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BANKRUPTCY  
INSTITUTE

## 2018 Northeast Bankruptcy Conference and Consumer Forum

# Facing the #MeToo Movement in the Legal Profession: Sexual Harassment and Misconduct, the Rules of Professional Conduct and the Code of Judicial Conduct

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**ABI Northeast Conference**

**Saturday, July 14, 2018 8:00 AM**

**Facing the #MeToo Movement in the Bankruptcy Profession**

**I. Introduction**

- a. How did we get here?
- b. Applicable rules and standards of conduct that apply to workplace conduct as a framework for a workplace anti-harassment policy;
- c. Compliance duties of all employees, managers, supervisors, owners, and employees, to understand policies and obligations;
- d. Procedures for raising awareness, conducting training, and eliminating workplace discrimination, harassment, retaliation.

**II. The Prevalence of Harassment**

- a. Overview: U.S Equal Employment Opportunity Commission, Select Task Force on the Study of Harassment in the Workplace, Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic, [https://www.eeoc.gov/eeoc/task\\_force/harassment/report\\_summary.cfm](https://www.eeoc.gov/eeoc/task_force/harassment/report_summary.cfm) (June 2016 (describing the prevalence of harassment in the work place and making recommendations for preventing harassment));
- b. Examples of unlawful workplace misconduct: <https://www.dol.gov/oasam/programs/crc/2011-workplace-harassment.htm>

(providing examples of behaviors that may contribute to an unlawful hostile work environment);

- c. Consequences of harassment misconduct in the workplace: Crystal Kim, Leslie P. Norton, and Lauren R. Rublin, Sexual Harassment Is Becoming a Serious Investment Risk (Barrons November 4, 2017), <https://www.barrons.com/articles/sexual-harassment-is-becoming-a-serious-investment-risk-1509766872>Sally J. Kaplan, Consequences of Sexual Harassment in the Workplace (Sage Journals 1991) (discussing macroeconomic consequences and costs of sexual harassment in the market place);
- d. The #MeToo Movement: <https://metoomvmt.org/>.

**III. Legal Framework and Principles Applicable to Abusive Work Environment**

- a. Classifications of unlawful sexual harassment and bullying:  
<https://www.dol.gov/oasam/programs/crc/2011-workplace-harassment.htm>  
(describing and providing examples of types of unlawful workplace harassment and contrasting quid pro quo harassment and hostile work environment harassment);  
<http://www.workplacebullying.org/individuals/problem/being-bullied/>  
(defining bullying and providing resources for victims).
- b. Federal and state laws: <https://www.eeoc.gov/laws/types/harassment.cfm>  
(describing harassment as a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in

Employment Act of 1967, and the Americans with Disabilities Act of 1990); see also <https://www.mass.gov/service-details/about-sexual-harassment-in-the-workplace> (summary of Massachusetts laws prohibiting sex discrimination in the workplace, including sexual harassment and links to additional resources);

Dianne Avery and Catherine Fisk, Litigating the Workplace Harassment Case, Chapter 1, Overview of the Law of Workplace Harassment, [apps.americanbar.org/abastore/products/books/abstracts/5190452%20intro\\_abs.pdf](https://apps.americanbar.org/abastore/products/books/abstracts/5190452%20intro_abs.pdf);

Maya Ragu & JoAnna Suriani, #MeTooWhatNext: Strengthening Workplace Sexual Harassment Protections and Accountability, <https://nwl.org/resources/metoowhatnext-strengthening-workplace-sexual-harassment-protections-and-accountability/>.

c. Ethical rules applicable to attorneys

1. State Codes of Professional Responsibility:

Maine: [http://www.mebaroverseers.org/regulation/maine\\_conduct\\_rules.html](http://www.mebaroverseers.org/regulation/maine_conduct_rules.html)

New Hampshire: <https://www.courts.state.nh.us/rules/pcon/>;

Vermont:

<https://www.vermontjudiciary.org/sites/default/files/documents/VermontRuleofProfessionalConduct.pdf>;

