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A Judge Wants a Bigger Role for Female Lawyers. So He Made a Rule.

By ALAN FEUER AUG. 23, 2017

It is common for judges to publish guidance for lawyers who appear in their courtrooms on how to conduct themselves with regard to minor matters like how and when to file motions. But on Wednesday, Jack B. Weinstein, a senior federal judge in Brooklyn, used this typically mundane process to address an issue of growing concern to many in the legal profession: the lack of female lawyers in leading roles at trials and other court proceedings.

Following the lead of a handful of other federal judges, Judge Weinstein issued a court rule urging a more visible and substantive role for young female lawyers working on cases he is hearing.

The issuance of the rule was just one jurist's effort to chip away at the traditional old-boy network that has dominated the legal profession for decades. While some women have, of course, ascended to the top of the legal field, serving on the United States Supreme Court, many still face challenges getting heard in court.

Judge Weinstein has informally encouraged young women and minorities to participate in court more actively over the years, but in an interview on Wednesday he said he decided to codify the guidance after a recent New York State Bar

Association report found that female lawyers appear in court less frequently and that when they do, they are less likely to have a prominent role.

At least one other federal judge in Brooklyn, Ann M. Donnelly, has an analogous rule in place, but that sort of guidance is rare. Of the hundreds of other federal judges around the country, only about 20 have established similar provisions, according to the bar association.

“I’ve been doing this on my own for some time, but not in a systematic way,” Judge Weinstein, who is 96, said. “It’s particularly important because we have so few trials these days so some of the youngsters don’t get the same training they used to. It’s important for everyone, and for the litigation process, that the upcoming generation understands the fundamentals and just gets up on their feet.”

While acknowledging that lawyers, not judges, should be the ultimate arbiters of who stands up to speak on behalf of a client, Judge Weinstein’s revised rule sheet now says that “junior members of legal teams” are “invited to argue motions they have helped prepare and to question witnesses with whom they have worked.”

The rule sheet notes that the decision was taken after the release of “studies of underrepresentation of female attorneys and minorities.” It adds that Judge Weinstein is “amenable to permitting a number of lawyers to argue for one party if this creates an opportunity for a junior lawyer to participate.”

In the interview, Judge Weinstein said that he had been influenced by the report’s findings that showed, among other gaps, that women were the lead lawyers about 25 percent of the time at trials and court hearings across New York State last year. “The low percentage of women attorneys appearing in a speaking role in courts was found at every level and in every type of court: upstate and downstate, federal and state, trial and appellate, criminal and civil, ex parte applications and multiparty matters,” according to the report.

Among the authors of the report was a former federal judge in Manhattan, Shira A. Scheindlin, whom Judge Weinstein credited with pushing him to issue his rule. Earlier this month, Judge Scheindlin, who is now in private practice, wrote an opinion article for The New York Times, saying she had served on the bench for

more than 20 years and that the gender dynamics in her courtroom had barely changed in that time.

“The talking was almost always done by white men,” Judge Scheindlin wrote. “Women often sat at counsel table, but were usually junior and silent. It was a rare day when a woman had a lead role — even though women have made up about half of law school graduates since the early 1990s.”

A few weeks ago, Judge Scheindlin said, she had lunch with Judge Weinstein who asked her, as he always does when they meet, “What good are you doing in the world these days?” When Judge Scheindlin mentioned the bar association report, Judge Weinstein asked what he could do to help. “I said, if you’re so inclined,” Judge Scheindlin recalled, “you could amend your individual rules. He said, ‘I’m going to do it!’ and started taking notes.”

Judge Weinstein is “such an icon and so respected,” Judge Scheindlin added, “that maybe other judges will follow. I’m hoping his choosing to do this will jump-start others to do the same.”

Judge Weinstein’s new rule has been praised by female lawyers all around New York.

“There isn’t, and hasn’t been, a great deal of representation in federal court with respect to women lawyers, so it’s great that Judge Weinstein has embarked on doing something that will increase the role of women in federal court,” said Sara J. Gozo, the immediate past president of the Brooklyn Women’s Bar Association.

Ms. Gozo added that she had recently discussed the issue of women in the law at a lunch she hosted with Dora L. Irizarry, the chief judge of the Federal District Court in Brooklyn, where Judge Weinstein serves.

“There are just pockets of different practice areas in certain courts where, for some reason, women aren’t there,” Ms. Gozo said. “It’s nice to see that some people are now doing their part.”

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