



DIVERSITY AND
FLEXIBILITY
CONNECTION
BEST PRACTICES

THE PROJECT *for*
ATTORNEY RETENTION

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The Diversity and Flexibility Connection of the Project for Attorney Retention (PAR) consists of 12 general counsel of major U.S. companies, and 12 chairs of PAR member law firms. The general counsel were chosen because of their history of demonstrated commitment to issues of diversity. The law firms were chosen based on objective metrics designed to identify firms that have made the most progress towards flexibility without stigma, *i.e.*, workplace flexibility programs that do not derail the careers of lawyers who use them.

The Connection was designed to facilitate a conversation about how in-house and outside counsel could work together more effectively to support balanced hours programs,¹ with the ultimate goal of making the legal profession more inclusive. The Connection seeks to tear down the wall between diversity and work/life initiatives in order to address the complex issue of attorney retention more holistically. Sustained long hours affect all lawyers, regardless of gender, race, or age. When combined with the advancement hurdles women and minority lawyers often face, the high hours can be the final straw leading to departure when no viable alternatives exist. The Connection's goal is to bring balanced hours into diversity initiatives, thereby accelerating the elimination of structural and cultural biases that create advantages and disadvantages for certain lawyers.

The Meetings

PAR convened two day-long, in-person meetings of Connection participants at the Chicago office of Schiff Hardin on March 27, 2009 and July 1, 2009. General counsel and law firm chairs engaged in a frank, moderated discussion about their shared goals and how each can support the other in making progress toward those goals. Topics included the reasons diversity and flexibility are good for business, why diversity programs need to include an effective work/life component, client service on a reduced-hours schedule, how to implement nonstigmatized flexible work programs in house, how clients can support law firms' flexible work programs, and whether everyone's interests are better served if clients are aware that their outside counsel is working reduced hours.²

The sense of the group was that widespread agreement on basic principles needs to be accompanied by an initiative to identify, and commit to, best practices and pilot programs that change everyday incentives in ways that produce sustained organizational change. These are set forth below. As another outgrowth of the Connection, PAR has created the Flex Success Award. The award will be given to one or more law firm partners who have been highly successful working a reduced-hours schedule, along with a client who has been instrumental in developing that attorney's career. The inaugural recipient of PAR's Flex Success Award will be announced at PAR's Connection conference on October 29, 2009 in Washington, DC.

The Connection between Diversity and Flexibility

PAR presented information about the connection between diversity and flexibility. Although discussions about these issues traditionally have occurred apart, in fact, achieving diversity is inextricably linked to an effective flexibility program that includes reduced-hours schedules.

Why Flexibility Matters to Clients. In normal economic times, attrition rates in large law firms are 20%—more than double those in most industries.³ Clients find high attrition disruptive and expensive, and continue to insist that law firms bring attrition levels under greater control. The Association of Corporate Counsel’s (ACC) Value Challenge summarizes clients’ concern over uncontrolled attrition.⁴

The ACC Value Challenge includes the business case for nonstigmatized part-time programs. PAR’s research on the business case over the past decade shows the following: it makes little business sense for legal employers to pay large sums to hire and train women, only to lose one after another due to insufficient flexibility in work schedules and commitments. High turnover is an inevitable—and expensive—consequence of a rigid and outdated model. For a full exploration of the business case for workplace flexibility, see PAR’s *The Business Case for a Balanced Hours Program for Attorneys*,⁵ and the Association of Corporate Counsel’s *Value Challenge*.⁶

A major cause of attrition is the requirement for sustained high billable hours, with reduced hours programs that are unworkable, stigmatized, or both.⁷ PAR’s research shows that many male as well as female attorneys want to work fewer hours,⁸ and many associates say they would prefer to sacrifice money for time.⁹ Yet many are reluctant to reduce their hours if doing so is stigmatized and stalls upward career progression.

Why Flexibility Matters to Women. The lack of a meaningful alternative to long hours has a particularly damaging effect on female lawyers. Law firms hire and train women lawyers, only to lose them as they find it unnecessarily difficult to combine long hours and motherhood. Given that 82% of American women have children,¹⁰ and that 95% of mothers aged 25-44 work fewer than 50 hours a week,¹¹ it is highly improbable that law firms will have a sufficient pool of women eligible for partnership until this scheduling tension is effectively addressed.

