

**AMERICAN BAR ASSOCIATION**  
**COMMISSION ON WOMEN IN THE PROFESSION**  
**REPORT TO THE HOUSE OF DELEGATES**  
**RESOLUTION**

1 RESOLVED, That the American Bar Association urges all employers in the legal  
2 profession to implement and maintain policies and practices to address and close the  
3 compensation gap between similarly situated men and women lawyers. Such policies  
4 and practices for achieving that goal may, depending on the circumstances, include the  
5 following:

- 6  
7 1. Commit to a policy where leadership and governance committees are comprised of  
8 a critical mass of women including diverse women;
- 9  
10 2. Commit to include a critical mass of women including diverse women in the pool of  
11 candidates for leadership roles;
- 12  
13 3. Not rely solely on prior salary history when setting compensation for new hires;
- 14  
15 4. Implement training for the elimination of gender bias for all involved in hiring and  
16 compensation setting processes;
- 17  
18 5. Ensure that in the performance review process implicit bias does not go unchecked  
19 and does not lead to an unwarranted compensation gap;
- 20  
21 6. Have a transparent compensation system to allow leaders and executives to  
22 identify compensation gaps with attorneys who are similarly situated to them;
- 23  
24 7. Identify, in writing, key elements that determine compensation and which may help  
25 the attorneys succeed and increase their compensation;
- 26  
27 8. Provide an appeal process for compensation decisions;
- 28  
29 9. Analyze on an individual basis the causes for any compensation gap between  
30 similarly situated attorneys of different genders, whether in base, bonus, or other  
31 compensation;
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- 33 10. Have a written protocol for allocation of credit for business generation, including an  
34 appeal process;
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- 36 11. Remove barriers to business generation, including gendered exclusion from  
37 business generation teams, inordinate legacy credit for existing clients and  
38 implement a transparent system for business origination opportunities;
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- 40 12. Provide equal access to mentoring and sponsoring relationships and marketing  
41 opportunities across genders, and implement a transparent system for succession  
42 of leadership opportunities;
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- 44 13. Analyze gaps in promotion rates between similarly qualified attorneys of different  
45 genders and addressing the cause of such gaps;
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- 47 14. Review the assignment system to ensure that attorneys of different genders have  
48 equal access to high-impact and high-visibility assignments that may lead to higher  
49 compensation; and
- 50
- 51 15. Consider the impact of non-legal task assignments on attorneys of different  
52 genders and their compensation.

## REPORT

### **I. Introduction and Overview**

This resolution urges all employers in the legal profession to implement and maintain policies and practices to close the compensation gap between similarly situated men and women lawyers. This Resolution also identifies policies and practices that legal employers may implement to work toward eliminating the gender pay gap in their organizations.

The ABA is committed to the elimination of bias and the enhancement of diversity in the legal profession. This commitment is not only recognized in prior resolutions passed by the House of Delegates, but also by the adoption of Goal III, which promotes full and equal participation in the association, the legal profession, and the judicial system. As one of the Goal III entities, The Commission on Women in the Profession focuses on developing and supporting initiatives and research to secure full and equal participation of women in all areas of the legal profession.

### **II. The ABA Has Been A Pioneer In Addressing Issues of Gender Equity and Equal Pay for Women**

The ABA has a long history of promoting gender equality in the legal profession and more specifically, equal pay between men and women lawyers. For nearly 50 years the ABA has passed resolutions and maintained active policy addressing discrimination in the legal profession. In 1972, the association passed resolution 72M23A, strongly condemning all forms of discriminatory hiring practices within the legal profession, including on the basis of sex.<sup>1</sup> Later, in 1988, resolution 88A23A was passed to address the persistence of overt and subtle barriers that deny women the opportunity to achieve full integration and equal participation in the work, responsibilities, and rewards of the legal profession. This resolution also affirmed the fundamental principle that there is no place in the profession for these barriers and calls upon members to eliminate these barriers.<sup>2</sup> In 1995, the ABA passed resolution 95M119 opposing bias and discrimination based on race and gender that prevented women from gaining full and equal participation in the legal profession and actively supporting efforts to eradicate this bias.<sup>3</sup>

In addition to policy addressing the legal profession the ABA has more broadly called for gender equality in the workplace. In 2007, ABA passed resolution 07A302 urging Congress to amend Title VII of the Civil Rights Act of 1964<sup>4</sup> and other federal age and disability employment discrimination laws to ensure that the statute of limitations regarding claims involving compensation run from each payment that reflects the claimed

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<sup>1</sup> ABA House of Delegates Resolution 72M23A (adopted Feb. 1972).