Massachusetts: <https://www.mass.gov/supreme-judicial-court-rules/supreme-judicial-court-rule-307-rules-of-professional-conduct>;

Rhode Island:

[https://www.courts.ri.gov/PublicResources/disciplinaryboard/PDF/](https://www.courts.ri.gov/PublicResources/disciplinaryboard/PDF/Article5.pdf)

Article5.pdf;

Connecticut: <https://www.law.cornell.edu/ethics/ct/code/>;

New York: <http://www.nycourts.gov/rules/jointappellate/ny-rules-prof-conduct-1200.pdf>;

- d. Ethical rules applicable to judges

Code of Conduct for United States Judges: <http://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges>;

*See also Letter to Hon Anthony J. Scirica, Chair of the Committee on Judicial Conduct and Disability dated December 20, 2017 from Jaime A. Santos [and 700 law clerks [of the U.S. Courts],*

<https://www.law360.com/articles/.../clerks-urge-chief-justice-to-tackle-sexual-harassment>

- e. American Bar Association [proposed] Resolution 109, to amend ABA Model Rules of Professional Conduct (2016) (recommending that definition of professional conduct include conduct that a lawyer knows or reasonably should know is harassment or discrimination),

<https://www.americanbar.org/content/dam/aba/administrative/>

[http://www.abajournal.com/news/article/house\\_of\\_delegates\\_strongly\\_agrees\\_to\\_rule\\_making\\_discrimination\\_and\\_harass](http://www.abajournal.com/news/article/house_of_delegates_strongly_agrees_to_rule_making_discrimination_and_harass).

**IV. Liability for Types of Harassment**

- a. Strict liability for supervisor harassment

*See* Equal Employment Opportunity Commission, Enforcement Guidance on Vicarious Liability for Unlawful Harassment by Supervisors,

<https://www.eeoc.gov/policy/docs/harassment.html>;

<https://www.eeoc.gov/policy/docs/harassment.pdf>;

- b. Liability for co-worker or other harassment depends on actual or constructive knowledge of the harassment and failure to take corrective action

<https://www.eeoc.gov/laws/types/harassment.cfm>

- c. Retaliation: <https://www.eeoc.gov/laws/types/retaliation.cfm> (describing forms of retaliation); <https://www.eeoc.gov/laws/guidance/retaliation-qa.cfm>

(Questions and Answers: Enforcement Guidance on Retaliation and Related

Issues); [https://www.nolo.com/legal-encyclopedia/workplace-retaliation-](https://www.nolo.com/legal-encyclopedia/workplace-retaliation-employee-rights-30217.html)

[employee-rights-30217.html](https://www.nolo.com/legal-encyclopedia/workplace-retaliation-employee-rights-30217.html) (defining workplace retaliation and advice); Tara

Goishan, Study finds 75 percent of workplace harassment victims

experienced retaliation when they spoke up, (Vox October 15, 2017),

[https://www.vox.com/identities/2017/10/15/16438750/weinstein-sexual-](https://www.vox.com/identities/2017/10/15/16438750/weinstein-sexual-harassment-facts)

[harassment-facts](https://www.vox.com/identities/2017/10/15/16438750/weinstein-sexual-harassment-facts);

- d. Resources for victims: <https://www.betterbrave.org/where-to-find-help>

[reference guide and list of resources for victims of harassment in the

workplace]; National Women's Law Center Legal Network for Gender

Equity and Time's Up Legal Defense Fund, <https://nwlc.org/legal-assistance/>

(resources for victims of sex discrimination, including sexual harassment, and

documentation guide for employees who experience harassment in the workplace)

