

FINDINGS FROM THE CAREGIVER WORK GROUP OF THE DIVERSITY AND INCLUSION ADVISORY COMMITTEE OF THE STATE BAR OF MICHIGAN**June 26, 2012****INTRODUCTION¹**

Balancing work and caregiver responsibilities has long been an issue for female attorneys. While this responsibility has historically fallen primarily to women, caregiving is a responsibility that is increasingly shared between men and women. According to US Census data from 2011 men account for 3.4 percent of stay-at-home parents². Only 17% of US households today have a husband in the workforce and a wife that is not.³ However, as discussed in a recent article in *The Atlantic*, titled “Why Women Still Can’t Have it All,” female professionals still face difficult choices in a society where workers “who put their careers first are typically rewarded; workers who choose their families are overlooked, disbelieved, or accused of unprofessionalism.”⁴ Increasingly attorneys face the challenge of balancing work obligations with their responsibilities as caregivers for relatives and other loved ones. Whether it is younger attorneys caring for children or baby boomers caring for aging parents or spouses, the issue affects first-year associates through senior partners.

Caregivers, whether male or female may be responsible for taking care of young children, caring for aging parents, or caring for spouses/partners with health conditions. In a recent survey of in-house counsel, nearly one-third of male attorneys said the responsibility for child care was split evenly between themselves and their significant other.⁵ Half of those attorneys said elder care was either split evenly between themselves and their significant other, or was primarily their responsibility.⁶

State Bar of Michigan President Julie Fershtman has spoken about the need for law firms and in-house counsel to help attorney caregivers balance the competing demands of working in a demanding profession while meeting the needs of their families. President

¹ The Caregiver Work Group wishes to express its thanks to Kristofer Leavitt, a rising 3L student at the Indiana University Mauer School of Law and summer associate at Warner Norcross & Judd LLP, for his assistance preparing the first draft of this report.

² *Mr. Mom Era: Stay-at-home dads doubled over last decade* www.foxnews.com/us/2012/06/17/mr-mom-era-stay-at-home-dads-doubled-over-last-decade/#ixzz24NOZi6iB

³ Linda Bray Chanow, National Association of Women Lawyers, *Actions for Advancing Women Into Law Firm Leadership*, 14-15 (2008) (citing Cathleen Benko & Anne C. Weisberg, *Mass Career Customization: Aligning the Workplace with Today’s Nontraditional Workforce* 32 (2007)).

⁴ Anne-Marie Slaughter, “Why Women Still Can’t Have it All,” *THE ATLANTIC* (July/August 2012), www.theatlantic.com/magazine/archive/2012/07/why-women-still-can-t-have-it-all/9020/ (last visited June 26, 2012)

⁵ Joan C. Williams et al., Project for Att’y Retention, *Still Better on Balance? Work/Life Balance In-House*, 25-26 (2012).

⁶ *Id.*

Fershtman asked the Diversity and Inclusion Advisory Committee to report to her on ways that our profession is addressing the needs of attorney caregivers. The Committee appointed a Caregiver Work Group⁷ to explore the issue. This is the report of that Work Group.

Identifying and sharing best practices to address the issues faced by caregiver attorneys and their firms will help all members of the bar in finding ways to fulfill their personal responsibilities and continue to provide excellent client service. In addition, the best practices identified in this report will also address the needs of law firms and legal departments by helping them to stem attrition and reduce the attendant costs, which some estimate to be in excess of \$200,000 for each lost associate.⁸

In studying this issue and preparing this report, the Work Group conducted a review of the literature rather than doing independent research. The report itself relies heavily on a few resources, principally those prepared by the Project for Attorney Retention at the University of California Hastings School of Law.⁹ Based on our review of the literature, the Work Group believes the materials from the Project for Attorney Retention provide a reliable insight into the practices of law firms and legal departments and will prove helpful to attorneys and firms who are balancing the commitments of caregiver attorneys.

