorneys. The Women's Bar does a generally good job of showing support for women attorneys, but that does not seem to translate to equal treatment by other attorneys, law firms (especially in hiring and partnership decisions), or judges.”

Conclusions – Recommendations

The State Bar of New Mexico’s report on the Status of minority attorneys in New Mexico provides an opportunity to reflect on the experiences, attitudes, and preferences of the membership at a critical point of time. Much has happened since the data were collected in 2019, including a national movement to call out structural racism and inequality. The state of New Mexico has also faced an unprecedented health pandemic that has fundamentally changed the nature of professional life due to the need to work from home. This context is important, as it may provide the ideal catalyst to address some of the issues we identified in our report that need attention.

One of the major lessons learned from the survey and qualitative data was that in many ways the experiences of the Bar Association have significantly improved in regard to diversity. This includes a steady increase in gender representation among Bar members to a high of 40% in 2019, 13% higher than the national average. When we look at common measures in the survey over time there are some very positive indicators that there has been a lot of progress over the last decade. In fact, many respondents in the study noted that the fact that the Bar association is conducting a study on diversity is reflective of progress. Furthermore, many participants in our focus groups from diverse backgrounds stated that being able to share their experiences was empowering. This suggests to our team that having more regular conversations on these issues, ideally focused on approaches to address these challenges, could lead to positive relationships between a wider number of Bar members and the association.

While survey and focus group participants acknowledge the Bar’s efforts to improve diversity and inclusion over the last decade, our report identifies several areas of concern in regard to gender inequality. This includes a significant gender gap in income across Bar members that is reflective of a national pay inequality facing female lawyers. Although workshops focused on effective negotiation should be considered to address one of the explanations identified in national research for income inequality, more structural solutions must also be investigated. This could include the promotion of remote and flexible work arrangements that could allow a greater number of women lawyers interested in raising children to not have to consider working in part-time positions or changing career goals to have a family.

These flex-schedules or flexible work arrangements also can lead to greater work-life balance and job satisfaction. This is important given the report includes strong evidence that many female attorneys struggle finding a sense of balance between their work and personal lives. Although a movement toward more flexible work situations will take time to be widely integrated, the current COVID-19 crisis has allowed many law firms, government institutions, and non-profits to evaluate the feasibility of having large numbers of their staff work from home. This could accelerate a transition toward increased flexibility in this area if challenges to working from home are identified and addressed.

The data made clear that many Bar members still feel that they face unfair or discriminatory treatment in their professional lives due to their gender, race, ethnicity, sexual orientation or other personal identities. The most salient theme identified in the report was the high rate of female lawyers, and particularly female lawyers from diverse racial and ethnic backgrounds, who are mistaken for administrative and/or custodial staff by other members of the bar. This is an example of a micro-aggression that may not seem like a major issue, but can lead to significant harm to professionals who experience this mis-identification frequently. The Bar could consider conducting training on how to avoid harming colleagues with micro-aggression like this, and encourage employers to require this training for all employees.

The large survey sample allowed for a deep investigation into these unfortunate and negative experiences, that at their extreme, have caused some members to leave positions and consider leaving the profession. This helped reveal the tremendous variation that exists within the diverse communities that comprise the Bar's membership. This is most apparent when we look at the intersectional challenges faced by women of color.

There is a sentiment that members of the Hispanic community may occupy a privileged position among communities of color in the legal profession in the state. Latinas also have higher salaries than women of other racial and ethnic backgrounds including White women. This may be reflective of the overall socio-political climate in New Mexico, a state that has had two consecutive Latinas elected as Governor when no other state has elected a Latina as Governor. Numerous data points from the survey results emphasize the need to apply an intersectional analytical framework to address issues of diversity and inclusion under the Bar moving forward. One example from the survey found that while balancing the demands of a legal professional career is difficult across race and gender, women of color in the profession were 2x more likely to change their family planning behaviors by postponing children due to these demands. By recognizing that lawyers from diverse backgrounds have varied experiences, the Bar association can look to address the unique challenges that specific sub-groups of the overall membership have and be mindful of not treating these communities as monolithic.

Overall, women at large, and women of color in particular reiterate the importance of dismantling institutionalized hierarchies that reinforce workplace discrimination. Due to the high percent of respondents reporting rampant discrimination in the courtroom and workplace, thoughtful interventions and possibly mandatory completed trainings, workshops, or classes should be implemented. When asked how the Bar Association could address issues of diversity, a handful of participants identified that advancing efforts to increase the percent of people of color in leadership and mentorship roles is a great start. In particular, the results from this report found

that mentorship, especially among female lawyers seems to be viewed positively. However, many reported that this opportunity was either not available to them or were not aware of such programs. As such, possibly advertising and emphasizing the importance of these mentorship opportunities much more could prove useful.

