"Professional" Moms—Can We Really Have It All?

Traci L. Koster

As Millennials, particularly as females, we were taught from a young age, with hard work and determination, we could do anything. Lawyer, doctor, astronaut—nothing was off the table. And, somewhere in the background (or forefront) we dreamed of raising a family.

Should we be forced to choose between our careers or our families? Of course not. But, can you really have it all?

Recently, the Journal of Science and Medicine released a study where researchers carefully examined the levels of cortisol, a stress hormone, in a variety of workers—men and women—throughout the day. Significantly, the study showed that women are *considerably* less stressed out at work than they are at home while men shoulder *slightly* more stress in the workforce. These findings contrast traditional notions that work is the main source of stress in people's lives. However, the study also revealed both men and women carried much less stress on the weekend—when they were home—than during the weekdays. It's not that women prefer work versus being home with their families. It's doing both in the same day that elicits the most stress. It's being lawyer, mom, wife, and woman all within twenty-four short hours.

While gender roles have shifted enough for women to participate in the workforce, they have not shifted as much for men's roles at home. As career women, we shoulder not only a majority of the housework and childrearing, but the added stress of a long day at work. As moms, we shoulder not only the pressures we put on ourselves to succeed (at everything) and advance our careers, but the pressures we feel to be perfect at home. The unrealistic expectations we place on ourselves and experience from outside influences play a role in our stress levels.

This "professional" mom dichotomy can likely be credited, at least in part, for the retention and promotion barriers women in private practice continue to face. Earlier this year, the National Association of Women Lawyers (NAWL) issued a *Report of the Eighth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms*.[1] While women encompass the large majority of associates or staff attorneys – those lawyers in the lowest echelon of law firms – they continue to make up a static minority of equity partners in large law firms.[2]

Since the mid-1980's, over forty percent of law school graduates have been women.[3] Why, then, are law firms currently reporting less than twenty percent women equity partners?

Despite their ambition and determination to not only complete, but excel in law school, women struggle to be "successful" in large, private law firms. Perhaps it is simply a change in priorities. More likely than not it is the way "BigLaw" defines success. Success—or a lack thereof—is defined most often by business development.[4] According to NAWL's most recent national survey, the greatest obstacle for women to achieve equity partnership is the lack of business development.[5] As women—particularly as women determined enough to "have it all"—having our success measured almost entirely by our business development ignores, in large part, our unique qualities that can and will support the long-term health of law firms as well as the quality of their client services.

There is a clear business case for increasing gender diversity in leadership and equity positions in law firms.[6] The continued attrition of women lawyers not only causes law firms to lose substantial resources, but adversely impacts the clients those law firms represent. It goes without saying: current and potential clients (and people in general) feel connected, well represented and better able to communicate with an attorney with whom they can identify. It makes sense, then, women clients (or businesses with women decision-makers) retain law firms with women positioned in equity ranks.

We really can have it all—but not at any one given moment.

In spite of wanting to raise a family, I chose to go to law school. Shortly after starting law school, I became engaged to my husband. I was already committed to a life as a career woman. At the same time, I was committing to raising a family. I decided, I really could have it all.

As a "professional" mom, I recognize there will be days or weeks when my career demands more of my attention. Likewise, there will be days or weeks when my family needs more of me. It's during these times when my success will require the hard work and determination I embodied to start my career and my family in the first place. As a "professional" mom, I made the conscience decision to "have it all," because I want it all. I WANT to work hard, and I WILL work hard.

We really can have it all—but not without the support of our firms and colleagues.

The impediments women face to attaining equity partnership are—to some extent—within the control of the law firms in which we work. Measuring the "success" of lawyers strictly by demands for billable hours and business development; failing to provide equal access to business opportunities; and failing to promote women into leadership roles hinder the success of women in large law firms. Of course women—like men—should be expected to contribute to the overall financial success of the firm. However, recognizing and placing value on womenspecific qualities will not only create well-balanced law firms, but will encourage women's continued success within those firms, which can only increase the firms' bottom lines.

