

# The Mansfield Rule and the Idaho State Bar: Let's Do This!

Anna E. Eberlin

**W**hat does diversity look like here? It depends how you define “here” – is it a particular firm or partnership? Is it our local legal market? All attorneys in the state of Idaho? Attorneys in the West? Or even on a national level? For me, a female real estate, construction, and finance transactional attorney in Boise, Idaho, diversity is viewed through each of those lenses. I have personally witnessed the progress we have made over the past 13 years, since starting out as a junior associate with no context for diversity except growing up in Eastern Idaho – which is not exactly a place teeming with diversity – to today, where the conversation about diversity is front and center, as it should be.

In my experience, the membership of the Idaho State Bar (ISB) is (slowly) becoming more diverse. And the numbers seem to support this, at least as far as gender: in 2009, 75% of the members of the ISB were men, with 25% women, and in 2018, the numbers had changed to 72% and 28%, respectively.<sup>1</sup> Still, we clearly have a long way to go. This article will present an emerging approach to increasing diversity within law offices, share the results of early efforts, and provide an outlook for future efforts to improve diversity across the spectrum of the legal profession.

## Enter the Mansfield Rule

Diversity, in theory, has much support across many platforms. But diversity in practice? That's the problem. The Diversity Lab, an incubator for innovative ideas and solutions that increase diversity and inclusion in the legal industry, has set out to change this.<sup>2</sup> The “Mansfield Rule” was one of the winning



Photo courtesy of the National Football League.

Mike Tomlin, Head Coach of the Pittsburgh Steelers answers questions from the media.

ideas from the 2016 Women in Law Hackathon, which is an annual event created by the Diversity Lab in conjunction with Bloomberg Law and Stanford Law School. The genesis of the Mansfield Rule is the National Football League's (NFL) Rooney Rule.



Dan Rooney

The Rooney Rule, named after Dan Rooney, who was once head of the NFL's diversity committee and owner of the Pittsburgh Steelers, requires NFL franchises to interview at least one racially diverse candidate for all top-level positions in the NFL, including head coaching jobs, general manager jobs, and other equivalent positions. In the years following the implementation of the Rooney Rule, the number of minorities hired to fill head-coach positions doubled.<sup>3</sup>

The Mansfield Rule is named after the first woman to be admitted to practice law in the United States, Arabella Mansfield, who took the

## One of the Rooney Rule Success Stories

Mike Tomlin, an African American championed by Dan Rooney under the Rooney Rule, became the Head Coach of the Pittsburgh Steelers, leading the team to a Super Bowl Championship, and multiple division and conference championships.

Iowa bar exam in 1869. Ms. Mansfield impressed the bar examiners so much that they stated that her brilliant performance defied the idea that ladies cannot practice law.<sup>4</sup>

Now, 150 years later, diversity in the lawyer ranks is still woefully inadequate. Thus, the Diversity Lab developed this idea to increase diversity in the law profession by designating tangible thresholds and goals, namely, to promote more women and minorities into leadership roles within their firms or companies.

## Early adopters, early results!

In 2017, a total of 44 law firms across the United States first adopt-

ed the Mansfield Rule as part of a pilot program under the Diversity Lab's supervision. The Mansfield Rule requires participating firms to consider 30% of women and racially diverse attorneys for 70% or more of the firms' openings in leadership positions – including firm-wide leadership positions, various committees, practice group leaders, or office leaders – during a yearlong review period. If the firm met the threshold, then it is qualified as "Mansfield Certified." After the first year in the pilot program, 41 firms have been Mansfield Certified.<sup>5</sup>

My firm, Holland & Hart LLP, is one of them. As one of the smallest firms to participate, Holland & Hart enthusiastically took on the implementation of the Mansfield Rule. As a result, it became "Mansfield Certified Plus." The "Plus" status indicates that, in addition to meeting the pipeline requirements during the process of filling leadership positions, it also successfully reached at least 30% women and minority lawyer representation in a notable number of current leadership roles and committees.

The Diversity Forum found measurable results across the 41 firms that achieved Mansfield Certification. Before adopting the Mansfield Rule, only 20% of the participating firms tracked diversity of candidates considered for partnership, for lateral senior positions, and for leadership and governance roles; as Mansfield Certified firms, all 41 of the firms now track this. After adoption of the Mansfield Rule, 95% of firms have increased formal discussions among firm leaders regarding diversity in candidate pools for leadership positions and lateral hiring. In addition, many firms have added reporting requirements internally regarding Mansfield Rule statistics.<sup>6</sup>

These results are supported by research that finds that law firms with

women in leadership roles have more women lawyers overall and 5% more women equity partners on average.<sup>7</sup>

### Expansion of the Rule

Running from July 2018 to July 2019, Mansfield 2.0 was implemented last year, which expanded the rule to include LGBTQ+ attorneys as well as women and minorities.<sup>8</sup>

For example, if firm management has identified a short list of five candidates for an opening on the executive committee, the Mansfield Rule requires that two of the candidates

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would need to be women, minorities, or LGBTQ+. In addition, Mansfield 2.0 will measure consideration for roles in client pitch meetings and measure transparency in appointment and election processes to all lawyers in their firms. The Diversity Lab will continue to measure and report data on the progress of participating firms.