The Committee on Women in the Legal Profession has the following recommendations based on the findings of the 2019 report:

Our Research Team

Brooke Abrams is a doctoral fellow at the Center for Social Policy and a PhD candidate in the Department of Political Science at the University of New Mexico. Her research is dedicated to promoting, protecting and enhancing the health and well-being of vulnerable populations in the U.S.

Violette Cloud is a recent JD graduate from UNM School of Law and a PhD graduate student in Psychology who works as a research assistant with the Latino Decisions Research Firm. Violette studies substance use and addiction and is interested in addressing the law and policy inequities around alcohol and other drugs in order to improve the treatment and prevention systems in rural and poor communities. Violette is also a UNM Center for Social Policy Fellow and a policy analyst for the Native American Budget and Policy Institute. Violette is from Southwest Colorado; she is an enrolled member of the Navajo Nation and a descendant of the Southern Ute Tribe.

Claudia Rodríguez is an analyst at Latino Decisions. She is a graduate of the University of California-Los Angeles, where she obtained a B.A. in Psychology and Political Science. Claudia collaborates with clients on research design, implementation, and data analysis for quantitative and qualitative projects. She also provides culturally-appropriate Spanish translations of research instruments to generate comprehensive analyses of Latino public opinion, mobilizing, and messaging efforts.

Gabriel R. Sanchez (PhD) is the Executive Director of the UNM Center for Social Policy, a Professor of Political Science, and Founding Member of the Native American Budget and Policy Institute at the University of New Mexico. Professor Sanchez is also a Principal at Latino Decisions, and is a nationally recognized expert in survey methodology and racial and ethnic politics.

Attachment – A

CWLP 2020 Report Recommendations

INTRODUCTION

Under the leadership of Chief Justice Judith Nakamura and with the support of both the New Mexico Supreme Court and the Board of Bar Commissioners, the “New Mexico State Bar Association 2019 Gender Diversity Report” (the “Diversity Report”) was designed, in part, to examine progress and changes that have occurred since the initial report spearheaded by the late Honorable Sarah Singleton more than 30 years ago looked at gender bias and diversity issues. The goal of the diversity report was to identify progress and changes that have occurred over the 30 years since Judge Singleton first spearheaded the initial study that is summarized in the Executive Summary.

American Decisions was hired to conduct a survey of all active and inactive members of the New Mexico State Bar and to conduct focus groups related to issues or patterns raised in the survey results. The brief description and summary of the results are in the Executive Summary. Both the Committee on Women in the Legal Profession (the “Committee” or “CWLP”) and the Diversity Committee of the State Bar were to receive reports resulting from the American Decisions Diversity Study, with both the Committee and the Diversity Committee identifying issues that are throughout the Diversity Report.

The CWLP formed a sub-committee to analyze the results of the report that was received in May 2020. Several in-depth meetings were held with the goal to review all of the data and issues identified in the Diversity Report and to develop a list of recommended issues/actions for the CWLP/State Bar/Courts that would identify both short term and longer term initiatives to correct gender bias and the challenges faced by women members of the State Bar.

It is important to note that the CWLP provides these recommendations in the absence of having a separate report from the Diversity Committee, which is still in progress at the time of this presentation. Some of our recommendations may overlap or touch on issues that are under the purview the Diversity Committee. The CWLP also anticipates that the list of issues will likely evolve over time, not unlike those from Judge Singleton’s study many years ago. The issues and actions have been thoroughly vetted within the CWLP; the CWLP’s recommendations represent a concerted effort, when taken as a whole, to further the goals of the Committee and to remove biases that remain as obstacles to women within the legal profession in New Mexico.

1. CHALLENGES WITH PROFESSIONAL AND PERSONAL OBLIGATIONS

Based on the survey, data analysis and member feedback, the Committee respectfully recommends:

- The New Mexico Judges and Lawyers Assistance Program (“JLAP”) should include specific mental health services for women and parents. Information on how to access these services should be advertised on the New Mexico State Bar

website and included in the bi-weekly State Bar newsletter.

