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# THE BALANCING ACT: PRACTICAL SUGGESTIONS FOR PART-TIME ATTORNEYS\*

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## I. INTRODUCTION

When I was five years old, I used to go to court with my uncle, a deaf attorney, and my mother, who would translate for my uncle in the courtroom. I was very impressed by what I saw. Practicing law appeared to be a challenging, interesting, and satisfying career. I decided I would be a lawyer. When I told my mother about my career decision, her reaction was not encouraging, but reflected the view of many people of her generation and still reflects the view of some people today. She told me not to become a lawyer. "Lawyers don't have time for their families. You won't be able to raise your children," she said. I can remember thinking about that idea for a long time and wondering why. Why can't attorneys also spend time with their families? Why is the practice of law all or nothing? Does it really need to be this way? I am still thinking about this problem and actively working to help attorneys practice law in a more balanced way. I think that for some attorneys in certain work environments, the practice of law will always be "all or nothing." There are, however, ways to reduce hours in a workaholic world. This Article will present some alternative work-time strategies.

First, this Article will examine the workplace and why lifestyle issues have become important for attorneys practicing law today. Second, economic factors affecting alternative work-time options will be discussed. Finally, practical suggestions for obtaining alternate work schedules will be examined.

## II. OVERVIEW

Generally, attorneys work long hours. It has become routine for many attorneys to work sixty to eighty hours per week. They work nights and weekends, bring work home, and put aside other pursuits to fulfill work-related commitments. Working long hours has become a badge of honor. High billable hours are "macho"—they are also the golden road to

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bonuses, promotions, and partnership. In the process of paying homage to long hours, prodigious time commitments have become confused with excellence. In a sense, attorneys do not join law firms these days, they join a new monastic order in which they are expected to devote their entire lives to the firm. Many leading law firms today expect attorneys to bill 2300-2500 hours per year to be eligible for partnership.<sup>1</sup> That translates into day after day in which an attorney "leaves home before the children are awake and returns home after they are asleep, works every Saturday and tries not to work Sundays."<sup>2</sup>

Practicing law did not always require such an all-encompassing time commitment, even for attorneys on the fast track. Today's partners got to the top by working 1700-1900 hours per year.<sup>3</sup> Many attorneys seeking so-called part-time work would be happy to work 1700-1900 billable hours. In many large firms and other prestigious workplaces nine-to-five is considered part-time.<sup>4</sup>

One reason for the dramatic increase in hours is the growth of large law firms in the past decade.<sup>5</sup> Law firms have become big businesses. These firms also develop new and complicated management problems for which managing partners have little or no training or experience.<sup>6</sup> At many large firms, management has determined that attorneys who bill more make the firm more profitable. They do not often consider the toll of long hours on their "human resources." An attorney's billable hours

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1. Kingson, *Women in the Law Say Path Is Limited by "Mommy Track,"* N.Y. Times, Aug. 8, 1988, at A1, col. 5. "[T]he average number of annual hours billed by lawyers—not a total reflection of the time they actually devote to their profession—has risen substantially. From about 1,700 several years ago to 2,300 to 2,500 today." *Id.* at A15, col. 3.

2. This statement was made by the wife of an attorney at a large Chicago law firm who billed 2500 hours last year and is competing for equity partnership for which he will be eligible in two years. He and his wife have two children, ages two and five. (Information based on counseling sessions with LAWS clients. The clients' identities are confidential.)

3. Kingson, *supra* note 1, at A15, col. 3; Bendix, *Mothers in Law Deserve More Accommodation from Firms*, MANHATTAN LAW., Dec. 13-19, 1988, at 14, col. 2. See also Rehnquist, *The State of the Legal Profession*, LEGAL ECON., Mar. 1988, at 44.

4. Kingson, *supra* note 1, at A15, col. 3. "[The] legal profession has its own definition of part-time work. At some of the largest and most competitive firms, mainly in New York, Washington, Boston, Chicago and Los Angeles, part-time hours are 9 to 5, five days a week. Full-time work may mean being on call around the clock." *Id.* See also Dusky, *Mommy Tracks That Lead Somewhere Good*, WORKING WOMEN MAG., Nov. 1989, at 132.