<sup>2</sup> ABA House of Delegates Resolution 88A121 (adopted Aug. 1988).

<sup>3</sup> ABA House of Delegates Resolution 95M119 (adopted Feb. 1995).

<sup>4</sup> 42 U.S.C. §2000e-5(e).

unlawful disparity.<sup>5</sup> In 2010, the ABA passed resolution 10M107 urging Congress to enact legislation to provide more effective remedies, procedures, and protections for those subjected to pay discrimination.<sup>6</sup> More recently, in 2016, the ABA passed resolution 16M10B supporting constitutional equality for women and urging the extension of legal rights, privileges, and responsibilities to all. This resolution also reaffirmed support of and affirmatively acts toward the goal of the ratification of the Equal Rights Amendment to the U.S. Constitution.<sup>7</sup>

In addition to the resolutions passed by the House of Delegates, in August 2012, under the leadership of then-President Laurel Bellows, the ABA created a Blue-Ribbon Task Force on Gender Equity which addressed, in part, pay disparity between men and women lawyers. The Gender Equity Task Force created three reports and a toolkit. Those publications are: (1) *Closing the Gap: A Roadmap for Achieving Gender Pay Equity in Law Firm Partner Compensation*;<sup>8</sup> (2) *Power of the Purse: How General Counsel Can Impact Pay Equity for Women Lawyers*;<sup>9</sup> (3) *Toolkit for Gender Equity in Partner Compensation*;<sup>10</sup> and (4) *What You Need to Know about Negotiating Compensation*.<sup>11</sup> The recommendations in each report created by the Gender Equity Task Force are still relevant today.

More recently, Hilarie Bass initiated a study in her Presidential term titled *Achieving Long Term Careers for Women in Law*.<sup>12</sup> This project is continuing in Bob Carlson's current term as President of the ABA. The report for this research has not yet been published. However, several recommendations for practice changes set out in this Resolution are derived from these ABA Presidential projects. Others, as set out below, are derived from research conducted by the ABA Commission on Women in the Profession.

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<sup>5</sup> ABA House of Delegates Resolution 07A302 (adopted Aug. 2007).

<sup>6</sup> ABA House of Delegates Resolution 10M107 (adopted Feb. 2010).

<sup>7</sup> ABA House of Delegates Resolution 16M10B (adopted Feb. 2016).

<sup>8</sup> Lauren Stiller Rikleen, *Closing the Gap: A Road Map for Achieving Gender Pay Equity in Law Firm Partner Compensation*, ABA PRESIDENTIAL TASK FORCE ON GENDER EQUITY AND THE COMMISSION ON WOMEN IN THE PROFESSION (2013),

[https://www.americanbar.org/content/dam/aba/administrative/women/closing\\_the\\_gap.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/women/closing_the_gap.authcheckdam.pdf).

<sup>9</sup> Lauren Stiller Rikleen, *Power of the Purse: How General Counsel Can Impact Pay Equity for Women Lawyers*, ABA PRESIDENTIAL TASK FORCE ON GENDER EQUITY AND THE COMMISSION ON WOMEN IN THE PROFESSION (2013),

[https://www.americanbar.org/content/dam/aba/administrative/women/power\\_of\\_purse.pdf](https://www.americanbar.org/content/dam/aba/administrative/women/power_of_purse.pdf).

