



**2019
Diversity
Counsel
Program**

Proactively Addressing Gender Diversity in the Workplace

**Monday, April 29, 2019 • 8:00 a.m. – 12:15 p.m.
Italian Community Center • 631 E. Chicago St., Milwaukee, WI**

Program Agenda

8:00 a.m. Registration

8:45 a.m. Welcome & Introduction of the Master of Ceremonies
State Bar of Wisconsin President Christopher E. Rogers

8:55 a.m. Introduction
Master of Ceremonies: Judge Carl Ashley

**9:00 a.m. Q&A: Gender Diversity Issues in the Workplace, and the
Importance of a Diverse Workforce**
Countless studies have shown that a diverse workforce, especially a gender diverse workforce, leads to increased results. A diverse workforce offers exposure to different cultures and backgrounds, which in turn provides individuals with a selection of different talents, skills, and experiences. This Q&A portion will delve into the importance of gender diverse workforces, how to create a gender diverse workforce, and more importantly, how to maintain a gender diverse workforce through an inclusive culture.

Keynote: Mary Ellen Stanek, CFA, Managing Director
and Director of Asset Management for Robert
W. Baird & Co., and Chief Investment Officer of
Baird Advisors

Co-Moderator: Margaret “Peggy” Kelsey, Executive Vice
President, General Counsel and Corporate
Secretary of WEC Energy Group

Co-Moderator: Linda E. Benfield, partner with Foley & Lardner
LLP

10:15 a.m. BREAK

10:30 a.m.

Closing the Gender Leadership Gap – Panel Discussion

Women make up the majority of the U.S. population. They account for 51.27% of J.D. enrollment and 47.3% of J.D.s awarded. Yet, women fill only 22.7% of law firm partnership ranks, 32.4% of law school deanships, 22% of state court judges, and only 26.4% of Fortune 500 general counsel positions. Clearly a large gender gap exists, despite the higher percentage of J.D. enrollment, nearly identical percentage of J.D. graduates, and a compelling economic case for greater gender equality in business. This panel will explore the general imperative of advancing women leaders and tackle hypotheticals that women in the legal profession commonly face.

Moderator:	April Toy, attorney with Meissner Tierney Fisher & Nichols S.C.
Panelist:	Margaret Hickey, shareholder with Becker, Hickey & Poster SC
Panelist:	Sally Fry Bruch, shareholder with Crivello Carlson, SC
Panelist:	Carrie Booher, Business Development Executive with PS-Companies
Panelist:	Amy M. Burger, attorney with Antonopoulos Legal Group

11:20 a.m.

Creating a Culture that Does Not Tolerate Sexual Harassment and Sexually Harassing Behaviors – Ethics

Aviva M. Kaiser, State Bar of Wisconsin Ethics Counsel
Amy E. Wochos, Deputy Register in Probate, Milwaukee County

12:10 p.m.

Closing Remarks

Master of Ceremonies: Judge Carl Ashley

12:15 p.m.

Lunch & Networking



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Speaker Bios

Q&A: Gender Diversity Issues in the Workplace, and the Importance of a Diverse Workforce



Keynote Speaker:

MARY ELLEN STANEK, CFA

Managing Director

Chief Investment Officer – Baird Advisors

President of Baird Funds

Mary Ellen Stanek, CFA, has nearly 40 years of investment management experience. She currently serves as Managing Director of Robert W. Baird & Co. and Chief Investment Officer of Baird Advisors responsible for over \$65 Billion in Assets under Management. Additionally, she serves as President of the Baird Funds. Under Mary Ellen's leadership, the Baird Advisors team was named a finalist for the Morningstar, Inc.'s 2016 Fixed Income Fund Manager of the Year Award. Previously she had served as President and CEO of Firststar Investment Research & Management Company.

Mary Ellen is a member of The CFA Institute, the CFA Society of Milwaukee, the Greater Milwaukee Committee (past Board Chair), Milwaukee 7 (past Co-Chair), Tempo (past President), Professional Dimensions and Milwaukee Women inc.

Mary Ellen serves on the boards of Baird Financial Group, [Northwestern Mutual](#), and [WEC Energy Group](#) (NYSE:WEC). She also serves on the boards of All-In Milwaukee, Boys and Girls Clubs (past Board Chair), Children's Hospital Foundation, Faith In Our Future Trust, Froedtert Health, Greater Milwaukee Committee, Greater Milwaukee Foundation, Medical College of Wisconsin (past Board Chair), and Milwaukee World Festival. She served on the Board of Marquette University where she chaired the Board and was elected Trustee Emerita. She has co-chaired annual campaigns for the United Performing Arts Fund and the United Way.

Mary Ellen has received the Marquette University Alumna of the Year (2010), the Marquette University College of Arts and Sciences Person for Others Award, Marquette University High School's Spirit of St. Ignatius Award, The St. Francis Children's Service Award, The Tempo Mentor Award, The Business Journal Women of Influence Award, The Point of Light Award, Professional Dimensions Sacagawea Award, Wisconsin Business Hall of Fame Distinguished Executive Award, Baird's Brenton H. Ruppel Citizenship Award and the Herb Kohl Champion Award. She and her husband were named "Parents of the Year" by COA Youth and Family Centers (2011). In 2012, she received the MVP Award from Boys & Girls Clubs.