5. Fisk, *When the Going Is Tough*, Nat'l L.J., Sept. 1990 (Career Issue), at 1, col. 1; Hildebrandt, *Slower Growth, Leaner Times Forecast for Firms*, Nat'l L.J., Feb. 22, 1988, at 22, col. 1.

6. Hildebrandt, *supra* note 5.

have therefore become an integral part of his or her worth to the firm.<sup>7</sup>

Fueling the spiraling increase in hours are the high starting salaries of new recruits. To maintain a competitive edge, large firms are vying for the best and brightest graduates from the top law schools. Generally, leading law firms must pay \$70,000-\$80,000 per year as a starting salary to compete for top law school graduates.<sup>8</sup>

High starting salaries for new recruits win competitive firms the highest ranking graduates, but these salaries also necessitate even higher salaries and billed hours in the classes above the new recruits. The work of a newly hired attorney cannot be billed to the client at the rate commanded by a more senior attorney. An attorney needs training for a number of years beyond law school to be able to bill at higher rates. Attorneys generally achieve competence from three to seven years into the practice of law.<sup>9</sup> Therefore, in order to recoup the cost of paying new recruits and maintaining profitability, the burden falls on the more senior associates and on the partners with greater billing potential. In addition, partners are unwilling to take a cut in pay or profits. The net result is that as billable hours for associates and partners rise, attorney discretionary time decreases. One attorney put it this way, "I was working until 2 A.M., then coming home and working until 4 A.M. I want to work, but I don't want to be a slave while the partners get rich. I'm tired of being exhausted all the time."<sup>10</sup>

Many attorneys are experiencing an imbalance between work and life outside of work. Some of these attorneys are actively seeking reduced-hours job options. Attorneys who seek these alternative options almost always have one characteristic in common: a compelling, time consuming, and deeply valued interest outside the practice of law. These compelling interests range from teaching, research, writing, and politics, to the pursuit of careers outside the law. But by far the largest group of attorneys seeking a long-term reduced hours option is that of lawyer-moms. Lawyer-moms are deeply affected by the workaholic atmosphere of the current legal workplace. Identifying lawyer-moms as a group in crisis serves a useful purpose because such labeling helps our profession

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7. *Id.*

8. Henning, *The Question of Money: Recruiting and Paying Lawyers*, III. Legal Times, Feb. 1990, at 1, col. 1.

9. D. Samuelson, Remarks at Forum '90, Los Angeles, Calif., Career Management in the 90s: The Right Kind of Competence (Dec. 13, 1989) (on file at the *New York Law School Law Review* office). See also Phelan, *Part-Timers Must Pay Their Way*, A.B.A. J., Jan. 1, 1989, at 37 (contending that firms do not receive their full return on the cost of training full-time associates until their third year of practice).

10. Statement by a third-year associate working in the litigation department of a large Chicago firm who wanted to find a nine-to-five job with a corporation to reduce her hours.

identify a specific social problem that needs to be addressed.

Over eighty percent of the attorneys I counsel are lawyer-moms. They call from around the country, trying to find ways to continue to work but also be responsible parents. One woman put it this way: "I never realized how crazy my work world was until I had kids. My hours make it impossible for me to see my children. That's crazy."<sup>11</sup> Another said, "After having a child I woke up to reality. I don't just want the status of motherhood. Motherhood can be a label, like home-owner or car-owner. For me raising a child isn't like owning a car or house, it means being there for my kids in their formative years."<sup>12</sup> Another said, "I love the practice of law, but not to the exclusion of raising my family."<sup>13</sup> These remarks are typical of the attorneys I counsel.

It should come as no surprise that many conscientious attorneys who are devoted to their clients and careers also feel responsible about motherhood and childrearing. Many lawyer-moms see themselves as having two compelling, time-consuming, full-time jobs: lawyering and childrearing. If a lawyer-mom wishes to participate more fully in raising children, rather than delegating that role, our society should support and encourage this decision. Why should an attorney be utterly excluded from the practice of law because she feels compelled to function as a mother on a part-time basis? It makes no sense to educate and train attorneys and then effectively disbar productive, highly motivated attorneys from the practice of law simply because they want to be responsible parents as well.

