

## **BRINGING THE DARK INTO THE LIGHT - Eradicating Sexual Misconduct in the Courthouse to Foster a Legal Community that Promotes Respect, Safety, and Equality**

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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 harassment<sup>1</sup> continues to cause serious issues in courtrooms and courthouses. In fact, sexual harassment 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<sup>2</sup>. 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

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

<sup>2</sup> 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.

in 4% of the cases, the harassment worsened after reporting<sup>3</sup>. 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 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.<sup>4</sup> Judges must set consistent expectations for all attorneys in all courtrooms<sup>5</sup>. For any uncivil behavior, including sexual

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<sup>3</sup> 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.

<sup>4</sup> “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.

<sup>5</sup> “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

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 *instanter* 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<sup>6</sup>. 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).<sup>7</sup>” 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

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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).

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

<sup>7</sup> See *Id.*

disrepute toward women.”<sup>8</sup> 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!

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<sup>8</sup> See *Id.*