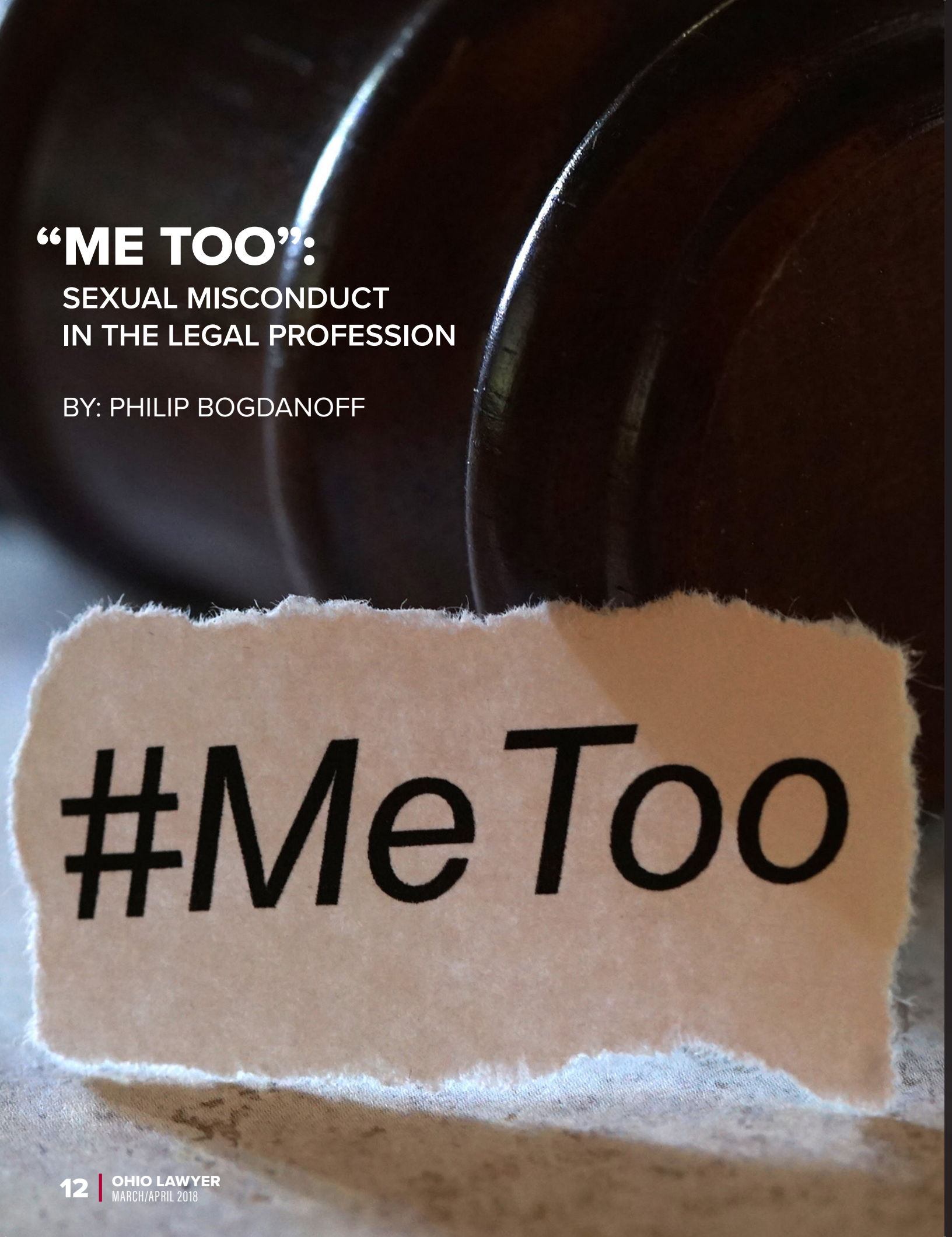

"ME TOO":
SEXUAL MISCONDUCT IN THE LEGAL PROFESSION

BY: PHILIP BOGDANOFF

The "me too" movement has focused attention on inappropriate sexual misconduct in the workplace. This movement was highlighted when dozens of women made allegations against movie mogul Harvey Weinstein, including allegations of rape, sexual harassment and assault. In the world of politics, Minnesota Senator Al Franken was forced to resign based on numerous allegations of inappropriate sexual misconduct before he entered the Senate. The "me too" movement has brought to light very serious allegations of sexual harassment and misconduct in various industries and professional settings, including the legal profession. Judge Kozinski, a judge on the U.S. Court of Appeals for the 9th Circuit, resigned after numerous female law clerks stated that he made inappropriate sexual remarks to them and one clerk indicated that the judge had showed her pornography several times while in his chambers. The Ohio Supreme Court has confronted numerous cases of sexual harassment and inappropriate sexual misconduct by attorneys in its disciplinary docket.

