Success in the Modern Age

Pregnancy or Partner—Why Not Both?

By Elizabeth Huntley

A few months ago, I had dinner with a group of young female attorneys to provide guidance and answer their questions regarding the appropriate steps toward advancing their careers. This group of young women was outstanding. They all worked for top tier firms in each of their legal markets. They all had successful law school careers and several had clerked for federal judges. They are clearly headed for success. They asked questions about complex case management, dealing with law firm partners, and business development. Eventually, one young lady exposed the "elephant in the room" and asked "*what about family?*" During the progression of this discussion, it dawned on me that the young female attorneys were not as concerned about balancing work with family as they were about the potential setbacks to their careers if they became pregnant. They were concerned about their physical limitations during pregnancy and how they would be treated by their law firm partners while pregnant.

As a mother of two, I have never been concerned about how an attorney may be perceived or treated because she was pregnant. I am sure that I feel that way because of the culture at my firm of over six years. I have watched two fifth-year female associates have their first child and maintain continued success on the partnership track. Two years later, they were both pregnant with their second child and both were named equity partners during that same year. One actually gave birth on the same day that she became an equity partner. I really smiled when I saw the dual congratulatory e-mail that included a picture of her newborn.

I watched a senior female equity partner at my firm complete two advanced-aged pregnancies (one with several complications) while maintaining her status as an equity partner. I watched another younger female equity partner experience debilitating illness during her pregnancy only to come back from maternity leave stronger than ever in her career. I watched another female partner and wonderful mother of four at my firm balance family with a legal career so successfully that she now serves as a United States district court judge. I realized that every female partner at our firm and most of the female associates have children. We could open a child care facility!

The baby boom among the female attorneys at my firm has not put a damper on their success as attorneys. These women have great cases, some are great rainmakers, and most importantly they all provide a great service to our clients. I spoke with some of the women whose stories I shared above to ask how they were able to balance pregnancy and law firm practice. They unanimously attributed their "non-career ending" transition into motherhood to the culture of our firm.

For example, the female attorneys that have taken maternity leave report that our 12-week paid maternity leave policy is a "true" maternity leave. They are not required to work their cases, and none of them were concerned that their cases would be suffering upon their return. Their budgeted billable hours for the year are adjusted accordingly. The equity partner who experienced complications that created a need to adjust her schedule beyond her maternity leave period was able to work out an adjustment to her point system that allowed her the flexibility that she needed. Additionally, some have had flexible firm hours allowing them to work some hours from home, depending on their situation. They have each successfully worked with the firm to establish solutions to their individual circumstances. Who was the big winner in all of this? Our firm. Because of our culture, we are able to retain these outstanding women who bring great value to our team.

I shared these successes with the young women in my dinner party. Unfortunately, they were not sure that such an environment existed at their respective firms. It saddened me that the choice to start a family for a female attorney comes with challenges that her male counterparts do not have to consider. Depending on the firm culture, deciding to start a family can be a tough decision for a female attorney.

As I reflected on this dilemma, I considered the ABA Commission on Women in the Profession July 2014 report titled *A Current Glance at Women in the Law.* A.B.A. Comm'n on Women in the Prof., *A Current Glance at Women in the Law* (July 2014), available at http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_july2014.authcheckdam.pdf. The report shows the high percentage of young women ascending up the

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concluding that the trial court was within its discretion in excluding improperly paid witness testimony as a sanction. Moreover, *Rocheux Intern. of New Jersey v. U.S. Merchants Financial Group, Inc.*, found that this cannot be "cured" through the ruse of improperly attempting to reclassify a fact witness as an "expert." 2009 WL 3246837 (D. N.J. Oct. 5, 2009) (unpublished). FD

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7. Communicate with an insured. An insured should be kept reasonably informed of the status of the litigation, and when possible updates should be given in writing. An insured should provide its informed consent to any admissions that are made on behalf of the insured.

8. Continuously reevaluate coverage assessments. Coverage counsel should assess any new information and update or revise the coverage analysis as appropriate. If an update is made, this revised analysis must be communicated to the insurer and the insured.

9. Terminate the duty to defend with caution. The duty to defend can only be terminated when the policy language separates the duty to defend from the policy limits payable under a policy. Coverage counsel should be consulted.

10. Consider indemnification of an insured when appropriate. If an insurer wants to take an excess limits claim to a trial, for example, if a good liability defense exists, the insurer should consider indemnification of the insured from any excess judgment.

Judgments and settlements that exceed policy limits do not automatically mean that an insurer has acted in bad faith. However, when this happens, the claim file and the counsel's file should reflect clear communication to the insured throughout the life of the file, particularly on the risk of liability and damages, and the basis for why the file could not be settled within the limits. Claims that exceed policy limits should be handled with additional precautions, as described above, and well documented to establish how an insurer and a defense counsel acted in good faith toward an insured. FD

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ranks in the practice of law. For example, women make up 46 percent of the leadership positions for law reviews at the top 50 law schools ranked by U.S. News & World Report, and 38 percent of those schools have a female editor-in-chief. Women make up more than 45 percent of the summer associates in private practice firms and more than 45 percent of federal law clerks. They constitute more than 44 percent of young associates in private practice. But the disappointing news is that women only make up 17 percent of equity partners in private practice. What happens to those bright, talented women who leave law school with numerous accolades and enter private practice at nearly the same rate as men? Why are they not becoming equity partners at the same rate of success? Where are they going?

The young women in my dinner party are members of the above statistics. They were all in the top ranks of their law school classes, law review editors, federal law clerks, and now successful young associates at great law firms. Will they stay the course? Or will the decision to start a family derail their path to success? It all depends on their firm culture and whether or not they are in an environment that will work with their unique circumstance to retain their talent. This facilitation is not merely a question of ethics; to achieve the highest level of success in our modern age, law firms must maintain a culture that is vigilant in accommodating the needs of females to preserve the diversity and skill found in these exceptional women. FD

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of an underfunded judiciary on local economies. The Center itself mounted five individual initiatives on this issue in the past year and made judicial funding one of the focuses of the 2013 DRI National Poll. To continue its advocacy, the Center will present a main stage program at the Annual Meeting in San Francisco that will focus on the issue of judicial funding. Center Vice-Chair Skip McCowan will moderate a panel that includes the California Chief Justice, Tani Cantil-Sakauye, Judge John D. Bates, director of the Administrative Office of the U.S. Courts, Judge Steven Jahr, director of the Administrative Office of the Courts of California, and Mary Campbell McQueen, president of the National Center for State Courts.

- The Issues and Advocacy Committee, under Bruce Barze's leadership, is active in several important issue areas including third-party litigation funding, involvement by DRI in ALI issues, and, with LCJ, reforms being considered by the Civil Rules Advisory Committee. The Center also monitors the activities of the TRIA subcommittee and supports its efforts to re-authorize TRIA in the Congress.
- The External Policy Groups Committee, with Neva Lusk as Chair, identifies and communicates with organizations that DRI might form strategic partnerships with on specific issues. Where appropriate and advantageous, DRI will coordinate and support like efforts with other legal and policy-oriented organizations to protect or improve the civil justice system.

As can be seen, the Center has given DRI a very focused and effective way of engaging, and even stimulating, the national debate over public policy as it relates to the way justice is administered in the United States. Anywhere officials gather to enact legislation, impose regulation, or create, modify, or eliminate rules that affect the defense bar, DRI will have an engaged and thoughtful presence and a forceful voice in pursuit of a justice system that is fair, viable, and equitable. FD