

To: New Jersey Women Lawyers Association's Scholarship Committee
From: Rachael Wolfram
Date: December 31, 2023
Re: 2023 Scholarship Program

I. The Forcible Choice Between Motherhood and Making Partner is an Underlying Issue Plaguing Female Identifying Attorneys in Private Practice.

All women pursuing a high-power professional career are familiar with the old adage, passed down from well-intended women before us: take off your engagement and wedding rings before you go for your interview, otherwise, you won't get the job. This uniquely female experience oftentimes comes with good intentions but carries forth the prejudice women face that their male counterparts would never dream of. It is unlikely that partners of a firm have brought up a male attorney's current or future familial status when determining their dedication to the role or the potential longevity of their career despite having endured the same grueling education.

We have all been taught that experiences that are uniquely feminine, such as childbirth, are the worst thing that can happen to a young attorney. We fear that firms will not invest as much into us and our success early on and that we will be excluded from the invite-only golf outings if there is the slightest indication of the desire for a family of our own. Our male counterparts are praised upon the birth of their children, but rumors are whispered about us, speculating if we will even return the firm upon the conclusion of our maternity leaves.

The fear surrounding this underhanded discrimination starts early in our legal careers, and we are not always each other's allies. On the first day of my first job at a firm during my 1L year, while reviewing the onboarding paperwork, my supervising attorney reached the portion

that addressed the various types of leave offered within my role. Sick leave, vacation time, and even COVID leave were gone over in a matter-of-fact manner. However, when she reached maternity leave, instead of breezing through the few sentences provided as she had with the other forms of leave, she paused, looked up at me, and said, “We don’t need to go over this one, right?” Her tone heavily implied there was a correct answer, and her expression grew more frustrated with the seconds that passed between the completion of her question and my response. At that moment, it didn’t matter that I was ranked in the top 10% of my class, nor that I had an extensive background in the type of law from my career prior to law school. All that mattered was confirming that I was not planning on getting pregnant while I worked for that firm. Ultimately, I gave her the answer she desired, as it is not in my plan to be pregnant while a law student, but that convoluted way of evading blatant discrimination while obtaining the desired effect has stayed with me, even after my time at that firm had ended. Although I am not engaged or married and did not have rings to remove, I wonder if there were other law students who had their candidacy at that firm negatively impacted by their presence.

Prior to that experience, I had almost naively believed that female attorneys, especially ones young enough to have just passed the bar one year prior to my start date, would rebuke the old notions of female inferiority. However, I was left wondering, and fearful, that I will have to make the choice between the career I have worked tirelessly to achieve one day, and the personal life I may want, especially knowing that my male counterparts can have it all.

The article *Women in Private Law Firms: Slow Progress on Equality of Promotion and Compensation*ⁱ claims to have identified a series of proposals to combat this “motherhood tax.”ⁱⁱ The authors call the reader’s attention to the implementation of flexible work arrangements so that female attorneys do not face derailment from the partner track simply

because they grew and birthed another human.ⁱⁱⁱ By having these policies written, rather than a series of oral agreements, they can be applied equally and equitably to the employees, regardless of gender identity or specific reason.^{iv} If something such as a remote work option is available to all employees, a woman will, in theory, no longer be shunned for working from home when her childcare falls through and will be viewed the same as Brad from Bankruptcy working from home because he was having car trouble.^v

While I do believe the theory of equitable remote work will result in the advancement of women in private firms, there will always be some stigma attached. From my own experience of working from home during the height of the COVID-19 pandemic, my female colleagues received a significantly higher level of judgment and passive-aggressive comments from superiors and even equals, when their children made brief guest appearances than my male colleagues when their children popped in at similar times. With the remote work option, there remains the risk of woman being socially penalized for her physical absence, regardless of her ability to maintain her productivity and billable hours as if she had been in the office. Anyone who has worked in an office setting knows of the importance and commonality of seemingly informal interactions that build camaraderie and trust in the workplace. It is unlikely that when selecting the next Junior Partner from a pool of equally qualified Associates, the Associate with the most remote hours will be truly considered to the same extent as the Associate who bonded with the Senior Partners over their fantasy football picks at the water cooler all season long.

While I do believe the de-stigmatization of remote work will lessen the productivity gap experienced by women who chose to have children, I do not believe it is enough to be effective, as there will always be another way to ensure female attorneys pay their “motherhood taxes.”

