Discussion Scenarios

1. A female junior associate is staffed on a new matter for an existing client. This client is one of the biggest clients for the firm, and this new matter will be very large and the firm expects to bill a large number of hours. The associate travels out of town with a senior associate to the client’s headquarters to meet with various representatives of the client about the new matter. During one of these meetings, a male, mid-level executive working for the client makes several comments that make the new associate feel uncomfortable, including complimenting her on her appearance and stating his extreme happiness that she is on the team. In addition to making those comments, he asks the junior associate personal questions such as whether she has a boyfriend. The executive does all of this in front of the senior associate. The junior associate feels uncomfortable with the executive and later tells the senior associate about how she feels. She also tells the senior associate that this client representative pulled her aside and said to her privately that he was really looking forward to the dinners that the team would have when she and the other associates travel to the corporate headquarters. The senior associate responds by laughing and stating the junior associate better get used to this kind of behavior especially since this client is important and valuable to the firm and they do not want to do anything that could jeopardize the relationship.

   a. Is behavior of the client representative just nuisance behavior? When does it rise to the level of sexual harassment?

   b. Is the senior associate the best person to report the incident to? To whom else might the junior associate want to report? Does it matter if the senior associate is a man?

   c. What should the junior associate do next?

2. A female partner, who has been practicing approximately 15 years, is in charge of a large litigation matter for an important client. She goes to court to argue an important motion. During the argument, the male judge frequently interrupts her and seems to give much more time and respect to the opposing counsel, a well-known older male attorney who is the head of the litigation department at his firm. A male partner, who is working on the case with the female partner, witnessed this, and he told her that this judge has a reputation for being particularly hard on female attorneys. Another important motion is scheduled to be heard soon, and the partners are planning a meeting with the client to discuss the upcoming hearing on the motion. The male partner tells the female partner that they should tell the client about the judge’s reputation and about how he treated the female partner during the last hearing. He also says that they should recommend that he [the male partner] should argue the next motion to improve the client’s chance of getting a good result on the motion.

   a. Is the female partner obligated to tell her client of the judge’s implicit bias? Should see? If the firm does decide to inform the client about the judge’s implicit bias, what sort of recommendation should be made?

   b. What actions could the female partner have taken during the argument?

   c. Should the female partner make any report internally?

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3. It’s time for the summer interns to descend on the law firm. Many of the male attorneys are excited to meet the newest “crop” of female associates. In the weeks preceding the start of the summer program, female attorneys overhear the men talking excitedly about what they are hoping the female interns look like. Upon arrival, the men start a game called “The Intern I’d like to F-ck.” An office pool is started and men begin taking bets on which female intern will be the first to “give it up” to a male attorney at the firm. Most socializing at the firm takes place during unofficial drinks after work where men make inappropriate comments about women (either at the firm or otherwise)—if women are even invited to attend the event. The female attorneys at the firm do not feel comfortable filing a complaint with HR or interjecting themselves into the conversations given that the firm leadership is overwhelmingly male. They instead warn the female interns and give them tips on how to delicately navigate any difficult situations without compromising an offer at the end of the summer.

   a. Are the female attorneys at the firm required by law or rules of professional conduct to file a complaint with HR? Or to the licensing board?

   b. Does the fact that the inappropriate comments take place outside of work make any difference?

4. A woman partner at a law firm is at a firm event at a hotel. While networking and getting to know the other partners, she starts a conversation with a male partner about his current cases. Initially, he seems really interested in learning more about her successes in negotiating fantastic terms for her corporate clients. As they learn more about each other’s practices, the male partner begins to stare at the female partner’s breasts. She feels uncomfortable but is nervous to speak up about his behavior because of the “good ol’ boys club” that runs the firm. He turns the conversation from professional to inappropriate and tells her that he’d like to meet her at the pool after the event, remarking how he’d like to see her in her bathing suit. She gives a short, uncomfortable laugh, changes the subject and quickly excuses herself. She went to her room to answer a few client emails before dinner. As she was working, the phone in her room rings. The male partner had called the front desk to be connected to her room. He asked her to skip the evening’s planned firm events and go to dinner alone with him instead.

