

A black and white graphic featuring a silhouette of a balance scale. A sign is suspended from the top of the scale, tilted at an angle. The sign contains the text 'SEXUAL HARASSMENT' in large, bold, sans-serif capital letters. The scale's pans are empty, and the central pillar is prominent. The overall design is stark and symbolic, representing the legal consequences of sexual harassment.

**SEXUAL
HARASSMENT**

in the

**HAWAII LEGAL
COMMUNITY**

Lawyers ("HWL") recently conducted a survey of its members as to the incidences and experiences of sexual harassment in the legal community.³ Seventy-six attorneys responded to the survey. Just under 60% (42 attorneys) reported being sexually harassed at some time during their legal career, with approximately 13% (10 attorneys) reporting having been sexually harassed in the workplace within the last two years. Some attorneys reported multiple incidents for the requested time periods. For harassment within the last two years, approximately 40% of the reported incidents involved a partner, senior attorney or other supervisor, 30% involved a co-worker, and 20% involved opposing or other counsel. For harassment that occurred at any time in the attorney's legal career, 30% of the reported incidents involved a partner, senior attorney or other supervisor, 17% involved a co-worker, and 23% involved opposing or other counsel. There were also incidents reportedly involving judges, other court officers, clients, and others.

The reported experiences varied, including assault, sexual comments, and unwanted advances. The following excerpts are taken from survey responses. Some have been edited for length and/or clarity.

During a work trip, a partner offered to walk me to my hotel. We had been drinking. Against my better judgment, I allowed him in my room. He tried to push me against the bed to get behind me even though I said no. I told him to leave. He pleaded to spend the night and said nothing had to happen, but then, he finally left. This same partner has also touched my leg under the table at work functions.



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In court, another attorney introduced himself. He then sat next to me in the gallery area and rubbed his leg against mine. Then he asked if I was taken, and if I was, whether I had cute friends.

The attorney who ran the office asked me out for drinks, rubbed his hand around my back, and said that if we had a good time together it would help me at the office. . . . A co-counsel kept touching me, even when we were at trial he would put his hand on my leg during testimony.

About 4 years ago, . . . the . . . #3 in the company in the power structure . . . started "taking an interest" in me. At first I thought it was friendly and professional, and I was really appreciative of the support, but then he gave me a hug and I caught him sniffing my hair. So of course this got progressively creepy. Eventually he told me, "I only date married women, because the single ones always think I will leave my wife." . . . Anyway, I told him no, I wasn't interested in cheating on my husband, so his response was "well, what about oral?"

A married co-worker was continually asking me to hang out with him/work out with him on weekends, even after a few polite refusals.

I once had a senior partner walk into my office, shut the door, lean over me and tell me a dirty joke then walk out.

I have been referred to as "babe," "kiddo", etc.

The worst was when I was clerking. When we were at bar functions or other exercises where there was a group of us, some of the male clerks along would proposition me, describe in detail sexual things they wanted to do to me, or otherwise make incredibly detailed sexual comments to me. The other males would laugh and join in. It always succeeded in alienating me from the group. . . .

As a summer associate . . . I was . . . preparing for a trial with a law firm partner, another summer associate, and a paralegal, all male. The talk between the men had been bordering on inappropriate, when the partner decided we were all going to share about our first time. I refused. The partner informed me I was a prude and told me he'd have to report to the hiring committee I wasn't a team player. . . .



My . . . boss used to openly hit on [me] regularly . . . If I had wanted an affair, he made it very, very clear often that he was available . . . I feel like this is super common in our profession, so much so that it was only the first two experiences I shared that still really haunt me. These affected the direction my career took. I decided not to stay, but also not to go back to where I clerked when the opportunity presented itself later, since some of those men are still there and in the profession. The second was one of the significant reasons I would not go back to that firm, despite having been made an offer.

I received suggestive emails and texts that weren't categorically 'sexual harassment', but subtle enough that if I called him on it, the sexual connotations could be convincingly denied. If ignored, then I'd be a distant, difficult, or uncooperative colleague. I needed to play cool and provide some kind of response - but I understand how easily my response could be misconstrued. It is a fine line to walk and requires too much disproportional mental load on women.

