Law Firms Take Heat For 'Juicing' Partner Stats

By Shannon Henson

Law360, New York (March 15, 2010) -- Law firms are under attack for concealing the breakdown of equity and nonequity partners in their ranks, with at least one lawyer accusing firms of keeping clients in the dark to justify hefty billing rates and make good on calls for diversity.

After a number of law firms refused to provide the information, the National Association for Law Placement Inc. recently backed away from a plan to distinguish between nonequity and equity partnership in its annual Directory of Legal Employers.

The firms had cited privacy concerns, saying they were worried nonequity partners could feel marginalized if exposed as the poor cousins of equity partners. But the move by NALP brought on a storm of criticism from a group of women lawyers who have long fought for acknowledgment of nonequity partner status in the statistics reported by firms.

A disproportionate number of nonequity partners - who don't have a financial stake in their firms - are women and minority partners, they say. And the true composition of a firm is important information for law students, who deserve to have an accurate picture before accepting an associate position.

"Transparency and accuracy is the goal here," said Nan Duffly, a judge on the Massachusetts Appeals Court and a past president of the National Association of Women Judges. Law students, she said, are interested in and entitled to information about "where they have a genuine shot" at becoming a full partner.

"How do they know that if information about equity and nonequity partnership is not revealed?" Judge Duffly asked.

Members of a consortium of women lawyers, which includes the National Association of Women Lawyers, the National Association of Women Judges and many others, believe law firms are reluctant to report the statistics for a variety of reasons - many of which involve protecting the bottom line.

Michele Dauber, a professor at Stanford Law School and a board member of Building a Better Legal Profession, argues law firms are unwilling to release equity and nonequity figures separately for fear clients will object to paying the same rates for the work of a partner revealed to have no real clout.

"Ambiguity about who is an equity partner is important if you want to justify your billing rates," Dauber said.

Firms may also worry that clients will look elsewhere for representation if they learn that their contacts are nonequity partners with no power, Dauber said. A client, she said, wants to feel confident of retaining counsel if the firm has a conflict, and wants to know that the partner in charge of their account is a true leader within the firm.

"Clients want an owner managing their relationship," Dauber said.

The exposure of nonequity partner statistics could also impact client relationships, as corporations increasingly consider diversity when making hiring decisions. "Clients look to the surveys for a starting point," said Deborah Epstein Henry, founder and president of the consulting firm Flex-Time Lawyers LLC. "Clients care about these issues and want the firms that represent them to be excelling."

Another concern, say members of the consortium, is that firms are not only reluctant to report equity and nonequity statistics, they are not disclosing accurate figures when they do reveal the breakdown.

Dauber, for one, maintains that some law firms "juice" the statistics depending on whether the survey is studying profits per partner – when fewer equity partners is preferable - or diversity - when it benefits the firms to report more women and minority partners.

"It's so widespread that I have to believe it's a business practice,"Dauber said of the statistic manipulation.

Some members of the consortium believe that part of the problem is that the publications surveying law firms have different definitions of equity and nonequity partnership, and are reaching out to the various news and legal organizations calling for uniformity.

"The goal is to get the industry to compare apples to apples," Henry said.

Linda Bray Chanow, executive director for the Center of Women in Law at the University of Texas School of Law, said it would benefit law firms if all the surveying organizations used the same definition for equity and nonequity.

"If everyone is asking for the same information, it makes it easier for the law firms to report" their numbers, she said.

Jessie Kornberg, executive director of Ms. JD, an online forum for women in the legal profession, said standardization would dramatically reduce the amount of time law firms spend generating the statistics for the various surveys.

"Yes, the law firms that have been playing shenanigans with their numbers in the past will lose out, but on the upside, they could take all the time their professional development people spend on gathering the information and put that toward improving diversity," Kornberg said.

In their fight for transparency, the consortium has a seemingly unlikely ally - single-tier law firms. Despite appearances from the survey results, firms with only equity partners may, in fact, have more women and minorities in positions of power.

"Their diversity (numbers) may not be as high as some of the two-tier firms, but in fact they may have higher numbers of [women and minorities] equity partners," Chanow said. "So they are probably making greater gains for diversity purposes."

Dauber, whose group tracks law firm statistics at www.betterlegalprofession.org, said the single-tier firms are being "unfairly portrayed as worse sweatshops for women than they are."

And, ultimately, that's the problem, according to the members of the consortium. Women and minorities cannot tell which firms will provide them with ample opportunities and which firms are paying lip service to diversity.

They are also in the dark about who are the power players within the firms. And that is important, the consortium members said, because young attorneys need to know who they should seek out as mentors.

"It's really important to have a powerful mentor," Dauber said. Women and minorities may not know they are under the wing of a nonequity partner and may incorrectly assume their mentor is in a position to help them advance their career.

"The bottom line is that these firms are falsely advertising the chances of advancement to prospective recruits, and persuading them to accept offers on false pretenses," Dauber said.