

THE NORTH CAROLINA STATE BAR

JOURNAL

SPRING
2020



IN THIS ISSUE

Incarcerated Mentally Ill - Legal and Ethical Issues *page 6*

Sexism: The Elephant in the Courtroom *page 10*

The Middle Finger *page 15*

Sexism: The Elephant in the Courtroom

BY: JUDGE ASHLEIGH PARKER DUNSTON

My dad always told me that I can be anything I put my mind to. He actually encouraged me to be a doctor instead of a lawyer, which is ironic since he retired as a prosecutor. He also made it very clear to me that I would be treated differently because of two “strikes” against me: my gender and my race. One common misconception is that the higher the profession, the less likely that sexism and racism exists. Even in light of the recent #metoo movement, we, as professionals, tend to distance ourselves from having this difficult conversation because we don’t believe that sexism is a problem in our field; hence, the elephant in the room.

Sexism is defined by Merriam-Webster as prejudice or discrimination that fosters stereotypes of social roles based on sex. Sexism is also one of the least discussed topics when we talk about attorney professionalism. In fact, when I attempted to research applicable Rules of Professional Conduct that directly relate to inappropriate comments or actions not occurring in the courtroom to fellow attorneys, the closest that I found was Rule 3.5: Impartiality and Decorum of the Tribunal, comment 10; Rule 4.4: Respect for Rights of Third Persons, comment 2; and Rule 8.4: Misconduct, comment 5. I encourage you to take a look at these rules and determine for yourself whether you deem them directly on point.

In my experience as an assistant district attorney and assistant attorney general, I have been asked in open court if I am “Mr. _____’s secretary,” asked if I am an intern,



©iStockphoto.com/grenlin

ignored during calendar call, discouraged from applying for positions, so on and so forth. But this article isn’t about me, it’s about all of the women throughout our bar who have experienced sexism and misogyny in their professional careers. The following are true accounts from women throughout the 10th Judicial District Bar. I solicited their stories because I wanted to ensure that we all understand that this is a problem that we cannot avoid talking about. It’s the elephant in the courtroom, boardroom, and break-room that is negatively affecting your colleagues every day. My hope is that through sharing these experiences, we can begin to discuss ways to change this dynamic and speak up when we see instances of sexism taking place. To those women in Wake County who bravely shared—thank you. To those who wanted to share, but couldn’t—thank you. And to those who stood up for

these women—thank you!

(These stories have been edited for brevity, clarity, and, in some cases, to protect the victims.)

- Several years ago, a male colleague called and berated me over the phone in the presence of another colleague for over five minutes. It was allegedly because of an email where he believed that I had belittled him, although I hadn’t. I was in complete shock, and so busy trying to find a rational answer for his behavior that I didn’t call him out for his unprofessionalism and verbal abuse, which still makes me mad at myself today. I’m now aware of several other times when he has yelled at others, but like my interaction, most have been unreported or, if reported, not really dealt with.

- I’ve never been treated differently by those in my firms because of my gender, but I have encountered issues from third parties.

I've been asked if I was my boss' paralegal. Once my boss found out that it was an issue, he made sure to always introduce me as an attorney to try to prevent it. I've also had opposing counsel who has had an issue with the fact that he was litigating against a woman.

- When I was a brand-new attorney, I handled a motion in court extremely well. An older male partner in my firm was with me, and when I and opposing counsel finished our arguments, the judge proceeded to ignore me for the rest of the proceedings although I was the one who handled the case. I felt offended and confused, but it gave me energy and motivated me to not only continue to excel in my field, but also to never treat other people the way I'd been treated that day.

- I have had a male attorney approach me and ask me to stand up and turn around in a circle so that he could see what kind of "little dress" I was wearing that day and what it looked like on me. He then told me to not be surprised when he sent all of the other attorneys in to come and look at me. Later, when I was looking at something on a colleague's computer, he proceeded to tell my superior that the reason he was stopping by was so that he could watch me bend over. I'm a curvier woman who tries to clothe myself appropriately for my shape and age; however, I've noticed that men use that as an opportunity to pass judgment and make crude or inappropriate gestures to me.