**V. Preventing Harassment in the Workplace: Crafting New Policies and Procedures**

- a. Federal Judiciary Workplace Conduct Working Group  
<http://www.uscourts.gov/news/2018/01/12/federal-judiciary-workplace-conduct-working-group-formed>;  
<http://www.uscourts.gov/news/2018/03/13/judicial-conference-receives-status-report-workplace-conduct-review>;
- b. U.S Equal Employment Opportunity Commission, Select Task Force on the Study of Harassment in the Workplace, Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic,  
[https://www.eeoc.gov/eeoc/task\\_force/harassment/report\\_summary.cfm](https://www.eeoc.gov/eeoc/task_force/harassment/report_summary.cfm)  
(recommendations for preventing workplace harassment, including leadership and accountability, anti-harassment compliance training, training in civility and bystander intervention; general outreach and outreach to youth, establishment of campaign to end harassment in the workplace);
- c. Considerations in developing new firm/company policies  
Setting the tone and establishing clear policies:  
<https://www.purplecampaign.org/resources> (Sample Code of Conduct and Sample Employee Agreement);  
Sexual harassment reform efforts in Congress:  
<https://www.youtube.com/watch?v=nPCNKoP07m8>

- d. Necessity for training, raising awareness, and self evaluation  
[https://www.americanbar.org/.../aba/.../2018\\_hod\\_midyear\\_302.authcheckdam.docx](https://www.americanbar.org/.../aba/.../2018_hod_midyear_302.authcheckdam.docx);
- e. Necessity for following policies, procedures, and rules in employee handbook; necessity for robust claims procedure within firm or company  
<https://employmentdiscrimination.foxrothschild.com/2014/09/articles/employee-training-programs/employee-handbooks-employers-first-line-of-defense/>;  
[www.nycourts.gov/CAREERS/diversity/pdfs/SHarassmenthandbook.pdf](http://www.nycourts.gov/CAREERS/diversity/pdfs/SHarassmenthandbook.pdf);  
<https://www.calchamber.com/hrcalifornia/hr-library/employee-policies-handbook/Pages/default.aspx>; [https://www.shrm.org/resourcesandtools/tools-and-samples/policies/pages/cms\\_000534.aspx](https://www.shrm.org/resourcesandtools/tools-and-samples/policies/pages/cms_000534.aspx)
- f. Filing administrative charge of discrimination with EEOC or equivalent state agencies  
<https://www.eeoc.gov/employees/charge.cfm>;
- g. Filing a civil action  
<https://www.eeoc.gov/employees/process.cfm><https://www.eeoc.gov/employees/lawsuit.cfm>; <https://nwlc.org/legal-assistance/>;
- h. Effect of arbitration clause in employment agreement:  
Should firms eliminate mandatory arbitration clauses, class action waivers, and a non-disclosure agreements that cover discrimination, harassment, or other workplace misconduct as a condition of employment?  
<https://www.law.com/americanlawyer/2018/05/14/top-law-schools-ask-firms-to-disclose-summer-associate-arbitration-agreements/>;



<https://www.coworker.org/petitions/hls-stop-allowing-firms-to-sweep-sexual-harassment-and-other-abusive-practices-under-the-rug>

[https://www.washingtonpost.com/news/wonk/wp/2018/05/15/uber-no-longer-requires-sexual-harassment-victims-to-sign-confidentiality-agreements-for-settlements-embargoed/?utm\\_term=.72610b956064](https://www.washingtonpost.com/news/wonk/wp/2018/05/15/uber-no-longer-requires-sexual-harassment-victims-to-sign-confidentiality-agreements-for-settlements-embargoed/?utm_term=.72610b956064)

- i. Mediation: <https://www.eeoc.gov/employees/mediation.cfm>

(describing EEOC mediation program and

process); Tim Hicks, Mediation in Sexual Harassment Cases,

<https://www.mediate.com/articles/hicksT8.cfm>.

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**Hypothetical # 1 – Sexual Assault**

Martha is a junior partner in a law firm and is assigned the role of lead trial counsel in a high-stakes case for a new client. Although she has been a lawyer at the firm for more than 10 years, this is her first opportunity to serve in a leadership role. She has worked many hours with her associate, Andrea, on discovery and pretrial proceedings, which have now concluded. The case is scheduled for trial that will last 6 weeks. Another law firm is serving as co-counsel on the trial team. A few nights before trial, attorneys from both firms move into the same hotel where the trial “war room” will be located. At 9:00 PM on the eve of the trial, Martha’s associate Andrea asks to speak with her privately. Andrea tells Martha that around 1:00 AM the night before, while she was organizing exhibits alone in the war room, a male associate employed by Martha’s co-counsel’s firm, stumbled drunkenly into the room, closed and locked the door, and forcibly kissed and groped her until she was able to push him off and escape.