Long hours also have negative effects on women lawyers without children, who may work the longest hours of any group of lawyers.¹² Lawyers, particularly women without children, tell researchers that their schedules make it difficult for them to find life partners.¹³ In addition, long hours requirements put them at a disadvantage in competing with male associates, many of whom have stay-at-home wives. Said one woman of color: “The male associates all had stay-at-home wives who took care of all the everyday things. So even if they didn’t have children, their dry cleaning was picked up, their dinner was cooked, their house was cleaned. And women have to do all that stuff on top of their work.”¹⁴

This background helps to explain why the proportion of women law firm partners has stalled: in the last decade it has risen from 14% to only 18%¹⁵ despite the fact that more than 40% of new associates entering firms have been female since for at least 1991.¹⁶

Why Flexibility Matters to Diverse Attorneys. While extensive research exists on the link between flexibility and retaining women, less research exists on the link between flexibility and racial and ethnic diversity. Programs that address attorneys’ need for work-life balance are important for attorneys of color, given that a disproportionate number are women.¹⁷ Women attorneys of color clearly have difficulty meeting billable hours requirements—nearly half reported they did not—although the role of work/life balance as opposed to other factors remains unclear.¹⁸

Research is emerging that suggests that the conventional wisdom that attorneys of color do not work part-time is exaggerated. When PAR and the Minority Corporate Counsel Association sent an outreach requesting to speak with attorneys of color about work/life balance, one in four respondents interviewed said that they worked part-time.¹⁹

In addition, some respondents who worked full-time hours stated that, although they would like to reduce their hours, the stigma associated with part-time at their firms made that unrealistic, when combined with challenges faced by all attorneys of color.²⁰ Moreover, 70% of women of color attorneys are the sole or primary breadwinners in their households.²¹ This means that finding a job that offers an extremely flexible full-time schedule, or one in which full time is defined as shorter hours, may well be more attractive options than staying at a firm and working part time—particularly where part time is stigmatized.

Minority female lawyers have the highest attrition rate of any group of lawyers, and lack of work/life balance plays a role. To quote the ABA Commission on Women's path-breaking report on women of color in the legal profession, *Visible Invisibility*, "Many women of color left firms to work in settings (especially corporations) that were lucrative, where they thought others' decisions about their careers would be less idiosyncratic, based more on merit, and where they had more flexibility to balance personal life, family, and work."²²

Attorneys of color who need to care for ill spouses or elderly parents also are negatively affected by long workweeks. A 2001 survey by AARP found that Asians were most likely to be caring for an elder relative (42 percent), whites were least likely (19 percent), and other groups fell somewhere in between (Latinos at 34 percent and African Americans at 28 percent).²³

The bottom line is that failing to address the issue of sustained high billable hour requirements makes it more difficult for law firms to retain women of color. Unfortunately, no studies have explored the impacts of long hours on men of color.

ISSUES AND SOLUTIONS: CONNECTION BEST PRACTICES AND PILOT PROGRAMS

1. Nonstigmatized Flexible Work

Background: When PAR was founded a decade ago, “part-time” at law firms typically meant that lawyers faced the “haircut” (e.g., 60% of a full-time salary for 80% of full-time hours), were taken off partnership track, and encountered uncontrolled “schedule creep” (where a part-time schedule creeps back up towards full time). Due to the work of PAR and others, today many firms have moved away from old-fashioned “part time” towards best-practice balanced hours programs that differ in significant ways.²⁴

Participants in the Connection have adopted many of PAR’s best practices recommendations from its Model Balanced Hours Policy (available at www.attorneyretention.org). PAR’s recommendations recognize that, for reduced hours programs to be effective, they have to allow for professional advancement and provide checks on schedule creep. As indicated in the best practice below, careful implementation and monitoring to prevent stigma are key.

