



Issues for Women in Law

Brandeis Team, 2022

1.

What is the problem?

Danielle Rowley, Lincoln City Attorney
Honorable Timothy Phillips, Lancaster County

NSBA Survey Results

- Over 80% of respondents to the Survey stated they believed that gender-based inappropriate conduct, and gender-based harassment and discrimination are occurring in Nebraska's legal communities and workplaces, with less than 8% stating they believed such conduct was not occurring.
- Nearly 70% of respondents to the Survey had personally experienced or witnessed conduct that demonstrated inappropriate behavior, harassment and/or discrimination based on gender.
- Over 33% of respondents to the Survey did not believe they had adequate reporting mechanisms in their places of employment or within the practice of law to report gender-based harassment, discrimination and/or biased behavior.
- Over 25% of respondents to the Survey believe that even if they reported the misconduct, their workplace and/or the legal community would not effectively respond to a report of gender-based harassment, discrimination and/or biased behavior.
- The comment section of the Survey further contained consistent and numerous allegations of gender-based inappropriate conduct, bias and discrimination in the legal profession including: physical assaults, inappropriate touching, and grabbing; sexual invitations from attorneys (including supervising attorneys) in the workplace and/or while making hiring decisions; and wide-ranging and inappropriate comments on female lawyers' physical appearance.

Inns Survey Results

- Over 83% of respondents to the Survey stated they believed that gender-based inappropriate conduct, and gender-based harassment and discrimination are occurring in Nebraska's legal profession, with less than 1% stating they believed such conduct was not occurring.
- Over 65% of respondents to the Survey had personally experienced or witnessed conduct that demonstrated gender-based harassment, discrimination and/or biased behavior.
- Over 22% of respondents to the Survey did not believe they had adequate reporting mechanisms in their places of employment or within the practice of law to report gender-based harassment, discrimination and/or biased behavior.
- Over 10% of respondents to the Survey believe that even if they reported the misconduct, their employer would not effectively respond to a report of gender-based harassment, discrimination and/or biased behavior.
- The comment section of the Survey further contained allegations of gender-based misconduct including: compensation; suggesting women smile more; lack of flexibility for women with families; and dress code in Lancaster County District Court.

NE R. of Prof. Cond. § 3-508.4

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct knowingly assist or induce another to do so or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice. Once a lawyer is employed in a professional capacity, the lawyer shall not, in the course of such employment, engage in adverse discriminatory treatment of litigants, witnesses, lawyers, judges, judicial officers or court personnel on the basis of the person's race, national origin, gender, religion, disability, age, sexual orientation or socio-economic status. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding.
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law or
- (g) willfully refuse, as determined by a court of competent jurisdiction, to timely pay a support order, as such order is defined by Nebraska law.

Proposed Amendment*

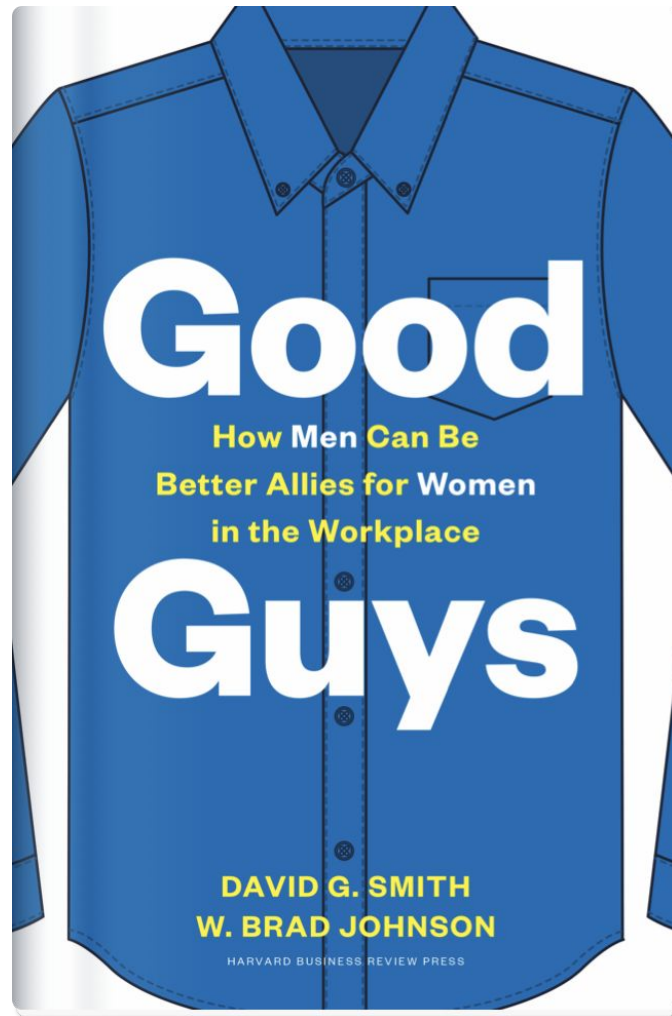
(h) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in connection with a lawyer's professional activities; or

