

# Mansfield Rule is a start, but law firms must do more

By Cheryl S. Chang  
and Diana M. Eng

Law firms need to take an inward look at how to address unequal treatment among male and female attorneys, which remains an on-going industry-wide issue. Tellingly, a 2016 study conducted by the Center for WorkLife Law at the University of California's Hastings College of the Law in San Francisco on behalf of the ABA Commission on Women in the Legal Profession and the Minority Corporate Counsel Association reports that efforts to advance female and diverse attorneys have largely failed and that bias and discrimination persist. See "Race and gender bias is rampant in law, says new report that also offers tools to fight it," ABA Journal (Sept. 6, 2018). Diverse female attorneys "reported the highest level of bias, with 63 percent affirming that they had to go 'above and beyond' others in the workplace to receive the same recognition as colleagues, and 67 percent stating they were held to higher standards than colleagues. Nearly 70 percent said they were paid less than their colleagues with similar experience and seniority, compared to 36 percent of white men.

Even female partners in big law face these biases, pointing to

unequal pay, implicit sexism and structural barriers embedded in the culture of big law itself. In fact, after years of frustration dealing with unequal treatment, many female partners have left big law to start their own firms. For instance, Elaine Johnson James started her own practice after over 25 years in

requirements. Stephanie Scharf, who also started her own firm, indicated that her firm eliminated minimum billable hours and that they share origination credit.

To further advance diversity and inclusion, 44 law firms, including Blank Rome LLP, began piloting a new diversity policy called the

ery NFL team to interview at least one minority candidate for head coach vacancies. In the years after implementing the "Rooney Rule," the number of minorities hired to fill head-coach roles doubled.

Although it is too early to tell if the Mansfield Rule will have the same effect in big law that the Rooney Rule had in the NFL, first-year data is promising and suggests that law firms are paying more attention to diversity and inclusion than ever before. For instance, before implementing the Mansfield Rule, only twenty percent of participating firms tracked the diversity of senior-level lateral candidates; all participating firms now record this data. See "Mansfield Rule Mid-Point Progress Report 2017-2018," Diversity Lab LLC, 2018. Ninety-five percent of participating firms reported an increase in formal discussions amongst firm leaders regarding broadening the pool of diverse candidates for appointments to leadership positions and lateral hiring. Moreover, many firms have now added reporting on diversity in leadership, hiring and promotions pipelines as a regular agenda item in Management Committee meetings.

This year, Blank Rome and 64 other law firms joined the next phase of the Mansfield Rule initiative ("Mansfield 2.0"), implementing an

updated version of the rule that now includes LGBTQ+ attorneys and permits firms to broaden the definition of attorneys of color. Specifically, the Mansfield 2.0 pilot permits firms to include Middle Eastern as an ethnicity and break down broader categories, such as Asian American, into sub-categories, such as East Asian and South Asian. Further, Mansfield 2.0 measures consideration for participation in client pitches, among other requirements, and increased transparency regarding leadership appointments and succession planning.

While the Mansfield Rule and Mansfield 2.0 may address some of the concerns about unequal treatment of women in big law by increasing their numbers in leadership roles, representation in leadership and governance will achieve its

full potential only if law firms go further and embrace the new ideas and perspectives that women will bring. Many law firms are already recognizing that they need to review conventional approaches to compensation and explore structures that are more entrepreneurial and collaborative, including allowing partners to split origination and more carefully monitoring how partners develop and inherit existing firm business.

Our hope is that the Mansfield Rule and Mansfield 2.0 will be the key catalysts that bring about the change that is long overdue.

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big law. James cited the "unfair distribution of work, the battles over origination credit, the assignment of work that would be perfect for you to somebody who doesn't know how the heck to do it, but is a member of the inner circle or who has a protector." Further, Beth Wilkinson, who left Paul Weiss and founded her own firm, Wilkinson, Walsh & Eskovitz, in Washington, D.C., stated that "[t]here's something about the system that is not a total meritocracy and doesn't reward all people in the same way." A female partner, who is efficient, may be unfairly penalized based on billable hour re-

"Mansfield Rule" in 2017. Named after Arabella Mansfield, the first woman admitted to the practice of law in the United States, the Mansfield Rule requires that law firms consider female lawyers and attorneys of color for at least thirty percent of the candidate pools for promotions, senior-level hiring, and significant leadership roles in the firm.

The policy was first introduced at the 2016 Women in Law Hackathon organized by Caren Ulrich Stacy and the Diversity Lab, and modeled after the National Football League's "Rooney Rule," which requires ev-



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