Best Practice: The law firm members of the Connection pledge to adopt the core components of a balanced-hours policy. These are:

- (1) A written policy that provides for proportional pay (e.g., 80% pay for 80% hours), proportional bonuses, and full or proportional benefits.
- (2) A promotion track that is at least proportional (e.g. someone who works an 80% schedule for four or five years would take a year longer to become eligible for partnership) *and* a proven track record of promoting part-time attorneys to partner.
- (3) 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.
- (4) 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.
- (5) A mechanism to ensure that balanced-hours lawyers have a proportional share of challenging work and access to business development opportunities.
- (6) 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.
- (7) 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.
- (8) Mechanisms to destigmatize parental leave for fathers.

2. Referring Work to Balanced Hours Attorneys

Background. Client support of flexible work arrangements, particularly reduced hours work, is critical to the success of balanced hours programs. Participants discussed a variety of ways in which clients can support law firms' efforts. One is to communicate support for flexible schedules directly to leaders in the firm: clients can have a tremendous impact by saying to a law firm relationship partner and Chair/Managing Partner "this (diverse or flex) attorney did great work—the kind that keeps me coming back to this firm."

Participants concluded that the single most effective thing clients can do to support flexibility is to refer work to balanced-hours attorneys.

Best Practice: *Pilot program to refer work to attorneys who are working reduced hours.* As a further demonstration of their commitment to diversity and flexibility, some members of the Connection have agreed to participate in a one-year pilot. Each participating law firm Connection chair will recommend several balanced-hour attorneys; each participating Connection general counsel will refer suitable work to two attorneys on flexible schedules to the extent possible, consistent with business needs and preferred provider programs. Connection members participating in the pilot, after one year, will work together to publicize success stories, both within individual firms and to the world at large—or will work to improve the pilot.

3. Clients Need to Signal Support for Flexible Work

Background: The importance of diversity to companies and to the legal profession is well-known; Connection general counsel stressed the importance of flexible work as a means to ensure continuity of service and to aid in increasing law firm diversity. Connection members stressed law departments can have a big influence on their outside counsel by signaling and communicating that flexibility without penalty is important to them.

Best Practices: *In-house members of the Connection will clearly signal their support for work-life balance for outside counsel.*

(1) *Signaling support in written communications.* Connection general counsel will add to their RFPs, engagement letters, and/or outside counsel guidelines, language that signals that they seek to work with qualified reduced-hours attorneys and will seek, wherever possible, to support attorneys' need for work-life balance.

(2) *Signaling support in day-to-day interactions.* In face-to-face communications, Connection members will consistently communicate that they expect law firms to offer flexibility without penalty as part of their commitment to diversity. In day-to-day interactions, Connection members will consistently communicate: a) their willingness to respect outside counsel's need for work-life balance whenever possible, b) that "being available" means that a lawyer is available when the client needs him or her—not that the lawyer guarantees 24-7 availability, and c) that outside counsel should feel free to suggest a teleconference instead of in-person meetings, both to control costs and to aid work-life balance.

4. Ensuring that Cost Controls do not Compromise Flexibility

Background: Clients often attempt to control costs by suggesting that law firms use only a specific number of attorneys on a given matter, *e.g.*, one partner and one associate. This widespread practice can limit law firms' ability to offer high-quality assignments to reduced-hours attorneys.

Best Practice: Connection law departments will avoid approaches to controlling costs that undercut law firms' ability to offer flexibility without penalty. Connection law departments will be thoughtful about using head count as a cost control lever. Alternative ways to control costs include setting a budget, using blended average hourly rates, asking a law firm how it intends to staff a project, or setting personnel limits by FTEs (full-time equivalents) rather than the number of attorneys (head count).

5. Effective Implementation In-House

Background: In most law departments, many lawyers interact with outside counsel on a daily basis and have the ability to affect outside counsel's schedules. For this reason, *all* the lawyers in law departments need to be aware of the general counsel's commitment to diversity and flexibility to ensure effective and consistent support for outside counsel seeking work/life balance consistent with client needs.

