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MSBA Women in the Legal Profession Committee

March 8, 2013

RESOLUTIONS

WHEREAS, in 2003, the Women in the Legal Profession Committee (“WLP”) completed a five-year longitudinal study of private and public legal employers in Minnesota called the Self Audit for Gender Equity (“SAGE”), and based on the results of that study, WLP developed a set of best practices (the “SAGE Best Practices”) (available at <http://www.mnbar.org/committees/women-in-profession/sage-best-practices.pdf>) in order to promote practices that encourage employment, retention and advancement of women in the legal profession;

WHEREAS, the MSBA authorized WLP to adopt the SAGE Best Practices and to implement a SAGE recognition and awards program (the “SAGE Recognition and Awards”) to (1) recognize legal employers who commit to the SAGE Best Practices, and (2) annually honor legal employer(s) who has (have) made a significant achievement in implementing the SAGE Best Practices or in achieving gender equity, a copy of which is attached hereto as Exhibit A;

WHEREAS, in 2005 – 2006, an MSBA-appointed Task Force on Diversity in the Profession developed and executed a three-part research study that included: (1) a survey of law firms and non-firm employers; (2) a survey of individual lawyers; and (3) focus groups of lawyers from diverse communities in order to update and expand the information from previous SAGE reports and to continue efforts toward elimination of bias against minorities and on the basis of gender in the legal profession in Minnesota;

WHEREAS, the Task Force on Diversity in the Profession published the *2005 Self-Audit for Gender and Minority Equity Report* (the “*2005 SAGE Report*”) in September of 2006 (available at <http://www.mnbar.org/committees/DiversityTaskForce/Diversity%20Report%20Final.pdf>);

WHEREAS, in 2006 – 2008, the Task Force on Diversity in the Profession recommended that the MSBA appoint a body or charge an existing body to develop specific recommendations for action based on the *2005 SAGE Report*, which resulted in the MSBA-appointed Diversity Implementation Task Force’s *2008 Diversity Best Practices Guide* (<http://www.mnbar.org/committees/DiversityImplementation/DiversityBestPracticesGuideFinal.pdf>);

WHEREAS, in late 2010, the MSBA appointed a joint committee of WLP and the Diversity Committee to conduct an update of the survey that resulted in the *2005 SAGE Report* (the “Diversity Survey Update Committee”);

WHEREAS, in 2010 – 2011, the Diversity Survey Update Committee surveyed 42 law firms, 15 non-legal employers, and 1,101 individual lawyers, facilitated focus groups, and published its *2011 SAGE Report: Self-Audit for Gender Equity and Diversity* (the “*2011 SAGE Report*”) (available at <http://www.mnbar.org/committees/women-in-profession/FINAL2011Self-Audit%20Diversity.pdf>), in order to provide the MSBA and legal community with updated information regarding demographic and cultural aspects of legal employment and the perception and experience of attorneys regarding bias;

WHEREAS, the results of the *2011 SAGE Report* indicated that significant progress had been made in the legal profession in the area of gender equity since the *2005 SAGE Report*, but demonstrated the continuing prevalence of gender bias and the need for further improvement; and

WHEREAS, to further the achievement of gender equity in the legal profession, WLP has revised its *SAGE Best Practices* (the “*2013 SAGE Best Practices*”) to reflect the recommendations of the *2011 SAGE Report* and the changing nature of the practice of law, and in order to be more inclusive of small law firm and non-law firm legal employers, a copy of which is attached hereto as Exhibit B;

IT IS HEREBY RESOLVED that the *2013 SAGE Best Practices* are adopted and approved; and

FURTHER RESOLVED that WLP is authorized to continue to implement the SAGE Recognition and Awards in furtherance of the *2013 SAGE Best Practices* in such manner as WLP determines appropriate or advisable.

REPORT

In 2003, the Women in the Legal Profession Committee (“WLP”) completed a five-year longitudinal study of private and public legal employers in Minnesota called the Self Audit for Gender Equity (“SAGE.”). Based on the results of that study, WLP developed a set of best practices (the “SAGE Best Practices”) (available at <http://www.mnbar.org/committees/women-in-profession/sage-best-practices.pdf>) in order to promote practices that encourage employment, retention and advancement of women in the legal profession.

The MSBA authorized WLP to adopt the SAGE Best Practices and to implement a SAGE recognition and awards program (the “SAGE Recognition and Awards”) to (1) recognize legal employers who commit to the SAGE Best Practices, and (2) annually honor legal employer(s) who has (have) made a significant achievement in implementing the SAGE Best Practices or in achieving gender equity, a copy of which is attached hereto as Exhibit A.