Mary Ellen and her husband, Scott, have three children: Peter (Erin), Katie (Tim), and Patrick and three granddaughters: Emme, Abigail and Kathryn.



Co-Moderator:

MARGARET "PEGGY" C. KELSEY

Executive Vice President, General Counsel and Corporate Secretary,
WEC Energy Group

Margaret "Peggy" C. Kelsey joined WEC Energy Group as executive vice president in September 2017 and assumed responsibilities as general counsel and corporate secretary in January 2018.

In this role, Kelsey is responsible for all legal matters affecting the company. She also is corporate secretary to the WEC Energy Group board of directors and manages all governance matters. In addition, she oversees the company's human resources, administrative services and environmental functions.

Kelsey was previously general counsel, corporate secretary and vice president – legal and corporate communications at Racine, Wisconsin-based Modine Manufacturing Co., where she oversaw a variety of legal and regulatory matters, served as liaison to Modine's board of directors and managed corporate governance matters and the company's corporate communications function.

Kelsey joined Modine as senior counsel in 2001 and progressed through a series of positions, including senior counsel and assistant secretary; corporate treasurer and assistant secretary; vice president – finance, corporate treasury and business development; vice president – corporate strategy and business development; and vice president – corporate development. She served as general counsel, corporate secretary and vice president since 2008.

Previously, she was a partner at Quarles & Brady LLP, where she was a member of the litigation group, specializing in product liability defense and representing clients across the United States.

Kelsey holds a bachelor's degree in history from Mount Mary University, a juris doctor from Georgetown University and a Master of Business Administration degree from the University of Wisconsin – Milwaukee.

She is a member of the boards of directors of Divine Savior Holy Angels High School, Greater Milwaukee Committee, North Shore Bank, Teach for America and the Zoological Society of Milwaukee. She also serves on the Marquette University Women's Council.

Kelsey is a recipient of The Business Journal's Women of Influence and Best Corporate Counsel awards, and the University of Wisconsin Milwaukee Sheldon B. Lubar School of Business Graduate of the Last Decade award.



Co-Moderator:

LINDA E. BENFIELD

Managing Partner, Foley & Lardner LLP

Linda E. Benfield is the managing partner of the Milwaukee office of Foley & Lardner LLP, and is an environmental lawyer with the firm. Linda has over 30 years of experience in litigation and counseling in all aspects of environmental law, including air and water permitting and compliance issues, and solid and hazardous waste handling and disposal. She has extensive experience on the cutting edge of Clean Air Act, Clean Water Act, Superfund, and RCRA enforcement, as well as citizen suit litigation, settlement strategies, and related cost recovery, insurance coverage, and indemnity disputes. She is a member and former chair of the Environmental Regulation Practice. She is also a member of the firm's Government Enforcement Defense & Investigations Practice and the Manufacturing Industry Team.

Linda serves on the boards of the United Way of Greater Milwaukee and Waukesha County, Boys and Girls Clubs, Building Brave, and Alas, Ltd. She served on the Milwaukee Ballet board, including as board chair and on the Milwaukee Jewish Day School Board. Linda also co-chaired the 2013 United Way campaign.

Linda was named to BTI Consulting Group's Client Service All Star Team in 2016. This honor is bestowed upon individual attorneys who deliver outstanding client service according to corporate counsel interviewed at large organizations with \$1 billion or more in revenue. Linda was named to the *Milwaukee Business Journal's* "Women of Influence" list (2014). She has been Rated as AV® Preeminent™, the highest performance rating in Martindale-Hubbell's peer review rating system, is listed in *The Best Lawyers in America*® (since 1995), was named 2014 Wisconsin Natural Resources Lawyer of the Year and has been named the 2010, 2013 and 2015 Milwaukee Environmental Lawyer of the Year and 2012 Milwaukee Natural Resources Lawyer of the Year, by *Best Lawyers in America*. She was also selected for inclusion in the *Wisconsin Super Lawyers*® lists (2005 – 2016) and in 2008, was recognized as one of the Top 25 Women for *Wisconsin Super*

	<p><i>Lawyers</i>. Linda was honored by the <i>Wisconsin Law Journal</i> as one of the Women in the Law 2009. She was also included in the 2010 – 2017 editions of <i>Chambers USA: America's Leading Lawyers for Business</i>.</p>
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	<p>Linda is a member of the American College of Environmental Lawyers, and a Fellow of the Wisconsin Law Foundation.</p>
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Closing the Gender Leadership Gap



MODERATOR

APRIL TOY

Attorney, Meissner Tierney Fisher & Nichols S.C.

April Toy is a trial attorney with the law firm of Meissner Tierney Fisher & Nichols S.C. She represents businesses in all types of commercial litigation. April graduated from Marquette University Law School and has been in practice for nine years.

April is a member of the Hispanic National Bar Association and Hispanic Professionals of Greater Milwaukee. In addition, she volunteers at the Milwaukee Justice Center.



PANELIST

MARGARET W. HICKEY

Managing Shareholder, Becker, Hickey & Poster, S.C.

Margaret Wrenn Hickey practices in the areas of divorce, family law, and elder law including trusts for the disabled, title 19 and guardianship. She is a shareholder in the law firm of Becker, Hickey & Poster, S.C., Milwaukee, and received her B.A. from Marquette University (1982, *summa cum laude*), where she was *Phi Beta Kappa*, and her J.D. from the University of Wisconsin Law School (1986, *cum laude*).