Best Practice: Connection law departments will take steps to implement their commitment to diversity and flexibility, including:

- (1) *Leadership from the top.* Connection general counsel will clearly state their expectation that all lawyers in their departments will support outside counsel's need for work-life balance, consistent with business needs. Such statements are particularly effective at meetings where both in-house and outside counsel are present, *e.g.*, a department's annual meeting for outside counsel.
- (2) *Training and communication in house.* In view of their departments' need to control costs and their commitment to diversity and flexibility:
 - Connection general counsel will include, in law department trainings and communication, information explaining why support of flexible schedules and work-life balance for outside counsel is important to control costs, to ensure continuity of outside counsel, and to support diversity. The information should include suggestions for how outside counsel's schedules can be supported.
 - Connection general counsel will communicate to their departments that, absent a concrete deadline or specific business need, it is inappropriate for in-house lawyers to wait to give outside counsel an assignment at the last minute, *e.g.*, at 5 p.m. on Friday.

6. Better Business Communications

Background: Connection participants spent considerable time discussing the need for better business communications.

Best Practices: Both inside and outside counsel need to implement a series of steps to improve business communication.

- (1) Connection general counsel will institute a policy that assignments to outside counsel should be accompanied by a specific deadline to prevent law firms from treating all assignments as needing immediate turnaround.
- (2) If an in-house lawyer does not specify a deadline, outside counsel will ask when the deadline is, instead of assuming it is needed as soon as possible. Outside counsel's request for clarification will be viewed as a component of excellent service.
- (3) Many of the deadlines communicated by in-house lawyers stem from pressures from their in-house clients and supervisors. Connection general counsel will encourage in-house lawyers' clients and supervisors, to set real deadlines.
- (4) Connection general counsel want to support flexible schedules—but cannot do so if they do not know about them. They therefore encourage outside counsel to be open about their schedules—they consider this part of effective business communication. That said, they respect the privacy right of every attorney to decide if and when to discuss this matter with clients.
- (5) Connection general counsel will set up channels of communication to enable outside counsel to provide feedback about whether lawyers in their departments are supporting flexibility and work-life balance, consistent with business needs. Promising approaches include:
 - An annual meeting between the general counsel or designee and the managing or relationship partner, at which the general counsel asks whether the department has met its goals of supporting diversity and flexibility.
 - For legal departments that conduct periodic surveys of law firms, questions about whether their departments have met the goal of supporting diversity and flexibility will be included.
- (6) Connection general counsel who track whether outside counsel is assigning matters to diverse attorneys will also track whether matters are being assigned to flex- and part-time attorneys.

7. Walking the Talk

Background: Concern was expressed at the meetings about a perceived disconnect between words and action, such that law firms hear clients say that they are committed to diversity but do not necessarily see clients awarding or withdrawing work as a result of specific law firms' progress or lack of progress toward diversity goals. A key sticking point is that general counsel who cease to work with a law firm because of its failure to make progress on diversity typically remain discreet about their decision out of professional courtesy for the firm involved. Another source of confusion arises when law firms that feel they have made significant progress on diversity are not awarded work they believe they are eminently qualified to do. In response to this concern, general counsel pointed out that often the firm in question is being measured against other firms that also have made progress on diversity and also are well qualified. Thus when a law firm is not awarded work, it should not conclude that its diversity efforts have gone un-noticed: it may well not have been in the pool of finalists were it not for its diversity efforts. All in all, general counsel pointed out that progress on diversity does not guarantee that any particular firm will be awarded any particular piece of work, but that lack of progress on diversity does have consequences, even if the general counsel chooses, out of respect and the desire to preserve business relationships, to remain discreet.

Best Practice: Connection general counsel commit to having a direct conversation with the Chair, Managing Partner or relationship partner of a law firm when they decide to move work away from the firm due to lack of progress in retaining talented, diverse attorneys through flexible work arrangements and meaningful career paths—and to tell a firm when its progress toward diversity and flexibility goals tips the balance in its favor.

CONCLUSION

PAR would like to thank members for their thoughtful, candid, and committed participation in the Connection. Now, it is time to widen the circle. The initial members of the Connection were chosen based on their ability to aid in the development of best practices. Connection members now seek to widen the circle to include additional general counsel and law firm leaders interested in joining with the Connection founders to commit to best practices to achieve diversity and flexibility. If you are interested in learning more about the Connection, please contact PAR at www.attorneyretention.org.

CONNECTION MEMBERS

As of the date of this report, the following members of PAR's Diversity and Flexibility Connection endorse and will take steps to implement the foregoing best practices.