<sup>10</sup> *ABA Toolkit for Gender Equity in Partner Compensation*, ABA WOMEN IN THE PROFESSION (June 15, 2018),

[https://www.americanbar.org/groups/diversity/women/resources/toolkit\\_for\\_lawyer\\_compensation\\_achieving\\_gender\\_equity/](https://www.americanbar.org/groups/diversity/women/resources/toolkit_for_lawyer_compensation_achieving_gender_equity/).

<sup>11</sup> Carol Frohlinger, et al., *What You Need to Know About Negotiating Compensation*, ABA PRESIDENTIAL TASK FORCE ON GENDER EQUITY AND THE COMMISSION ON WOMEN IN THE PROFESSION (2013),

[https://www.americanbar.org/content/dam/aba/administrative/women/negotiations\\_guide\\_task\\_force.pdf](https://www.americanbar.org/content/dam/aba/administrative/women/negotiations_guide_task_force.pdf).

<sup>12</sup> *Achieving Long Term Careers for Women in the Law*, ABA PRESIDENTIAL INITIATIVE,

[https://www.americanbar.org/content/dam/aba/administrative/office\\_president/Initiative\\_Overview.pdf](https://www.americanbar.org/content/dam/aba/administrative/office_president/Initiative_Overview.pdf) (last visited Apr. 11, 2019) (detailing the initiative which includes research projects to find “best practices to stem the steady loss over time of experienced women lawyers in private practice”);

### III. The Statistics Show That the Gender Pay Gap Is Still Wide

The 2012 *Closing the Gap* report, which was published by the ABA because of the work of the Task Force on Gender Equity, highlighted the extent of the gender pay gap regarding the compensation paid to men and women in law firms.<sup>13</sup> The *Closing the Gap* report cites to significant research on the wage gap issue. Sadly, the issues raised in the *Closing the Gap* study have not been resolved. The most recent studies on the gender wage gap show:

- In 2018, the average male partner total compensation in an AM Law 200 firm was 53% more than the average female partner;<sup>14</sup>
- In 2016, the average male partner total compensation in an AM Law 200 firm was 44% more than the average female partner;<sup>15</sup>
- In 2019, male General Counsels were paid 39% more than their female counterparts, with only one woman among the 10 top-paid General Counsel positions.<sup>16</sup>

According to the Association of Corporate Counsel, female in-house counsel (non-GC) also earned less than their male counterparts at all junctures of their career. Female in-house counsel, barred between 2015-2018, earn 91% of what their male colleagues earn.<sup>17</sup> This disparity increases for in-house women barred before 2000, who earn only 74% of what their male counterparts earn.<sup>18</sup> Looking at the entire legal profession including all levels of practice, the 2018 Bureau of Labor Statistics shows full-time women lawyers earn 77.8% of what full-time male lawyers earn.<sup>19</sup> If current trends in pay persist, women would achieve parity to men in 2059; however, it would take substantially longer for women of color.<sup>20</sup> For African American women, pay equity would not be achieved

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<sup>13</sup> See generally *Closing the Gap*, *supra* note 1.

<sup>14</sup> Jeffrey Lowe, *2018 Partner Compensation Survey*, MAJOR, LINDSEY & AFRICA (Dec. 6, 2018), <https://www.mlaglobal.com/en/knowledge-library/research/2018-partner-compensation-report>.

<sup>15</sup> *Id.*

<sup>16</sup> *The 2019 General Counsel Landscape*, LAWGEEX AND THE ASSOCIATION OF CORPORATE COUNSEL 6, 16 (2019), <http://ai.lawgeex.com/rs/345-WGV-842/images/The%202019%20General%20Counsel%20Landscape%20-%20LawGeex.pdf>.

<sup>17</sup> *ACC 2018 Global Compensation Report*, ASSOCIATION OF CORPORATE COUNSEL 12 (2018), [https://www2.acc.com/comp-dashboard-landing/documents/ACC\\_Compensation\\_070518\\_Executive\\_Summary\\_FINAL.pdf](https://www2.acc.com/comp-dashboard-landing/documents/ACC_Compensation_070518_Executive_Summary_FINAL.pdf).