**Hypothetical # 2 – Crude and Rude**

Alan, a law firm senior counsel in his seventies, constantly makes comments on the appearance of women, including associates, partners, administrators, assistants, and paralegals, even clients. His comments range from the benign to the offensive, such as: “My you look lovely today.” “That dress accentuates your curves.” “Your husband is really lucky to cuddle up to you every night.” and “If I were younger I’d ask you out.” He has never touched or propositioned anyone and his offensive conduct consists solely of offensive remarks. Several young female associates complain to one of the partners about how uncomfortable Alan’s remarks make them feel. In addition, Alan also asks younger male associates personal questions about their girlfriends and weekends while others are within earshot. Enabled by the senior lawyer, Bill describes his sexual prowess and numerous

conquests. Another associate, Jim brags how gorgeous his girlfriend is and spoke of their intimate relations this past weekend. Several co-workers heard the banter and mentioned to each other how crass and offensive Alan and the associates' remarks are.

### **Hypothetical # 3 - Thank You Dilemma**

Jonathan is a young associate in a law firm who is very active in the LGBTQ Bar Association. Joel is a junior partner, who is a rising star in the firm. He is also active in the LGBTQ Bar Association, and is a member of the board of directors. Joel has enlisted Jonathan to work with him on several of the association's projects, requiring them to stay and work together after regular hours. During these work sessions, Joel has a habit of sitting very close to Jonathan at the conference table and frequently touching Jonathan's arm or shoulder frequently to make a point. Joel tells Jonathan that he can help him become a leader in the association and move up within the firm. Recently, Joel sent Jonathan a note inviting Jonathan to dinner at an expensive restaurant on a night of his choice, as a thank you for working on his successful campaign to become the president of LGBTQ Bar Association.

### **Hypothetical # 4 – The Rule of Two**

Mike is a senior partner in a large law firm. He thinks that the #MeToo movement has gone too far. A close friend of his from law school was accused of sexual harassment at his firm, and Mike knows his friend could never be guilty of such misconduct. Thus, Mike adopts a policy of never being alone in a room with a female co-worker, whether an executive assistant, paralegal, associate, or partner. Moreover, he always asks that male associates be assigned to work with him on his cases. One of the female associates, Jen, noticed this pattern, and went to the managing partner complaining about it. The managing partner asked Mike to explain his policy. Mike replied that he wants to make sure he is never charged with sexual harassment.

## Hypothetical # 5 – Open House Disaster

A large financial advisory and accounting firm moved to new offices and has an open house for clients. A male manager, Paul, became drunk and sloppily hit on the firm's best client's CEO, Deborah, by putting his arm around, and saying "Come on baby, we're not getting any younger –let's do it!" Deborah stormed away, and the next day, called the managing partner. She said that Paul's embarrassing treatment of her is a deal breaker, and exclaimed, angrily "He needs to go now or I find another firm." Paul is a fine accountant and financial advisor and is also an excellent rainmaker. He has not exhibited any lapse of judgment in the past.

Two accountants at the firm also were drinking at the party. Doug, a senior accountant, asked a younger female, Lacey, if she wanted to go out after the party. She declined but they continued to drink to excess. An hour later, Doug cajoled Lacey to leave together. Lacey drunkenly held onto Doug as they left the party. Lacey's colleagues and the managing partner looked on with anxiety.