   a. Does the fact that the male and female attorneys are both partners make a difference in whether the male partner’s behavior is sexual harassment?

   b. If the female partner rejects the male partner’s invitation to dinner, should she also tell him that his unwanted sexual attention is making her uncomfortable?

   c. Should she tell anyone else at this time, or should she wait to see if the behavior continues?
5. A senior partner in a firm tells a female associate she should not put up a picture of her family—her wife and child—in her office. The partner tells the associate that if a client saw the picture, “they might be uncomfortable” with her “lifestyle.” The partner also reminds her that she is should not to mention she is gay to any of the firm’s clients even those with whom she works closely. The senior partner says, “[y]ou know we’re all okay with your ‘lifestyle’ here at the firm, we just don’t want to lose any clients because of your ‘choice’ of family unit.” In addition, while other heterosexual attorneys at the firm are allowed, even encouraged, to bring their spouse or girlfriend/boyfriend to firm events, she is encouraged not to bring her wife because “she wouldn’t have anything in common with anyone” and anyway, “clients may question the firm’s values.”

a. Does this constitute sexual harassment? Or any other kind of discrimination? Does this determination depend upon in which city and state the firm is located?

b. Should the associate report these comments? To whom?

6. A young female attorney visits one of her firm’s clients who is in jail. The interview takes place in a counsel room of the jail. During the course of the interview, the client makes sexually inappropriate comments. The lawyer responds in a way to indicate that the comments are unwelcome and inappropriate and that she is part of his legal team. The interview continues. At some point during the course of the interview, the client sexually assaults the lawyer by moving her hand under her skirt, touching her genitals. She immediately ends the interview. The entire interaction was caught on the security tape. The lawyer returns to the firm and tells her principal what happened.

a. What is the appropriate response from the law firm?

b. Does this analysis change when it is a corporate client as opposed to an individual client?
7. You are at a sports game with other attendees of a professional conference. The sports game is an add-on social event for all conference attendees who chose to purchase a ticket for the game. The majority of attendees at the game are members of the professional organization, however there are vendors who market to the attendees of the conference in attendance as well. You are in a leadership position with the professional organization, and one of your duties in that position is to cultivate relationships between the organization and the organization’s conference vendors. You hear from one of the vendors that after the game that you were the subject of “locker room talk” by some of the male leaders in the professional organization. The vendor would not tell you exactly what was said except that it involved sexually charged language and innuendo. The vendor shared that he was uncomfortable with the “locker room talk,” but he did not say or do anything to stop it. You are embarrassed and you feel that both you and your organization were demeaned by the “locker room talk.”

   a. Does the situation change if you are female or male?

   b. Is “locker room talk” sexual harassment or gender-based bullying when it does not happen in your presence? If so, should you confront the individuals allegedly engaging in the “locker room talk” when you do not know who said what?

   c. Does it make a difference that the “locker room talk” occurred after a sports game which was a social event at the conference?

   d. What needs to change to make the vendor feel like he could have voiced that he was uncomfortable with the “locker room talk”?

8. An “out” gay male in-house counsel has a white board in his office. Frequently when he gets into work he finds that someone has drawn pictures of penises on his white board. In addition, another employee of the company who works in the business unit regularly stops by the attorney’s office and asks him “if his penis is as big as he’s heard,” and “whether the boys scream when he gets at ‘em.” This individual is not in the in-house counsel’s line of reporting. The in-house counsel always ignores these comments in the hopes that the conversation will end quickly. The in-house counsel suspects, but does not know, that the penises that are drawn on his white board are drawn by the same person who asks him the provocative questions.

   a. Is the in-house counsel the subject of sexual harassment?