II. The Implementation and Acceptance of a Healthy Work-Life Balance Throughout the Entire Law Firm is Likely to Show Success in the Furtherance of Female Attorney's Careers.

In the article, the author notes how “[e]xplicit action at the firm level” has produced better outcomes than the slow-moving enactment of gender-aware policies.^{vi} In these actions, the stigma of maintaining a healthy work-life balance is challenged from the top down.^{vii} Leadership and those in positions of power are encouraged to use their PTO, leave in time to make it to their children’s school for pick-up, and take any necessary unpaid leave.^{viii} The theory is that in doing so, the culture of the firm will shift to one of support for working parents and the feelings of the ability to take these leaves will trickle down through the ranks.^{ix} Interestingly, unlike the aforementioned remote work option proposal, this recommendation has proven to be more than just a theory.^x Some firms have already enacted similar policies to this recommendation and have seen results in talent retention and the morale of their personnel while not sacrificing the quality of their work product.^{xi}

As this encouragement to take leave is applied to all employees, regardless of gender or familial status, I believe this pathway is one that will result in aiding the closure of the gap between male and female attorneys in private practice. Not only will it reduce the stigma of the traditionally female roles of parenthood that female attorneys are shamed for “failing” at, such as picking a sick child up from school, but it will increase the mental well-being of all employees with a surge of support for using reasonable PTO without feeling the need to justify the time with your superiors. With time, the use of this option will no longer fall under the notorious “motherhood tax.”

III. Through my On-Going Mentorship, My Advancement in Private Legal Practice Will Assist in the Success of Other Female Attorneys.

Although I am just a 2L, through my work experience pre-dating law school and the legal experience I have gained in my roles since, I know there are ways I will make the path slightly better for those who come after me. As a law student, I mentor 1L and 0L women in navigating the unique challenges of femininity that I have encountered in my legal career thus far. Through my position as a Judicial Extern with the Honorable Stephanie Sawyer, many of my mentees are women of color as Judge Sawyer strives to give a place for those historically barred from the legal community. Currently, I am the only law student working for Judge Sawyer, although she has an army of ambitious undergraduates who are all prospective law students. I've helped craft resumes and frame traditionally undervalued, overwhelmingly female experiences, such as working as a nanny, as relevant experiences in interviews at law firms. I strive to challenge their feelings of imposter syndrome and replace them with confidence in their abilities. As frivolous as this sounds, a mantra that seems to always be received well is by instructing them to remember that not only are they achieving just as much as their male counterparts, but they can do it in heels, which as any woman knows is an added challenge in and of itself. The intention is always for them to be unapologetically themselves and be proud of the experiences they have accumulated.

As graduation and the bar approach, and subsequently pass, and I enter into practice, I hope to continue my mentorship of female law students. Even from the position of either a Judicial Law Clerk or a First Year Associate, my own experiences will grow, allowing me to have a greater wealth of knowledge and subsequent ability to pass it down. I will not be like my former supervisor in perpetuating the notion that women can be a promising attorney or a mother, but never both. As time goes on, if I am fortunate enough to obtain a position of authority within a

firm, I will ensure that no promising attorney ever feels as though they have to remove their rings, an outward symbol of having a personal life, out of fear of not being hired or promoted. While there are some women who believe there is only room for one female at the male-dominated table, I instead believe in always making room to pull up another chair. It is important that we do not view the powerful profession of law as a place where only so many women can thrive, but as a platform for more diverse voices to be heard. It was the late Supreme Court Justice Ruth Bader Ginsburg's dream to see nine women on the United States Supreme Court,^{xii} and I aim to be one of the many forces within the legal community to make that statement a normalcy rather than a shocking dream. It is my intention to extend my hand and help the next woman climb when I am in a position to do so, as many other women have done for me.

ⁱ *Women in Private Law Firms: Slow Progress on Equality of Promotion and Compensation*, Rutgers School of Management and Labor Relations Center for Women and Work, Aug. 2022.

ⁱⁱ *Id.* at 16-17.

ⁱⁱⁱ *Id.*

^{iv} *Id.*

^v *See generally, Id.*

^{vi} *Id.* at 19.

^{vii} *Id.*

^{viii} *Id.*

^{ix} *Id.*

^x *Id.*

^{xi} *Id.*

^{xii} *When will there be enough women on the Supreme Court? Justice Ginsburg answers that question* (PBS television broadcast Feb. 5, 2015 7:48 EST), <https://www.pbs.org/newshour/show/justice-ginsburg-enough-women-supreme-court>.