<sup>18</sup> *Id.*

<sup>19</sup> See *Labor Force Statistics From the Current Population Survey*, BUREAU OF LABOR STATISTICS (2018), <https://www.bls.gov/cps/cpsaat39.htm>. Male lawyers earned a median weekly earning of \$2,202 while female lawyers earned a median weekly earning of \$1,762. *Id.* In 2016, the difference was 77.6%. *A Current Glance at Women in the Law*, ABA COMMISSION ON WOMEN IN THE PROFESSION 6 (Jan. 2018), <https://www.americanbar.org/content/dam/aba/administrative/women/a-current-glance-at-women-in-the-law-jan-2018.authcheckdam.pdf>.

<sup>20</sup> *The Gender Wage Gap: Earnings Differences by Race and Ethnicity*, INSTITUTE FOR WOMEN'S POLICY RESEARCH 2 (Mar. 2019), [https://iwpr.org/wp-content/uploads/2019/03/C478\\_Gender-Wage-Gap-in-2018.pdf](https://iwpr.org/wp-content/uploads/2019/03/C478_Gender-Wage-Gap-in-2018.pdf).

until 2119, while Latinas would have to wait until 2224, over a hundred years, to secure parity.<sup>21</sup>

The Commission on Women in the Profession's seminal reports, *Visible Invisibility: Women of Color in Fortune 500 Legal Departments*<sup>22</sup> and *Visible Invisibility: Women of Color in Law Firms*,<sup>23</sup> discuss the factors contributing to gaps in compensation for women of color in corporate legal departments and law firms. The Commission's research showed that women of color were the least likely to be hired for top legal management positions and most likely to be hired at salary scales that were lower to both their white male and female counterparts.<sup>24</sup> As both reports note, disparities in hiring and compensation have a ripple effect for future salary compensation and retention. For example, "what starts as a \$2,000 salary gap for a woman entering a law firm, becomes a \$66,000 annual gap upon promotion to equity partner."<sup>25</sup>

In both law firm and corporate legal department settings, women of color face barriers not only in securing pay equity but also in salary negotiations. Both of the *Visible Invisibility* reports found that women of color are disproportionately the sole breadwinners in their households;<sup>26</sup> they also worry that if they ask for too much, they will miss out on opportunities or will be viewed as aggressive.<sup>27</sup> For women of color from ethnic groups, cultural socialization also affects how they navigate their advancement in the legal profession. For example, in a study by the Hispanic National Bar Association's Commission on Latinas in the Profession, the report found Latinas are taught to be humble and not to "act bigger" which at times impacts their ability to push for advancement or higher salaries.<sup>28</sup>

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<sup>21</sup> *Id.*

<sup>22</sup> *Visible Invisibility: Women of Color in Fortune 500 Legal Departments*, ABA COMMISSION ON WOMEN IN THE PROFESSION (2013), [https://www.americanbar.org/content/dam/aba/marketing/women/visibleinvisibility\\_500.pdf](https://www.americanbar.org/content/dam/aba/marketing/women/visibleinvisibility_500.pdf).

<sup>23</sup> Janet E. Gans Epner, *Visible Invisibility: Women of Color in Law Firms*, ABA Commission on Women in the Profession (2006), <https://www.americanbar.org/content/dam/aba/marketing/women/visibleinvisibility.pdf>.

<sup>24</sup> *Women of Color in Fortune 500 Legal Departments*, *supra* note 15, at xv.

<sup>25</sup> *Id.* at xviii (quoting Roberta D. Liebenberg, *Foreword* to Joan C. Williams & Veta T. Richardson, *New Millenium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women*, THE PROJECT FOR ATTORNEY RETENTION AND MINORITY CORPORATE COUNSEL ASSOCIATION (July 2010), <https://worklifelaw.org/publications/SameGlassCeiling.pdf>).

<sup>26</sup> *Women of Color in Fortune 500 Legal Departments*, *supra* note 15 at xviii; *Women of Color in Law Firms*, *supra* note 16, at 27.

<sup>27</sup> *Women of Color in Fortune 500 Legal Departments*, *supra* note 15 at xviii.