Most law firms, however, do not run on sympathy or on a commitment to better family life or healthier parent-child bonding. Economic realities seem to dictate the attitudes of management in the legal workplace. The critical question becomes: What are the economic factors affecting the workplace and how do they influence work-time options?

### III. ECONOMIC FACTORS

Two economic factors affecting the legal workplace today may create a positive environment for reduced hours. First, a large number of female attorneys of childbearing age are entering the law.<sup>14</sup> Second, firms pay a high cost to recruit and train attorneys who later leave their "firm of

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11. Statement by a sixth-year associate at a blue-chip firm who returned to work full-time after her first child, but sought reduced hours after having a second child.

12. Statement by a former Assistant United States Attorney who litigated criminal cases for six years and worked full-time until the birth of her first child.

13. Statement by an attorney who worked at a large Chicago firm until the birth of her second child. She now has four children, six-years-old and under.

14. Bendix, *supra* note 3, at 14.

origin" after achieving competence.<sup>15</sup> Another factor which may create a favorable environment for alternative work options is the possibility of a labor shortage as the less numerous post-baby boom generation reaches maturity.<sup>16</sup>

#### A. *Influx of Women Attorneys*

Women are entering the field of law in unprecedented numbers. In 1963, women comprised a little over two percent of all attorneys.<sup>17</sup> In 1970, three to four percent of practicing lawyers were women.<sup>18</sup> By 1980, twelve percent of practicing lawyers were women, while thirty-three percent of law students were women.<sup>19</sup> By 1989, twenty percent of practicing attorneys were women, and over forty percent of law students were women.<sup>20</sup> The number of women in the legal profession has quadrupled in the past two decades, and continues to rise.<sup>21</sup>

Typically, women professionals delay starting a family until they have launched their careers.<sup>22</sup> Female lawyers having their children in their thirties are generally five to ten years into the practice of law. As long as women continue to graduate in large numbers from law schools, the legal workplace will not be able to avoid hiring them, even if employers may be nervous about requests for nontraditional work-time options. Far-sighted law firms will see the handwriting on the wall and establish alternative work options as a recruiting tool to achieve an advantage in this highly competitive arena.

#### B. *High Cost of Attrition*

Law firms, especially large ones, invest a great deal of money in the recruitment and training of the best and the brightest young lawyers. It is estimated that a firm spends over \$100,000 to recruit and train each

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15. K. FEIDEN & L. MARKS, *NEGOTIATING TIME: NEW SCHEDULING OPTIONS IN THE LEGAL PROFESSION* 9 (1986).

16. Lawson, *With Job Sharing, Time for the Family*, N.Y. Times, June 1, 1989, at C1, col. 1.

17. C. EPSTEIN, *WOMEN IN LAW* 4 (1981).

18. *Id.*; ABA COMM'N ON WOMEN IN THE PROFESSION, *REPORT TO THE HOUSE OF DELEGATES* 5 (1988).

19. C. EPSTEIN, *supra* note 17, at 53.

20. Kaye, *"Mommy Track" in Practice*, Nat'l L.J., May 22, 1989, at 13, col. 1.

21. *Id.*

22. C. EPSTEIN, *supra* note 17, at 358-59; *First-Time Moms Older, More Learned*, Chic. Tribune, July 6, 1989, at A3, col. 5.

attorney.<sup>23</sup> Law firms that do not offer alternative work options invite attrition and may lose many highly trained attorneys at the point when they become most valuable to the firm as a result of their experience and relationship with clients. Attorneys who are denied reduced hours options are leaving for more flexible work environments, usually found in smaller law firms, solo practice, and nine-to-five jobs at corporations.<sup>24</sup> In effect, big law firms are becoming the training grounds for more flexible workplaces. Attorneys also appear to be expressing their needs for lifestyle options by experimenting with lateral movement.<sup>25</sup> Law firms can stem the tide of attrition by offering the reduced hours benefits that attorneys seek.

