

The Catalyst

The newsletter of the Illinois State Bar Association's Standing Committee on Women and the Law

Chair's Column

BY KELLY BENNETT

It is my last column as chair of the Standing Committee of Women and the Law. Yesterday I chaired my final meeting and it was on Zoom. It's funny, because at the start of my chair year, we were all encouraged to conduct more meetings via phone conferences and/or Zoom conferences. Zoom seemed like such a foreign concept not that long ago. Now it has very much become a part of most of our daily office and social routines. Our

committee also recently did a Zoom happy hour social, just to check in with each other, and make sure everyone was doing ok during this stay home order.

It has been an interesting spring, to say the least. Most of us have been operating from home offices for over a month and a half, and will likely still be working from home for several weeks. When we return to our offices and to court, things will be

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Workplace Harassment Reforms in the Wake of the #MeToo Movement

BY MACKENZIE E. PICKERING

The #MeToo movement exploded into the public consciousness in October of 2017, forcing legislators across the country to recognize a systemic problem surrounding workplace harassment and to rethink the way that women are heard in today's society. Following the proliferation of #MeToo, over 300 state legislators representing 40 states and the District of Columbia came forward and declared that they were committed to supporting survivors and working towards the goal of

strengthening protections against sexual harassment in 20 states by 2020¹. Since this time, state legislators from across the country have introduced approximately two hundred bills aimed at strengthening protections against workplace harassment. Of these states, fifteen—Illinois included—have passed new protections².

This past August, Governor JB Pritzker signed legislation including the Workplace Transparency Act, the Sexual Harassment

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different. They will have to be different. We won't be able to fill up court rooms with litigants like we did in the past. Although it is often hard to see the positive in this pandemic, the legal profession is historically slow to adapt and change to advances in technology and work-life balance shifts. This stay home order may be what causes a shift in the way we practice. Maybe we will figure out how to stop using carbon copies! Is that a pipe dream?

There are still so many unknowns for the next year. I keep hearing people say what they want to do when this "goes away" or when things "go back to normal." But the reality is that this may not be going away and we likely need to adjust to a new normal. As of today, Illinois will likely be "shut down" for another month. So instead of thinking about what we are going to do when things go back to normal, maybe we can think about what we can do better when the stay home order gets lifted.

The common thought is that it takes 21-30 days to form a habit, and about two

months for a behavior to become automatic. Under the most recent extension of the stay home order, we will have been working from home for 2.5 months—more than enough time to establish a new automatic behavior. So what new behaviors will we have formed when we return to our offices? Will you be better in shape? Will you be more organized? Will you enjoy the slower pace and decide that you don't want to return to your previous frenetic pace? Will you decide that you like Zoom conferencing better than requiring clients to come to the office? Will you have developed good habits or bad habits?

Personally, I have been trying to get in at least a 10-minute workout every day. I am practicing gratitude. And I am spending lots of quality time with my 10-month-old daughter. I try and touch base with my friends, family, and colleagues regularly, on Zoom happy hours and phone calls. Let's all continue to take care of each other, and I will see you on the other side. All in Illinois.■

Workplace Harassment Reforms in the Wake of the #MeToo Movement

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Victim Representation Act, and the Hotel and Casino Employee Safety Act, in order to bolster Illinois' laws protecting survivors and holding abusers and enablers more accountable. These new laws were set to take effect on January 1, 2020, with the exception of the Hotel and Casino Employee Safety Act, which will go into effect on July 1, 2020³.

The Workplace Transparency Act, which amends the Illinois Human Rights Act, requires all employers in Illinois to provide annual sexual harassment training to employees starting in 2020 and also strengthens employees' abilities to report allegations of harassment⁴. The Sexual Harassment Victim Representation Act ensures that victims and accused individuals will not be represented by the same union representative in proceedings⁵. Finally,

the Hotel and Casino Employee Safety Act requires hotels and casinos to provide employees who work in isolated areas with panic buttons and to write and develop anti-sexual harassment policies⁶.