In 2005 – 2006, an MSBA-appointed Task Force on Diversity in the Profession developed and executed a three-part research study that included: (1) a survey of law firms and non-firm employers; (2) a survey of individual lawyers; and (3) focus groups of lawyers from diverse communities in order to update and expand the information from previous SAGE reports and to continue efforts toward elimination of bias against minorities and on the basis of gender in the legal profession in Minnesota. The Task Force on Diversity in the Profession published the *2005 Self-Audit for Gender and Minority Equity Report* (the “*2005 SAGE Report*”) in September of 2006 (available at <http://www.mnbar.org/committees/DiversityTaskForce/Diversity%20Report%20Final.pdf>).

In 2006 – 2008, the Task Force on Diversity in the Profession recommended that the MSBA appoint a body or charge an existing body to develop specific recommendations for action based on the *2005 SAGE Report*, which resulted in the MSBA-appointed Diversity Implementation Task Force’s *2008 Diversity Best Practices Guide* (<http://www.mnbar.org/committees/DiversityImplementation/DiversityBestPracticesGuideFinal.pdf>).

In late 2010, the MSBA appointed a joint committee of WLP and the Diversity Committee to conduct an update of the survey that resulted in the *2005 SAGE Report* (the “Diversity Survey Update Committee”).

In 2010 – 2011, the Diversity Survey Update Committee surveyed 42 law firms, 15 non-legal employers, and 1,101 individual lawyers, facilitated focus groups, and published its *2011 SAGE Report: Self-Audit for Gender Equity and Diversity* (the “*2011 SAGE Report*”) (available at <http://www.mnbar.org/committees/women-in-profession/FINAL2011Self-Audit%20Diversity.pdf>) in order to provide the MSBA and legal community with updated information regarding demographic and cultural aspects of legal employment and the perception and experience of attorneys regarding bias. The results of the *2011 SAGE Report* indicated that significant progress had been made in the legal profession in the area of gender equity since the *2005 SAGE Report*, but demonstrated the continuing prevalence of gender bias and the need for further improvement.

To further the achievement of gender equity in the legal profession, WLP has revised its *SAGE Best Practices* (the “*2013 SAGE Best Practices*”) to reflect the recommendations of the *2011 SAGE Report* and the changing nature of the practice of law, and in order to be more inclusive of small law firm and non-law firm legal employers, a copy of which is attached hereto as Exhibit B.

It is important for the MSBA to take a position on the issue of gender equity in the legal profession because this is an issue that affects the profession as a whole, not just women lawyers. When any group within the profession is not treated fairly, the entire legal community suffers. Nearly half of all new attorneys are women, and this is, therefore, an issue that, if left unaddressed, will have repercussions in the future as the profession lags behind other professions in the retention and advancement of women.

WLP has not identified any potential negative ramifications from the MSBA approving the 2013 SAGE Best Practices and continuing the SAGE Recognition and Awards. However, the positive ramifications are significant. The MSBA’s approval sends a strong message to legal employers that gender equity in the legal profession is a priority for the bar. It also will provide guidance to employers on how to further this cause. With the support of the MSBA, WLP can do the work of educating and supporting legal employers as they strive to attract, retain, and advance the women in their organizations.

The 2013 SAGE Best Practices have been presented to the Diversity Committee, and the members have expressed full support of this proposal. Because the 2013 SAGE Best Practices and SAGE Recognition and Awards are exclusive initiatives of WLP as a committee of the MSBA, no other groups have taken a position on this issue.

Because WLP has been actively working on the 2013 SAGE Best Practices and the associated SAGE Recognition and Awards for several years, there is no additional cost or staff time involved in this proposal. This is simply an update to the SAGE Best Practices based on the results of the *2011 SAGE Report* and a reauthorization for WLP to implement the SAGE Recognition and Awards.

The process used to evaluate and approve this position has been previously articulated in this document, and all supporting documents are referenced in the links and attached as Exhibit A and B. If this proposal is adopted, there will be no changes necessary to the current implementation of the 2013 SAGE Best Practices and SAGE Recognition and Awards. These are ongoing initiatives of WLP, and the

proposed resolutions simply approve the most current version of the SAGE Best Practices and allows for the continuation of the SAGE Recognition and Awards.