### C. *Post-Baby Boom Labor Shortage*

It is predicted that the post-baby boom era will result in a labor shortage in many fields.<sup>26</sup> If this predicted shortage affects the legal work environment, employers may be encouraged to find new ways to utilize available attorneys. If good attorneys are in short supply, they may have the bargaining power to obtain the desired reduced hours benefits and lifestyle options. If the predicted labor shortage occurs, far-sighted law firms and other legal employers may create reduced hours options and other unorthodox benefits packages to attract the quality attorneys who have left the law to raise families or pursue other interests.

Good business demands reduced hours option packages to recruit and retain the best and the brightest. As billable hours mount at the larger firms, more and more attorneys will be asking themselves whether it is worth the personal sacrifice to practice law in this environment. Progressive employers may lure some of the highly trained cream-of-the-crop from traditional firms by offering nontraditional work options as bait. Law firms may obtain attorneys with a desired specialty through lateral hiring by offering them alternative work options.

For these reasons, the potential for alternative work styles in the next decade warrants cautious optimism. It is possible that once large firms start opening the doors to these new ideas, a domino effect may occur in

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23. K. FEIDEN & L. MARKS, *supra* note 15, at 9.

24. There are currently no precise numbers illustrating the exodus of lawyer-moms from prestigious, pressure-cooker law firms into more flexible work environments (statement based on material from conversations with LAWS clients, and counseling sessions over the past six years involving hundreds of attorneys).

25. D. ARRON, *RUNNING FROM THE LAW 2-4* (1991). See also Cook, *Lawyers Lured by Other Careers, Lifestyles*, Nat'l L.J., Feb. 16, 1987, at 1, col. 1.

26. Bendix, *supra* note 3, at 14; Lawson, *supra* note 16, at C6, col. 2; Hickey, *The Part-Time Professionals*, Wash. Post, Oct. 11, 1988, at D5, col. 2.

small and medium-sized firms, with corporations and the public sector following suit. Even if many large firms do not offer alternative options, smaller workplaces will use lifestyle benefits to attract quality laterals.

#### IV. PRACTICAL SOLUTIONS

Whatever the future holds for alternative work options, the current work environment presents problems for attorneys seeking a reduction of hours. After six years of counseling these attorneys I can almost predict what will be said:

Hello. I'm glad I reached you. Excuse me while I shut my door.<sup>27</sup> I'm a lawyer in my mid-thirties. I work at a large firm. I've been here for (four to ten) years. I have a specialty. I enjoy being an attorney, but now that I have a baby I really don't want to work these hours anymore. I keep thinking, "Why did I have a child if I never get to see him/her?" Can you help me figure out how to convince my employer to let me work part-time, or help me find a part-time job?

I am always hoping to get a call from a law student which would sound like this: "Hello, I'm a law student, graduating in two years. I'd like to plan a career with you." That phone call has not yet come. People do not call until they are up to their necks in quicksand. The following are some practical suggestions that could help to avoid the quicksand altogether.

##### A. *Line Up Your Options Before Reduced Hours Are Needed*

###### 1. Locate a Good Workplace

The best way to work part-time is to pick a workplace that is open to alternative options. Become a knowledgeable consumer. Talk to alumni who work there or used to work there. Find out how requests for part-time work have been treated. Are there any associates or partners on a reduced hours schedule? Talk with those individuals. Find out whether they are satisfied with their arrangements. Find out how management feels about alternative options. Does the firm have a policy? Read it, but don't

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27. Part-time work is still very secretive. There are part-time associates and partners in many firms and workplaces who are secretly working reduced hours. The fact that closet part-time attorneys exist and are not forthright about their arrangements makes it harder for their colleagues to argue precedent. It creates needless repetition of arguments for other attorneys to obtain the same benefits.

assume the workplace supports part-time options simply because it has a policy. For example, one large Chicago firm with a written policy has consistently exhibited punitive treatment toward reduced hours attorneys.<sup>28</sup> At one point, part-time attorneys were required to "pay" the firm lost overhead hours—hours they were out of the office. Next, find out whether the policy is followed. A leading Chicago law firm presently has a policy that appears to limit part-time options to only six months.<sup>29</sup> The reality is far better than it appears on paper. Requests for ad hoc arrangements have been liberally granted. Even unusual requests have been allowed. For example, one woman worked from three A.M. to nine A.M. while her children were young so that she and her husband could spend time with each other and their newborn.