LAW FIRMS

While large law firms and small law firms encounter similar problems with work/life balance, they handle them quite differently. Large law firms usually find solutions that work for many different attorneys and, as a result, tend to offer a wide array of programs to ensure each attorney has an option available to meet his or her needs.¹⁰ Small law firms, however, tend to find unique solutions tailored to the specific needs of the individual attorneys at the firm and, as a result, tend to offer a narrower range of specific options.¹¹

I. Large Law Firms

The optimal outcome for a large law firm is to offer flexible work schedule options while ensuring the attorneys that utilize those options still have access to business development opportunities as well as challenging and meaningful legal work. Many solutions offered by large firms tend to fall into the same broad categories.

⁷ The Caregiver Work Group was chaired by Rodney Martin of Warner Norcross & Judd LLP. Its members included Elizabeth Joy Fossel, of Varnum LLP, John Nussbaumer, Dean of the Auburn Hills campus of The Thomas M. Cooley School of Law, Sherrie Farrell, of Dykema Gossett PLLC, and Angela Sherigan, of Wojnecka & Sherigan, P.C. Gregory Conyers, Director of Diversity for the State Bar of Michigan, served as liaison to the Work Group.

⁸ Project for Att’y Retention, *Best Practice #9: Hold Partners Accountable for Retention & Attrition*,” www.attorneyretention.org/BestPractices/BestPracticeAccountable.shtml (last visited June 26, 2012).

⁹ www.attorneyretention.org (last visited June 26, 2012)

¹⁰ Letter from Cynthia Thomas Calvert, Co-Founder, Project for Att’y Retention, to author (May, 1 2012) (on file with author).

¹¹ *Id.*

The following are best practices for large law firms to facilitate attorneys' caregiving responsibilities. Many firms across the country have utilized these practices in varying degrees:

- **Reduced Hour Work Arrangements.** Many law firms offer a schedule where attorneys work a reduced number of hours while receiving proportional compensation and partnership credit.¹²
- **Flexible Work Schedules.** Many law firms also offer attorneys, whether full-time or part-time, the ability to create a flexible schedule. Attorneys do not have set times to start or stop work; instead they create a schedule to meet their needs.¹³
- **Flexible Leave.** Some law firms offer attorneys flexible leave programs for: parents of newborn children; attorneys taking care of a family member with extraordinary needs due to accident, illness, or trauma; or attorneys who want to take a sabbatical leave.¹⁴
- **On-Site Child Care Services.** Some large firms also offer on-site child care. Many offer the services as a back-up plan for when the primary child care service falls through, but some firms offer it as the primary option for child care.¹⁵
- **Employee Assistance Programs.** Some firms offer Employee Assistance Programs that offer a range of services for attorneys with caregiver responsibilities. One example the Work Group viewed offers a work-life referral service, where attorneys can get referrals for child care, nanny and au pair placement, senior care and respite services and other services.

Any program that allows flexible work schedule also must address the potential obstacles to the success of such a program. Attorneys that move away from traditional work schedules are often marginalized and do not have the same opportunities as attorneys working a more traditional schedule.¹⁶ This undermines the efficacy of the entire program because attorneys are more reluctant to use the programs that are offered. Firms can address the marginalization of flex time attorneys by paying special attention to the following issues:

- **Ensure Access to Challenging and Meaningful Work.** Firms need to assure that flex-time attorneys have access to high-profile and interesting work.¹⁷ This allows the attorney

¹² *Id.* at 15; *Best Practices – Balanced Hours – Model Balanced Hours Policy*, Project for Att'y Retention (2012).

¹³ *Id.* at 14-15.

¹⁴ Boston Bar Ass'n Task Force for Prof'l Challenges and Family Needs, *Facing the Grail: Confronting the Cost of Work-Family Imbalance*, Boston Bar Ass'n, 38 (1999); Joan Indiana Rigdon, *Time Out, Time Off: Lawyers on Sabbatical*, D.C. Bar Ass'n (Aug. 2005).

¹⁵ See Yihwan Kim, *Programs Promoting Work-Life Balance Gain Traction at Large Law Firms*, LexisNexis Communities (June 16, 2011, 9:51 AM),

www.lexisnexis.com/community/lexishub/blogs/careernewsandtrends/archive/2011/06/16/programs-promoting-work-life-balance-gain-traction-at-large-law-firms.aspx

¹⁶ Chanow, *supra* note 3, at 14-15.