Catherine A. Lambole,
Senior Vice President, General Counsel &
Corporate Secretary (retired),
Shell Oil Company

Jeffrey J. Gearhart,
Executive Vice President and General Counsel,
Wal-Mart Stores, Inc.

Michele Coleman Mayes,
Senior Vice President & General Counsel, Allstate
Insurance Company

Teri Plummer McClure,
Senior Vice President of Legal Compliance and
Public Affairs, General Counsel & Secretary,
United Parcel Service

Roderick A. Palmore,
Executive Vice President,
General Counsel & Secretary,
General Mills Inc.

James Potter,
Senior Vice President,
General Counsel & Secretary,
Del Monte Foods Company

Thomas L. Sager,
Senior Vice President & General Counsel,
DuPont Company

Douglas G. Scrivner,
General Counsel,
Secretary & Compliance Officer,
Accenture

Laura Stein,
Senior Vice President & General Counsel,
The Clorox Company

Danette Wineberg,
Vice President, General Counsel & Secretary,
The Timberland Company

Thomas Milch,
Chair, Arnold & Porter LLP

Kent Gardiner,
Chairman, Crowell & Moring, LLP

Michael Nannes,
Chairman/Firmwide Managing Partner,
Dickstein Shapiro LLP

Lee Miller,
Joint Chief Executive Officer,
DLA Piper

Steven Lowenthal,
Chairman, Farella Braun + Martel LLP

Gordon Davidson,
Chairman, Fenwick & West LLP

Steven B. Pfeiffer,
Chair, Fulbright & Jaworski LLP

Patrick Dunican,
Chairman & Managing Director,
Gibbons P.C.

Keith Wetmore,
Chair, Morrison & Foerster LLP

Robert Riley,
Chairman, Schiff Hardin LLP

Thomas Cole,
Chair of the Executive Committee,
Sidley Austin LLP

Elliott Portnoy,
Chairman, Sonnenschein Nath
& Rosenthal LLP

ENDNOTES

1. “Balanced hours” programs, unlike traditional part-time programs, allow attorneys to work individually-tailored, reduced schedules that are designed to meet the firm’s business needs while maintaining the attorney’s ability to work and to develop professionally without stigma. Balanced hours programs involve active management of workloads in proportion to reduced hours, emphasize client service, and promote the values of the firm.
2. Participants were asked not to discuss fees or alternative billing arrangements, and those topics came up only tangentially.
3. Keith Cunningham, *Father Time*, 53 Stan. L. Rev. 967, 970.
4. AMERICAN ASSOCIATION OF CORPORATE COUNSEL, *THE ACC VALUE CHALLENGE: RECONNECTING LEGAL COSTS TO THEIR VALUE*, available at <http://www.acc.com/valuechallenge/resources/upload/VC-Docket-Brochure.pdf>.
5. Project for Attorney Retention, *The Business Case for a Balanced Hours Program for Attorneys* (2007), available at http://www.pardc.org/LawFirm/PAR_BusinessCase_8-23-07.pdf.
6. AMERICAN ASSOCIATION OF CORPORATE COUNSEL, *supra* note 4.
7. Williams, Joan C. and Cynthia Thomas Calvert, *Balanced Hours: Effective Part-Time Policies for Washington Firms* (2000), available at <http://www.pardc.org/Publications/BalancedHours.shtml>.
8. *Id.*
9. *See, e.g.*, Stephanie Francis Ward, *The Ultimate Time-Money Trade-Off*, ABA Journal (Feb. 2007) (84% of associates responding to online survey said they would be willing to earn less money in exchange for fewer billable hours), available at http://www.abajournal.com/magazine/the_ultimate_time_money_trade_off1/; *see also* “Less Money, Fewer Hours” Say Many Summer Associates, Law Students Building a Better Legal Profession, Dec. 4, 2007 (citing American Lawyer Summer Associate survey), available at <http://refirmation.wordpress.com/2007/12/04/less-money-fewer-hours-say-many-summer-associates/>.
10. Barbara Downs, U.S. Census Bureau, *Fertility of American Women: June 2002, P20-548*, at 3 (October 2003), available at <http://www.census.gov/prod/2003pubs/p20-548.pdf> (visited July 1, 2006) (stating that, in 2002, 17.9% of women aged 40 to 44 had never had children).
11. U.S. Census Bureau, *Current Population Survey: 2006 March Supplement*, Data generated by Mary C. Still for the Center for WorkLife Law, using DataFerrett, URL:<http://dataferrett.census.gov/TheDataWeb/index.html> (Files generated 25 April 2006).
12. *See, e.g.*, Mona Harrington and Helen Hsi, *Women Lawyers and Obstacles to Leadership: A Report of MIT Workplace Center Surveys on Comparative Career Decisions and Attrition Rates of Women and Men in Massachusetts Law Firms* (MIT Workplace Center, Spring 2007) at 18.
13. Janet E. Gans Epner, *Visible Invisibility: Women of Color in Law Firms* (ABA Commission on Women in the Profession, 2006), at 34 (“I am single and I have to do everything for myself. I work primarily with white men who are married. They view my marital status as a benefit; it allows me to work without feeling bad about neglecting anyone. What they don’t understand is that I don’t have the opportunity to form close relationships, and that’s hard.”)
14. *Id.* at 33.