- When I walked into the courtroom with my older, white, male paralegal, the judge asked him if he was ready to proceed, despite my name being on every pleading filed in the case. I stood, smiled, and advised him that I was the attorney for the department and was ready to proceed.

- When I was a new attorney, I was working on a case against an older male attorney who called my male boss to complain that I was referring to him by his first name instead of Mr. _____. He believed this to be disrespectful, although he had referred to me as, "honey, darling, sweetie," etc. in our phone conversations. Thankfully, my boss gave him a lesson in professionalism, informing him that, as colleagues, he expected we would all call each other by our first names regardless of years of practice—or gender.

- While at a firm retreat, a male associate groped my private parts without my consent. When I later confronted him, he claimed to

be drunk. It caused me significant pain because I felt like, as an attorney, how could I advocate for anyone when I couldn't advocate for myself?

- I have been consistently called "aggressive" and a "ball buster" by men.

- I worked at a law firm where men were constantly scoping out new female hires to "grade" them on their looks. If there was one who was deemed to be less attractive, they'd give the woman a nickname like "Fat So and So." I once heard them state that a very competent and kind female attorney had legs that looked like "pigs wrestling under her skirt."

- Once, while in the attorney room, several male attorneys started complaining about prosecutors and began to demean one female prosecutor in particular. One referred to her as a c**t, and others chimed in using a variety of four and five letter words. It was as if I was invisible, so I eventually picked up my folders to make it evident that I was present and walked out.

- When my client's name was called out, I went to the defense desk as my client made her way to the front. The male judge asked me where *my* lawyer was.

- I am a Wake County retired emergency judge. I graduated from UNC School of Law in 1975 and immediately went to work as the first female assistant district attorney in Wake County. There were only a handful of female attorneys in the county at the time. So few, in fact, that I used to say we could all meet in a courthouse elevator and still have room to spare!

Several years into my job as a prosecutor, there was a vacancy on the district court bench. A rumor was going around that I was interested in it, which, at the time, I wasn't. A white male prosecutor, who was interested, dropped by my office and asked if I was going to pursue an appointment to the vacant position. Apparently, just because I was female, he thought the appointment would be given to me because, he said, "I'm tired of Anglo Saxon males being discriminated against." I have no recollection of how I responded to that, but I do remember thinking "You've got to be kidding. You have no idea what discrimination is!"

A few weeks later, I was attending a Wake County Bar Association Christmas party. I was approached by a middle aged white male attorney who asked if I was going to try to get appointed to the vacant judgeship. I said no, and he said "Good. I don't think

women should be judges." I'm sure this was just an offhand comment to him, but I was shocked, offended, and speechless. I quietly walked away, wishing I had been quick enough to come up with an appropriate response to his remark. I was surprised by what these two men had said to me, particularly since most of the men in the Wake County bar had been welcoming to me when I started working in the District Attorney's Office.

I doubt that the two lawyers who made these comments even remember them, but they have stuck with me all these years. In the 1980s, I became a judge after running one time and losing, and then being on four separate appointment lists that went to two governors. It was obviously not as easy for me to get appointed to the bench as that male prosecutor thought it would be! I can't begin to tell you how proud I was as we added one female judge after another to the Wake County District Court bench. With each new addition, I remembered the lawyers' comments. The poetic justice in the number of women on the bench now is much better than any response I could have given when those sexist remarks were made to me so many years ago.

These are certainly not the only personal examples I could share, as there have been others over the years, but these comments made a lasting impression on me. Fortunately, these experiences have been greatly outweighed by the tremendous support and kindness shown to me by numerous other male attorneys.

If you experience or witness these or similar acts of sexism, please find someone you trust and confide in them and remember that these experiences do not define you. Sexist and misogynistic comments and actions hurt, distract, and erode the profession. So now that we're aware of the elephant, we should all do our part to end sexism and raise the bar of professionalism throughout our state. ■

Judge Ashleigh Dunston is a district court judge in the 10th Judicial District which encompasses Wake County. For more information about Judge Dunston or to request for her to present a CLE on this topic, please visit her website JudgeAshleigh.com.

This article was originally published in the Wake County Bar Flyer, Third Quarter 2018.