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The #MeToo Culture Shift in the Legal Profession

Posted on August 21, 2018 by Mark C. Palmer



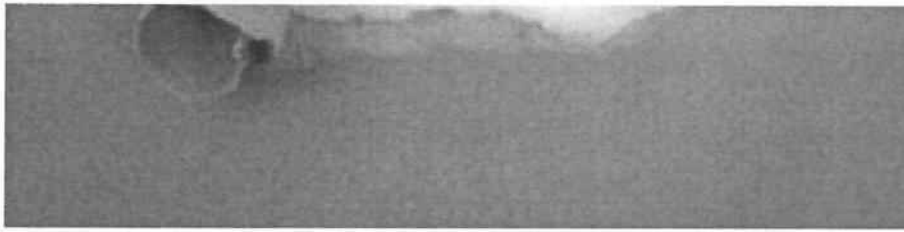
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As the #MeToo movement maintains its impact across the nation, the legal industry continues to respond. Law firms, law departments, bar associations, and even the judiciary are reviewing sexual harassment policies, examining reporting procedures and structures, and fostering dialogue meant to find systematic changes.

Attendees at the ABA Annual Meeting in Chicago this month heard from an esteemed panel of speakers on how workplace environments have been impacted by the #MeToo and Time's Up movements. The panelists included:

- Judge M. Margaret McKeown – U.S. Court of Appeals for the Ninth Circuit
- Tina Tchen (@TinaTchen) – Co-Founder, Time's Up Legal Defense Fund (@TIMESUPLDF)
- Teresa Hutson – Deputy General Counsel, HR Legal, Microsoft
- Nicole VanderDoes (@ThatBarGirl) – Chief Counsel, ABA Standing Committee on the American Judicial System (@abaSCAJS)

The program was co-sponsored by the ABA Office of the President, Commission on Women in the Profession and the Section of State and Local Government Law. The panel was moderated by ABA Past President Hilarie Bass (@HilarieBass).

Here are some of the panel highlights:

Judge McKeown

Judge McKeown chaired a special ad hoc committee in the Ninth Circuit to examine how such inappropriate behaviors were

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being investigated and addressed. The committee surveyed almost 6,000 current and former court employees, receiving over 3,000 survey responses to hear about the experiences and evaluate the procedures in the judiciary. They continued their examination with focus groups among clerks and law students to solicit ideas.

As a result, the U.S. Court of Appeals for the Ninth Circuit is taking steps to advance its procedures, including the formation of a “Director of Workplace Relations” to create a separate connection outside human resources for reporting and investigations. Additionally, the federal judiciary is examining how to produce impactful and meaningful training options well beyond the “bad training videos” in the days of old.

“Lawyers always want to know what’s the bottom line, what’s my legal liability. It’s something broader than that. I think this conversation...needs to be broadened because we need everybody under this tent,” stated Judge McKeown.

Tina Tchen

Tina Tchen, who served as the chief of staff for former First Lady Michelle Obama, leads the TIME’S UP Legal Defense Fund. Tchen told the audience that the Fund has received over 3,200 requests for help and has had over 800 pro bono attorneys step up to help defend those who experience sexual misconduct including assault, harassment, abuse and related retaliation in the workplace.

Over 40% of law firm employees have reported being present when inappropriate behavior has occurred. And 28% of women lawyers feel that they had to either develop an inappropriate relationship or engage in some sort of sexual behavior to advance in their career, according to Tchen.

It is a difficult conversation on a topic nobody likes to talk about – sex. Nevertheless, what often gets overlooked is that it isn’t really about sex. It is about power.

So, when you recast the conversation to power and coercion, then the lines become more definable. “Over whom do you have power and influence so that your actions can be coercive or misinterpreted.” That is where Tchen says you need to focus the conversation to build an appropriate organizational culture.

Tchen said that the #MeToo movement is the first time she’s seen such a national conversation occurring on the topic in the past 30 years. She emphasized that this is a business governance and workplace culture issue, well beyond an employment law issue. And rightfully so, as poor workplace culture and career development opportunities are the leading reasons why people leave their jobs, according to Korn Ferry in 2018, not their dissatisfaction with pay.

Teresa Hutson

The entire workplace culture – viewed as a responsibility by and for everyone – must be involved for systematic change, reiterated Teresa Hutson of Microsoft. She discussed how good management needs to be held accountable to drive change and shift workplace culture. Such focus needs to include proper training and responses to the harasser, the victim, and the significant role of the bystander as well.

As a bystander, you have an obligation to do something and take appropriate action. That may be talking to the offender or talking to the recipient of the behavior. In other words, if you see something, say something; or even more so, DO something.

“See Something, Do Something,” Hutson pointed out, is the focal point of Microsoft’s bystander training. “We all need to be part of that organization’s culture and take responsibility for it.”

Nicole VanderDoes

VanderDoes published an impactful and personal piece about sexual harassment in the ABA Journal entitled, “The judiciary must deal with #MeToo – and with what I know” wherein she

describes how two men in power, one a state judge and one a federal judge, sexually assaulted her.

She shares her stories and encourages conversation because “lawyers, judges, courts, judicial disciplinary authorities and bar associations need to be prepared so that when that day comes [when abusers are named], we can preserve the integrity of the judicial system by holding all judicial officers to the highest standards and showing the public that no one is above the law.”

As lawyers and judges, we are held to a higher standard, and should be, says VanderDoes. Nevertheless, the appropriate line for behavior remains. To the men saying I just don’t know how to act? “Behavior that was appropriate before, is still appropriate. And behavior that was inappropriate before, is still inappropriate.”

Should an individual experience sexual harassment or unwanted behaviors in the judiciary, VanderDoes encourages that person to check into what procedures have been set up, because the federal court has taken actions to address and follow-up with such reports. VanderDoes reminded the audience that “a lot of changes are happening in society...but it will take a while to see how these changes are impacting workplace environments.”

“[In the past,] if you said to a man, if you said to a judge, if you said to a senior partner, ‘You’re making me a little uncomfortable,’ you’re so afraid of how he’s going to react. And now, you’re still going to be afraid, but there’s a much better chance he’s going to respond in a positive way,” stated VanderDoes.

Hear more from Nicole VanderDoes during her interview by Stephanie Francis Ward of the Legal Talk Network on “advice for attorneys whose superiors make them feel uncomfortable and how men of integrity shouldn’t fear hiring or being in the same room with women attorneys.”

On the Road

ABA Annual Meeting 2018: #MeToo in the Legal Industry



And lastly, to the men, the panel encouraged us to embrace the #MeToo movement as a learning opportunity to learn from our mistakes and the imperfect cultures we find ourselves living and working in. We are part of the conversation too, there is no question about it.

Don't limit a woman's opportunities because of your fear, that opens you up to legal liability and only acts to reinforce a dysfunctional work culture. Look for ways to include women in a professional manner. In time, work to help a new pattern emerge, and a new culture.

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As Professionalism Counsel, Mark leads professionalism programming through the statewide mentoring program, collaborating with stakeholders from Galena to Cairo. Mark also supports the development and delivery of educational programming to lawyers and in law schools. When not in the office, you will likely find Mark and his wife busy raising their twin