By enacting these reforms, Illinois, along with fourteen other states, has acknowledged the impact of the #MeToo movement and validated the voices of survivors in America. There are, however, further changes that can be implemented. For instance, while the Illinois Human Rights Act has been amended to permit non-employees like contractors and consultants to hold an employer liable for unlawful sexual harassment, the amendments generally do not hold employers liable for harassment committed by nonsupervisory employees. Only when employers become

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aware of the conduct and then fail to take reasonable corrective action will they be held responsible for harassment performed by lower level employees⁷. Some states, like New York, California, and Maryland, have enacted legislation that goes even further than that passed by Illinois, such as reforms that prevent loopholes in employer liability for harassment, extend the statute of limitations for harassment complaints, and authorize victims to seek punitive damages⁸. While there is clearly still progress to be made, states throughout the country are making serious changes in response to the #MeToo movement and Illinois remains at the forefront of these transformations. ■

This article was authored by Mackenzie E. Pickering. Mackenzie is a first-year associate at Weiss-Kunz & Oliver, LLC and can be contacted at mpickering@wkofamilylaw.com.

1. Andrea Johnson, Kathryn Menefee, and Ramya Sekaran, *Progress in Advancing Me Too Workplace Reforms in #20Statesby2020*, National Women's Law Center (December 2019), https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/07/final_2020States_Report-12.20.19-v2.pdf.

2. *Id.*

3. Gov. Pritzker Signs Comprehensive Legislation Protecting Victims of Sexual Harassment in the Workplace (August 2019), <https://www2.illinois.gov/Pages/news-item.aspx?ReleaseID=20435>.

4. Michael Johnson, *Illinois Annual Sexual Harassment Training*, Clear Law Institute (February 2020), <https://clearlawinstitute.com/blog/new-illinois-annual-sexual-harassment-training-requirements/>.

5. *Id.*

6. *Id.*

7. Jan. 1st New Workplace Harassment Laws in Illinois, Horton (September 2019), <https://www.thehortongroup.com/resources/jan-1st-new-workplace-harassment-laws-in-illinois>.
8. Johnson, Menefee, and Sekaran, *Progress in Advancing Me Too Workplace Reforms in #20Statesby2020*, National Women's Law Center (December 2019).

Women and the Law Celebrates International Women's Day

BY ERIN WILSON

It was a lovely afternoon on March 6, just a week before most of us went into quarantine/work from home mode, where so many fabulous female and supportive male attorneys gathered at The Drake for High Tea. We celebrated International Women's Day and the accomplishments of women on a local and national scale. Ava George Stewart encouraged us to be proud of there being six candidates for the Democratic Presidential nomination for 2020, and we now know that Joe Biden has promised to name a woman as his running mate (am I the only one secretly hoping for Michelle Obama?).

This event has grown each year. Now in our fourth year, we welcome guests that are active in the ISBA and our committee and those learning about how great our organization is. Staci Balbirer and I were thrilled to co-chair the event with the help of Melissa Burkholder and look forward to the event again next year. ■



The Fear Factor

BY JUDITH MILLER, ESQ.

Fear lurks everywhere in the profession of law. But it can be faced, battled and beat. That, at least, is the scenario laid out by author Heidi K. Brown in her book “Untangling Fear in Lawyering: A Four-Step Journey Toward Powerful Advocacy.”

Brown is director of legal writing and associate professor of law at Brooklyn Law School. She earned her juris doctorate in 1994 from The University of Virginia School of Law and is the author of five other books on the practice of law.

Starting with fear in law students, Brown traces the path attorneys take as they enter their profession and interact with clients. She looks at the role of fear in mistake-making, as well as the science of fear. Wrapping it all up, Brown offers strategies for untangling fear and mentally rebooting to channel our inner athlete and cultivate a culture of fortitude.¹ The book “endeavors to shed some light on fear within the profession so that we can be happier, more effective, and ethically sound advocates.”²

Brown postulates that fear starts in law school, where students learn that to admit ignorance is to admit weakness, and to admit weakness is to open oneself to attack. “Lawyers are taught to bluff, expected to bluff. Lawyers must always give the impression of knowledge and confidence, must always know,” writes Brown.³ This nurtures an imposter syndrome that follows the student into their professional practice.