## Hypothetical # 6 – Married Acting Single

Jeff, a partner in the Boston office a national law firm, stops in daily to see Lauren, a young female associate, to say "hi" and occasionally asks her for a consult on cases. They are assigned to a big case and start to work long hours together. A couple of months ago Jeff started asking Lauren to go for drinks after work about 3 times a week. Lauren obliges but usually leaves the bar after two drinks. After a couple of weeks, while having drinks after work one night, Jeff got personal- asked Lauren about her social life, told her she's pretty, and moved closer. Lauren continues to go out with him after work, but now after two months, she is stressed about it. He texts her jokes while they are not at work and asks her what she is wearing. One night Jeff professed his attraction to her and desire for a sexual relationship. Lauren replied vaguely that she is involved and left the bar. The next day Jeff asked the managing partner to remove Lauren from the case they are working on together. However, Jeff continues to drop by her office and still asks her to come out after work for drinks. She continually declines, but he

does not stop texting her asking her out. Lauren fears reprisal if she reports Jeff because the managing partner is his cousin.

### **Hypothetical # 7 – Too Close for Comfort**

A senior law firm litigation partner, James, and his paralegal Jean, are both happily married to others, and often work together on cases as a team. They eat breakfast and lunch everyday together and work out in the same gym after work. Jean was going on summer vacation and James saw her at the gym and said he wanted to give her a hug goodbye. He does so for what Jean considered an inappropriate length of time. As she pulled away, he commented on her tattoo and asked her to show the entire tattoo to him. This made her uncomfortable and she left quickly. Jean told her husband who called HR the next week to report and complain about the partner's conduct. After her 2-week vacation, Jean went to HR and asked for a transfer to a different department. The HR director supported the transfer and discussed it with James. James stated that he disagreed with a transfer, that he and Jean simply needed time to discuss this misunderstanding, and that they would work it out. When the HR Director reported his response to Jean, Jean said she was very stressed, that she and her husband talked it over and a transfer would be best. She stated that she did not wish to discuss anything with James and insisted on a transfer to another department. She reported to the HR Director that she heard from friends that James is blackballing her around the firm. He reported to the HR Director that Jean refused to take his calls, return his messages, or meet with him and that this is insubordination. He also told HR that she knows too much about his clients and insists on her signing a Nondisclosure Agreement. When HR relates this request to Jean, she refuses. James tells both the HR Director and the managing partner that this refusal is also insubordination and that he wants Jean fired. He also insists that a letter be included in her personnel file that she refused to sign the NDA. The HR Director supports the transfer to another department and not termination, and thinks James is trying to bully Jean. The HR Director is concerned about what to do and comes to you as managing partner.

### **Hypothetical # 8 - Networking**

After working at the same firm for 7 years as an associate, Meredith recently was promoted to junior partner. She has established a personal goal

to bring in two new clients this year, in the hopes that she will make a good impression on firm management during her first year as partner. Zach, a former law school classmate who now works as an in-house lawyer at a prospective client corporation—and who Meredith briefly dated almost 10 years ago—sees her promotion update on LinkedIn, and sends a congratulatory note to Meredith’s work email that concludes, “I’ll definitely keep you in mind if I ever need a good lawyer! :)” Excited by the prospective new business, Meredith replies that they should find time to catch up in the coming weeks. Zach suggests they meet for Friday happy hour drinks at 5:00pm at a bar near both of their offices. They spend the first 45 minutes talking about business. Then, the conversation turns to catching up about friends, family, and their personal lives, and Zach asks if Meredith is still single (she is, and answers truthfully). Zach mentions that he and his wife of two years recently separated. The next day, Zach sends a follow up note to Meredith’s work email suggesting they get together again the following week for dinner to continue the conversation. Meredith has no romantic interest in Zach.

# ABI Northeast Conference 2018

## Facing the #MeToo Movement in the Bankruptcy Profession



### Presenters:

**Mark W. Batten**

*Proskauer Rose LLP; Boston*

**Hon. Joan N. Feeney**

*U.S. Bankruptcy Court (D. Mass.); Boston*

**Cathy Rae Hershcopf**

*Cooley LLP; New York*

**Paul G. Lannon**

*Holland & Knight LLP; Boston*

**Ally Coll Steele**

*Purple Campaign; Washington D.C.*

## Poll Questions #1 and #2

- How many in the audience have been subjected to sexual harassment in the workplace?
- How many know someone who has been sexually harassed in the workplace?