Should sexual misconduct require an actual suspension from the practice of law?

In 2015, the Cleveland Bar Association filed disciplinary charges against Tasso Paris alleging that he violated Prof. Cond. R. 1.3 (requiring a lawyer to act with reasonable diligence in representing a client) and 1.8(j) (prohibiting a lawyer from soliciting or engaging in sexual activity with a client unless a consensual sexual relationship existed prior to the lawyer-client relationship) when he made unwelcome sexual advances towards a female client.[1] The client had been charged with driving under the influence of alcohol and driving under suspension, and she paid Paris $1,000 to represent her. Paris admitted that during the course of his representation, he asked his client to go out with him several times and invited her to his house to join him in his hot tub on more than one occasion. The client testified that as the case dragged on she would have done "whatever he wanted" to get it resolved.[2]

After pleading guilty, Paris did not appear for the client's sentencing. When the judge asked whether Paris was going to appear, the client stated that she did not expect him to because "[h]e's been doing nothing but trying to get in my pants."[3]

After stipulating to many of the facts, Disciplinary Counsel and Paris agreed to a recommended sanction of a six-month stayed suspension. However, the Board of Professional Conduct, noting the increasing frequency of cases involving inappropriate sexual misconduct, argued that there should be a presumption of an actual suspension. The Court declined to adopt this presumption and ordered a six-month stayed suspension, finding that Paris's conduct was similar to other sexual misconduct cases where the Court had ordered six-month stayed suspensions. The Court also noted that Paris cooperated with the investigation and had no other disciplinary violations. Justice Lanzinger dissented, stating that a presumption of actual suspension should apply, "especially because it appears that cases of this type are increasing."[4]

Attorneys that victimize their clients

In one of the more egregious sexual misconduct cases to reach the Ohio Supreme Court, Disciplinary Counsel alleged that then-attorney Edward Sturgeon committed sexual misconduct with three of his clients.[5] When a woman sought legal representation for a child custody matter, Sturgeon sought a $2,500 retainer. When she could only pay $50, Sturgeon indicated that would not even cover the filing fee and solicited oral sex. The client submitted to these advances. She then sought treatment at a local medical center, reported the incident to the police, and stopped payment on her $50 check.

In Count 2 of the disciplinary complaint, another woman sought legal assistance for a child custody matter and offered to pay $1,000 for legal assistance. Sturgeon arranged a meeting at the client's home where, after discussing her case for two hours, he closed the blinds, laid down on a bed and motioned for the client to lay next to him. When she refused, Sturgeon "stood up, touched her buttocks and breasts, and tried to force her to kiss him."[6] Sturgeon stated "that he did this kind of thing all the time and had helped many women with their legal troubles in exchange for their having sex with him."[7] When Sturgeon told this client that no other attorney would take her case, she paid him $1,000.

In Count 3 of the complaint, another woman sought legal assistance in a wage garnishment matter, Sturgeon charged the woman $300 and she paid a $100 down payment. During a meeting in his office, Sturgeon solicited oral sex from this client. When she refused, Sturgeon exposed his penis to her.

The Disciplinary Board and Ohio Supreme Court found that Sturgeon had violated numerous disciplinary rules, and the Disciplinary Board recommended an indefinite suspension. However, the Ohio Supreme Court imposed permanent disbarment based upon three standards of egregious professional misconduct. First, he used the attorney-client relationship to satisfy his own selfish sexual interest instead of concentrating on the needs of his client. He preyed on woman that were vulnerable and "tried to seduce them for his own selfish gratification."

Second, a lawyer must always exercise independent professional judgment and a lawyer who attempts to engage in an unwelcome sexual relationship with a client is putting his own personal feelings ahead of the objectivity that is the hallmark of any successful attorney client relationship. Third, not only did Sturgeon commit sexual misconduct, he lied about it during the disciplinary process and engaged in a pattern of deception.[8]

The Ohio Supreme Court has emphasized that the primary purpose of the disciplinary process is not to punish the offender but to protect the public from lawyers who are unworthy of the trust and confidence essential to the attorney-client relationship. When

attorneys victimize their clients to satisfy their own sexual interest, clients become trapped in the attorney-client relationship because of their desperate need for legal assistance.

