

Bullying in the legal profession

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October is national bullying prevention month. It is also the one-year anniversary of the publication of a study on bullying in the legal profession conducted in Illinois.* Recently I attended a presentation on this topic by Erika Harold, the executive director of the Illinois Supreme Court Commission on Professionalism. The commission sponsored the study, and its findings are eye-opening—though in many ways unsurprising.

The study sought to distinguish incivility and harassment from bullying. Incivility is rude and disrespectful behavior. Harassment is abusive conduct targeted at someone due to a protected characteristic. Bullying may include both incivility and harassment, but the study defined it as inappropriate behavior intended to intimidate, humiliate, or control the actions of another person. Thus, bullying is characterized by an intentional act that can take many forms: verbal aggression, nonverbal actions, acts of exclusion, harsh working conditions, physical harm, stalking, or other aggressive actions.

The findings

The study focused on a particular one-year window, not the whole course of a lawyer’s career. The findings show bullying is pervasive. Fifteen percent of male attorneys reported experiencing bullying during the prior year, as did 38 percent of female lawyers. Lawyers with disabilities and attorneys of color experienced bullying at high rates. Thirty-eight percent of lawyers with a disability reported bullying, compared to 23 percent of lawyers without a disability. Thirty-six percent of Black attorneys from the Middle East or North Africa reported bullying; 35 percent of Black American lawyers reported bullying, compared to 23 percent of white lawyers. Hispanic and Asian lawyers reported high numbers as well, 34 and 28 percent respectively. Twenty-nine percent of gay or lesbian lawyers were bullied as compared to 25 percent of heterosexual lawyers.

Bullying was reported across age groups: 39 percent of lawyers aged 25 to 35 were bullied in the year prior to the study, with lawyers in this age group being more likely than other age groups to report acts of bullying. Although instances of bullying decreased with age, 12 percent of lawyers aged 66 to 75 reported bullying. Basically, bullying is widespread across various demographics in the legal profession.

The behavior

The seven most reported types of bullying behavior were:

- verbal intimidation, such as insults, name-calling, or shouting;
- harsh, belittling, or excessive criticism of work;
- demeaning nonverbal behaviors;
- unrealistic work demands;
- behind-the-back malicious rumors;
- improperly taking credit for work; and
- the withholding of important work information.

Lawyers also reported being subjected to cyberbullying, physical intimidation (throwing objects, invading space, and stalking), and physical contact (inappropriate touching, pushing, or shoving).

The bullies engaging in this behavior were often a lawyer external to the lawyer’s workplace (33 percent) or a more senior lawyer within the organization (31 percent). A shocking 14 percent of lawyers said they were most recently bullied by a judge!

Most bullying behavior went unreported. Only 20 percent of lawyers reported the bullying to a supervisor or human resource manager. Common rationales for not reporting were concerns relating to being perceived as “weak” or a “complainer” (34 percent), fear of the bully (27 percent), anticipated inaction by organization (27 percent), and concerns about position (16 percent). A majority of people who did report the bullying rated the organization’s response as insufficient or totally unsatisfactory.

Study recommendations

The study made five recommendations:

1. Legal workplaces should develop, implement, and enforce anti-bullying policies.
2. Legal workplaces should conduct training specific to their organization’s anti-bullying policies and procedures to equip lawyers with tools to respond, whether they are being targeted by bullying or witnessing it.
3. Courts should enforce anti-bullying standards in courtrooms and litigation activities.
4. Bar associations should use their resources and reach to advance programs that educate members on the prevalence and impact of bullying in the legal profession.

5. Lawyers being bullied should respond in the way they feel best safeguards their rights, well-being, and career.

Other important take-aways

One of the most notable pieces of information from the study for me was how frequently bullying occurred in front of others (62 percent reported bullied with others present) but most often witnesses either ignored the behavior or did not react (72 percent). And, as the study has been rolled out in law schools in Illinois, many law students (students were not included in the study) reported that they expected bullying to be bad in the legal profession!

To address the bystander issue, the study authors created a “Bystander Tip Sheet.” When you witness bullying, the tip sheet recommends that you intervene in the moment. This can include interrupting the bully. You can identify that the behavior is wrong as it is occurring (“That’s not an appropriate way to talk to them”) and publicly support the person who is being bullied. Next, offer support after the incident. Talk privately to the person who is being bullied to offer support. You can also consider communicating with the bully privately after the incident depending on your relationship with that person. Share that the actions made you uncomfortable and undermine both the legal profession and the organization the lawyer represents. Finally, the tip sheet recommends that you consider reporting the behavior, consistent with any policy in place, or if no policy exists, report to senior management or human resources—after taking into consideration the severity of the conduct and the wishes of the target.

Conclusion

This is a high-level summary of the study. The report includes a wealth of anecdotes and individual, anonymized responses provided by study participants that bring the behavior into sharp focus, and I commend the whole report to you. Illinois is in the process of rolling out several initiatives prompted by the study findings, including a continuing legal education course to raise awareness and specific training for judicial officers on how to effectively spot and address bullying behavior.

As is the case with incivility, the problem is larger than the rules of professional conduct, although some bullying behavior can run afoul of the ethics rules. I’ve been reflecting on the study findings a lot since I read the report and attended Ms. Harold’s presentation. Study participants would like to see attorney discipline play a larger role in curbing bullying than it currently does (one survey participant put it succinctly: “Bullying happens because it is allowed to happen”). And I attended the presentation at a conference for discipline counsel, who reflected on how frequently lawyers attempt to bully us during investigations and prosecutions. I appreciate the work the Illinois Supreme Court has undertaken to shine a light on this issue and encourage you to join me in thinking about ways we can confront this issue together. We should not continue to be bystanders to the problem. ▲

* Stephanie A. Scharf & Roberta D. Liebenberg, *Bullying in the Legal Profession: A Study of Illinois Lawyers’ Experiences and Recommendations for Change*, Illinois Supreme Court Commission on Professionalism (2024). <https://www.2civility.org/bullying-in-the-legal-profession>