

**Starting Out on the Right Foot:
Addressing Professionalism Concerns at the Beginning of Your Career**

By

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For

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Starting your career can be an exciting time. But it can also be fraught with navigating the complexities of a new profession. Upholding the ideals of the legal profession is often paramount to a young attorney. When those ideals are challenged by conduct that falls short of professional expectations, it can be difficult for new attorneys to know what behavior to address and how to proceed.

Identifying conduct that is outside the bounds can be difficult for new lawyers. They may question, "Is this abusive behavior, or just a cranky judge? Is this behavior that is expected and tolerated in this profession?" Without years of personal experience under their belt, one might second guess reporting behavior that is not obviously egregious. One such scenario would be a judge who crosses the line when addressing one of the parties. What constitutes constructive criticism or even frustration, and what crosses the line of professional conduct? A California judge was publicly reprimanded for referring to a litigant as "hypersensitive" and a "snowflake," stating that the lawyer needed to "litigate like a grown-up." The California Commission on Judicial Performance held that the comments were, "personal, critical, and created the appearance of bias against [the litigant]."¹ This could easily be a scenario that a new attorney might witness, either personally or at the expense of another litigant. But for a newer attorney, deciding this is actionable behavior and how to proceed could prove difficult.

Newer attorneys may also want to be aware of problematic behavior that can be emblematic of more egregious behavior. For example, issues of sexual harassment may be excused as a judge being "overly friendly" or "just of a different generation." However, this undermines how the receiver of the information may feel about the comments or behaviors. "Remarks of a personal and sexual nature to a subordinate are especially egregious, even if the woman does not protest."² There is a natural power dynamic that exists between the judge and those who appear before the court. And there is never a burden on the person receiving these comments or actions to officially protest before they become problematic.

Instead of dismissing behavior that one finds to be borderline problematic, a better course is to address the behavior. "...There are myriad specific behaviors that fall well short of extremely serious or actionable sexual harassment that should nonetheless be red flags. These small, seemingly insignificant behaviors can normalize other inappropriate behaviors and the attitudes

¹ "Snowflake," "saving face," and "fast and loose." Judicial Ethics & Discipline: A blog of the Center for Judicial Ethics of the National Center for State Courts. Posted on October 24, 2023 by graycynthia. <https://ncscjudicialethicsblog.org/category/demeanor/> (Last visited July 12, 2024).

² In the Matter of Dye, Determination (New York State Commission on Judicial Conduct February 6, 1998), <https://cjc.ny.gov/Determinations/D/Dye.Luther.V.1998.02.06.DET.pdf> (Last visited July 12, 2024). In 2019, the Supreme Court of Georgia also took steps to prevent sexual harassment by the judiciary. See Supreme Court of Georgia, Committee to Prevent Sex Harassment Named, <https://cjc.ny.gov/Determinations/D/Dye.Luther.V.1998.02.06.DET.pdf> (Last visited July 12, 2024). To review the report issued by the Committee, visit <https://georgiacourts.gov/wp-content/uploads/2019/12/Ad-Hoc-Committee-Report-and-Recommendation.pdf> (Last visited July 12, 2024).

that lead to more severe harassment and discrimination, creating a work culture where inappropriate behavior can easily escalate. Acknowledging problematic behaviors that fall short of being wildly illegal or deeply cruel might allow us to identify unsafe working environments before they become more severe.”³

Once problematic behaviors have been identified, navigating the best path forward can be concerning for newer members of the bar. Below are some practical tips for addressing judicial professionalism concerns.

If You See Something, Say Something Just like when the court is not correctly applying a legal principle that you know to be incorrect, even if it helps your case, you have a professional duty to speak up when judicial behavior is out of bounds. It can be as simple as attempting to lower the temperature in the room by interjecting with a neutral point that hopefully allows the parties to reshift their focus. “Judge, I hate to interrupt, but I know the court wanted to address these additional motions this morning.” Or the situation may call for more direct support of opposing counsel. “Judge, while I understand the court’s concern, I believe that opposing counsel did attempt to comply with the court’s directions.” Furthermore, suggesting that the court address more contentious matters in chambers with all parties present can be a successful means toward airing concerns and allowing the temperatures to cool without an unnecessary audience.

Speaking Directly with the Judge Judges can and should be held to a higher standard. Their actions set the tone for how members of our society interact with and view the judicial process. But judges are human too. Sometimes their emotions get the best of them, and their actions may fall short of their own standards. Other times, the judge may simply not understand the issue or appreciate the power dynamic. This can be true when there is a large generation-gap between the judge and the attorney. If the attorney feels comfortable discussing the matter with the judge, whether in the moment or after court has concluded, this may be the most direct and often most productive way to confront an issue. Factors such as the degree of egregiousness, familiarity and comfort with the judge, and whether the nature of the conduct and resulting conversation would run afoul of ex parte communication rules would govern whether this is an appropriate route.

Speaking with Other Members of the Bench or Court Administration Depending on the situation, it may be appropriate and beneficial to speak with another member of the bench who can either provide a course of action or speak with the judge in question. While these situations would be case specific, the attorney should never seek to place another judge in an awkward situation or run afoul of other ethical rules when approaching the judge.

Use Your Resources If you work in an office with more senior attorneys, address your concerns regarding professionalism with those attorneys. They can be an invaluable resource to help you navigate both identifying problematic behavior and knowing the proper route to address that behavior. You may feel comfortable speaking with a non-supervisor who happens to have more experience. But also feel empowered to speak to supervisors, and depending on the severity of the situation, the head of your office. Whether it is a District Attorney’s Office, Public Defender’s Office, County Attorney’s Office or the like, these organizations cannot act if they don’t have the knowledge.

³ Leah M. Litman and Deeva Shah, On Sexual Harassment in the Judiciary, 115 Nw. U. L. Rev. 599 (2020).

If you are not within a formal organization, utilize any professional resources that you have amassed. This could be a voluntary bar association, a mentor, or colleagues in the field. Seeking assistance from those who have practiced longer will undoubtedly aid in realizing the best path forward. Additionally, those lawyers may be willing to advocate for a certain position with the judge, court administration, or another entity.

The Judicial Qualifications Commission Referrals and complains can also be made to the Georgia Judicial Qualification Commission (JQC). While the JQC normally prosecutes the most egregious behavior, that should not deter a lawyer from making a good-faith complaint if deemed appropriate.