Try to find a workplace where reduced hours options are already in place and working well. Many of the frontiers-women who blazed the trail for future attorneys are legends now because they were unable to work out a good long-term part-time arrangement, and have long since left the firm or workplace. Remember, the first reduced hours arrangements are often learning experiences for everyone.

## 2. Work Full-Time for a Few Years Before Seeking Reduced Hours Options

Attorneys who work full-time at a firm or other workplace develop a higher billable potential and better reputation during those years of training. This is important because attorneys who move from large to smaller firms to work part-time will be receiving approximately one-third to one-half of their hourly billing rate as pay. The higher the billing potential, the better it is for the pocketbook later in an attorney's career. If the "workplace of origin" or starting job is a prestigious one, it contributes to an attorney's marketability later on. If an attorney must choose between a name firm with a "sweat shop" reputation, or a smaller firm with humane hours and a progressive attitude toward alternative options, it may be worth the trade in prestige and salary for career continuity and security. Changing jobs during pregnancy or after the birth of a child can be trying and difficult.

## 3. Pick a Specialty Carefully

Most large firms are organized into departments. Departments within the firms have varying degrees of influence and may be managed with varying degrees of autonomy. At firms where reduced hours options are

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28. Information based on client counseling sessions.

29. Information based on client counseling sessions.

ad hoc arrangements—which, at the present time, includes most firms, even some firms that have a policy—obtaining reduced hours will depend on the attitude of the partners or choosing a department that has a good track record for reduced hours options. Remember, the front ranks end up as cannon fodder. That is, the first people to work reduced hours at a workplace often end up leaving. A department that permits reduced hours may often have less crisis-oriented work, which is generally better for attorneys trying to manage reduced hours schedules.

A problem can arise, however, if a particular department is small and has already granted reduced hours schedules to a number of attorneys. One option is to permit job sharing—allowing two attorneys to share one full-time job. Job sharing, however, is an even newer concept than reduced hours and, consequently, is not yet easy to obtain.<sup>30</sup> If possible, choose a department where the partners are willing to try new options.

#### 4. Develop a Track Record for Excellence and Professionalism

Wherever you go and whatever you do, your reputation will follow. Always perform at the highest professional level. Some day you may be seeking references, advice, or a job referral from supervisors, judges, and even opposing counsel. Try never to allow a dogfight in the courtroom to spill over into personal dealings with others. This advice applies to anyone seeking a new legal position, but is more important for part-time attorneys, simply because part-time jobs are harder to secure.

#### 5. Develop True Mentors

A true mentor can be a most valuable asset in the workplace. A prominently placed attorney in the superstructure of your firm who sincerely supports your work and wants you to stay at the firm may be all you need to obtain reduced hours. Sometimes, however, it may be difficult to know whether your mentor is a true supporter. One attorney I counseled who worked at a corporation believed her mentor was arguing her case to management, but learned through the grapevine that he was actually lukewarm about a reduced hours arrangement. He never told her about his doubts, and acted as if he were pleased about the prospect of having her work reduced hours. To effectively argue her case to management she needed to develop a proposal which she submitted and personally presented at a crucial management meeting.

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30. Lawson, *supra* note 16, at C13, col. 1.