   b. Would your opinion change if the person asking the provocative questions was a woman?
9. A female attorney is in charge of a litigation matter and has to go to court to argue a motion. During the argument, the male judge gives her a lot of attention and keep staring at her in a suggestive manner. He gives more time and attention to her than her opposing counsel, a senior male attorney. In the end, the judge rules in her favor. The female attorney returns to the office to share the amazing news with the other attorneys in her firm. In front of several other partners, one male partners tells the female attorney not to be too excited about her victory as the judge has a reputation for being particularly nice to attractive female attorneys. No one else in the room speaks up regarding the partner’s comment or the judge’s behavior.

   a. Was the judge’s conduct sexual harassment?
   b. Should (and could) the female attorney done anything differently before the Judge?
   c. Was the male partner’s comment to the female attorney sexual harassment?
   d. Should the female attorney report anything within the firm?

10. A female attorney receives an email from her male opposing counsel which was not intended to go to her. The intended recipient was the opposing counsel’s co-counsel, who is also male, on the case. The email states, “[s]he (the female attorney) is freaking nuts. Please send cupcake the documents she requested.” The opposing counsel immediately emails female attorney stating, “[p]lease disregard my earlier email as it was not intended to be sent to you. My apologies.”

   a. What is the appropriate response from the female attorney?
   b. Was the male partner’s comment to the female attorney sexual harassment?
   c. Should the female attorney report this to someone at her firm or at opposing counsel’s firm?
11. A female associate joins her firm immediately after passing the bar. She is assigned to work with a female partner who, at first, seems kind despite rumors stating otherwise. After the first three months, the female associate has her evaluation and she is rated as outstanding by her female supervising attorney. As time passes and other partners notice the excellent work of the young associate, the partner’s behavior becomes erratic. The partner tells the associate that she “revels” in knowing that young female associates fear her and that she finds it funny. Soon after that conversation, the associate notices that the partner is becoming increasingly critical of her work. At the associate’s six-month review, the partner admonishes the associate for poor work quality, which had never been brought to the attention of the associate before the evaluation. The associate no longer has enough work to keep her busy and finds out that the partner is keeping the work for herself. The associate begins asking other partners for work, and when her supervising attorney finds out, the associate is disciplined. At her annual review, the partner tells the associate that she is not progressing and is not billing enough hours. When the associate asks the partner how she can get more assignments, the partner tells her to figure it out herself. The associate leaves the meeting knowing that she needs to have her supervising attorney changed, but she does not know who can help her as she has been blacklisted from working with other partners.

a. Does this rise to the claim of sexual harassment or gender-based bullying?

1. Would your answer change if the genders were reversed?

b. Should it be addressed? If so, how?

c. How is bullying different than sexual harassment?

1. How do these differences factor into how the situation is addressed?
12. A new associate joins a prestigious law firm in a large metropolitan city that is in a state that has seen growing acceptance of gay rights but is still beginning to address transgender rights. There are no anti-discrimination laws in place in the state to protect LGBTQ people in the workplace. The new associate is a transgender Hispanic woman who is post-transition and voluntarily outed herself during the hiring/interview process with the partners. She is not out to other staff or colleagues. The firm is a traditional firm but has been working to improve its outreach to the LGBTQ community, particularly targeting affluent gay and lesbian professionals to consider the firm for wealth management. One of the senior associates is an out lesbian who is known to be active in the local LGBTQ community and is the “face” of the firm’s LGBTQ outreach and business development efforts. None of the partners are LGBTQ-identified. Unfortunately, the senior associate is a TERF (trans-exclusionary radical feminist) and begins to make comments in the workplace (referring to the new associate as “he” in conversations, making comments about how much the new associate “passes” or does not “pass” for a woman, complaining that men should not be allowed to use the women’s restroom, and making anti-transgender statements generally) when she learns of the gender identity of the new associate because a partner let it slip that she and the new associate have “lots in common” and might be able to work together on LGBTQ outreach.

The new associate, while “out” as transgender, wants to focus her outreach on Hispanic diversity challenges and outreach and prefers not to focus on LGBTQ outreach.

a. What should the new associate do to address the situation?

b. If it is brought to the attention of the partners – what should they do?

c. What action should be taken with regard to the senior associate?