

Bench & Bar

The newsletter of the Illinois State Bar Association's Bench & Bar Section

Bringing the Dark Into the Light: Eradicating Sexual Misconduct in the Courthouse to Foster a Legal Community That Promotes Respect, Safety, and Equality

BY LINDSAY B. COLEMAN, JUDGE DEBRA B. WALKER, & KELLY T. BENNETT

The profound Martin Luther King, Jr. said, "Darkness cannot drive out darkness: only light can do that." Many legal professionals are alarmingly unaware

that sexual harassment¹ continues to cause serious issues in courtrooms and courthouses. In fact, sexual harassment

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Information Overwhelm? How to Tailor Your 'Media Diet' to Stay Informed

BY DEBRA PICKETT

As the founder of a legal PR and media strategy firm, I spend most of my time counseling lawyers on how to handle being the *subject* of media stories — how to answer reporters' questions about high-profile clients and matters, how to ensure coverage of key issues is accurate, how to stay on the right side of professional

guidelines around trial publicity — but, in the wake of tumultuous events shaping last year and this one, many lawyers tell me they are now struggling with the other side of the equation: their lives as media consumers. The need to keep up with business news across multiple industries and regulatory developments at the federal and local level,

feels overwhelming, and they worry about what they are missing.

They know they do not have the luxury of abandoning the effort to stay informed — there's too much at stake for their clients and the business of their firms. Instead, they need to adopt a few new habits and systems

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still affects attorneys at all levels, including judges and named partners. In 2020, many of us became aware of two prominent Illinois legal professionals, an attorney and judge, who were charged with sexual misconduct allegations. As we move into 2021, sexual misconduct needs to be brought into the light so it can be eradicated to foster a legal community that promotes respect, safety, and equality. This past summer, a study was released by the Women Lawyers on Guard, a national nonprofit organization focusing on equality and justice.² This study analyzed the results from its survey of attorneys. The survey respondents were asked to list the time frame in which such harassment occurred going back 30 years. The survey found that sexual harassment by partners and supervising partners does not appear to have lessened in the last 30 years but simply shifted. It alarmingly showed that although the percentage of “sexual assaults, threats, and bribes for sex decreased, the percentage of sexually offensive jokes, ogling or leering, rating of attractiveness and sexualized name-calling” increased. Also, the study revealed that such “inappropriate comments” said to attorneys in their 20s from male law firm partners are simply perceived as “normal” explaining that the young, victimized attorneys remain scared and never report the offenders. This perpetuates the prevalence of sexual harassment and sexual discrimination. As such, we may considerably eradicate sexual misconduct by reporting the offender. However, this is easier said than done.

Most legal professionals do not report sexual misconduct for fear of job loss, negative career repercussions such as being blacklisted in the legal community, and doubts about whether they will be believed. Half of the respondents to The Women Lawyers on Guard study said that even when they reported harassment, the offender did not suffer any consequences,

and horrifically in 4% of the cases, the harassment worsened after reporting.³ The results of this survey lead to the “inescapable conclusion that the system for addressing sexual harassment in the legal profession is still broken.” The results of this survey challenge us to unite and solve the problem together.

An inspiring group of women attorneys who primarily practice in domestic relations, affectionately called Lady Lawyers Who Lunch (“LLL”), are diligently raising awareness of sexual misconduct in our profession and proposing solutions. LLL invited Judge Debra B. Walker, a Cook County Domestic Relations Judge, past Chair of the Illinois Supreme Court Commission on Professionalism, to speak due to her writings and teachings on this subject. On December 16, 2020, over Zoom, Judge Walker engaged in a dialogue with LLL. Judge Walker describes victims as survivors. Sexual misconduct is not about sex but about power. Reporting sexual misconduct is a potent way to take back the power and to bring sexual misconduct into the light. Exposing offenders and bringing their misconduct to light discourages further misconduct by the offenders and motivates other professionals to not be shamed in their careers. This is how change happens over time. For those who are not ready to report, the need for allies is critical, especially in a courthouse where judges may immediately address such uncivil conduct.

Judge Walker’s suggested methods for attorneys to eradicate sexual misconduct include:

- If the misconduct occurs in court, inform the judge, and ask the judge to admonish the offender;
- If you witness misconduct in the courthouse, report it. **If you see something, say something;**
- Write to the judge (*caveat* ensure there is not any ex parte

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- communication about the case);
- Report misconduct to a supervisor, human resources, or someone of equal or higher rank to the offending attorney, if there are no such human resource-like departments;
- Write articles for bar journals and other legal and/or professional organizations;
- Volunteer to be a mentor to younger attorneys; and
- Report the offender to the ARDC or JIB even if it may not result in discipline by these entities. They maintain records of prior complaints.