- Employers should consider more flexibility with accommodations for employees—allowing attorneys to work from home and/or providing flexible work hours.
- All employers should incorporate best employment law practices into their employment manual ways in which they can accommodate women with infants in the workplace, including breastfeeding policies, or allowances for those who need to work from home, in compliance with state law.
- Childcare:
 - Flex spending account for employees.
 - Small firms can compensate for lack of resources for family-oriented benefits by allowing flexible hours and telework for employees.
 - In-house daycare part of best practices (emergency care practices).
 - Law school to consider childcare for parents while studying for the bar exam.
- Employers need to consider flexibility on work hours and telework—let employees be creative about completing their work in a manner that works for them.
- Female attorneys, especially in solo or small firm practice, need a more extensive support network to help with emergencies or family events which may interfere with court dates.
- Often referred to as the “sandwich generation” problem, employers need to include provisions that allow the attorneys without children but who may have health issues/disabilities or those who have obligations as care givers for others to still remain active members of the legal profession.

2. GENDER AND RACIAL BIAS AND DISCRIMINATION

- Recommend state and federal judges receive periodic training on issues of explicit and implicit bias.
- Continue to work with the UNM Law School Deans and Chairs of the Judicial Nominating Commissions that women candidates should not be asked during selection process whether or how they have a work-life balance. (See letter from CWLP Co-Chairs Zoe E. Lees & DeAnza Valencia Sapien to Deans Mathewson and Pareja, dated October 15, 2015 regarding interview questions asked of female judicial candidates.)
- Add a continuing legal education requirement as part of the New Mexico state bar licensure and potential inclusion as part of the UNM School of Law ethics/clinic program to include updates to NMRA 16-804(G).
 - 16-804(G) NMRA should be included in the MPRE test required for New Mexico State Bar licensure.
 - Requiring one of ethics credits mandated to be anti-bias professionalism credit (gender or race).
- Establish a State Bar Discrimination reporting hotline. The Committee recommends the Supreme Court create a Discrimination Task Force that receives complaints about discrimination in the legal profession and issues a yearly report that categorizes the types of complaints received and

recommendations to improve inclusivity and diversity in the legal profession.

- Update and distribute the *Gender Equality in the Courts* handbook, including information for use in federal courts. Recommend the State Bar print copies that can be distributed to newly licensed attorneys and all state and federal court judges.

3. MENTORSHIP AND LEADERSHIP OPPORTUNITIES

- Encourage state and federal judges to require that the person who drafted the brief, sign it and argue it in court, or permit multiple people to argue the motion.
 - <https://www.nytimes.com/2017/08/08/opinion/female-lawyers-women-judges.html>
 - <https://www.nytimes.com/2017/08/23/nyregion/a-judge-wants-a-bigger-role-for-female-lawyers-so-he-made-a-rule.html>
- Formalized mentorship programs for new or young female attorneys to be encouraged to remain in the practice.
- Encourage the State Bar of New Mexico to develop a women's leadership program that supports the development of future women leaders in the legal profession.
 - To further encourage women to be able to engage in valuable networking opportunities and obtain continuing education credits, the State Bar of New Mexico should provide at least two scholarships for women to attend the State Bar of New Mexico's Annual Conference. The first scholarship would be awarded to an attorney working for a state or federal agency and the second scholarship would be awarded to an attorney that is facing financial hardships due to health or family issues.
 - The Board of Bar Commissioners should allocate funding to send one representative of the Committee on Women and the Legal Profession to a national conference that focuses on reducing gender discrimination in the legal field.

4. BARRIERS TO EMPLOYMENT OPPORTUNITIES

The New Mexico State Bar should develop a best practices employment manual. The Law Management Executive Director could work with the Employment Law Section and the respective State Bar Committees for legal employers to ensure that the Manual is regularly updated and distributed at the annual state bar conference and published on the New Mexico State Bar website.

- State Bar employee (law practice management coordinator) coordinates with liaisons from various committees/sections (committee on women, committee on diversity, solo and small firm section) to create and publish the Manual through the bar.
- These practices should have an eye towards *inclusion* and *retention* of women and women of color in the legal profession.
- State Bar system for accrediting legal employers for adopting employment recommendations/best practices. Accreditation to be approved by the committee. <https://nmfamilyfriendlybusiness.org/learn-more/>

- State Bar of New Mexico award for New Mexico employers who adopt innovative and flexible workplace policies.

In addition, the Committee also makes the following recommendations:

a. Income inequality facing female members of the bar.