Margaret is a past Chair of the State Bar of Wisconsin Elder Law Section Board of Directors and a past Chair of the Family Law Section Board of Directors. She is a past President of the Milwaukee Bar Association (President 2004-05) and served on the Board of Directors from 1999-2005. Margaret currently serves on the State Bar of Wisconsin Board of Governors (District 2, 2005-09, Chair 2006-07) and will serve as Treasurer of the Board from 2009-11.

Margaret also serves on the Board of Directors of the Legal Aid Society and public radio station WUWM. Margaret lectures frequently at local, state and national bar meetings and to community groups and other professionals on elder law and family law topics. She has served on the board of Aurora Family Service, Rosalie Manor and the Village of Shorewood.

Margaret is a member of the American Bar Association, the State Bar of Wisconsin, the Milwaukee Bar Association, the National Academy of Elder Law Attorneys, and the Association for Women Lawyers and she is a Fellow of the American Bar Foundation and the American Academy of Matrimonial Lawyers (President for the Wisconsin Chapter, 2005-06.) She is named in the Best Lawyers in America for family and elder law and has been named as a "Super Lawyer" in elder law. She was also named in the top ten lawyers in Wisconsin by Super Lawyers (2012).



PANELIST

SARAH “SALLY” FRY BRUCH

Shareholder, Crivello Carlson, S.C.

Sarah “Sally” Fry Bruch is a shareholder with Crivello Carlson, S.C. Sally represents businesses, insurance companies and individuals in Civil Trial and Appellate Practice matters in the Wisconsin State and Federal Courts. Her areas of practice include insurance defense, insurance coverage, municipal law, civil rights litigation and personal injury defense.

Sally was appointed to 2017-2019, 2014-2016 and 2011-2013 terms on the Office of Lawyer Regulation (OLR) District 2 Committee by the Wisconsin Supreme Court. From 2010-2013 she served a three-year term on the Board of Directors, Wisconsin Trust Account Foundation (WisTAF). In 2009, she was elected a Fellow of the Litigation Counsel of America (litcounsel.org), a trial lawyer honorary society recognizing effectiveness and accomplishment in litigation, trial work, and ethical reputation.

Sally is a member of the State Bar of Wisconsin, Defense Research Institute (DRI), Wisconsin Defense Counsel, and the Association for Women Lawyers. From 2003-2012, she was a member of the State Bar of Wisconsin’s Diversity Outreach Committee, and served terms as Chair and Vice-Chair. She was a nominee for State Bar of Wisconsin President-elect in 2010. Sally developed the 2009 Diversity Counsel Program CLE “Focus on Minority and Women Owned Law Firms,” and the 2008 Diversity Counsel Program CLE “Ethical Issues of Bias.” She co-authored “E-Discovery, Practical Considerations,” presented at the Civil Trial Counsel of Wisconsin, 2008 Spring Conference. In 2006, she served as Subcommittee Chair for the State Bar Convention Diversity Outreach-Gender Equity CLE.

Sally was previously an Assistant District Attorney in Portage County, WI, where she prosecuted criminal felony and misdemeanor cases to successful verdicts before juries.




PANELIST

CARRIE BOOHER

Business Development Executive, PS-Companies

Carrie Booher has always loved meeting new people and connecting those with similar interests. Working in the legal recruiting space allows her to use her legal background and her personal passion for networking. Carrie joined PS-Companies in 2015 as a Business Development Executive. In her role, she works with both candidates and clients to find

	<p>the right fit, placing talented attorneys in both law firms and corporate legal departments. Having worked in both a large law firm and with in-house counsel previously, Carrie’s unique background gives color and depth to her guidance during the legal recruiting process.</p> <p>Prior to recruiting, Carrie worked as an associate in a large Chicago law firm and later spent a number of years as the Executive Director of the Association of Corporate Counsel Wisconsin Chapter. She joined PS-Companies in an effort to use her skills to help other attorneys find career fulfillment and opportunity.</p> <p>Away from the office, Carrie enjoys spending time with her family, including her husband, an in-house attorney, and her three teenage children. When she isn’t acting as a taxi service for her kids, she loves to travel with her family. Carrie sits on the Board of Directors at Community Memorial Hospital in Menomonee Falls, Wisconsin, and on the University of Illinois College of Law Alumni Board. Carrie holds an A.B. in Economics from the University of Chicago and a J.D. from the University of Illinois College of Law.</p>
	<p>PANELIST</p> <p>AMY M. BURGER Attorney, Antonopoulous Legal Group</p> <p>Amy M. Burger provides legal services in the areas of estate planning, trust and probate administration, employment, and special education law. Amy graduated with a Bachelor’s degree in Social Policy from Northwestern University. She graduated Cum Laude from Regent University Law School in Virginia Beach, VA before moving back to her hometown of Milwaukee.</p> <p>As a woman with a disability, Amy understands that individuals with disabilities can live the lives they want, but this often requires thoughtful preparation and strategic planning. She focuses her practice on working with individuals with disabilities and their families by drafting special needs trusts. She views a special needs trust as a tool which provides both freedom and security for individuals with disabilities.</p> <p>Amy’s estate planning practice also includes the drafting of trusts, wills, marital property agreements, and powers of attorney.</p> <p>The other side of Amy’s practice involves her representation of individuals in employment, contested guardianship, and school law matters. She has litigated in state and federal court and has obtained favorable outcomes for her clients.</p> <p>Amy is a member of the State Bar of Wisconsin and serves on the Diversity and Inclusion Committee. She is also the Estate Planning Co-chair for the Association for Women Lawyers. Amy is very active with</p>

the Wisconsin Board for People with Disabilities and speaks on the topics of special needs planning, guardianship, and disability rights at the Board's state-wide conferences.