WLP therefore submits this Report in support of the proposed resolutions (the “Resolutions”), and respectfully requests that the MSBA approve and adopt such Report and Resolutions.

Exhibits Attached:

Exhibit A: SAGE Recognition and Awards Description

Exhibit B: 2013 SAGE Best Practices

EXHIBIT A



**The SAGE (Self-Audit for Gender Equity)
Best Practices Recognition Award**

*Awarded to a legal employer who has made a significant contribution,
through the implementation of the SAGE Best Practices,
to the achievement of gender equity in the workplace.*

All legal employers in Minnesota, including private firms, government, county and city agencies, or corporate legal departments, who have committed to the implementation of the SAGE Best Practices are eligible to apply for the SAGE Best Practices award.

To be considered for the award, the Women in the Legal Profession Committee of the MSBA must receive a completed Nomination Form, together with any additional supporting documentation the employer would like the Committee to consider. The Committee will also consider recommendation letters from employees.

To submit a nomination, complete the attached form and send it to:

The Minnesota State Bar Association
Attn: The Women in the Legal Profession Committee
600 Nicollet Mall, #380
Minneapolis, MN 55402

If the Women in the Legal Profession Committee determine that no submissions meet the criteria in a given year, an award may not be presented that year.

Should you have any questions, please contact Tram Nguyen at the Minnesota State Bar Association at either 612-278-6316 or tnguyen@mnbbar.org



SAGE Best Practices Recognition Award

*Awarded to a legal employer who has made a significant contribution,
through the implementation of the SAGE Best Practices,
to the achievement of gender equity in the workplace.*

Nomination Form

1. Nominee Information

Name of Legal Employer

Address

Address

Phone Number/Contact Person

2. SAGE Best Practices Contact Person

Name /phone number

3. What is your relationship to the nominee?

4. When did your firm/organization adopt the SAGE Best Practices? _____

5. Using the SAGE Best Practices as a guide, please describe the specific steps your firm/organization has taken to implement the SAGE Best Practices in any or all of the following areas:

A. Equal Access Issues

B. Work Day Issues

C. Governance

D. Evaluation & Promotion

E. Retention

F. Compensation

6. Since signing on to the SAGE Best Practices, describe what changes your firm/organization has made because of its participation. For example, have there been any particular systems or programs that you have implemented because of your participation?

7. Please describe the procedure(s) in place at your firm/organization for annual review of the commitment and implementation of the SAGE Best Practices:

8. How do you communicate your firm's/organization's commitment to the SAGE Best Practices to employees?

9. Describe what differences, if any, the adoption and implementation of the SAGE Best Practices have had on your firm/organization:

10. Please tell us anything else you think we should consider:

11. Are there individuals we may contact to follow up on the information provided in this questionnaire? (Include the Name, Position & Contact Information.)

**Relevant supporting materials, if any, can also be submitted with, but not in lieu of, this completed nomination form.*

EXHIBIT B

MINNESOTA STATE BAR ASSOCIATION WOMEN IN THE LEGAL PROFESSION COMMITTEE

SAGE BEST PRACTICES

The Women in the Legal Profession Committee of the Minnesota State Bar Association, in connection with the Self-Audit for Gender Equity (“SAGE”) award, surveys, and reports, has developed the SAGE Best Practices to promote gender equity in legal employment and the advancement of women in the legal profession. The SAGE Best Practices consist of principles and goals that are intended to promote fair and equitable practices among legal employers (public and private, large and small) in order to support and encourage the retention and advancement of women in the legal profession. The Committee Comments provide context and guidance for the implementation of each Best Practice.

The 2011 SAGE Report: Self-Audit for Gender Equity and Diversity is available at: <http://www2.mnbar.org/committees/diversity/FINAL2011Self-Audit%20Diversity.pdf>.

1. EQUAL ACCESS

- (a) Provide equal opportunity for challenging work assignments and equal access to clients.
- (b) Establish, adopt, and regularly review succession plans.
- (c) Provide equal access to business development and training opportunities, including, but not limited to, financial support, recognition and commensurate compensation for developing sustainable and growing practices, and establishing a marketing presence in the community.
- (d) Build a culture of inclusiveness by ensuring that social events are welcoming to women and people of diverse backgrounds.
- (e) Recognize and provide credit for participation in community and bar leadership activities and for time spent on internal diversity and gender equity initiatives.
- (f) Periodically review scheduled meetings or events, including marketing events, to ensure that all attorneys have the opportunity to participate in meetings and activities.
- (g) Create opportunities for all junior attorneys to have access to more senior attorneys for training, evaluation, networking, and mentoring.
- (h) Provide internal and external access to leadership training.
- (i) Adopt and implement formal mentoring programs within the organization.