(i) 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 that reflects adversely on the lawyer's fitness as a lawyer. Whether an act of discrimination or harassment reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including:

- 1) the seriousness of the act;
- 2) whether the act was part of a pattern of prohibited conduct; and
- 3) whether the act was committed in connection with the lawyer's professional activities.

(j) Subsections (h) and (i) do not preclude legitimate advocacy when harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status are issues in a proceeding.

*Comment period ends May 2, 2022



Video

Play video:

https://www.ted.com/talks/melinda_briana_epler_3_ways_to_be_a_better_ally_in_the_workplace

Stop video at 1:35 (after she says, "I could have used an ally.")

2.

White Knight v. Ally

Carly L. Bahramzad, Knudsen Law Firm

3.

Defining Terms (From “Good Guys”)

Tom McCarty, Keating O’Gara

Sexism

1. Prejudice or discrimination based on sex;
2. Behavior, conditions, or attitudes that foster stereotypes and social roles based on sex.

Sexism

- Overt sexism: degrading jokes and comments.
- Subtle sexism:
 - Office housework (e.g., planning social events, taking notes, less complex projects) that is necessary but undervalued and disproportionately assigned to women.
 - A male colleague interrupting a woman (but not a man) who is speaking, showing disrespect for her and her perspective.

“Benevolent Sexism”

- Speaking for women and holding them back from opportunities as a form of “protection.”
 - E.g., “She wouldn’t want to travel now that she has the kids.”
 - E.g., “We’d invite you to come with us for drinks, but you wouldn’t enjoy yourself anyway and, besides, its at night” (implying it is her responsibility to care for children after work)

Allyship

- Actively promoting gender fairness and equity in the workplace through supportive and collaborative personal relationships and public acts of sponsorship and advocacy intended to drive improvements to the workplace culture.

Allyship

- Male Allies:
 - Sharpen situational awareness as to how female colleagues are treated.
 - Deliberately initiate friendships and mentorships with female colleagues.
 - Ask about women's experiences.
 - Deliberately seek feedback from women.
 - Intervene when sexist language is used.
 - Start allyship at home.

4.

How To Be A Watchdog

Justin Kalemkarian, Berry Law
Grant Friedman, Nebraska Law 2L

How To Be A Watchdog

- Becoming a courageous watchdog for equity, dignity, respect, and fairness
- Being a watchdog does not mean you're rescuing people
 - You're not a White Knight, you're not saving someone.

5 Steps To Be A Watchdog

1. Notice the event or sexist comment.
2. Define it as a problem.
3. Take responsibility for intervening.
4. Decide on a course of action.
5. Implement the intervention.

Owning Your Statements

- Use “I” statements when you respond.
- Don’t divert who’s being harmed.
 - “I would really appreciate it if you stopped calling our female colleagues that name.”
 - Instead of, “It’s offensive to our female colleagues when you call them that.”

Public v. Private Confrontation

5.

Everyday Interactions

Haleigh Carlson, Perry Law Firm
Bob Lannin, Baylor Evnen

Belonging Uncertainty

- Many women receive subtle-or sometimes, overt-signals that they are not part of the in-crowd
 - You are not invited to lunch or drinks with the guys
 - When you walk into a meeting, the guys are already in there doing their pre-meeting, talking to each other, laughing, etc.
- Such experiences of exclusion can cause loneliness and attrition from the workplace.



How To Help

- **Include women.** Combat *belonging uncertainty* among women by inviting them to all work-connected gatherings, generously sharing time, and treating them like one of the guys.

How To Help

- **Decenter.** Step out of central roles, make physical space for women, and when invited to lead or participate in a high visibility group (e.g., conference, committee), consider whether a talented female colleague would be a better fit and recommend her.

