



# ASK AMANDA

**Dear Amanda,**

*I mentor young women attorneys and I am dismayed at the sexism they are experiencing. They do the work on the cases and the male attorney takes the lead in mediations or court and, not infrequently, takes the credit for the win and the women get the blame for the loss. I think it would be helpful to educate on this topic.*

**Dear Member,**

Our 2019 report on the Status of Women in the Legal Profession found many instances of discrimination and bias against women attorneys. The report found discrepancies in pay, promotion, and treatment by judges, colleagues, and opposing counsel<sup>1</sup>. When we add an intersectional lens, meaning a lens that includes race, sexuality, disability, and other factors, we see further disparities in pay and collegial respect.

## Data Supports Your Observations

The finding that women lawyers are not asked to argue in court is well-documented. For a report conducted for the New York State Bar Association, judges were asked to keep track of who argued in court. They analyzed 2,800 responses over four months and found women to be the lead lawyer in private parties only 20% of the time and in criminal and commercial cases only 25% of the time<sup>2</sup>.

In our own 2019 Report on Women in the legal profession, 86% of women reported experiencing gender bias<sup>3</sup> in the profession, and the report details disparities in treatment and evaluation of work in the courtroom. For example, 68% of women reported they had been mistaken for a paralegal, administrative assistant, or custodial staff<sup>4</sup>. The report points out that it may seem like a minor slight, but in a field where perceived competence is necessary for a successful career, even a slight loss of status can be damaging. Attorneys were also asked whether they believed women's work was evaluated differently by colleagues, judges, and clients. Results showed that 54% of women believe the work of women attorneys is evaluated differently than men's work, and 41% of women believe they have limited access to important assignments.

One obstacle to solving sexism is that men attorneys do not report seeing it. Compared to the 54% of women who believe their work is judged differently than men attorneys, only 27% of men agreed. In a recent Pew Survey on gender equality, most men said that they do not see any barriers to equality for women in general. In the Pew survey, 56% of men said that obstacles inhibiting women's progress are largely gone in contrast to 34% of women<sup>5</sup>. **If men don't see a problem, they are unlikely to get involved in solutions and we need them to. As someone who is invested in these changes, make sure you are letting everyone know where you stand on these issues and see who else you can bring on board.**

## We Need Policy

The specific problem you bring up about arguing cases and leading mediations is an example of where we need policy to intervene in this form of bias and discrimination. A policy gives people a roadmap for acceptable practices and a path to enforcement. One of the recommendations from our 2019 report on women attorneys is for courts to put in policy that the person who prepares a brief is the one to argue it, but is there something firms can additionally do? I imagine when you bring this up with your colleagues that you hear a lot of arguments for why individual cases did not include women or personal anecdotes about why individual men were better suited for the task. Instead of arguing about a phenomenon that is widely recognized, move the conversation to policy decisions. Ask what your firm can do to ensure that women are arguing cases, taking depositions, and being mentored to lead.

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Many organizations make the mistake of focusing on the representation of marginalized and historically underrepresented groups in hiring without committing to shared power and leadership. Simply hiring more women without including them in the most important assignments, such as arguing a case, does not constitute equality.

**Women are entering the profession at the same rate as men at this point but being part of the profession is not the end goal. Women and nonbinary individuals need to be in positions of power alongside men to gain true equality.**

*Dr. Amanda Parker is the new Equity in Justice Manager at the State Bar of New Mexico. To submit a question to Ask Amanda or find out more about the program go to [www.sbnm.org/eij](http://www.sbnm.org/eij).*

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### Endnotes

<sup>1</sup> The New Mexico State Bar Association 2019 Gender Diversity Report (American Decisions, 2020).

<sup>2</sup> Shira A. Scheindlin, *Female Lawyers Can Talk, Too*, New York Times, Aug. 8, 2017. <https://www.nytimes.com/2017/08/08/opinion/female-lawyers-women-judges.html>

<sup>3</sup> Report, pg. 18

<sup>4</sup> Report, pg. 24

<sup>5</sup> Mary Frances Winters, *We Can't Talk About That at Work: How to Talk about Race, Religion, Politics, and Other Polarizing Topics* (2017) p.5.

Ask your questions about diversity, equity, and inclusion issues in the office, courtroom, and larger society at [www.sbnm.org/eij](http://www.sbnm.org/eij)