¹⁷ *Id.* at 9.

to develop competency, but it also gives the attorney access to powerful partners and business development opportunities.

- **“Schedule Creep.”** Attorneys working a reduced hour schedule may find themselves receiving partnership credit and compensation for a smaller workload; e.g., 60-70% of full-time, but actually working close to a full-time schedule.¹⁸ Firms need to be mindful of this and take steps to ensure it does not happen.
- **Remove Institutional Stigma.** Attorneys on a reduced hour schedule may deal with the perception of not being as dedicated as attorneys working a full schedule.¹⁹ Removing this stigma will increase the efficacy of the programs by decreasing the negative consequences of working on a reduced hour schedule. Eliminating the stigma will require clear communication and consistent support from the firm’s partners.
- **Facilitate Business Development.** One of the largest factors for making partner is an attorney’s ability to generate business.²⁰ Attorneys working reduced hour schedules should be given the same access to business development opportunities as attorneys working traditional schedules.

One way of addressing these issues is for a firm to adopt a policy similar to the Model Balanced Hours Policy²¹ created by the Project for Attorney Retention. That policy includes references to a “Balance Hours Coordinator.” In the view of the Project for Attorney Retention, a Balance Hours Coordinator can help ensure the success of a balanced hours policy by helping attorneys and their firms create balanced hours proposal, monitoring workloads to guard against schedule creep and advocate for attorneys who are working on flex time schedules.²² In 2010, the Project for Attorney Retention collaborated with the general counsel of several Fortune 500 companies and the managing partners of some of the nation’s largest law firms to create the Diversity & Flexibility Connection. The Connection adopted a number of best practices to eliminate the stigma of flex time attorneys. Among them were the following:

- Consistent communication within the firm that flexibility is available to anyone who can make the case for a flexible arrangement that will enable delivery of timely and effective client service—and that such lawyers can be successful at the firm.
- A detailed business case developed and disseminated through the firm to document that flexibility without stigma is a business-based program that helps the firm attract and retain talent and better serve clients.
- A mechanism to ensure that balanced-hours lawyers have a proportional share of challenging work and access to business development opportunities.

¹⁸ *Id.* at 15.

¹⁹ Williams. *Supra* note 4, at 14-16, 31.

²⁰ *Id.* at 17.

²¹ www.attorneyretention.org/BestPractices/BH_ModelBalancedHoursPolicy.shtml (last visited June 25, 2012)

²² www.attorneyretention.org/BestPractices/BestPracticeBHC.shtml (last visited June 25, 2012)

- A coordinator who provides an initial point of contact for attorneys who are considering a flexible schedule, coaches lawyers working balanced hours, monitors and controls for schedule creep, and acts as an ombudsman who seeks a long-term resolution in cases of persistent schedule creep.
- Mechanisms to track, and hold accountable, if appropriate, practice group leaders and other partners for a persistent pattern of regretted losses among diverse attorneys, including those on balanced hours.
- Mechanisms to destigmatize parental leave for fathers.²³

Surveys of large firms and the work of groups like the Diversity and Flexibility Connection show common themes for how large law firms are addressing the need of attorney-caregivers for flexibility in their practice. Large firms that are in the forefront of balanced hours practice create institutional structures that support attorneys working on flex time. In Michigan, however, most attorneys work for firms with twenty or fewer attorneys. The next section of this report discusses how small firms address caregiver needs.

II. Small Law Firms

The Work Group could find little information about how smaller firms deal with caregiver issues. The Work Group consulted with Cynthia Calvert, co-founder of the Project for Attorney Retention, to see what research, if any, had been conducted on small firm practices. Ms. Calvert noted that “small firms are often unique, and it is usually necessary to create work/life solutions for each firm.”²⁴ In an informal survey of several smaller Michigan law firms, the Work Group found this to be true. According to Calvert, a primary goal for small law firms is to develop associates who are engaged in their work and willing to work hard, remain with the firm, and develop client relationships.²⁵ Calvert believes flexible work schedules are an important part of achieving that goal, especially with young associates.²⁶ The key for small firms is being creative and finding solutions that work for their attorneys.²⁷ Small firms can utilize all the programs discussed above, but a more extreme approach may also work well.