## 6. Develop a Marketable Specialty

Most specialties in the law can be practiced on a reduced hours basis depending on the flexibility of the workplace and of the reduced hours attorney. In the present job market, however, some specialties make this easier to accomplish. If you have a specialty that is in demand, or that brings in steady business and permits a regular schedule, your own firm and other firms will be more interested in accommodating your needs for alternative work time options. The "hot" specialties change from year to year, and from city to city. Some of the better specialties for reduced hours these days include tax, trusts, wills, real estate, appellate work, domestic relations, ERISA employee benefits, intellectual property, labor, environmental law, and civil litigation. Litigators are in demand and, contrary to general belief, can usually manage reduced schedules, unless they are preparing for a trial or are on trial. Motion practice is fairly easy to schedule. Most judges have a morning and/or early afternoon call. Litigation can actually be quite conducive to part-time work if the litigator is prepared to hire supplemental child care assistance for periods of more than full-time work. In Chicago, twenty-five of the 105 attorneys (associates and partners) working part-time at twenty of the largest Chicago firms are litigators.<sup>31</sup>

Evaluate any special training you may have to help determine an appropriate practice area. For example, a registered nurse-attorney might find a good situation with a small "boutique" or specialty firm engaging in medical malpractice. A social worker-attorney would be a valuable asset to a firm with a domestic relations practice.

## 7. Become Valuable to Your Firm

One way to enhance your bargaining position at a firm is to specialize in a complicated, technical, high demand area. Learn an area of the law that no one else knows. If you are difficult to replace, you will have more leverage when you negotiate a reduced hours situation. Your firm might be willing to consider an "of counsel" relationship. If you develop a marketable specialty in high demand, it may be easier to obtain a position with a small specialty firm or medium-sized firm. A caveat: it can be tricky to develop a specialty that is narrow enough to increase your value to the large firm, but broad enough to allow lateral movement to a small or medium-sized firm. Try to choose your specialty carefully, after learning about the available options within your current workplace.

Another method for becoming valuable to your firm is to retain a big

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31. Information obtained from a Nielsen Consulting survey of associates and partners reporting on colleagues working reduced hours at large law firms in Chicago in 1990.

client or several good clients for your firm. If you are able to bring in business, that will help to convince your firm to allow a reduced hours schedule as a reasonable trade-off. Your firm will not want to lose you if it means losing clients or potential clients.

#### 8. Prepare Your Workplace Before You Need the Reduced Hours Option

Obtaining part-time hours will be easier if a policy for reduced hours already exists. Cutting an ad hoc deal at the time of pregnancy is playing with fire. Success or failure may depend upon whether the managing partner thinks women should be home with the children, whether he or she likes you, whether your specialty is valuable enough to the workplace, whether your mentor is powerful enough, and a myriad of other factors outside your control that can bring your career to a grinding halt. Policies allow people to plan their futures. Without a policy, every attorney seeking reduced hours options has to re-invent the wheel. Furthermore, secretive ad hoc arrangements make it hard for attorneys to argue precedent.

The most effective way to develop a policy at your workplace is to organize a committee of concerned attorneys at all levels, including male and female associates and partners, and to research the problem of recruitment and retention of attorneys. This group can develop a proposal for lifestyle benefits that will enhance recruitment and retention of attorneys, and help to maintain the firm as a progressive leader. Part of this benefits package should include a reduced hours option policy.

In enlisting members for such a committee, do not overlook the elder statesman. Some older male attorneys are learning about the value of reduced hours options from their daughters, as their daughters try to balance career and family. Some of them might be considering reduced hours as they near retirement. Do not let preconceived notions about co-workers and partners stop you from exploring their interest in this issue. I learned this lesson first-hand when I worked at the United States Attorney's Office. I was trying to convince my supervisors to support the concept of reduced hours by discussing it with them, but I thought one supervisor would be particularly opposed because he worked very long hours and it was known that he even worked on the train while commuting to and from the office. Surprisingly, this supervisor turned out to be very interested in part-time work. My supervisor was Scott Turow and he was working on his book, *Presumed Innocent*.<sup>32</sup> He is now a part-time partner at a large firm in Chicago.

Even if your supervisor is not Scott Turow, it still makes sense to

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32. S. TUROW, *PRESUMED INNOCENT* (1987).

explore the attitude of any potential kingpin in the decision-making process. You may uncover an unexpected ally. Many men and women secretly harbor an interest in a richer family or personal life, but are afraid to say so in the current workaholic environment.