Creating a Culture that Does Not Tolerate Sexual Harassment and Sexually Harassing Behaviors - Ethics



PANELIST

AVIVA M. KAISER

Ethic Counsel, State Bar of Wisconsin

Aviva Meridian Kaiser is Ethics Counsel at the State Bar of Wisconsin. Prior to joining the State Bar in 2013, she taught at the University of Wisconsin Law School for 25 years. She taught Professional Responsibilities, Ethical and Professional Considerations in Writing, Problem Solving, and Risk Management. From 1992 until 2002, she was the Director of the Legal Research and Writing Program. Aviva received her B.A. in Chinese from the University of Pittsburgh and her J.D. from the State University of New York at Buffalo Law School. She clerked for the Honorable Louis B. Garippo in *People v. John Wayne Gacy* and clerked for the Honorable Maurice Perlin in the Illinois Appellate Court. She practiced law in Chicago before beginning her full-time teaching career at IIT Chicago/Kent College of Law. Aviva is a member of the State Bar of Wisconsin, a Wisconsin Law Fellow, an American Bar Foundation Fellow, and a frequent speaker on matters of professional ethics.



PANELIST

AMY E. WOCHOS

Deputy Register in Probate/Acting Court Commissioner, Milwaukee County

Amy E. Wochos is a Deputy Register in Probate/Acting Court Commissioner for the Milwaukee County Register in Probate. She is responsible for facilitating the work of the Probate Court by monitoring and administering pending probate estate matters, presiding over court hearings, making court orders, and assisting the public by answering procedural questions. She has been in that role since July, 2018. Previously she was Legal Counsel for the Milwaukee County Clerk of Courts office and, in that capacity, was also Senior Administrator for the Clerk of Courts and the original Legal Director of the Milwaukee Justice Center. Prior to joining Milwaukee County, she was a litigation partner with the Milwaukee law firm, Piper & Schmidt. She serves on the committee that oversees the Wisconsin Lawyers' Fund for Client Protection and is on the State Bar of Wisconsin Board of Governors. She chaired the State Bar's 2018 Sexual Harassment in the Legal Profession Working Group. She earned her B.A., with honors, and J.D., cum laude, from the University of Wisconsin-Madison.



MASTER OF CEREMONIES

The Honorable Carl Ashley

Circuit Court Judge, Milwaukee County Circuit Court

Prior to being elected as a Circuit Court Judge, Judge Ashley spent seven years practicing law in the Public Defender's Office. He opened his law practice in 1989.


Judge Ashley was elected to the Milwaukee County Circuit Court in 1999. He has served in general misdemeanor court, domestic violence court, juvenile dependency and delinquency court, homicide/sexual assault court, felony drug court, family court, drug treatment court, Veterans treatment court and he is presently assigned civil court.

He has received advanced Domestic Violence Training from the National Council of Juvenile and Family Court Judges and served on the faculty of the National Judicial Institute on Domestic Violence. He presently trains judges and system partners about how being trauma informed improves criminal justice responses. He is a member of the Evidenced-based Sentencing Judicial Peer Group for the National Center for State Courts. He is a faculty member of the Wisconsin Judicial College.

Judge Ashley is Past Vice-Chair of the Supreme Court Policy and Planning Committee and presently Chair of its Subcommittee on Effective Justice Strategies (EJS) Committee. Judge Ashley is Chair of the Wisconsin State Bar Diversity and Inclusion Oversight Committee.

In 2003, he received the Innovator of the Year Award in recognition of vision, creativity, and innovative spirit. In 2011, he was selected by the State Bar of Wisconsin as Judge of the Year. In 2013, Judge Ashley received the Leaders in the Law Award from the Wisconsin Law Journal. In 2014 and 2015, Judge Ashley was presented with the State Bar's President's Award. In 2016, he received the E. Michael McCann Distinguished Public Service Award.

He is married to Felita Daniels Ashley and has two girls, Elise and Zoe.



Leading the Way: Do the Rules of Professional Conduct Provide Strategies for Creating a Culture That Does Not Tolerate Sexual Harassment?

2019 Diversity Counsel Program

Aviva Meridian Kaiser, Ethics Counsel
State Bar of Wisconsin



What is Sexual Harassment?

- There is no one agreed-upon definition of sexual harassment.
- Sexual harassment includes a range of actions from mild transgressions to sexual abuse or assault.
- It includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive work environment.
- Sexual harassment is a form of sex discrimination that occurs in the workplace.
- Courts and employers generally use the definition of sexual harassment contained in the guidelines of the U.S. Equal Employment Opportunity Commission. This language has also formed the basis for most state laws prohibiting sexual harassment.



