

PRESIDENT'S MESSAGE

Setting Goals for 2019: Be Intentional About Interrupting Bias in the Profession

By Tara Aschenbrand



As we move into 2019, many of us make resolutions for the New Year. Until the last few years, I was not been big on making New

Year's resolutions. Several years ago, a friend of mine who had battled a health scare told me about her bucket list that she makes each year. Having faced this health scare, she is committed to living every day to its fullest. At the end of the year, she reflects on her list and what she has accomplished (or not) as she makes her list for the next year (not judging herself as she does this exercise). I have embraced this philosophy and make annual goals for myself. My goals always range from ones that help me to be more present, such as writing a handwritten letter to a friend, or going to lunch with a family member, to others that push me out of my comfort zone to continue learning.

As I have been reflecting on my personal goals, I have also taken time to reflect on the Ohio Women's Bar Association's accomplishments. We have reached many goals. We have tackled many topics while growing the organization's membership and reputation. Each year, we host thought-provoking CLEs on such topics as professional development, career advancement, ethics, diversity

and inclusion, substance abuse, crisis management, and work-life balance.

Although we have made significant strides in our journey, I was recently reminded that our journey continues. Many of you have likely read the ABA's study, "You Can't Change What You Can't See: Interrupting Bias in the Legal Profession." The survey of 2,827 lawyers found that female lawyers, especially women of color, are more likely than our male colleagues to be interrupted, mistaken for non-lawyers, and do more office housework. Many of us have been mistaken for the court reporter or an assistant when we arrive for a deposition or court hearing. According to a study conducted by the Harvard Business Review, even our sisters in law on the United States Supreme Court suffer from this behavior as they are more likely to be interrupted on the bench than the male Justices. Although feelings of disappointment may arise as you review these studies, I challenge us to use these studies to help us develop goals for ourselves and for our organizations/companies in 2019.

These studies confirm that our focus should continue to be on interrupting bias in the profession. We must be intentional about removing barriers. We need to use metrics to help us with this. Rather than asking for volunteers to help with "office housework," consider

assigning it to attorneys and rotating that assignment. When we witness or experience interruptions from our counterparts, we should call out this behavior.

We look forward to continuing this conversation at our Annual Conference and Meeting on May 2-3, 2019. Until then, make your own difference. Slow down, and take time to make an impact on our profession by interrupting bias and celebrating each other's accomplishments as we each continue our journeys. Each year, more female attorneys join our profession, and our work today will help them tomorrow. Best wishes as you set your goals for the new year. ■

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Key Points in the U.S. Department of Education's Proposed Regulations on Title IX

By Nancy Paine Sabol



The U.S. Department of Education (“DOE”), under Secretary Betsy DeVos, has proposed substantial changes to the way that colleges and universities handle

allegations of sexual harassment, which includes sexual assault, under Title IX. In this article, I explain some of the key changes the proposed regulations would make.

By way of background, Title IX provides that no person, on the basis of sex, shall be “excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Title IX applies to all public K through 12 schools, as well as public colleges and universities, and almost all private colleges and universities as a result of their students receiving federal student loans. Because the DOE is charged with enforcing Title IX, the agency has substantial power to affect the process by which colleges and universities comply.

The DOE under the Obama administration issued a number of “Dear Colleague Letters” (“DCL”), which explained how the DOE would enforce Title IX, and Questions and Answers, which provided further guidance on enforcement. On September 22, 2017, the DOE under the new administration withdrew two of the previous administration’s enforcement documents, the DCL on

Sexual Violence, and the Questions and Answers on Title IX and Sexual Violence, both issued on April 4, 2011. On November 16, 2018, the DOE released its proposed regulations and published them on November 29, 2018, which started the 60-day notice and comment period.

The proposed regulations define the hostile environment category of sexual harassment more narrowly than the DOE enforcement documents had previously. Under the proposed regulations, hostile environment sexual harassment is “unwanted conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the [educational institution’s] education program or activity” 34 CFR Section 106.3.

There would also be a change to when an educational institution has a duty to respond to allegations of sexual harassment. Previous enforcement documents provided that an educational institution had a duty to respond to allegations of sexual harassment when the institution “knew or should have known” about the allegations. This required educational institutions to designate “responsible employees” who were required to report any allegations of sexual harassment to the Title IX Coordinator on campus. The proposed regulations change the standard, providing that an educational institution doesn’t have a duty to respond to allegations of sexual harassment unless it has

actual knowledge, which occurs when an employee with authority to take corrective action has knowledge of the allegations.