<sup>28</sup> Jill L. Cruz & Melinda S. Molina, *Few and Far Between: The Reality of Latina Lawyers*, HISPANIC NATIONAL BAR ASSOCIATION COMMISSION ON LATINAS IN THE PROFESSION 34 (Sept. 2009), <http://hnba.com/wp-content/uploads/2015/06/few-far-between.pdf>.

#### IV. Why The ABA Should Adopt This Resolution

The American Bar Association has been one of the organizations at the forefront of making recommendations to eliminate the gender pay gap. As this Resolution illustrates in the 16 suggested policies and procedures that legal employers may look to to close the gap, the gap is not created by compensation systems alone. There are many pieces to the puzzle that impact the gender wage gap. These include the failure to promote women to leadership roles, gender bias (combined with racial bias for women of color), lack of transparency in compensation and hiring systems, and allocation of work assignments. In law firms the systems for establishing origination credit can have a negative impact on women lawyers' salaries.<sup>29</sup> In corporate legal departments the failure to promote women creates a disparate impact on wages.

In 2018 the Association of Corporate Counsel reported that although there was growing parity in hiring within legal departments of Fortune 500 companies (57% male and 43% female), with promotions the gap was startling with men making up 79% of promotions and women only 21%.<sup>30</sup> For law firms, external hires are over three times more likely to be men than women.<sup>31</sup>

The ABA has addressed many of these issues in various studies, toolkits and programs. The ABA is already providing research and information to assist legal employers in enacting some of the recommended policies and procedures outlined in this Resolution.<sup>32</sup> Although the ABA already has an active voice in seeking to eliminate the gender wage gap, the adoption of this Resolution will amplify that voice.

This Resolution provides legal employers with a list of suggested actions that can be taken to eliminate practices that may contribute to the pay gap. The *Closing the Gap*

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<sup>29</sup> See *Closing the Gap*, *supra* note 1 at 15 (“Research shows that women are often excluded from the internal networks where male colleagues assist one another’s efforts and, in many cases, are bullied or otherwise intimidated by more senior male colleagues who aggressively pursue credit allocation.”).

<sup>30</sup> *The 2019 General Counsel Landscape*, *supra* note 8 at 15.

<sup>31</sup> Marc Brodherson et al., *Women in Law Firms*, MCKINSEY & COMPANY 4 (Oct. 2017), <https://www.mckinsey.com/~media/mckinsey/featured%20insights/gender%20equality/women%20in%20law%20firms/women-in-law-firms-final-103017.ashx>.

<sup>32</sup> See, e.g., ZERO TOLERANCE: BEST PRACTICES FOR COMBATING SEX-BASED HARASSMENT IN THE LEGAL PROFESSION (Wendi S. Lazar et al. eds., 2018) (providing tools for legal organizations and victims of harassment and bullying); *Achieving Long Term Careers for Women in the Law*, ABA PRESIDENTIAL INITIATIVE, [https://www.americanbar.org/content/dam/aba/administrative/office\\_president/Initiative\\_Overview.pdf](https://www.americanbar.org/content/dam/aba/administrative/office_president/Initiative_Overview.pdf) (last visited Apr. 11, 2019) (detailing the initiative which includes research projects to find “best practices to stem the steady loss over time of experienced women lawyers in private practice”); Joan C. Williams, et al., *You Can’t Change What You Can’t See: Interrupting Racial & Gender Bias in the Legal Profession*, ABA COMMISSION ON WOMEN IN THE PROFESSION AND MINORITY CORPORATE COUNSEL ASSOCIATION (2018), <https://www.americanbar.org/content/dam/aba/administrative/women/Updated%20Bias%20Interrupters.pdf> (finding that traditional diversity tools are not effective and providing new research and toolkits for law firms and in-house departments); Women of Color Research Initiative, ABA COMMISSION ON WOMEN IN THE PROFESSION, [https://www.americanbar.org/groups/diversity/women/initiatives\\_awards/women\\_of\\_color\\_research\\_initiative/](https://www.americanbar.org/groups/diversity/women/initiatives_awards/women_of_color_research_initiative/) (last visited Apr. 11, 2019) (exploring the bias and other obstacles women of color face in the legal profession due to the intersection of their gender and their race).