## Judge Joan Feeney

*Why are we here today?*

- Prevalence of workplace misconduct - Mass. Women's Bar Association survey results
- Culture of acceptance, secrecy, and cover ups before #MeToo
- #MeToo becomes "Now What?"
- Reforms, necessity of standards and procedures
- Format of our program
  - Panelists' efforts to eliminate sexual harassment in the workplace
  - Poll questions and responses
  - Analysis by panelists



## Ally Coll Steele



- Founder of the Purple Campaign
- EEOC statistics on prevalence of sexual harassment in the workplace
- High percentages of failure to report
- High rates of harassment for women of color
- History of the #Me Too Movement
- How to effectuate change?

## Mark Batten

- Representative on Proskauer's internal Personnel Practices Committee
- Boston office Ombudsman
- Advises lawyers and administrative staff on best practices for workplace conduct
- Develops and ensures adequate training on sexual harassment and workplace misconduct
- Reviews and investigates workplace misconduct complaints from both lawyers and staff

## Cathy Hershcopf



- 1980s - started at a large law firm that had all meetings outside the firm at an all-male club with no women's bathrooms
- 1990s - only woman partner in my smaller law firm
- 2000 - only woman in the bankruptcy group out of 28
- 2008 - kick-started Women's Initiative @ Cooley LLP with several fabulous women outside my group and support of CEO/ Managing Partner

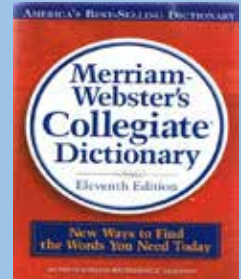
## Paul Lannon



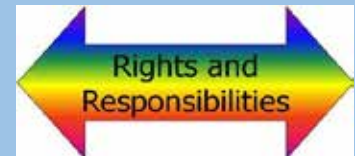
- Employment litigator defending employers and conducting investigations
- Law firm partner working with associates, staff, and clients
- #MeToo on campus at schools and colleges

## Workplace Misconduct Definitions

- Discrimination – adverse action based on protected characteristic
- Sexual harassment is gender discrimination
  - Two types – quid pro quo and hostile work environment
- Bullying is abusive conduct serving no legitimate purpose
- Power disparity factor



## Claims: Management's Threshold Duties



- Establish policy and obligations under it
- Necessity of training
- Establish complaint procedures
- Complaint triggers duty to investigate – what is a complaint?
- Duty to conduct early, prompt, thorough, impartial, investigation

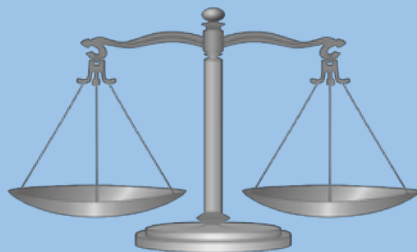
## Claims: Investigation

- Confidentiality and privilege issues
- Procedures for conducting interviews of complainant, witnesses, supervisors, accused
- Questioning strategies
- Reviewing evidence and documents – emails, texts, voicemails, personnel files
- Retaliation issues
- Documenting the investigation



## Claims: Liability and Remedies

- Liability – individual and employer
- Appropriate remedial action



# Hypo # 1

## SEXUAL ASSAULT



- Martha, a junior partner, is lead counsel in a 6 week trial.
- While compiling exhibits in the war room, associate Andrea is sexually assaulted by drunken associate employed by firm acting as co-counsel.

## Hypo # 1 Poll Questions: Yes or No

- A. Should Martha report the incident to her supervising partner?
- B. Should Martha report the incident to partner of co-counsel firm?
- C. Should Martha report the assault to the court and request continuance of the trial?
- D. Should Andrea report the male associate to the police?