My experience with the Mansfield Rule has been both eye-opening and incredible. As a "reward" for achieving Mansfield Certification and Certification Plus, firms were in-

### The legal industry is the last to the party:

- Facebook implemented its own version of the Rooney Rule to increase diversity in tech.
- House Democrats have adopted the Rooney Rule to push diversity in staff.
- Amazon adopted the Rooney Rule to increase board diversity.
- The NCAA adopted the College Rooney Rule.

vited to send their newly promoted diverse and women partners to Client Forums held around the country last year. As a newly promoted partner in 2018, I was invited to go to the San Francisco forum to learn from, connect with, and pitch to in-house legal teams from national and international companies across multiple industries and practice areas.

At the Client Forum in San Francisco, it was clear that in-house legal teams are committed to diversity just as much as law firms are and are 100% committed to moving the needle on diversity throughout the entire legal industry. Some in-house counsel went so far as to say that if the outside legal teams performing the company's work did not include at least one diverse team member, then the firm would no longer be doing the work for that company. Companies wanted to see diverse pitch teams – and not just for face-time during the pitch, but for performing the work as well.

### Diversity is an ongoing commitment

I have strived to bring back to my office and my overall firm the teamwork, camaraderie, and excitement that I experienced at the Client Forum. Increasing diversity is not lip service at Holland & Hart – especially in my real estate world but notably, the firm as a whole. Holland

& Hart's management committee recently approved an updated Diversity and Inclusion Plan that includes diversity goals modeled on the Mansfield Rule, such as:

- Consideration of diverse attorneys for at least 30% of the candidate pool for recruitment for open attorney positions, including partner and non-partner lateral, entry level, and summer clerk positions.
- Consideration of diverse attorneys for at least 30% of the candidates for partnership promotion, which requires certification by the Practice Group Leader to the partnership committee whether she or he met the requirement.
- Consideration of diverse attorneys for at least 30% of the candidates for composition of teams making pitches to existing or potential clients.
- Consideration of diverse attorneys for at least 30% of the candidates for open positions on firm committees.
- Consideration of diverse attorneys for at least 30 percent of the candidates for succession planning to ensure diverse lawyers are being offered meaningful opportunities.<sup>9</sup>

In addition to the updated Diversity and Inclusion Plan, I have seen a marked difference in Holland & Hart's increased diversity efforts and have pushed these with my own pitch teams and client service teams. The breadth and depth of experience, culture, and background that diverse attorneys bring to a team shows in the new and creative solutions, insights, and knowledge that have helped clients achieve their own goals.

Idaho, with its measurable growth in corporate presence both from home-grown companies and those that are moving in from out of the region, should take notice. Diversity is not just for the bigger firms or bigger companies; we should all be taking action to increase diver-

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sity and inclusion in our own firms and in-house legal teams. I challenge Idaho firms and in-house legal groups alike to create diversity and inclusion goals that align with the Mansfield Rule and Mansfield Rule 2.0.

#### Endnotes

1. See <https://isb.idaho.gov/wp-content/uploads/Road-Show-PowerPoint-General.pdf>.
2. See <https://www.diversitylab.com/> for a full description of the Diversity Lab and its initiatives.
3. See <https://www.diversitylab.com/pilot-projects/mansfield-rule/>; see also The Impact of "Soft" Affirmative Action Policies on Minority Hiring in Executive Leadership: The Case of the NFL's Rooney Rule. *American Law and Economics Review*, Volume 18, Issue 1, Spring 2016, Pages 208–233.
4. Arabella Mansfield brought suit to al-

low women to become members of the bar after she successfully passed the bar exam, resulting in Iowa amending its licensing statute and becoming the first state to accept women and minorities into its bar. Interestingly, she never actually practiced law and instead worked as an educator and activist. See <https://law.jrank.org/pages/12257/Mansfield-Arabella.html>.

5. See <https://www.diversitylab.com/pilot-projects/mansfield-rule-certified-firms-2018/>.
6. See <https://www.diversitylab.com/wp-content/uploads/2018/06/Mansfield-Rule-Pilot-Mid-Point-Progress-Report-2017-2018.pdf>.
7. See <https://www.law360.com/corporate/articles/1047285>.
8. See <https://www.diversitylab.com/pilot-projects/mansfield-rule/>.
9. See <https://www.hollandhart.com/holland-hart-among-41-trailblazing-firms-to-achieve-mansfield-rule-certification>.

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