

Federal Judges Say Firms, Clients Favor Male Litigators at Their Peril

At a Reed Smith event, former SDNY Judge Shira Scheindlin and current U.S. District Judge Cynthia Rufe highlighted the costs of ignoring gender diversity.

By Dan Packel
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Client outcomes suffer when both law firms and their clients fail to push for gender diversity, former U.S. District Judge Shira Scheindlin and her Pennsylvania colleague, U.S. District Judge Cynthia Rufe, told an audience in Philadelphia on Tuesday.

Scheindlin, continuing a flurry of public appearances in the wake of a New York State Bar Association report last summer on the paucity of women in court speaking roles, joined Rufe, known for her work overseeing a slew of multidistrict litigations in Pennsylvania's Eastern District, at an event on women in the courtroom at the offices of Reed Smith.

The former New York federal judge, introduced at the event as a "rock star" for her 22-year judicial career and opinions on subjects from stop-and-frisk to e-discovery, provoked the audience with a story from a lawyer at a top New York firm who was asked by a new client for a top trial lawyer for a big case.

"He says, 'I'm going to give you our best. She's fabulous,'" Scheindlin recalled.

"He never met her, but he said, 'I need somebody stronger.' The lawyer said, 'OK, she's our best, but if



Former U.S. District Judge Shira Scheindlin, center, with Len Bernstein and Sara Begley of Reed Smith on April 17, 2018.

you don't want her, we'll give you Mr. So-and-So. The guy was good, but not as good as Ms. X, who didn't get that particular assignment."

Attendees reacted strongly to the tale, with one attorney questioning whether that jilted litigator would have been in her rights to pursue a

Photo: Brett Schoen

discrimination claim against the firm for honoring the client's request.

But one of Scheindlin's immediate points was that putting women in charge of trial teams could win better client results, beyond the larger social ramifications. She followed the story by citing a recent study by jury consultancy DOAR, which found that women jurors tended to favor women attorneys by a greater margin than male jurors favored male attorneys.

"Women have an implicit bias in favor of women attorneys: something to keep in mind for those of you who do jury selection," she said.

Rufe, who uses her role in appointing lead counsel and liaison counsel in MDLs to push for gender diversity, also highlighted the practical benefits of diversity, saying that firms that didn't take the matter into account were selling their clients short.

"Diversity isn't necessarily part of succession planning in law firms, but don't you have a responsibility to make sure clients are taken care of by the best?" she asked. "The best is the best qualified, and diversity provides a better path to success."

Rufe drew a connection between her role tapping MDL leaders and how firms can advance their own top talent.

"I would hesitate to interfere in the inner workings of your law firm, but what I must do is get the best qualified persons—be they male, female, or persons of color—to work with the court on appointments, and I would hope you would want to do the same for your client," she said.

The event also featured perspectives from general counsel, who debated their own role in pushing diversity. One in-house leader questioned the leverage that corporations actually hold over law firms in any long relationship involving significant and continuing litigation.

"They know we're not walking, I know we're not walking, and it's a problem," the general counsel said.

But another panelist was unpersuaded, arguing that clients must be willing to do more.

"The keys are with us, but we're not turning the key," the second general counsel said, before referencing a beauty contest where a law firm came in with eight middle-aged white men, after being told the client was looking for a diverse group of lawyers.

The message for that firm was succinct: "I'm sorry to do this, but you really are wasting our time. This meeting is over."