Equal Employment Opportunity Commission Guidelines

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals, or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. 29 C.F.R. § 1604.11

State Bar of Wisconsin

Position Statement Against Sexual Harassment

The term *sexual harassment* includes, but is not limited to, any unwelcome sexual attention, innuendos, advances, requests of a sexual nature, and other verbal, visual or physical conduct of a sexual nature, especially when repeated or when:

- (a) such conduct has the purpose or effect of demeaning or objectifying an individual;
- (b) such conduct has the purpose or effect of interfering with an individual's work performance; or
- (c) such conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment;
- (d) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- (e) submission to or rejection of such conduct by an individual is used as the basis for cooperation, employment, and/or favorable decisions affecting such individual.

Examples of Sexual Harassment Given by the U.S. Department of State

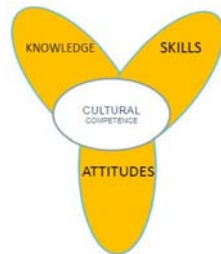
- Sexual pranks, or repeated sexual teasing, jokes, or innuendo, in person or via e-mail;
 - Verbal abuse of a sexual nature;
 - Touching or grabbing of a sexual nature;
 - Repeatedly standing too close to or brushing up against a person;
 - Repeatedly asking a person to socialize during off-duty hours when the person has said no or has indicated he or she is not interested (supervisors in particular should be careful not to pressure their employees to socialize);
 - Giving gifts or leaving objects that are sexually suggestive;
 - Repeatedly making sexually suggestive gestures;
 - Making or posting sexually demeaning or offensive pictures, cartoons or other materials in the workplace;
 - Off-duty, unwelcome conduct of a sexual nature that affects the work environment.
- A victim of sexual harassment can be a man or a woman. The victim can be of the same sex as the harasser. The harasser can be a supervisor, co-worker, other Department employee, or a non-employee who has a business relationship with the Department.

Selected Rules of Professional Conduct

SCR 20:1.1 Competence

- “A lawyer shall provide competent representation to a client. Competent representation requires the **legal knowledge, skill, thoroughness and preparation** reasonably necessary for the representation.”
- [8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including the benefits and risks associated with relevant technology**

Does Competence Include Cultural Competence?





SCR 20:2.1 Advisor: A Duty of Cultural Competence?

- “In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, **a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.**”
- ABA Comment [1] states: “... **Purely technical legal advice, therefore, can sometimes be inadequate.** It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, **moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.**”

Lawyers as Leaders, Gatekeepers, and Role Models

- The goal of achieving a culture that does not tolerate sexual harassment requires much more than discipline for misconduct.
- However, prohibiting lawyers from engaging in misconduct involving harassment is crucial, and along with other rules, may be a strategy to create a culture that does not tolerate sexual harassment.
- Lawyers are leaders and the gatekeepers to our justice system. Accordingly, they have a unique opportunity to serve as role models to other professions and businesses, to their clients, and to their employees.

Prohibiting Misconduct Involving Harassment

- Under SCR 20:8.4(i), it is “misconduct for a lawyer **to harass** a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with the lawyer's professional activities.”
- The Wisconsin Committee Comment following this rule states: “What constitutes **harassment** under paragraph (i) may be determined with **reference to anti-discrimination legislation and interpretive case law.**”

Comparison of SCR 20:8.4(i) and Model Rule 8.4(g)

SCR 20:8.4(i) It is professional misconduct for a lawyer to:	Model Rule 8.4(g) It is professional misconduct for a lawyer to:
harass a person	engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination

ABA Comment [3] to Model Rule

- [3] Discrimination and harassment by lawyers in violation of paragraph (g) undermine confidence in the legal profession and the legal system. Such discrimination includes **harmful verbal or physical conduct** that manifests bias or prejudice towards others. Harassment includes sexual harassment and derogatory or demeaning verbal or physical conduct. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature. **The substantive law of antidiscrimination and anti-harassment statutes and case law may guide application of paragraph (g).**
 - The ABA rejected using "bias" or "prejudice" in the Rule itself because there is case law on harassment and discrimination.
- [Note: This Comment has not yet been adopted by our Rules.]

SCR 20:8.4(i)

Model Rule 8.4(g)

on the basis of	on the basis of
race	race
sex	sex
religion	religion
creed	
national origin	national origin
color	
	ethnicity

SCR 20:8.4(i)	Model Rule 8.4(g)
age	age
disability	disability
sexual preference	sexual orientation
	gender identity
marital status	marital status
	socioeconomic status
in connection with the lawyer's professional activities.	in conduct related to the practice of law.

**What Is "Conduct Related to the Practice of Law"?
ABA Comment [4]**

- [4] Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law. Lawyers may engage in conduct undertaken to promote diversity and inclusion without violating this Rule by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations.
- Omitted from the final draft of this Comment was the following sentence: "Paragraph (g) does not prohibit conduct undertaken to promote diversity."

SCR 20:8.4(i)	Model Rule 8.4(g)
	This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16.
Legitimate advocacy respecting the foregoing factors does not violate par. (i).	This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

Opportunities for Discussion

In his column in the Washington Post, Professor Eugene Volokh (UCLA) posed the following scenarios.