Judges have a duty to make their courtrooms safe for everyone.⁴ Judges must set consistent expectations for all attorneys in all courtrooms.⁵ For any uncivil behavior, including sexual misconduct, all judges must take immediate action to nip it in the bud at inception, leading by example, to set the tone for civil conduct. This is a non-exhaustive list of tools that Judge Walker suggests all judges have at their disposal to immediately put a stop to sexual misconduct in the courtroom:

- Strongly admonish the offender in open court;
- Put attorneys in a “timeout” by sending them into the hallway (or Zoom waiting room) until they can demonstrate respect for the presiding judge, the litigants, and the lawyers;
- Bring the offenders immediately into chambers (or a breakout room for Zoom) to speak with attorneys about their misconduct and how to eliminate such behavior (*caveat*: ensure there is not any ex parte communication about the case);
- If such misconduct occurs while a witness is being questioned, then an attorney should make an objection on the court’s record;
- If such misconduct occurs during a deposition, call the presiding judge, put him/her on speakerphone, and inform the judge of the misconduct. Alternatively, attorneys may request for a deposition to be taken in the judge’s conference room, providing

- the judge with the ability to rule instantly and address immediately any attorney’s behavior;
- Judges should have Civility Rules on display in their courtrooms;
- Attorneys may speak with the presiding judge of the division or with a chief judge if a judge engages in such misconduct or allows such misconduct to occur in their courtroom; and
- Attorneys may also prepare a motion regarding misconduct in a case at bar and notice it for the court to address.

Judge Walker unequivocally states that third parties, including judges and other attorneys, must also come forward to report sexual misconduct. On June 6, 2019, the Illinois Judicial Inquiry Board filed a Complaint with the Illinois Courts Commission (“Commission”) against former Cook County Circuit Judge Mauricio Araujo (“Araujo”), which alleges he engaged in unwanted sexual advances, inappropriate and harassing advances, and inappropriate and sexually suggestive comments and conduct toward women.⁶ Also, “[t]he complaint further alleges that through the described pattern of inappropriate conduct toward women respondent encountered in a professional setting and through each incident, respondent violated Rules 61, Canon 1, Rule 62, Canon 2(A), and Rule 63, Canons 3(A)(3) and (A)(9).”⁷ Multiple women came forward to report him, demonstrating, in part, the importance of reporting offenders. Araujo resigned in late September 2020 after the Commission found Araujo’s conduct as proved by clear and convincing evidence, was “prejudicial to the administration of justice and brought the judicial office into disrepute toward women.”⁸ Since Araujo resigned, The Commission need not have written such a thorough Opinion. Illinois Supreme Court Justice Theis, Chair of the Courts Commission, issued one anyway. This powerful Opinion, in part, should serve as a warning to judges that this is a new era, and that sexual harassment will not be tolerated.

It is 2021 and while everyone should “know better,” sexual misconduct continues to be a pervasive issue that requires more effective measures to eradicate. Attorneys

and judges must genuinely commit to stand united, strategize, cultivate allies, mentor the younger generations, and continue to collaborate, so together, our legal community will truly achieve fundamental and long-lasting change. We need to pave the way for seamlessly reporting sexual misconduct in our legal profession, regardless of whether it occurs in courtrooms, law firms, or bar associations. We need to adopt a zero-tolerance standard. Collectively, we must bring the dark behavior of sexual misconduct into the light and make sexual misconduct a shameful behavior that has real consequences, so that attorneys and judges together may create a profession that promotes respect, safety, and equality. The future of our profession depends on it! ■

1. NOTE: sexual harassment, sexual discrimination, sexual assault/violence, and sexism in all forms are referred to herein as “sexual misconduct”.

2. See an executive summary of the study, *Still Broken: Sexual Harassment and Misconduct in the Legal Profession*. The study is based on an August 2019 survey, disseminated through bar associations, online groups, and individuals’ networks. More than 2,100 people responded to the survey; 92% of them identified as female.

3. The survey found that sexual harassment has long-term negative effects. 61% percent of the respondents reported anxiety about their careers or workplaces; 40% feared retaliation; 37% experienced a loss in productivity; and 28% reported a negative impact on their careers. Only 18% reported no impact.

4. “A judge having knowledge of a violation of these canons on the part of a judge or a violation of Rule 8.4 of the Rules of Professional Conduct on the part of a lawyer shall take or initiate appropriate disciplinary measures.” See CANON 3” *Rule 63 - Canon 3 of the Code of Judicial Conduct*, Ill. Sup. Ct. R. 63. This Canon requires a judge to take or initiate appropriate disciplinary measures where he or she has knowledge of a violation of Rule 8.4.

5. “It is unprofessional for a lawyer to: “...engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.” See Model Rules of Prof’l Conduct R. 8.4(g).