Committee Comments:

1(a), (b): The 2011 SAGE Report found, “In 2011, one quarter of firms had formalized criteria or a system to distribute work to associates but none had such a system for partners. At non-firms, nearly half had work distribution criteria for attorneys with less than five years of experience and nearly one third had them for supervisory attorneys.” (2011 SAGE Report, p. 62.) Legal employers should provide and routinely monitor equal access to work and clients for all attorneys in all practice areas, including establishing succession plans for equal access to clients of retiring attorneys.

1(c): Legal employers should provide opportunities and support for all types of marketing activities including less traditional activities such as theater, arts, and family activities, as well as the more traditional opportunities such as golf and sporting events. See Table 33, “Top five business development activities funded by firms.” (2011 SAGE Report, p. 64.)

1(d): Legal employers should encourage attorneys to create social events that are not exclusive to individuals with a particular sex, race, orientation, etc. Instead, support initiatives and social events that are broadly of interest. “Real inclusion” should be the goal, rather than simply looking at diversity as a “numbers game.” (2011 SAGE Report, p. 5.)

1(e), (f): Marketing, community involvement, education, speaking, and networking opportunities specifically targeting female attorneys, clients and potential clients should be encouraged and supported financially. Women should be included in all traditional marketing efforts as well. See Table 33, “Top five business development activities funded by firms.” (2011 SAGE Report, p. 64.)

1(g), (h), (i): The 2011 SAGE Report found, “Nearly all firms, 97%, had mentoring programs. Formal programs are in place at 53% of firms, down from 60% in 2005 but up from 44% in 2000 and 42% in 1997). Informal programs were in place at 44% of firms (up from 33% in 2005).” (2011 SAGE Report, p. 62.) Junior attorneys benefit from interactions with more senior attorneys in a variety of ways, including learning not only the substance of the law, but also how to “be” a attorney. Firms should provide access to formal and informal mentoring and leadership programs to help junior attorneys advance professionally.

2. WORKDAY & GOVERNANCE

(a) Offer equitable and viable alternative part-time and flexible work schedules to all attorneys.

(b) Provide adequate technology and clerical support to maximize attorneys’ productivity and to support their needs consistent with their work schedules.

(c) Regularly educate employees about policies and procedures to investigate and enforce complaints of inequity, discrimination, or harassment.

(d) Encourage and provide training on civility in the legal profession.

- (e) Ensure that women are represented and active at all levels of management.
- (f) Actively support gender equity and diversity at all management levels and communicate this support to the entire organization.
- (g) Gather and internally disseminate statistical information regarding gender representation in hiring, promotion, compensation, and governance.
- (h) Charge a person and/or committee with promoting diversity, including gender equity.

Committee Comments:

2(a): In addition to offering part-time and flexible work schedules, legal employers should work to create an environment in which all attorneys feel comfortable using them. Men are less likely to utilize flexible and alternative scheduling. (2011 SAGE Report, p. 56-57.)

2(b): Legal employers must provide the tools necessary to support attorneys who have elected alternative schedules, including the increasingly popular option of telecommuting. (2011 SAGE Report, p. 56-57.) Legal employers should keep pace with changing technology so that flexible and alternative work schedules are a viable option for attorneys.

2(c): The 2011 SAGE Report indicated that most employer respondents had formal anti-discrimination and sexual harassment policies. (2011 SAGE Report, p. 59-60.) However, a much smaller percentage provide training on their anti-discrimination and sexual harassment policies, and for law firm respondents, that percentage decreased in 2010 from 2005. (2011 SAGE Report, p. 59-60.) It is imperative that legal employers not only implement and enforce anti-discrimination and sexual harassment policies, but also require training to employees and attorneys understand how to report and respond to complaints of inequity, discrimination, or harassment. It is equally important that management communicate its support of these policies to all attorneys.

2(d): A primary issue identified in the 2011 SAGE Report is the lack of civility among attorneys. The Report noted that “most attorneys perceive bias in their own workplaces and in interactions with opposing counsel.” (2011 SAGE Report, p. 66.) The Report therefore concluded that “implementing the changes necessary to create a more inclusive legal profession is still a work-in-progress and the work must be done by the legal profession itself.” (2011 SAGE Report, p. 66.) Legal employers should not tolerate uncivil behavior by their own attorneys toward each other or toward opposing counsel. Education and training regarding civility should be explored as a means to foster a more welcoming profession.