In *Disciplinary Counsel v. Detweiler*, then-attorney Detweiler was retained by a former client to represent her in a divorce. She paid him a $3,500 retainer. Detweiler texted this client about her clothing, how it made him feel sexually, how he wanted to have sex with her, and then sent her a nude picture of his lower body in a state of sexual arousal. When Detweiler sent her a text message requesting oral sex, she declined his request. Although she was put in this incredibly uncomfortable position, she felt she was unable to fire her attorney because she had already spent $10,000 in fees and expenses and could not afford to retain new counsel. So, she continued this attorney-client relationship while fending off her attorney's sexual advances.[9]

Attorneys who victimize their office staff

This sexual misconduct does not stop at the attorney-client relationship. It also pervades the workplace, creating hostile environments for both male and female attorneys.

In *Cincinnati Bar Assn. v. Young*, then-attorney Young made sexual advances on a female law student who was applying for a position in his office. During her second interview, Young made inappropriate comments, including asking whether the law student was a virgin. The student worked in Young's office for a period of time, and the sexual advances and inappropriate comments continued. Young asked the law student to be his mistress and encouraged her to "sleep[] around." She was put in a difficult position because although she felt uncomfortable, ashamed and degraded, she also needed the job. The student eventually quit her job after Young lost his temper on one occasion. In response, Young threatened to ruin her career.

The Disciplinary Board found that Young had created a hostile work environment in violation of DR 1-102(B) (engaging, in a professional capacity, in conduct involving discrimination prohibited by law because gender) and 1-102(A)(6) (engaging in conduct that adversely reflects on the lawyer's fitness to practice law). The Ohio Supreme Court agreed with the Board's findings and ordered a two-year suspension with one year stayed, finding that Young's conduct was "appalling."[10]

Preventing sexual misconduct in the legal profession

The "me too" movement has unmasked sexual abuse that occurs in the shadows of the workplace. The legal profession is ripe for this type of abuse because of the confidential and personal nature of the attorney-client relationship. And as Justice Lanzinger noted in her dissenting opinion in *Paris,* cases of sexual misconduct by attorneys are becoming more frequent. This is especially alarming since we know from the "me too" movement that most cases of sexual abuse go unreported. There must be zero tolerance of sexual misconduct in the legal profession.

The question remains how to prevent sexual misconduct from occurring in the future. First, the Bar must do a better job of making the public aware that sexual misconduct is specifically prohibited by the Disciplinary Rules and that a lawyer can be suspended from the practice of law for this activity. Second, the "me too" movement should now have placed every attorney and judge on notice that they have an ethical responsibility to report sexual misconduct to disciplinary counsel. Third, the "me too" movement has demonstrated that sexual misconduct rarely occurs in isolation. After a substantiated allegation of sexual misconduct by an attorney, Disciplinary Counsel must investigate whether it is indicative of a pattern of activity. Finally, the Ohio Supreme Court must lead by example. The Court must emphasize the damage done to our profession when an attorney commits sexual misconduct and impose actual suspensions from the practice of law in these cases.

Endnotes

[1]*Cleveland Metropolitan Bar Association v. Paris*, 148 Ohio St.3d 55, ___ N.E.2d ___, 2016-Ohio-5581 (2016).
[2]Id at ¶ 6.
[3]Id at ¶ 7.
[4]Id at ¶ 29.
[5]*Disciplinary Counsel v. Sturgeon*, 111 Ohio St.3d 285, 855 N.E.2d 1221, 2006-Ohio-5708 (2006).
[6]Id at ¶ 12.
[7]Id at ¶ 13.
[8]Id at ¶ 24-27.
[9]*Disciplinary Counsel v. Detweiler*, 135 Ohio St.3d 447, 989 N.E.2d 41, 2013-Ohio-1747 (2013).
[10]Id at 320.

Author Bio

Philip Bogdanoff is a frequent continuing legal education speaker on the topics of ethics, professionalism and other topics. Previously, as an attorney, he served as assistant prosecutor in the Summit County, Ohio Prosecutor's Office for more than 25 years, beginning in 1981. Mr. Bogdanoff argued cases before the Ohio 9th District Court of Appeals and 20 cases before the Ohio Supreme Court, including six death penalty cases, before retiring as a senior assistant prosecutor.

He is the author of numerous articles on ethics, professionalism and other legal topics and has taught the members of numerous organizations including the National Association of Legal Administrators, as well as numerous state and local Bar associations and Prosecuting Attorney's Associations. More information about Mr. Bogdanoff is available on his Web site at http://www.philipbogdanoff.com/.