- “Lawyers put on a Continuing Legal Education event that included a debate on ... whether people should be allowed to use the bathrooms that correspond to their gender identity rather than their biological sex. In the process, unsurprisingly, the debater on one side said something that was critical of ... transgender people. If the rule is adopted, the debater could well be disciplined ...” (August 10, 2016)

More Opportunities for Discussion

- Ronald Rotunda, one of the highest-regarded ethics scholars posed this scenario in one of his articles. “The St. Thomas More Society is an organization of ‘Catholic lawyers and judges’ who strengthen their ‘faith through education, fellowship, and prayer.’ Therefore, since Rule 8.4(g) covers any ‘law firm dinners and other nominally social events’ at which lawyers are present because they are lawyers, any St. Thomas More Society event, including a Red Mass, CLE program or similar event, would be subject to the rule. Assume that at a St. Thomas More-sponsored CLE program, some of the lawyers on the panel discuss and object to the Supreme Court’s gay marriage rulings.”

More Opportunities for Discussion

Remember SCR 20:2.1 Advisor?

- “In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, **a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client’s situation.**”
- ABA Comment [1] states: “... **Purely technical legal advice, therefore, can sometimes be inadequate.** It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, **moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.**”

More Opportunities for Discussion?

- Ronald Rotunda provides another example. “ABA Rule 2.1 provides that the lawyer must offer candid advice and may refer to ‘moral’ considerations. What if the lawyer’s conscientious view of what is ‘moral’ conflicts with the ‘cultural shift’ that Rule 8.4(g) seeks to impose?” For example, assume that the client (worried about a ‘palimony’ suit) tells the lawyer that he would like to create a prenuptial agreement with the woman that he does not intend to marry.” What if the lawyer objects to drafting palimony papers on nonreligious grounds, but on the grounds that it treats women like sex objects?

SCR 20:8.4(f) and (g) Misconduct

“It is professional misconduct for a lawyer to:

...

- (f) violate a statute, supreme court rule, supreme court order or supreme court decision regulating the conduct of lawyers;
- (g) violate the attorney’s oath.”

The Attorney’s Oath states in part: “I will abstain **from all offensive personality** and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged.”

SCR 20:4.4 Respect for Rights of 3rd Persons

“(a) In representing a client, a lawyer shall not use means **that have no substantial purpose other than to embarrass, delay, or burden a 3rd person**, or use methods of obtaining evidence that violate the legal rights of such a person.”

ABA Comment [1] states: “Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. . . .”

SCR 20:3.1

Meritorious Claims and Contentions

“(a) In representing a client, a lawyer shall not:

- (1) knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law;
- (2) knowingly advance a factual position unless there is a basis for doing so that is not frivolous; or
- (3) file a suit, assert a position, conduct a defense, delay a trial or **take other action on behalf of the client when the lawyer knows or when it is obvious that such an action would serve merely to harass or maliciously injure another.”**

SCR 20:3.1


Meritorious Claims and Contentions (continued)

ABA Comment [1] states:


“The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.”


SCR 20:1.2(b) Scope of Representation

“(b) A lawyer's representation of a client, including representation by appointment, **does not constitute an endorsement of the client's political, economic, social or moral views or activities.”**




Police Chief, Hmong Leader
Question Cultural Attitudes
On Domestic Violence





SCR Chapter 62
Standards of Courtesy and Decorum for the Courts of
Wisconsin
and
SCR Chapter 60
Code of Judicial Conduct



SCR 62.01 Scope

“The uniform standards of courtroom courtesy and decorum in SCR 62.02, adopted to enhance the administration of justice by promoting good manners and civility among all who participate in the administration of justice in Wisconsin, are applicable to judges, court commissioners, lawyers, court personnel and the public in all Wisconsin courts. **Notwithstanding SCR 20:8.4 (f), the standards under SCR 62.02 are not enforceable by the office of lawyer regulation.** Conduct by a lawyer that violates SCR ch. 20 or SCR 40.15 is subject to the authority of the office of lawyer regulation.”

SCR 62.02 Standards

(1) Judges, court commissioners, lawyers, clerks and court personnel shall at all times do all of the following:

- (a) Maintain a cordial and respectful demeanor and be guided by a fundamental sense of integrity and fair play in all their professional activities.
- (b) Be civil in their dealings with one another and with the public and conduct all court and court-related proceedings, whether written or oral, including discovery proceedings, with civility and respect for each of the participants.
- (c) Abstain from making disparaging, demeaning or sarcastic remarks or comments about one another.
- (d) Abstain from any conduct that may be characterized as uncivil, abrasive, abusive, hostile or obstructive.

SCR 60.04(1)