## Hypo # 2

### CRUDE AND RUDE



- Alan, law firm senior counsel in his 70s, makes benign as well as crude remarks about women's appearance.
- Misconduct is not physical, and is limited to offensive remarks.
- He and young male associates, Bill and James, engage in sexist, offensive, loud conversations.

## Discussion Questions: What would you do if:



- A. You are a young female associate and Alan makes these remarks to directly to you weekly?
- B. You are an administrative assistant and you hear the banter between Alan and the young male lawyers?
- C. You are a partner and a young associate complains to you about the remarks?
- D. You are a client and you overhear the remarks while walking into a meeting with your attorney?

## Hypo # 2 Poll Questions: Yes or No

- Should Alan be terminated ?
- Should Jim and Bill be terminated?



## Hypo 2 Poll Question: Multiple Choice What should management do?



- A. Have a talk with Alan, and advise him that management will not condone his conduct, and he needs to amend ways, failing which his compensation will be reduced;
- B. Direct Alan to send an email to everyone in the firm apologizing for his insensitivity and offensive remarks;
- C. Order Alan to take immediate training in workplace conduct;
- D. Send a firm wide email from management that the firm has taken action on the associates' complaint and to remedy Alan's conduct;
- E. All of the above.



## More Hypo 2 Poll Questions

What options should the managing partner pursue with the associates, Bill and Jim?

- A. Speak with the complainants about what remedy or sanction they would like the firm to impose on Bill and Jim;
- B. Have an informal discussion with Bill and Jim separately and advise them to stop the offensive remarks;
- C. Give Bill and Jim a formal warning about their workplace misconduct and put the warnings in their personal file;
- D. Send an email to all partners, associates, and the complainants that the firm has investigated the complaints and given the associates warning;
- E. Place both Jim and Bill on probation.

## Hypo # 3

### THANK YOU DILEMMA



- Jonathan is a rising star in his law firm and in the LGBTQ Bar Association.
- He asks a young associate, Joel, to work with him on cases and his campaign to be president of the bar association.
- Jonathan frequently touches Joel's arms and shoulder to make a point.
- Jonathan invites Joel to an expensive restaurant for dinner to thank him for working on his successful campaign to be president.

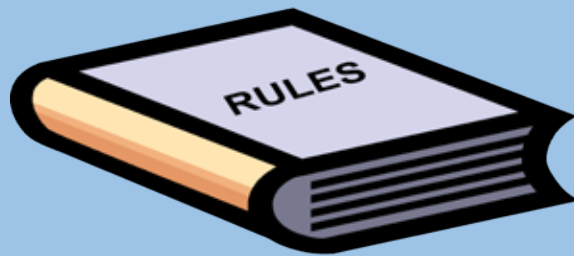
## Hypo 3 Poll Questions: Yes or No



- Should Jonathan accept the dinner invitation?
- Should Jonathan talk to a colleague or a partner about the dinner invitation before he accepts?
- Should Jonathan ask Joel if Sam can join them for dinner as he also worked hard with Joel on the campaign?
- Should Jonathan thank Joel for the dinner invitation but decline, stating that a costly expression of gratitude is not necessary?

## Hypo # 4

### RULE OF TWO



- Mike, senior law firm partner, thinks #MeToo has gone too far and men are unfairly accused.
- Mike refuses to be alone with any female in the office and won't assign work to female associates.
- Jen complains to managing partner.
- Mike explains to managing partner that his policy is self-preservation to make sure he is never charged with sexual harassment.

## Hypo # 4 Poll Questions: Yes/No



- A. Should the board allow Mike to set his own policy and not interfere?
- B. Is Mike's policy unreasonable and should the board advise him to stop excluding women?
- C. Should the board approve Mike's policy as a firm policy?

## Hypo # 5

### OPEN HOUSE DISASTER



- Financial advisory, accounting firm has open house in new office for clients and all staff.
- Paul, a partner, gets drunk and hits on firm's best client, Deborah.
- Deborah demands Paul be fired or she pulls her business.
- Younger female associate also drinks excessively and leaves party with senior male associate.