The proposed regulations adopt a “deliberately indifferent” standard for liability under Title IX, meaning the DOE will not find an educational institution to have violated Title IX unless the educational institution’s response to sexual harassment is “clearly unreasonable in light of the known circumstances.” 34 CFR Section 106.44(a). The previous standard was a higher one for educational institutions to meet.

With respect to the evidentiary standard an educational institution may use in Title IX matters, the proposed regulations allow the use of either a clear and convincing standard or a preponderance of the evidence standard. However, if the educational institution uses a higher standard than preponderance of the evidence for adjudication of other student, employee, or faculty misconduct, the educational institution must use the higher standard for Title IX cases. The previous DOE enforcement documents required educational institutions to use a preponderance of the evidence standard for Title IX cases.

For resolving formal complaints of sexual harassment, under the proposed regulations, public and private universities and colleges must have a live hearing. A number of courts have held that public universities

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and colleges must provide a live hearing to comply with due process requirements, but private universities and colleges had not generally been subject to that requirement since there is no state action.

Finally, in the live hearing, cross-examination of a party by the advisor of the other party must be permitted. If the party doesn't have an advisor, the educational institution must provide an advisor to do the cross-examination. The parties can be in separate rooms during the cross-examination, facilitated by technology. The previous enforcement documents provided for cross-examination by the parties; each party could submit questions to the Chair of the hearing panel for the Chair to ask the other party. The Chair would review the questions for relevancy and appropriateness (limiting questions on sexual history unrelated to the current matter).

These are some of the major changes the proposed regulations

would make, but there are a number of other changes as well. For more information, see <https://www.regulations.gov/document>; <https://www.aacc.nche.edu/2018/11/29/aacc-summary-of-proposed-title-ix-regulations> or <https://www.jdsupra.com/legalnews/departement-of-education-new-proposed-77624/>.

Nancy Paine Sabol is the University Title IX Coordinator, an Associate Professor of Law, and Director of Academic Support at Ohio Northern University College of Law, where she teaches Employment Discrimination, Legal Problem Solving & Analysis, and Transition to Practice, and works with students and graduates on successfully passing the bar exam. Prior to joining the faculty at ONU in 2001, Ms. Sabol practiced law for fourteen years with Jones Day, focusing on labor and employment law. She received her J.D. from the Moritz College of Law, summa cum laude, and her B.A. from Ohio University, summa cum laude. ■

Member Benefit – Job Postings

*Are you using all
of your OWBA
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Are you looking for your first job in the law industry, or are you an experienced professional looking to advance your career? Check out OWBA's job postings page for opportunities across Ohio and in other states. Our page is updated weekly with new career opportunities.

Is your company hiring? Submit your job posting to admin@owba.org to have your position listed on our page.

View OWBA's job postings page at www.owba.org/jobpostings.

**JOB
POSTINGS**

Save the date for OWBA's 2019 Annual Meeting & Conference

Save the date for OWBA's 2019 Annual Meeting & Conference! Stay tuned at www.owba.org/events for more information about educational sessions and the announcement of our keynote speaker. ■



2019

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at AEO, Inc.

Employment Cases, Trends, and Regulation to Watch for in 2019

By Catherine Strauss



HOT TOPICS FOR 2019

A new year brings a new opportunity to make lists – the best, the worst, and, my favorite, what to watch and expect. January is also a good time for employers to review their policies and procedures as it relates to their employees. Several hot employment topics could result in necessary changes over the next 12 months. Following is a list that employers of all sizes should consider as they conduct annual policy reviews:

- The Supreme Court may take up a series of cases involving the scope of Title VII of the Civil Rights Act and whether its ban on sex discrimination covers sexual orientation and/or gender identity. Three cases, originating from three different circuits, including our own Sixth Circuit, are before the Court for acceptance of certiorari. A prudent approach for employers is to prohibit discrimination based on sexual orientation and gender identity while the state of the law is in flux.
- Currently pending before the Supreme Court is an arbitration case that could further impact how employers handle arbitration agreements with employees. In October 2018, the Court heard arguments on whether arbitration agreements must explicitly require class arbitration. If the answer is yes, employers should consider modifying arbitration agreements to specify which claims are subject to class or collective treatment.
- The Department of Labor is expected to announce a draft overtime rule which is intended to answer the previously enjoined Obama era increase to white collar salary thresholds. Early hints suggest that Labor Secretary, Alex Acosta, supports a threshold increase from \$23,660 to \$33,000 for those in white-collar jobs. Also unknown, however, is whether the draft rule will offer changes to the duties test which analyzes whether white collar workers are properly exempt from overtime pay.
- Until the Senate confirms another commissioner to the U.S. Equal Employment Opportunity Commission, the EEOC will not announce new policies or guidance. Currently, three of the five seats are vacant, leaving the two commissioners without a quorum to approve amicus briefs or to issue new or modified guidance on employers' obligations under various federal employment laws.
- The EEOC's lack of quorum does not limit routine enforcement, however, and current thinking is that the EEOC's 2018 focus on #metoo will continue into 2019. In 2018, the EEOC doubled the number of sexual harassment lawsuits it initiated and fielded an increased number of sexual harassment charges. In 2018, the EEOC also introduced two new anti-harassment training programs. ■