report found that “as long as the data demonstrates such a pay differential, there is a compelling need to look behind the numbers to understand the factors that help explain the disparity.”<sup>33</sup> That is what this Resolution proposes. Each of the 15 practices outlined in this Resolution are provided as guidance to legal employers to assist them in looking behind and getting beyond the numbers in evaluating pay disparity in their organizations. These 15 recommendations are based on the ABA publications cited in this Report. This research has gone behind the numbers and created recommendations to help legal employers identify how wage disparity is created and how it can be changed. This Resolution will amplify those messages and urge legal employers to make changes.

## V. Conclusion

In the research publications referenced in this report there is one common denominator: diversity and inclusion must be part of the fabric of the legal organization for the gender pay divide to close. The voice of the American Bar Association is an important part of the effort to eliminate the gender wage gap. By adopting this Resolution, which includes concrete recommendations backed by solid research, the ABA will be providing a great resource to legal employers who want to eradicate the gender wage gap in their organizations and continue to promote one of its goals in eliminating bias in the legal profession.

Respectfully submitted,

Stephanie A. Scharf  
Chair, ABA Commission on Women in  
the Profession  
August 2019

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<sup>33</sup> *Closing the Gap*, *supra* note 1 at 13.

GENERAL INFORMATION FORM

Submitting Entity: ABA Commission on Women in the Profession

Submitted By: Stephanie A. Scharf, Chair, ABA Commission on Women in the Profession

1. Summary of Resolution(s).

This Resolution urges all legal employers to implement and maintain policies and practices to close the compensation gap between similarly situated male and female lawyers. It also identifies the fifteen best practices and policies that legal employers can implement in order to eliminate the gender pay gap in their organizations.

2. Approval by Submitting Entity.

The ABA Commission on Women approved this policy on Friday, January 25, 2019 in Las Vegas, NV during its Midyear Business Meeting. Additional approval of substantive resolution modifications took place on Tuesday, May 28, 2019.

3. Has this or a similar resolution been submitted to the House or Board previously?

No

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

This policy is consistent with prior policy supporting the prohibition of gender equality and opposing discrimination in the legal profession in 72M23A, 88A121, 95M119, 10M107, 16M10B, and 16M116.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A

6. Status of Legislation. N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The policy will provide authority for the ABA to advocate and promote pay equity within the legal profession through the various mechanisms currently used by the association.

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8. Cost to the Association. (Both direct and indirect costs)

Adoption of this Resolution would result only in minor indirect costs associated with staff time devoted to the policy subject matter as part of the staff members' overall substantive responsibilities.

9. Disclosure of Interest. (If applicable) There are no known conflicts of interest.

10. Referrals. By copy of this form, the Report with Recommendation will be referred to the following entities:

Law Practice Division  
Section of Civil Rights and Social Justice  
Section of Dispute Resolution  
Section of Labor and Employment Law  
Section of Litigation  
Young Lawyers Division  
Commission on Racial and Ethnic Diversity in the Legal Profession  
Commission on Sexual Orientation and Gender Identity  
Business Law Section

11. Contact Name and Address Information.

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12. Contact Name and Address Information (who will present...)

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## EXECUTIVE SUMMARY

### 1. Summary of the Resolution

This Resolution urges all legal employers to implement and maintain policies and practices to close the compensation gap between similarly situated male and female lawyers. It also identifies fifteen best practices and policies that legal employers can implement in order to eliminate the gender pay gap in their organizations.

### 2. Summary of the Issue that the Resolution Addresses

This Resolution addresses the compensation inequality that continues to exist between men and women within the legal profession. The Resolution outlines specific practices and policies based on the association's own research and available data. By implementing the practice and policies outlined in this Resolution organizations can promote equality in compensation between male and female lawyers.

### 3. Please Explain How the Proposed Policy Position Will Address the Issue

The proposed policy addresses the issue of compensation inequality by providing best practices and policies that legal employers can implement in order to eliminate compensation disparity.

### 4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None at this time.