## Hypo # 5 Poll Questions: Yes/No

- A. Should Paul reach out to Deborah and apologize?
- B. Should the managing partner have a discussion with Deborah and try to keep her company as a client, explaining that Paul's conduct was an aberration?
- C. Should the firm refer Paul to alcohol counseling?
- D. Should the firm terminate Paul so they can keep Deborah's company as a client?
- E. Should the managing partner refer the two associates to alcohol counseling?
- F. Should the firm investigate what happened with Doug and Lacey after the party?



## Hypo # 6

### Married Acting Single



- Jeff, a partner who is married, pays excessive attention to a young second year female associate, Lauren.
- Jeff asks her for drinks after work several times a week and after a couple of months expresses desire for an affair.
- Lauren declines and says she is involved but Jeff continues to text her and ask her out for drinks after work.
- Lauren fears reprisal if she reports Jeff as the managing partner is his cousin.

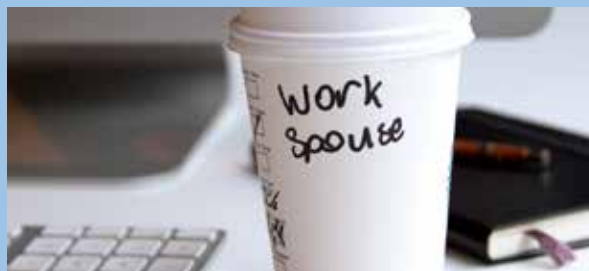
## Hypo 6 Poll Questions: Yes or No

- A. Should Lauren simply confide in a co-worker about Jeff and leave it at that?
- B. Should Lauren report Jeff to his cousin, the Boston office managing partner?
- C. Should Lauren skip over the managing partner cousin and report Jeff to the senior management at the firm's national headquarters?
- D. Should the firm send a team to the satellite office to investigate?
- E. Should Jeff be placed on probation?
- F. Should Jeff be terminated?



## Hypo # 7

### TOO CLOSE FOR COMFORT



- Senior litigation partner, James and his paralegal Jean work closely together. Although each is married they consider each other "work spouses".
- James hugs Jean after working out late in the gym and asks to see the rest of her tattoo.
- Jean returns from vacation and HR asks for a transfer. HR advises James and he disapproves. James asks to meet with Jean and she refuses.
- James demands Jean sign NDA about his clients and when she refuses demands she be fired for insubordination.

## Hypo 7 Poll Questions: Yes/No



- A. Should the HR director advise Jean to NOT sign the NDA?
- B. Should the HR director effectuate the transfer of Jean to another department over the objection of James?
- C. Should the firm refer them both for separate counselling?
- D. Should James be terminated for his conduct toward Jean?
- E. Should a lesser sanction be imposed on James, such as suspension or reduction in compensation?



## Hypo # 8

### NETWORKING



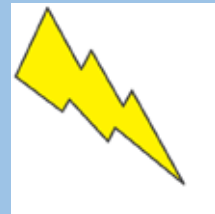
- Meredith was promoted to junior partner and is expected to generate new clients.
- She meets with Zach, a former boyfriend, who is in house counsel at corporation to explore as possible client.
- Zach invites Meredith for drinks and advises he is separated.
- Zach invites Meredith for dinner the following week.

## Hypo 8 Poll Questions: Yes/No



- A. Was it improper to Zack to mention he is separated and ask Meredith her relationship status?
- B. Should Meredith accept the dinner invitation and see where it goes?
- C. Should Meredith accept the dinner invitation by email and indicate that she wishes to keep it strictly business?
- D. If Meredith makes a formal client pitch, is it improper for him to pursue her romantically thereafter?
- E. If Zach becomes a client, is a consensual relationship improper?

## CONCLUDING REMARKS



- Long-term solutions and changes to achieve lasting reforms must include positive firm culture, accountability, self-assessment, reporting processes, communication and training, collection of data about misconduct, prevent retaliation
- Important role of lawyers in creating lasting change.