



Antitrust Compliance Policy Statement **National Association of Women Lawyers (NAWL)**

It is the policy of the National Association of Women Lawyers (“NAWL”) to comply strictly with all applicable international, federal, and state antitrust laws. Compliance encompasses not only abiding by these laws in every respect, but also honoring their spirit and purpose. NAWL expects that each of its member or sponsor law firms, corporate law departments, and law schools, as well as individual attorney members, will faithfully honor all such laws both during official NAWL functions and during social and other informal gatherings. In addition to reviewing this Antitrust Policy, members also should review the attached “Do’s and Don’ts” list for practical guidelines on antitrust compliance.

Violating the antitrust laws can have severe consequences not just for the NAWL organization (criminal fines), but also for individual member firms and their attorneys (criminal fines and possible imprisonment in severe cases). In addition, NAWL reserves the right to expel, report to relevant authorities, or otherwise discipline any NAWL member whose actions violate this Antitrust Policy or the laws this Policy is intended to cover.

Unlawful Agreements

The antitrust laws prohibit NAWL members and their representatives from forming agreements or understandings relating to any competitively sensitive business topics, including, but not limited to, agreements about wages, salaries, and benefits for women lawyers and other legal professionals within their respective organizations, or current or future fees or fee structures offered to specific, potential, or actual clients. In addition, members must not form agreements or understandings that aim to maintain or fix the price of legal services for law firms or attorneys in a given region. And members must not form agreements or understandings that would prevent member firms or attorneys from competing against one another in the hiring of attorneys and other legal professionals.

Significantly, the fact that NAWL is a non-profit organization with the goal of decreasing systemic gender discrimination in the legal industry does not insulate it from potential antitrust liability. For example, if members conspired to fix salaries in such a way as to raise the salaries of all female attorneys in their respective firms, such an agreement likely would be found to violate the antitrust laws.

Information Exchanges Regarding Sensitive Business Topics

Because information exchanges relating to sensitive business topics such as wages, salaries, benefits, or current or prospective fee rates have the potential to facilitate an unlawful agreement or understanding between the parties to conspire to fix prices, rig bids, or allocate the market for legal services, NAWL members shall take special caution when exchanging information about or discussing these topics. In particular, NAWL members will abide by the guidelines prescribed below, which reflect current guidelines issued by U.S. antitrust authorities with respect to information exchanges about sensitive business topics (unless otherwise antitrust compliant deviations are pre-approved in writing by NAWL's authorized antitrust counsel).



Operating within these guidelines does not give NAWL members a free pass with respect to exchanging sensitive business information, however, courts and the antitrust enforcement agencies routinely reference compliance with these guidelines when determining whether particular information exchanges are lawful, amount to anticompetitive agreements between competitors, or receive further inquiry and possible enforcement action.

NAWL members will not discuss competitively sensitive business topics unless the presentation of that information complies with the benchmarking rules set forth below:

- (1) A third-party surveyor, which itself will not be a member of NAWL, will manage the collection of information from each member and disseminate only aggregated data as set forth below to the larger group.
- (2) The members will not discuss or share their individual wage, salary, benefits, fees, rates, or other competitively sensitive information with other members at any time. Members will only share their information with the non-member third party surveyor, which will be bound to maintain the confidentiality of each member's information.
- (3) The aggregated data must comply with the following restrictions:
 - The aggregated information provided by the third-party surveyor will be based on data from members that is at least 3 months old;
 - There will be at least 5 member firms reporting data upon which each disseminated aggregated data or statistic is based;
 - No individual member's data will represent more than 25 percent on a weighted basis of any aggregated statistic or data; and
 - The information disseminated will be sufficiently aggregated such that it will not allow members to identify the wages, salaries, benefits, fees, or other sensitive business information of individual member firms.
- (4) NAWL has the sole right to decide whether to publish the survey results to its members and to the public through NAWL's website or otherwise.
- (5) Any deviation from the restrictions above must be pre-approved in writing by NAWL's antitrust counsel prior to the sharing of any information with the third-party surveyor.

Discussions Regarding Non-Sensitive Topics

In addition to sensitive business information, NAWL members also might be interested in sharing information that does not directly implicate market prices. For example, sharing information about a member firm's experiences relating to female mentorship programs and training opportunities generally will not pose significant antitrust risks unless those discussions



implicate the members' salaries, wages, and/or benefits paid to attorneys and other legal professionals. In those instances, individual members are free to discuss their firms' individual policies and experiences, and if appropriate, publish recommended best practices for member law firms.

It is not always obvious whether a particular category of information constitutes sensitive business information, and NAWL and its members shall err on the side of caution when deciding whether to discuss a particular topic. If a question arises as to whether a particular category constitutes a sensitive business topic, members shall raise their concerns with a NAWL representative, who may in turn consult with NAWL's authorized antitrust counsel to determine whether and how information relating to that topic can be exchanged and discussed by NAWL members.