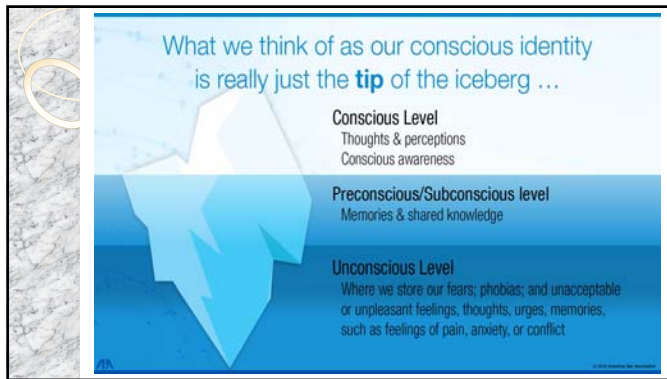
Adjudicative Responsibilities

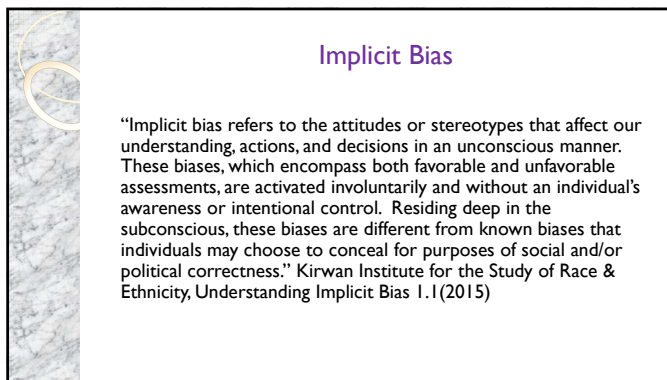
- (e) A judge shall perform judicial duties **without bias or prejudice**. A judge may not, in the performance of judicial duties, **by words or conduct, manifest bias or prejudice, including bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status**, and may not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.
- (f) **A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others.** This subsection does not preclude legitimate advocacy when race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status or other similar factors are issues in the proceeding.

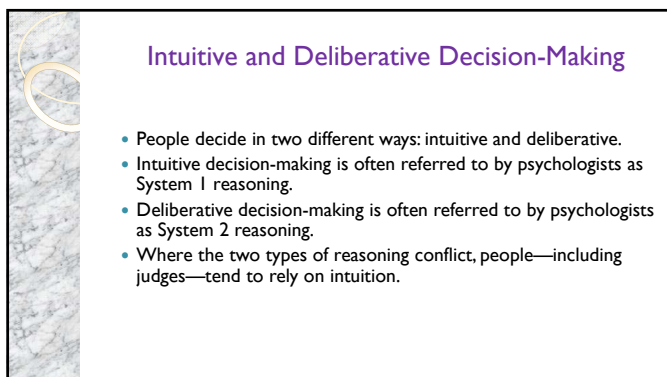
Comment to SCR 60.04

"A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control."

"A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceedings, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial."







System I Reasoning

- System I is always running without our knowledge unknowingly, involuntarily. It is automatic and fast.
- System I is where our unconscious associations and snap judgments are made, where breathing and regulating body temperatures occur.
- System I is where our schemas live. Schemas are how we understand the world. They are mental concepts that inform us about what to expect from a variety of experiences and situations. Schemas are developed based on information provided by what one is exposed to and then stored in memory.
- Schema describes a pattern of thought or behavior that organizes categories of information and the relationships among them.

System I Reasoning (continued)

- Schemas consist of attitudes and stereotypes.
- An attitude is an association between some concept, i.e. a cultural marker, and an evaluative valence, either positive or negative. For example, a woman wearing an hijab is respectful of her religion, or a woman wearing an hijab must be hiding something.
- A stereotype is an association between a concept, i.e. a cultural marker, and a trait. For example, girls are not good at math.

System 2 Reasoning

- System 2 reasoning, by contrast, is our conscious, deliberative mind.
- This is where we assess conflicting information and make complex judgments.
- We use this part of our brain consciously. It is only 10 percent of our brain power, capability, and functioning.
- This is also where our aspirations for acceptance and tolerance live.

How Can We Become Conscious of Our Implicit Feelings, Attitudes, Behaviors, and Associations

- The Implicit Association Test is a methodology that tells us something about our unconscious by our reaction time to words and categories.
- For example, if I am quicker at linking women with children than men with family obligations, this tells me something about attitudes that I may not have consciously thought I held.

There are many different kinds of tests you can take:

GENDER-SCIENCE IAT

This IAT often reveals a relative link between liberal arts and females and between science and males.

AGE IAT

This IAT requires the ability to distinguish old from young faces. This test often indicates that Americans have automatic preference for young over old.

GENDER-CAREER IAT

This IAT often reveals a relative link between family and females and between career and males.

RELIGION IAT

This IAT requires some familiarity with religious terms from various world religions.

DISABILITY IAT

This IAT requires the ability to recognize symbols representing abled and disabled individuals.

RACE IAT

This IAT requires the ability to distinguish faces of European and African origin. It indicates that most Americans have an automatic preference for white over black.

SEXUALITY IAT

This IAT requires the ability to distinguish words and symbols representing gay and straight people. It often reveals an automatic preference for straight relative to gay people.

PRESIDENTS IAT

This IAT requires the ability to recognize photos of Barack Obama, and one or more previous Presidents.

All tests can be accessed at PROJECT Implicit, <https://implicit.harvard.edu/implicit/test/index.html> (last updated 2011) (all test descriptions are quoted from the IAT).

Gender Bias Example

One experiment asks participants to evaluate two finalists for chief of police—one male and one female.

One finalist's profile "signaled book smart," while the other "signaled streetwise." The profiles were randomly switched between the two finalists during the experiment.

The man was chosen more often by all groups, regardless of which profile he had.

All attributes were considered more important when ascribed to the man.