All of these stories have a common thread – in each instance, the attention was unwanted and crossed professional boundaries. Much of the conversation in the wake of the #MeToo movement has involved the question, "What is sexual harassment?" The Hawai'i Civil Rights

Commission defines sexual harassment as “unwanted sexual advances or other unwanted or offensive visual, verbal or physical conduct of a sexual nature.”⁴ In reality, it may not be easy to define when behavior crosses the line. It may be a case of “I’ll know it when I see it.”⁵ But any difficulty in formulating precise definitions should not serve as justification for avoiding the topic altogether. Norms change over time, and it often takes difficult, uncomfortable conversations to do it. A positive consequence of this movement should be to identify and address sexual harassment issues openly and with a zero tolerance policy.

In 2017, there were 2,201 female attorneys who were members of the Hawaii State Bar Association (1,196 active, 416 government, 29 judges, 560 inactive).⁶ The American Bar Association’s (“ABA”) Commission on Women in the Profession recently reported that “at each advancing level of a lawyer’s career we lose a disproportionate number of talented women lawyers,” and that “one of the most pernicious hurdles to achieving a satisfying legal career is the unfortunate and continuing problem of sexual harassment.”⁷ The report cited sources supporting that the “majority of women lawyers believe harassment is a problem in their workplace.”⁸

As lawyers, we have the privilege of working with, upholding, and shaping our society’s laws and policies. If we allow or ignore the problem of sexual harassment, the whole profession is less for it. When intelligent, hard-working attorneys leave the law or miss opportunities as a result of sexual harassment, the whole profession suffers. We owe it to our profession and to future generations to be a part of a long-term solution. The stories shared by our members remind us of the work that needs to be done. We can start by following the principle, “If you see something, say something.” By recognizing sexual harassment and collaborating to address and eliminate it, we can aspire to create a culture in which future female attorneys of Hawai‘i will not need to say, “me too.”

⁴ Stephanie Zacharek, Eliana Dockterman & Haley Sweetland Edwards, *Person of the Year 2017*, Time Magazine (Dec. 18, 2017), <http://time.com/time-person-of-the-year-2017-silence-breakers/> (last visited Feb. 15, 2018).

⁵ *Id.*

⁶ HWL has 357 active members, who are all members of the Hawaii State Bar Association (“HSBA”). The survey was conducted between

January 12, 2018 and February 4, 2018. The survey was done on a strictly voluntary and anonymous basis, and with the understanding that any stories provided by survey respondents may be shared publicly to raise awareness of the occurrence of sexual harassment in the legal community. The survey was conducted for informational purposes only, and HWL has not conducted an independent investigation as to and cannot guaranty the accuracy of the results of the survey or the specific instances of harassment shared by survey respondents. HWL recognizes that terminology may carry different connotations for different parties and did not define “sexual harassment” in the survey. HWL also recognizes that men are victims of sexual harassment as well as women, but as the mission of HWL is to improve the lives and careers of women in all aspects of the legal profession, the main focus of the article is on the experiences of female victims.

⁴ Hawai‘i Civil Rights Commission, *Sexual Harassment in the Workplace* (Nov. 2000), available at <http://labor.hawaii.gov/hcrc/files/2013/01/INFOsh-1.pdf>.

⁵ *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

⁶ HSBA, *2017 Bar Statistics & Summaries*, available at http://hsba.org/HSBA/ABOUT_US/Statistics/HSBA/About_Us/Statistics.aspx?hkey=564e3031-a52f-44a4-aff-13cfc116cb6f.

⁷ Stephanie Ann Scharf, Chair, American Bar Association Commission on Women in the Profession, *Report: The Problem of Sexual Harassment in the Legal Profession and Its Consequences* (Feb. 2018), available at https://www.americanbar.org/news/reporter_resources/midyear-meeting-2018/house-of-delegates-resolutions/302.html. On February 5, 2018, the ABA’s 601-member House of Delegates adopted Resolution 302, which expanded the ABA’s 1992 policy and “urges all employers, and specifically all employers in the legal profession, to adopt and enforce policies and procedures that prohibit, prevent, and promptly redress harassment and retaliation based on sex, gender, gender identity, sexual orientation, and the intersectionality of sex with race and/or ethnicity.”

⁸ *Id.*

Kimi Ide-Foster is an associate with the law firm of Chun Kerr LLP and concentrates her practice in the areas of real estate, commercial finance, and general business transactions. She is a 2014 graduate of the William S. Richardson School of Law, and is involved in a number of community organizations including Special Olympics Hawai‘i and the Iolani Community Action Network, and currently serves on the Hawai‘i Women Lawyers’ Board of Directors. Michelle Momose is a litigation associate with the law firm of Cades Schutte LLP, concentrating in the areas of commercial, banking, and real property litigation. She currently serves on the Hawai‘i Women Lawyers’ Board of Directors.