Lobbying Efforts

Members may discuss industry-wide issues, such as laws, regulations, proposed legislation, amicus briefing, litigation positions, and compliance practices that affect the legal industry generally or specific legal practice areas. It also is permissible for NAWL members to collectively petition state and federal governments regarding proposed legislation and regulations that may affect competition in the legal market (e.g., standards for admission to a state's bar). Such petitioning activity generally is immune from antitrust scrutiny and is protected by the First Amendment to the U.S. Constitution. However, while NAWL members and their firms generally may lobby the government for action that arguably will restrain trade in the legal industry, they cannot use illegal agreements and restraints of trade as means to obtain a desired government action (e.g., by orchestrating an unlawful boycott to not represent indigent parties until the local court raises public defender rates).

All lobbying efforts must be pre-approved by NAWL in accordance with its By-Laws. To the extent that a particular piece of proposed legislation has the potential to adversely affect a portion of NAWL's membership, NAWL will publish a summary of its proposed lobbying efforts and provide a period for NAWL members to comment. After the comment period, and after taking into consideration the opinions of individual members, NAWL will determine whether to approve the lobbying efforts in accordance with its By-Laws.

The antitrust laws are nuanced and complex, and this Antitrust Policy is not intended to address every situation that could arise. If you have specific questions, please direct them to NAWL's executive director or NAWL's authorized antitrust counsel, Kathy Osborn (Kathy may be reached at Kathy.Osborn@FaegreBD.com or at (317)-237-8261).



**ANTITRUST DO'S AND DON'TS FOR
THE NATIONAL ASSOCIATION OF WOMEN LAWYERS (NAWL)
DURING MEETINGS AND INFORMAL INTERACTIONS**

Because they may be potential competitors in the market for legal services, when NAWL's members come in contact, they must be especially mindful of their responsibilities under the antitrust laws. Among other things, the antitrust laws prohibit price-fixing, bid rigging, agreements to divide markets, and agreements to allocate customers. For NAWL and its members, this means not only that members cannot form agreements relating to sensitive business topics like wages, salaries, benefits, or fees, but that they also must be cautious about how information about their individual law firms, companies, or academic institutions is exchanged. Consequently, NAWL members must take heed of the following principles for minimizing risk under the antitrust laws.

Questions about the Antitrust Policy and these Do's and Don'ts should be directed to a NAWL representative.



DON'TS

DON'T discuss or form agreements related to current or projected salaries, wages, or benefits for attorneys or current or projected fee rates for attorneys and other legal professionals.

DON'T discuss future actions related to member entities' strategic plans, including plans to change salaries, wages, and benefits.

DON'T discuss or form agreements or understandings regarding member entities' relationships with specific clients or potential clients, including hourly billing rates, alternative fee agreements, responses to requests for proposal, or other fees or cost structures.

DON'T participate in discussions or other gatherings of members that in any way relate to the sharing of sensitive business information unless that information has been aggregated by a third-party surveyor in accordance with the following principles:

- The data compiled is at least 3 months old;
- The aggregated statistics include data from at least 5 member firms;
- No individual member's data represents more than 25 percent on a weighted basis of any statistic disseminated by the surveyor; and
- The statistics disseminated are sufficiently aggregated such that they will not allow members to identify the wages, salaries, benefits, fees, or other sensitive business information of individual member firms.

DON'T enter into any agreements or understandings with any other member that have the effect of reducing or preventing other members from competing with you or your law firm or legal department or academic institution for legal talent or clients.

DON'T enter into any agreement or understanding with any other member that restricts a member from working for a particular client, or charging certain rates to those clients. Members must remain free to make those decisions independently.

DON'T discuss recruiting efforts relating to specific candidates with other members. In particular, **DON'T** discuss the salary package your firm is willing to offer a candidate, or form an agreement with another NAWL member firm about which firm will extend an offer to the candidate.

DON'T verify sensitive business information with competitors, even if you received that information through a public source.



DO'S

DO think before you write or speak.

DO document the source of any sensitive business information you obtain about your competitors or potential competitors who also are NAWL members (e.g., it is perfectly acceptable for you to learn about another firm's salary structure through a national reporting association or through a potential hire who is negotiating her salary).

DO feel comfortable discussing publicly available sources of data (including research, studies, and articles) in order to understand legal industry trends

DO think carefully before you attempt to describe, in writing or orally, any product or geographic market (e.g., the market for antitrust legal services in Indianapolis, Indiana).

DO consult a NAWL representative whenever you encounter a matter with antitrust significance or whenever you are uncertain about the propriety of any proposed conduct under NAWL's Antitrust Policy.

If during the course of a NAWL meeting or other gathering of NAWL members, any member begins to discuss a prohibited topic, you should leave the discussion immediately and report the incident to a NAWL representative. When you leave the discussion, leave no doubt that you believe the discussion is improper and a violation of NAWL's Antitrust Policy. Any specific questions regarding this Do's and Don'ts list or the Antitrust Policy should be directed to NAWL's executive director or NAWL's authorized antitrust counsel, Kathy Osborn (Kathy can be reached at Kathy.Osborn@FaegreBD.com or at (317)-237-8261).