2(e), (f), (g): Representation should be proportionate based on the ratio of female attorneys to male attorneys employed, rather than focusing on whether there is token representation at the management level. Gender representation includes both participation in the activities related to hiring, promotion, compensation and governance, and the result of efforts in those areas. Focus group participants observed that “presence of diversity did not translate to inclusion of diverse attorney.” (2011 SAGE Report, p. 15.) The goal should therefore

be meaningful representation and participation at all levels of the organization. Management's support of gender equity should carry with it the expectation that all members of the organization will be committed to gender equity within the organization.

2(h): This is a position for which the appointed person or committee members receive(s) credit and/or compensation. (2011 SAGE Report, p. 52.)

3. RETENTION & ADVANCEMENT

- (a) Establish and communicate equitable, non-discriminatory and transparent standards for advancement and promotion within the organization.
- (b) Recognize achievements in all areas of legal practice, including recruiting, marketing and mentoring.
- (c) Conduct exit interviews of all departing attorneys to determine the reasons for their departure.
- (d) Address gender inequity and diversity in retention rates for attorneys at all levels.
- (e) Address gender inequity and diversity in promotion rates for attorneys at all levels.
- (f) Establish measurable and fair goals for individual attorneys as part of their personal evaluations.
- (g) Review attorneys' treatment of others and address inappropriate behaviors.
- (h) Establish and communicate equitable, non-discriminatory and transparent bases for compensation decisions within the organization.
- (i) Recognize and equitably reward men and women for participation in firm administrative duties as part of the compensation decision.
- (j) Periodically review, communicate, and consider client satisfaction in the evaluation of all attorneys.
- (k) Create affinity group for women attorneys.

Committee Comments:

3(a): Although the vast majority of employer respondents reported having formal policies or specific criteria for promotion to supervisory positions or partnership, only 68% of female attorney respondents reported that they believed female and male attorneys in their offices had equal chances of promotion. (2011 SAGE Report, p. 21.) Legal employers must continue efforts to develop equitable policies and criteria regarding promotion, evaluate candidates even-handedly, and ensure gender parity in promotion.

3(b): Employee respondents to the 2011 SAGE survey who serve as mentors or assist with diversity efforts “commented that the work is often unending, exhausting, and uncompensated.” (2011 SAGE Report, p. 65.) Legal employers can demonstrate commitment to diversity and gender equity by tying compensation to individual attorneys’ efforts in these areas. For non-firm employers, recognition is especially critical as merit compensation is not usually available.

3(c): A strong trend visible in the 2011 SAGE Report was the much higher percentage of female attorneys employed in non-firms versus firms. (Table 1, 2011 SAGE Report, p. 5.) However, more than half of individuals who left non-firm employers in 2010 were women. (Table 1, 2011 SAGE Report, p. 5.) Exit interviews should include inquiry about the reasons for leaving and allow for discussion about all aspects of firm management and culture. Firms should make use of the information learned in exit interviews to improve retention.

3(d), (e), (f): Attorneys should be receive ongoing feedback regarding their performance and, if applicable, progress toward promotion. (2011 SAGE Report, p. 63.) Legal employers should establish realistic goals and measurable benchmarks to enable both attorneys and their employers to fairly evaluate progress, aid in training and ensure that all attorneys receive similar opportunities to progress toward promotion.

3(g): Legal employers should have both male and female employees available to receive and review complaints. Complaints should be handled confidentially when possible, and complaining parties should not be subject to retaliation. Senior management should be responsible for addressing behaviors reflecting conscious or unconscious stereotypes and perceptions of gender bias. Behavior may include language, excluding someone from an event or type of work, lack of civility and other inappropriate behavior, or failing to provide adequate alternative marketing opportunities.

3(h): In light of continuing pay disparities between male and female attorneys at all levels of seniority, legal employers should routinely analyze compensation to ensure there is no gender bias in the decision-making. (2011 SAGE Report, p. 53-54.)

3(i), (j): To the extent possible, legal employers should consider all of an employee’s contributions to the employer, such as business development, realization rates, efficiency, client satisfaction, administrative duties, mentoring, and pro bono work in addition to billable hours or seniority. (2011 SAGE Report, p. 52.)