How To Help

- **Listen generously.** Listen to women with the intent to understand, demonstrate empathy, and validate her experience-not fix women's problems.

How To Help

- **Assume women are capable and competent (then, stop assuming).** Scrutinize your automatic-often erroneous-assumptions about women and deliberately signal clear assumptions that your female colleagues are talented and competent.

How To Help

- **Validate and normalize women's experiences.** Be a trustworthy confidant in hearing about the daily slights, dismissals, and microaggressions women so often encounter in male-centric workplaces and who understanding about their feelings.

How To Help

- **Encourage women to let their talents shine.** Affirm women's capabilities and challenge sexist and biased comments about assertive, competitive, self-confident women as well as hierarchical systems that fail to fully credit them for their innovations and ideas.

How To Help

- **Level the playing field.** Communicate the same performance expectations for men and women and push back on expectations that women must prove themselves over and over again or achieve a higher standard to earn advancement.

How To Help

- **Be observant but don't give unsolicited advice.** Avoid sharing unsolicited feedback, and before offering any advice, flip the script and ask yourself if you'd give the same advice as a man.

How To Help

- **Practice transparency.** Secrecy perpetuates gender inequality, so share information (like salary figures and negotiation strategies) with female colleagues.

How To Help

- **Engage in women's initiatives and inclusion events.**
When you participate in women's inclusion events, listen, demonstrate a learning orientation and gender humility, and ask women how you can most effectively support efforts toward gender inclusion and equity.

6.

How To Be A Mentor

Sarah Safarik, Lancaster County Public Defender
Dean Richard Moberly, Nebraska Law



A sound male ally needs to be “an all-in advocate for talented women who should be noticed, pushed forward for opportunities, and promoted to serious leadership positions.”

(See David G. Smith & W. Brad Johnson, *Good Guys: How Men Can Be Better Allies For Women In The Workplace* (2020)).

How To Be A Mentor

- Creating visibility for her in the organization
- Supporting her for promotions
- Ensuring she gets training and development opportunities she needs to succeed.

Examples of when a male ally was a powerful mentor?

Strategy: Be Her Raving Fan

- Give public claims about a female colleague's competence, excellence, and readiness for an assignment.
- Bring to Key Meetings
 - At the office:
 - recognize her good ideas
 - nominate for important committees within the office
 - nominate or encourage her to apply for promotions
 - Within the life of a case:
 - bring to depositions, pretrial hearings, and negotiations with opposing counsel
 - if she is second chair, make sure she has an important role to play in trial preparations

Strategy: Talk About Her (Positively Behind Her Back)

- Be her advocate even when she is not in the room.
 - This is consistent and unconditional sponsorship.
- Recommendations:
 - Use bold praise
 - Faint Praise: She shows the potential too...
 - Bold Praise: She's proven she can succeed at...

Strategy: Provide Cover & Share Your Social Capital

- Place your full trust in her as a co-worker and leader.
- Add her to your network
 - Take to CLEs (have her prepare and present with you)
 - Make important introductions to others in the field
 - Use your credibility to bring her to the attention of the decision-makers

Strategy: Nominate Her For Stretch Opportunities

- Why do women miss out on stretch opportunities?
 - Socialized Reticence
 - Previous Rejections
 - Risky Investment Bias
 - Assumptions about Interest Level

Strategy: Nominate Her For Stretch Opportunities

- Back her on the basis of potential, not just performance
 - Lack of experience is not a disqualification for a stretch opportunity
- Provide proper support when she is given the stretch opportunity
 - Trust her and do not micromanage

7.

Action Steps

Elsa Knight, Nebraska Law 3L

Interpersonal Allyship

- Expand your Gender Intelligence
 - Sharpen your situational awareness
 - Deliberately seek feedback from women.
 - Notice sexist words and phrases- and intervene
- Start at Home
 - Support your partner's career without reservation
 - Take time away from work and leave loudly.
- Include Everyday Interactions
 - Include women and listen generously

Public Allyship

- Hone Your Watchdog Skills
 - See something, say something
 - Be a voice for those not in the room
- Help in Meetings
 - Give credit where it's due
- Sponsor Women Loudly
 - Support women in leadership roles
 - Be her raving fan

Systematic Allyship

- Promote Organizational Change
 - Design clarity, transparency, and accountability into your workplace
- Develop a Culture of Allyship
 - Clarify desired outcomes
 - Cultivate, connection, and collaboration