An organized committee can be valuable in many ways. Rather than forcing individuals to stand out and appear as lone advocates for a special dispensation, a committee allows a group to raise this touchy issue. A committee may force the firm to squarely confront attorneys' needs for flexible work options when an organized coalition requests a part-time policy.

A research committee should develop a proposal for a reduced hours option policy. It is often a good idea for associates, rather than management, to develop the policy because the policy should reflect the concerns and needs of the individuals most likely to use it. One of the best strategies for passage of such a policy is to identify the kingpin decision makers at your workplace and meet with them. At these meetings, you will want to discuss their ideas about reduced hours work and listen to their objections. All the objections raised in these meetings need to be addressed in the proposal.

It is also useful to survey the leading firms in your area. Locate as many attorneys as you can who are working part-time. Find comparable firms with ad hoc arrangements and policies. Learn the details of these policies and work arrangements. Document your information with names and phone numbers. Data on other firms can be persuasive to your own firm.

## B. *How to Negotiate a Reduced Hours Position*

### 1. Two Pitfalls of Part-Time Work

Whether an ad hoc part-time arrangement is made with a current employer or a workplace that permits part-time hours, two major stumbling blocks exist. First, part-time work never stays part-time. Second, "mommy tracking" creates delayed attrition.

#### a. Keeping Part-Time Work Part-Time

Attorneys who have tried to work part-time generally report that the workload gradually increases until the arrangement is no longer part-time, but close to full-time. After a few months of part-time work, attorneys often complain that they are willing to be treated like second-class citizens, to be given less challenging work, fewer bonuses and pay, and are willing to forego all hope of advancement in exchange for reduced hours, but since the hours are no longer reduced, they feel cheated. Attorneys sometimes try to return to full-time work or leave their jobs

after experiencing this creeping expansion of their hours.

Some workplaces may not be geared for part-time work. Sometimes, however, the initial arrangement is the root of the problem. One of the best techniques for keeping part-time work part-time is to pay the reduced hours attorney an hourly fee for office hours worked, rather than a prorated salary.<sup>33</sup> The prorated salary—paying an attorney a percentage of her salary for a percentage of anticipated billable hours—creates an incentive for the firm to pass along more work to the part-time attorney. It is in the firm's interest to test the part-timer's willingness to take on more work. The part-time attorney takes on more to prove she is still a team player and because she enjoys challenging work. Consequently, the stage is set for the demise of the part-time arrangement. If the reduced hours attorney can say no to additional projects, and is paid for all additional work on an hourly basis, she will not develop the same degree of resentment when her hours do not stay as reduced as she expected. Nor will the workplace be as eager to overload the attorney.

The part-time attorney should anticipate hours-inflation and commit to working fewer hours. An attorney willing to work thirty-five hours a week should commit to working only thirty hours a week. Generally, the attorney in such a situation will actually work thirty-five hours a week.

If the firm persists in requiring that the part-time attorney be paid a prorated salary, a "spill-over" clause in the employment contract is strongly suggested. A spill-over clause would kick in at an agreed-upon point where the attorney has worked extra hours beyond the average expected weekly hours. The extra hours should be paid for on an hourly basis.

#### b. Mommy Tracking

"Mommy tracking" is a controversial idea taken up by the popular press after Felice Schwartz published an article, *Management Women and the New Facts of Life*.<sup>33</sup> The article suggested separating fast-track from career and family-oriented women so that businesses could avoid the expense of training women who would drop out or reduce their hours to raise families.<sup>34</sup> The article is unclear, however, about how businesses could predict the fast or slow-track women before the birth of their children.

"Mommy tracking" has come to mean that lawyer-moms who request reduced hours are treated as second-class citizens.<sup>35</sup> The term "mommy

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33. Schwartz, *Executives and Organizations: Management Women and the New Facts of Life*, 67 HARV. BUS. REV., Jan.-Feb. 1989, at 65.