Added to this need to appear always in-the-know, lawyers face a host of daily concerns. “What if we don’t know what we are doing? What if we don’t understand the client’s question or ... expectations? What if we can’t find the answer? Find the wrong answer? Spend too much time figuring out a legal problem?”⁴ Of course, there is also the fear of malpractice or disciplinary action, despite striving daily to adhere to intricate procedural rules and meet every deadline.⁵

As fears mount, they begin to hinder the ability to process stimuli and information, retain knowledge, interact with others, and

make prompt decisions, writes Brown as she explores the science of fear.⁶ “Unbridled and unchecked fear blocks learning and performance,” she writes.⁷

Yet it is not just learning and performing that suffers. It is more global than that. “People who fear can’t genuinely give. They are imbued with a deep-seated sense of scarcity in the world, as if there isn’t enough to go around. Not enough love, not enough money, not enough praise, not enough attention—simply not enough.”⁸

The problem deepens as an attorney’s fear meets head-on with a client’s fear. Brown offers no big surprise when she writes that “[c]lients who come to us seeking legal advice experience fear ... about potential loss of freedom, property, financial security, reputation, social status, shelter, relationships and other areas of possible forfeiture.”⁹ From a client’s perspective, the legal arena is uncharted territory fraught with foreign terminology, lack of control, and confusion.¹⁰

To be genuinely effective, “lawyers need an understanding of the client’s deep fear and mistrust of the very legal system upon which the client must rely for a solution to his or her legal problem,” writes Brown as she references the work of clinical law professor Philip M. Genty of Columbia Law School.¹¹

“Unless we put ourselves—at least temporarily—in the shoes of the client, we might fail to provide enough context,” states Brown, adding that “depriving the client of sufficient context heightens fears, worries and other destructive emotions.”¹² Unfortunately, then, the “lawyer’s resistance to or minimization of a client’s emotions can have the deleterious effect of heightening the client’s stress.”¹³ The stress pours out of the client, who may lash out at the attorney or freeze up and fail to follow-up on the legal advice provided, Brown posits.¹⁴

Bottom line: The client is dissatisfied.

“In fact, the failure of lawyers to appreciate that they deal with emotions, human values, beliefs, secret hopes and fears, prejudices, all of the aspects of humanity, is

probably the single most important reason for client dissatisfaction with legal services,” states Brown in quoting legal ethics scholar Charles Wolfram.¹⁵

The remedy to fear, according to Brown, starts with a psychologically safe environment, “where people trust and respect each other – where, if they make a mistake, others will not think less of them or humiliate them when they ask for help or information.”¹⁶ Yet the answer does not depend on a perfect psychological work world. Instead, Brown points us to the power inherent in “intentional discernment,” where we learn to perceive rightly.¹⁷ This requires metacognition: The internal voice we hear when we are engaged in the learning process—thinking about thinking—the voice that enhances our conscious awareness of how we process new information and learn.¹⁸

Metacognition. This is what Brown zeros in on in the final four chapter of the book. It requires humility, authenticity, and vulnerability. And having carried readers along the journey from fear to understanding, Brown promises we will “come through the other side not only unscathed but even more vibrant and alive.”¹⁹ ■

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1. Heidi K. Brown, *Untangling Fear in Lawyering: A Four-Step Journey Toward Powerful Advocacy*, iv, (2019)

2. *Id.* at 55.

3. *Id.* at 58.

4. *Id.* at 21.

5. *Id.*

6. *Id.* at 87.

7. *Id.*

8. *Id.* at 97.

9. *Id.* at 33.

10. *Id.*

11. *Id.* at 34.

12. *Id.*

13. *Id.* at 35.

14. *Id.* at 36.

15. *Id.* at 38.

16. *Id.* at 59.

17. *Id.* at 77.

18. *Id.* at 161.

19. *Id.* at 174.