We live in an electronic age. I am available even when I'm not physically present—even if this means sending emails at four o'clock in the morning while rocking a toddler back to sleep. It's during these times when my success will depend not only on my hard work and perseverance, but on the flexibility, support and understanding of my firm and my colleagues.

Let's be clear—there is no such thing as a perfect mom

or a perfect lawyer. But, with hard work, perseverance, and a little flexibility, you can surely be a "professional" mom. **SB**

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Endnotes

[1]Report of the Eighth Annual NAWL National Survey on Retention and Promotion of Women in Law Firms, February 2014, by Stephanie A. Scharf, Roberta Liebenberg and Christine Amalfe.

[2]*Id.* at p. 7.

[3]*Id.* at p. 4.

[4]*See id.* at p. 14.

[5]*Id.*

[6]*Id.* at p. 2.

Coquina Investments v. TD Bank, N.A.: Examining A Non-Party's Invocation of The Fifth Amendment

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When a witness invokes the Constitution's Fifth Amendment privilege against self incrimination in civil litigation, the court may allow an "adverse inference" that the witness did so because he is guilty. Furthermore, most federal courts to address the issue have held that, where the witness is not a party to the litigation, but his former employer is, the adverse inference can extend to the former employer for its ex-employee's election to remain silent. Recently, in *Coquina Investments v. TD Bank, N.A.*,[1] a case of first impression in the Eleventh Circuit, the Court validated this approach.

A. Invocation of the Fifth Amendment by a Non-Party Witness

Courts have broad discretion to permit a jury to draw an adverse inference against a party in a civil trial based on a non-party witness's invocation of the Fifth Amendment if there is a sufficiently close relationship between the party and the non-party witness.[2]

Because a non-party could choose to remain silent for a variety of reasons, a non-party's invocation of the privilege against self-incrimination in a civil proceeding raises concerns regarding "the reliability of the adverse inference drawn from his silence."[3] Due to the adverse inference's potential for inaccuracy, courts have determined that the admissibility of a non-party's invocation of the Fifth Amendment should be made on a "case-by-case basis."[4] In *Coquina Investments*, the Eleventh Circuit agreed and adopted the four-prong test first established by the Second Circuit in *LiButti v. U.S.*[5] The factors considered under the test include:

1. What is the (silent) witness's relationship to the corporate party? The closer it is, the less likely the non-party witness will testify in a way that damages the relationship.
2. How much control does the corporate party have over the non-party witness? The more control there is, the more likely the testimony (or silence) can be viewed as a vicarious admission binding the company.
3. How compatible or aligned are the interests of the company and the non-party witness? The more aligned, the more likely the silence may be used against the company.
4. What was the witness's role in the events? The more important it was, the more likely an adverse inference.

***B. The Eleventh Circuit's Treatment of Former Employee, Frank Spinosa's* Invocation of the Fifth Amendment in Coquina Investments v. TD Bank, N.A.**

Coquina Investments v. TD Bank, N.A. involved a billion-dollar Ponzi scheme executed by South Florida plaintiffs' attorney Scott Rothstein. The scheme's structure was simple: The defendants in Rothstein's cases would settle, the defendants would deposit the settlement amount in trust account, and the plaintiffs would be paid over time. However, where the plaintiff wanted immediate payment, Rothstein asked wealthy investors, including Coquina, to finance the payments, and ensured the potential investors that there was very little risk involved with the investment since the defendants had already deposited the entire settlement amount with TD Bank. To further convince investors of the investment's low risk exposure, Rothstein enlisted the help of TD Bank and its then-regional vice president Frank Spinosa to send "lock letters" to potential investors explaining that defendants' settlement payments were deposited into accounts subject to heightened transfer restrictions that prohibited disbursement to anyone but the investor. In reality, everything (the clients, defendants, settlements, and bank accounts) was fictitious.[6]

The district court allowed Coquina to call Mr. Spinosa as a witness even though Mr. Spinosa had made clear that he would invoke his Fifth Amendment privilege on the stand.