15. NATIONAL ASSOCIATION OF LAW PLACEMENT, MINORITY WOMEN STILL UNDERREPRESENTED IN LAW FIRM PARTNERSHIP RANKS — CHANGE IN DIVERSITY OF LAW FIRM LEADERSHIP VERY SLOW OVERALL (Nov. 1, 2007), *available at* <http://www.nalp.org/minoritywomenstillunderrepresented> (reporting that in 2007, 18.34% of partners at major law firms were women); NATIONAL ASSOCIATION OF LAW PLACEMENT, PRESENCE OF WOMEN AND ATTORNEYS OF COLOR CONTINUES TO RISE AT LARGE LAW FIRMS (Feb. 3, 1999), *available at* <http://www.nalp.org/1999presenceofwomenattorneyscolor2> (reporting that in 1998, 14.55% of partners at major law firms were women).
16. NATIONAL ASSOCIATION OF LAW PLACEMENT, JOBS FOR NEW LAW GRADUATES – TRENDS FROM 1991-2001 (NALP BULLETIN, AUGUST 2002), *available at* <http://www.nalp.org/2002augjobsfornewlawgrads> (reporting that between 1991 and 2001, 42% or more of new hires were female at law firms of more than 100 attorneys); NATIONAL ASSOCIATION OF LAW PLACEMENT, JOBS FOR NEW LAW GRADUATES – TRENDS FROM 1991-2001 (NALP BULLETIN, JULY 2005), *available at* <http://www.nalp.org/2005juljobsfornewlawgraduates> (reporting that between 1994 and 2004, 42% or more of new hires were female at law firms of more than 100 attorneys; in 2004, 50.2% of new hires at such firms were female).
17. NATIONAL ASSOCIATION OF LAW PLACEMENT, MINORITY WOMEN STILL UNDERREPRESENTED IN LAW FIRM PARTNERSHIP RANKS, *supra* note 15 (reporting that in 2007, minorities account for 18.07% of associates, and minority women for 10.07% of associates).
18. Epner, *Visible Invisibility*, *supra* note 13, at 30.
19. Calvert, Cynthia Thomas, Linda Bray Chanow, and Linda Marks, *Reduced Hours, Full Success: Part-Time Partners in U.S. Law Firms* (Project for Attorney Retention, Sept. 2009), *available at* www.pardc.org/Publications/Part-TimePartner.pdf, at 25.
20. *Id.* at 25-27.
21. Epner, *Visible Invisibility*, *supra* note 13, at xii.
22. *Id.*
23. See Sheel Pandya, *Long-Term Care Trends: Racial and Ethnic Differences Among Older Adults in Long-Term Care Service Use* (AARP Public Policy Institute, June 2005), *available at* http://www.aarp.org/research/longtermcare/trends/fs119_ltc.html.
24. See Williams & Calvert, *Balanced Hours*, *supra* note 7. See also WILLIAMS, JOAN C. AND CYNTHIA THOMAS CALVERT, SOLVING THE PART-TIME PUZZLE: THE LAW FIRM'S GUIDE TO BALANCED HOURS (NALP 2004).