6. See *In re Araujo*, Case No. 19 CC 1 (Nov. 6, 2020)

7. See *Id.*

8. *Id.*

Information Overwhelm? How to Tailor Your ‘Media Diet’ to Stay Informed

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to manage the content they consume. Here are some approaches that I’ve seen work well:

Limit social media consumption.

LinkedIn and other social media channels can be a good way to stay informed, but the endless scrolling these platforms are designed to encourage bombards you with content and leaves you feeling overwhelmed and underinformed. Carefully edit the list of accounts you follow to make sure everything you see is credible and relevant. And get a handle on your overall social media use by using the “screentime” feature on your devices. You’ve got better things to do!

Assess your inbox. How many newsletters and alerts do you receive each week? Which ones really matter? Whittle that selection down to no more than three morning news summaries hitting your email each day:

- One for national headlines, such as the New York Times, Washington Post or Wall Street Journal
- One for local stories. In Chicago, where my firm and most of my clients are based, the Crain’s Morning 10 is an excellent curated list of headlines from multiple sources.
- One focused specifically on either legal news or the particular industry you serve. (ALM’s “The Morning Minute” and Bloomberg Law’s “Wake Up Call” are excellent examples of this. Law360 also has a feature that enables subscribers to create a custom newsletter for themselves pulling from their many different areas of coverage.)

Unsubscribe from all other alerts and newsletters. Your inbox will feel less cluttered, and you will have the bandwidth to actually engage with this selection of content.

Read and generate next steps. Merely skimming these emails every day, however, still won’t fully empower you to act on the intelligence they contain. You need to create space for the “so what?” analysis of that information, which might include questions

like “What are the big takeaways and how do they square with what leaders already know about this issue?” or “Who needs to see this information, and how can I get it to them?” One way to “process” your content is to outsource the task to a clerk or trusted assistant who understands the questions that are top of mind for you and most relevant to the matters you handle. Indexing articles through the use of tags, one-sentence summaries, flagging for relevance by client, or whatever makes sense in your practice area helps ensure that you have the best, most current insights available when they are most important for your work.

Think long term. Clients who trust your counsel rely on your ability to forecast the future we cannot yet see, and that stretches far beyond the breaking news landscape. As we saw numerous times last year, government entities and the industries they impact can make a dramatic move one day, only to reverse that decision 24 hours later. Leaders underestimate the whiplash that comes from consuming too much of this kind of media, getting stuck in reactive mode instead of staying focused on long-term goals. Make space to engage with longer, more substantive analysis from trusted sources offering not just news but valuable context, not just content but wisdom. ■

Debra Pickett is the publisher of [De Novo](#), a subscription-based publication for law firm leaders, and the founder of [Page 2 Communications](#).

Recent Appointments and Retirements

1. Pursuant to its constitutional authority, the supreme court has assigned the following to the appellate court:

- Hon. LeRoy K. Martin, Jr., 1st District, January 4, 2021

2. Pursuant to its constitutional authority, the supreme court has appointed the following to be circuit judge:

- Hon. Sanjay T. Tailor, Cook County Circuit, January 4, 2021
- Hon. Barry L. Vaughan, 2nd Circuit, 5th Subcircuit, January 4, 2021
- Michael G. Nerheim, 19th Circuit, 2nd Subcircuit, February 1, 2021
- Carla E. Barnes, 11th Circuit, February 22, 2021
- Hon. Rene M. Van Tine, Cook County Circuit, February 19, 2021

3. The following judges have retired:

- Hon. Richard L. Tognarelli, 3rd

Circuit, January 4, 2021

- Hon. John Kennedy, 6th Circuit, January 15, 2021
- Richard C. Schoenstedt, 12th Circuit, January 17, 2021
- Hon. Dennis J. Porter, Associate Judge, Cook County Circuit, January 20, 2021
- Hon. Cornelius J. Hollerich, Associate Judge, 13th Circuit, January 28, 2021
- Hon. Valerie Bottle Ceckowski, 19th Circuit, 2nd Subcircuit, January 29, 2021
- Hon. Kathleen Ann Panozzo,, Associate Judge, Cook County Circuit, January 29, 2021
- Hon. Daniel T. Gillespie, Associate Judge, Cook County Circuit, January 30, 2021

4. The circuit judges have appointed the following to be associate judge:

- John Hay, 15th Circuit, January 6, 2021
- Scott M. Belt, 13th Circuit, January 8, 2021
- Lindsey A. Shelton, 6th Circuit, January 21, 2021
- Nancy A. Nicholson, 21st Circuit, February 16, 2021
- Leah M. Bendik, 14th Circuit, February 22, 2021
- Derek L Hancks, 14th Circuit. February 22, 2021
- Ronald S. Motil, 3rd Circuit, February 22, 2021
- Matthew D. Lee, 6th Circuit, February 25, 2021
- Angela P. Donohoo, 3rd Circuit, February 26, 2021 ■



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