- The New Mexico State Bar should collect salary information annually and publish aggregate data on the New Mexico State Bar website broken down by sector and years of experience.
- There should be more transparency in salaries and promotion in the workplace. Employers should make this information readily accessible to employees.
- Tiered criteria in hiring salaries/bonuses/raises to eliminate unknown biases.
- No punishment for taking sick or vacation leave, family emergencies.
- No adverse impact on shareholder calculated income when a parent takes parental leave.
 - Adjust numbers when considering shareholder/partner track to take parental leave out of the equation.
- No adverse impact on calculation of bonuses when a parent takes parental leave.
 - Same adjustment as above.
- Parental leave to have no adverse impact on performance evaluations.
- Firms and employers to foster a culture that encourages men to take parental leave.
- Encourage employers to self-audit salary distribution based on gender.
- State Bar discrimination reporting hotline.

b. Alternative licensing options for attorneys unable to continue practicing law due to severe health or personal issues

- The Committee recommends the State Bar consider creating an alternative licensing option that allows members who are experiencing significant health or facing critical family obligations that prevent the member from practicing law on a full time basis to be able to obtain a “non-practicing” licensing option.

c. Intersectionality of Gender and Race

- According to the latest ABA study, seventy percent (70%) of female minority lawyers report leaving or considering leaving the legal profession. (See, https://www.abajournal.com/news/article/most-minority-female-lawyers-consider-leaving-law-aba-study-explains-why?utm_source=salesforce%20230566&utm_medium=email&utm_campaign=wee%20email&utm_medium=email&utm_source=salesforce%20230566&sc_sid=01300%20642&utm_campaign=m=&promo=&utm_content=&additional4=&additional5=&sfmc_id=230566&sfmc_s=45494562&sfmc_l=1527&sfmc_ib=125&sfmc_mid=100%2027443&sfmc_u=7404229). Notably, the researchers found that this statistic was not “statistically significant” because they could not find enough women of color in longtime practice. *Id.* See also, “Left Out and Left Behind: The Hurdles,

Hassles, and Heartaches of Achieving Long-Term Legal Careers for Women of Color.” This data mirrors some of the findings in this report. Accordingly, we adopt and incorporate the recommendations set forth in this report:

- Adopt best practices for reducing biases in decision-making. The report calls for “serious consideration” of who is making decisions critical to advancement and success, how they are making decisions, and whether the decisions adequately consider the potential for biases.
- Improve access to effective, engaged mentors. Female lawyers of color report being more likely to have mentors than others, but their mentors are less likely to have influence at the firm.
- Go beyond recruitment to focus on *inclusion* and *retention*.
- Incorporate an intersectional approach to addressing diversity and gender. Gender, race, and other social identities can interact to create distinct experiences.
- Create a more inclusive culture in the legal profession.

d. Discrimination in the Workplace

- Require judges and court staff (both at the state and federal level) to undergo periodic gender bias training.
- Encourage firms and other legal organizations to have clear guidelines for advancement, including when applicable, partnership, salaries, and discretionary bonuses.
- Require firms to abide by the provisions of Title VII requirements by eliminating questions to women related to “balancing” work and personal obligations during job interviews.
- Adopt anti-harassment policies and train employees annually on compliance and how to report violations.
- Encourage employers to adopt New Mexico State Bar best practices employment manual, including policies and procedures for reporting acts of discrimination.
- In accordance with the ratification of amendments to 16-804 NMRA, there should be CLE training on the changes to the rule and the process for reporting violations of paragraph G of this rule. Law students should be taught and tested on the changes to this rule.

The Committee recognizes that the survey focused primarily on challenges for women that have families and did not focus on women who are single or do not have children. In addition, the survey did not delve into issues facing the “sandwich generation”, i.e. those individuals dealing with the challenges of having multi-generational family obligations while also attempting to maintain a successful legal career. The Committee urges the State Bar of New Mexico to examine how a broader and more diverse examination of the existing survey data can be used to address these concerns or whether additional survey data or focus groups of these demographics can supplement the existing Gender Diversity Report.

In summary, the recommendations/issues are not all inclusive and remain a work in progress, much as those that were in the initial report from Judge Singleton. The CWLP anticipates that additional efforts may be identified once the Diversity Committee recommendations are identified, and as the Committee’s own recommendations are thoroughly vetted. The CWLP, however, believes these key recommendations will assist in making systemic changes to improve the

practice of law for women in the legal profession and to better address the challenges attorneys face with both their professional and personal obligations. As aptly articulated by the late Justice Minzner, the work of this Committee is in continuing to help our profession move closer to true equal opportunity.