Catherine Strauss is a partner at Ice Miller Columbus.

Congratulations!

Congratulations to Laurie G. Steiner!



The law firm of Solomon, Steiner & Peck, Ltd. is excited to announce that partner Laurie G. Steiner has been named to the 2019 Super Lawyers list. The law firm has locations in Mayfield Heights, Independence, Westlake and Mentor.

Three Mindset Shifts to Help Take the Work Out of Networking

All the Tactics You've Learned Will Fail If Your Head's Not in the Game

By Stephanie R. Hanna



It's no secret that few lawyers enjoy networking. Despite all the networking tips and resources (<https://www.attorneyatwork.com/40-ways-make-networking-work/>) out there, most lawyers struggle with meeting new people and maintaining relationships.

A Networking Attitude Adjustment

One thing I've learned about relationship-building is that working on some basic mindset shifts before you try out specific strategies makes a huge difference. A shift in mindset can help you approach new business development efforts from a more intentional perspective, thereby setting yourself up for success. Consider these attitude adjustments.

1. Think Giver, Not Taker

Don't approach networking looking to receive something (a job, a client, more business). Instead, try thinking about things you can give: a connection, book recommendation, new resource. Always being "on the hunt" is exhausting — and rarely productive. It leads to burnout and eventual abandonment.

It's much easier to think about how you can help someone. Making an introduction or sending a note with a hands-on tip are great ways to be a giver. Think about it: Would you rather help someone who is hounding you for a job or help someone who recommended a great book or pointed you to a person who helped your practice?



It's human nature to be drawn to people who help you. When you are a giver, people want to help you in return.

2. Think Long-Term, Not Shortsighted

Relationships don't just need to be built, they need to be maintained — and that takes work. So, instead of approaching networking as a one-time occurrence or something to "get through," look at it as a long-term investment in your professional development. This mindset shift helps you recognize:

- The amount of work required to maintain relationships.
- That it is *supposed* to take time to nurture and develop strong relationships.

We've all been on the receiving end of someone reaching out for a favor when we haven't heard from them for months. They haven't checked in or updated us on what they are up to — and, out of the blue, show up in our inbox asking for something. Don't be that person. There are no shortcuts to long-term relationships.

3. Think Quality, Not Quantity

Instead of trying to meet as many people as possible at every event you attend, focus on making connections with just a few targeted people. (Read "Relationships 3.0" by Mike O'Horo <https://www.attorneyatwork.com/relationships-3-0-the-idea-relationship-era/>) This mindset shift makes networking less overwhelming, helps you set attainable goals and takes the pressure off. By consistently looking to meet one to three people at each event (and, ideally, doing your homework on them), you are being intentional about building new relationships.

Position Yourself to Succeed

Focus on these three mindset shifts and you'll see a difference in your business development results. You'll go from being a taker looking for a quick return on your perceived investment with many people, to a giver invested in professional development and focused on relationship-building with quality connections. ■

First published on AttorneyatWork.com. Stephanie Hanna is an attorney and people connector who knows what it takes to develop and maintain key relationships. For nearly a decade, she has been coaching law students and lawyers to navigate the profession and develop their careers. Stephanie understands that only 15 percent of job success comes from technical skills, so she created "The Other 85" program to help her clients master the other 85 percent. Follow her on Instagram and Twitter @stephanna8.

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News

Thank You for Joining Us for the New Admittee Event

On December 6, the Ohio Women's Bar Association had the honor of welcoming Ohio's newest women attorneys of Southwest Ohio at the New Admittee Reception held at The Roosevelt Room in Liberty Township.

Members of the law community gathered in celebration to network with our attendees that recently passed Ohio's bar exam. Zya and Kendra Scott participated and supported the event by offering discounts to attendees in their pop-up shops at the Event.



Thank you to our generous sponsors who made this night a success:

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The next OWBA New Admittee Event was held in Central Ohio on January 17, 2019. A recap will be in our next issue. ■

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