34. *Id.* at 68-71.

35. For recent commentaries on mommy tracking, see generally Bendix, *supra* note

tracking" refers to the practice of reducing not just the hours of a part-time lawyer, but foreclosing prospects for professional advancement, permitting the attorney to work only on less challenging matters, and denying the part-time attorney the bonuses and perks available to full-time attorneys.<sup>36</sup> Some workplaces are essentially creating ghettos of second-class attorneys who are assigned the more tedious and pro forma tasks of lawyering. For example, reduced hours state attorneys and United States attorneys are sometimes permitted to handle only appeals, but not litigation, even if they are good litigators. At some firms, the reduced hours lawyers are allowed to engage in residential real estate matters, but no commercial real estate, even if commercial real estate has been their specialty.<sup>37</sup>

Whenever a workplace allows part-time work, but administers punitive or restrictive measures, it usually results in delayed attrition. The following pattern is typical. At first, attorneys who seek reduced hours are eager to work, even in a punitive or restrictive setting. These attorneys are often so thankful to get any reduction of hours that they are willing to put up with second-class citizenship, at least in the beginning. Over time, however, the arrangement becomes problematic. After all, many of these attorneys seeking reduced hours are highly competitive people. Suddenly, their peers are passing them. Reduced hours lawyers generally work hard and efficiently; they are highly motivated to do so. But their hard work goes unrewarded. No matter how hard they strive, their efforts do not advance them or bring them monetary rewards, nor are they very excited by their less challenging work.

The part-time attorney in a "mommy track" position generally leaves her job. She will try to work for a year or year and a half before leaving. When she leaves her job she has lost her good will toward her employer. What is equally unfortunate is that the employer may unfairly conclude that part-time does not work. To avoid attrition, the workplace needs to allow progression toward partnership or other favored status, but at a slower pace. Furthermore, firms may need to consider remodeling their pyramid structure and replacing this wasteful "up-or-out" system with a more equitable and cost effective model.

Reduced hours positions in the law can work. There have always been attorneys who worked less than a full schedule. There has been a tradition in the law of allowing elderly attorneys to ease out gracefully and work a reduced schedule. Politicians and public figures have often worked reduced hours at law firms. Pro bono advocacy has often been permitted

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3; Dusky, *supra* note 4; Kaye, *supra* note 20; Kingson, *supra* note 1.

36. On the effects of part-time lawyering, see generally Bendix, *supra* note 3; Kingson, *supra* note 1.

37. Information based on client counseling sessions.

in the past, but never have so many attorneys wanted reduced hours to pursue the compelling interest of childbearing. This is a new need of greater proportion than anticipated and the legal workplace needs to understand and cope with this new need. Fortunately, there are new ways to work that will allow alternative work styles. Attorneys can learn to use beepers and advanced telecommunications systems to maintain availability to clients. Home fax machines and computers can enhance our connections to the workplace.

Far-sighted firms and other legal workplaces have begun to provide reduced hours options in a supportive, flexible way. These workplaces realize that a punitive approach will simply delay the moment of departure, but not prevent attrition. To be a strong, competitive firm, the workplace must be responsive and supportive of attorneys' lifestyle needs. Ignoring the need for reduced hours options will not make this issue disappear.

## V. CONCLUSION

Many of the points made in this Article are geared toward the outstanding law school graduate who went to work for a blue-chip firm and became trapped by its workaholic lifestyle. In part, the reason for that focus is because the grind at the top is often the most grueling. In the current legal workplace, it is difficult to find reduced hours positions. Unless an attorney is a superstar or has a valuable specialty, he or she may have to work full-time or may be unable to work at all.

When an average attorney is able to work reasonable "full-time" hours without stigma, our profession will be truly hospitable to lawyer-moms and other attorneys with compelling outside interests. I look forward to a time when attorneys will be able to slow or increase their work pace without jeopardizing their careers. I look forward to a time when the field recognizes that accommodations for personal lifestyle choices enhance the profession and are a necessary aspect of a fulfilling and progressive work environment.