Some small firms allow attorneys to determine when they will be in the office.²⁸ Attorneys may be in the office for several hours one day and then work remotely the next several days.²⁹ These programs often utilize an on-line system where attorneys will indicate when they will be in the office along with any necessary contact information.³⁰ Some small firms hire contract attorneys on reduced hour schedules in order to provide niche services that do not justify hiring a full-time attorney.³¹

²³ www.attorneyretention.org/BestPractices/BestPractice_Nonstigmatized.shtml (last visited June 25, 2012)

²⁴ Calvert, *supra* note 9

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

As in large firms, attorneys working a flex-time schedule in small firms must deal with stigma. One smaller firm in Michigan consulted for this report indicated that while it allows attorneys to set flexible start and stop times, the firm was unable to establish a policy that would apply across the board because of partners' resistance to having associates work any less than five days a week in the office. Calvert suggests that in small firms, eliminating stigma can be more important than in large firms because attorneys spend more time working with one another. Ensuring each attorney understands and supports the program is critical.³²

For law firms, large and small, the best approach to accommodate the caregiving responsibilities of attorneys is to be flexible. Flexibility allows attorneys to balance their personal obligations while still functioning as a valuable member of the firm. This flexibility is especially important to younger associates, which means it will be an increasingly important issue for the Michigan bar, and the legal profession as a whole, in the future.

IN-HOUSE COUNSEL

Our Work Group also considered how in-house legal departments addressed caregiver issues. In a recent study by the Project for Attorney Retention, it was determined that in-house counsel positions can be more accommodating than law firm positions because in-house schedules usually have set hours and are consistent from week to week.³³ However, the study also found that in-house legal departments were far less likely than law firms to have work-life policies. Over a third of legal departments surveyed offered no policies to support work-life balance while nearly all large law firms do.³⁴ For example, 98% of NALP-member law firms reportedly have a part-time work policy, but at least 35% of legal departments do not.³⁵ Despite the differences, the study by the Project for Attorney Retention shows that the solution for balancing caregiving responsibilities and work is the same as a law firm: flexibility.

The tools used most frequently by in-house counsel are telecommuting and flexible start/stop times.³⁶ Another option some in-house counsel use is compressed work weeks.³⁷ In a compressed workweek schedule, an attorney will only work four days a week but will work longer hours on those days. This practice is virtually unknown in law firms, but a small percentage of in-house counsel attorneys use it.³⁸

In-house counsel face similar obstacles as law firms, but with the additional problem of a high premium on face time.³⁹ The Project for Attorney Retention's survey found that in-house counsel tended to perceive face time as "maintaining relationships and perceptions of commitment and productivity at work."⁴⁰ In the absence of billable hours or other quantative

³² *Id.*

³³ Williams, *supra*, note 4, at 4-5

³⁴ *Id.* at 4.

³⁵ *Id.* at 2.

³⁶ *Id.* at 9

³⁷ *Id.*

³⁸ *Id.* at 2, 10

³⁹ *Id.*

⁴⁰ *Id.* at 6

measures of productivity, face time becomes a proxy for productivity.⁴¹ This translates into attorneys who feel obligated to be on-site as often as possible.⁴² Overcoming this perception will be important if in-house attorneys are going to use flexible scheduling programs to balance work and caregiving responsibilities.⁴³

CONCLUSION

Accommodating the needs of attorneys with caregiver responsibilities in a demanding profession is, frankly, challenging. For large law firms, certain practices can be identified as “best practices.” Best practices have not yet been established for smaller firms, where accommodations for caregivers of necessity are likely tailored to the individual situation. Legal departments boast of better work-life balance. This balance appears to come principally from the predictability of schedules, but legal departments appear to have been slow to embrace part-time work and other practices used by large law firms to provide greater flexibility in the practice.

⁴¹ *Id.* at 34

⁴² *Id.*

⁴³ *Id.*