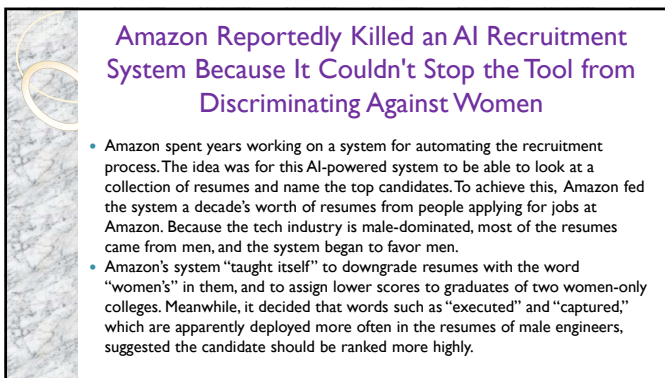
Jerry Kang et al., Implicit Bias in the Courtroom, 59 UCLA L. REV. 1124, 1156–57 (2009).



Ideal Litigators Study

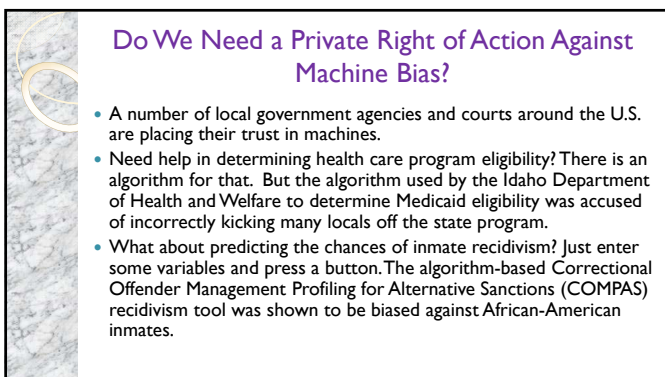
Found test takers associate *ideal litigators* (**competence, skill, likeability**) as being white and male DESPITE EXPLICIT (conscious), strong beliefs that they held no such associations!

Jerry Kang et al., Are Ideal Litigators White?: Measuring the Myth of Colorblindness, 7 J. EMPIRICAL LEGAL STUD. 886 (2010).



Amazon Reportedly Killed an AI Recruitment System Because It Couldn't Stop the Tool from Discriminating Against Women

- Amazon spent years working on a system for automating the recruitment process. The idea was for this AI-powered system to be able to look at a collection of resumes and name the top candidates. To achieve this, Amazon fed the system a decade's worth of resumes from people applying for jobs at Amazon. Because the tech industry is male-dominated, most of the resumes came from men, and the system began to favor men.
- Amazon's system "taught itself" to downgrade resumes with the word "women's" in them, and to assign lower scores to graduates of two women-only colleges. Meanwhile, it decided that words such as "executed" and "captured," which are apparently deployed more often in the resumes of male engineers, suggested the candidate should be ranked more highly.



Do We Need a Private Right of Action Against Machine Bias?

- A number of local government agencies and courts around the U.S. are placing their trust in machines.
- Need help in determining health care program eligibility? There is an algorithm for that. But the algorithm used by the Idaho Department of Health and Welfare to determine Medicaid eligibility was accused of incorrectly kicking many locals off the state program.
- What about predicting the chances of inmate recidivism? Just enter some variables and press a button. The algorithm-based Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) recidivism tool was shown to be biased against African-American inmates.



State Bar of Wisconsin
Position Statement Against Sexual Harassment

Respect for the dignity and worth of each individual is a fundamental tenet of our democracy, our justice system, and a decent civil society. Every individual has the right to work in an environment that is free from discriminatory practices. Sexual harassment is unlawful, reprehensible, and a matter of particular concern to the legal community which is charged with upholding justice and equality.

The State Bar of Wisconsin does not tolerate sexual harassment as an employer nor as a professional association. It is the legal and moral responsibility of the State Bar and its members to adhere to the laws and Rules of Professional Conduct prohibiting sexual harassment, and to foster a professional environment and legal system that does not tolerate nor enables harassment.

The term *sexual harassment* includes, but is not limited to, any unwelcome sexual attention, innuendos, advances, requests of a sexual nature, and other verbal, visual or physical conduct of a sexual nature, especially when repeated or when:

- (a) such conduct has the purpose or effect of demeaning or objectifying an individual;
- (b) such conduct has the purpose or effect of interfering with an individual's work performance; or
- (c) such conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment;
- (d) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- (e) submission to or rejection of such conduct by an individual is used as the basis for cooperation, employment, and/or favorable decisions affecting such individual.

The State Bar of Wisconsin is committed to eradicating sexual harassment in all of its forms and manifestations and encourages its members to make a similar commitment. Examples can include jokes or other verbiage that incorporates sexually explicit or offensive language; unwelcome/unsolicited comments about appearance; questioning an individual's competence for a particular job due to physical appearance or perceptions about gender roles; displaying pornography; and/or making sexually explicit gestures.

The State Bar of Wisconsin will not tolerate harassment that involves unwanted sexual attention including, inter alia, suggestive comments about a person's body or attractiveness; unsolicited and unreciprocated sexual advances; unwanted and unnecessary physical contact; the display in the workplace of sexually suggestive objects or pictures; and unwelcome sexual advances by attorneys, clients or other visitors to the workplace, the extended workplace, employer-sponsored events, other professional events, or the courthouse and its environs.

Finally, the State Bar of Wisconsin opposes any form of sexual coercion, including, inter alia, threatening adverse employment actions if requests of a sexual nature are not granted, promising preferential treatment in return for complying with a sexually-related request, and any action requiring sexual activity or other degrading or involuntary behaviors as a condition of employment or job rewards.