



*Presents*

**Diversity, Contemporary Practice  
and Your Mental Health**

May 4, 2021  
6:00 pm - 8:00 pm

Presenters: Tiffany C. Malcolm, Esq.  
Ravi Cattry, Esq.  
Mark S. Anderson, Esq.  
Madison Porzio, Esq., LL.M



THE MENTAL HEALTH AND WELLNESS COMMITTEE OF THE  
QUEENS COUNTY WOMEN'S BAR ASSOCIATION PRESENTS,

# DIVERSITY, CONTEMPORARY PRACTICE, AND YOUR MENTAL HEALTH


Madison Porzio, Esq., LL.M.  
Ravi Cattray, Esq.  
Mark S. Anderson, Esq.  
Tiffany C. Malcolm, Esq.

# INTRODUCTION

- Diversity
  - Social and political climate is more active, and more connected than ever
  - Attention to systemic bias
  - Attention to microaggressions
- Intersectionality
  - “The belief that our social justice movements must consider all the intersections of identity, privilege, and oppression that people face in order to be just and effective.” – Ijeoma Oluo, *So You Want to Talk About Race*
  - How you are affected by all factors of diversity in your life can greatly influence your mental health
- Mental Health at Work
  - More important than ever to ensure stability, productivity, and quality of our work as lawyers
  - Important for both employee and employer
  - Your mental health at home, and your mental health at work have a symbiotic relationship



# PERSPECTIVES

- Our “role” or responsibilities at work factor into our intersectionality- that ‘status’ can dictate how we approach difficult situations related to bias or diversity, what resources or limitations we operate in, how we can preserve our mental health and most importantly how we influence the atmosphere for those around us
    - **Legally** - Model Rule 5.1(b)(2) – Supervisors are directly responsible for the compliance of their subordinates, includes their professional behavior
    - **Professionally** - Various state and federal laws Human Resources laws applicable to the work place
    - **Personally** - Responsibility to ourselves to protect our mental health
  - **We will be looking at several different perspectives, and though some topics will be the same we’ll look at them through the lens of your work role and how it may be different**
  - **Associate Attorney/ Firm**
    - Madison Porzio, Esq., LL.M.
  - **Solo Practitioner/ Small Practice**
    - Ravi Cattray, Esq.
  - **Partner or Manager/ Firm**
    - Mark S. Anderson, Esq.
  - **Court Employee**
    - Tiffany C. Malcolm, Esq.
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# ASSOCIATE ATTORNEY: MADISON PORZIO, ESQ.

- **Introduction and background**
- **Fraternal relationships with your colleagues**
  - Feelings of being accepted, or ostracized. Work relationships can have both positive and negative effects on your mental health
- **Microaggressions at work**
  - The difference between blatant bias and a microaggression is that it may not be intentional. It's important to understand because we may be unknowingly contributing to the problem
- **Professional conduct in the office**
  - Like with our relationships, our conduct and the conduct of those around us can be both a positive and a negative factor in our mental health culture at work
- **Communication with partners or supervisors**
  - Our ability to communicate with our superiors at work, and the resources available to engage in these conversations can be a source of stress or anxiety



# HYPOTHETICAL #1

- Marilyn, an associate attorney in “A” department, returns to the office with several colleagues after an off site networking event. Upon entering the office and passing through the hallway, Marilyn passes supervising partner of “B” department, talking to another associate attorney in Marilyn’s department. After Marilyn walks by, but within earshot, the partner says to the second associate “*that’s* what she wore to the event. Inappropriate.” Nothing about Marilyn’s appearance violates the office dress code. Though Marilyn does not directly work for this partner, she’s embarrassed in front of the other associate, and anxious about partner’s negative comment. She’s barely able to concentrate for the rest of the day, is late on a daily assignment, and out of anxiety, stays in the office three extra hours to make sure she makes her billables for the day.
- **Discussion**
- **Suggestions for Marilyn**
  - Speak to her own supervising Partner
  - Work on coping mechanisms to avoid mental effect of wasting the day- compartmentalize thoughts, take a break or a walk then come back to work and focus, consult HR resources before taking action
  - Distance yourself from any situation negative to your mental health at work
  - Kill partner of “B” department- with KINDNESS



## HYPOTHETICAL #2

- It's raise time at Marilyn's firm, The Firm! You and another associate, Male Counterpart, were hired about the same time. In the midst of your conversations you discover that not only was Male Counterpart hired at a higher base salary than you, but that last year he also received a bigger raise than you which results in a significant pay disparity at this point. You both graduated from similarly situated law schools, within a year of each other, and came to The Firm with similar experience. Marilyn is angry and frustrated at work, which is unintentionally affecting her attitude. Additionally, she is anxious and distracted thinking about how to address this in discussion at her upcoming review and raise negotiation.
- **Discussion**
- **How Can Marilyn Address Unequal Pay?**
  - Speak to her supervising partner directly, prior to her review
    - Some firm structures allow for this kind of conversation where the partner could speak to the higher executives in the firm and make them aware of the disparity
  - Be transparent in the review and negotiation
    - Ask for what is equal and/or what is deserving, and respectfully share that you know other associate attorneys similarly situated are earning similarly
  - If you are turned down, don't be afraid to ask why there is a pay disparity
    - There are pros and cons to every decision, this could lead to a constructive conversation that eases your anxiety, it could lead to a tense conversation that doesn't help- every employment situation is different and only you know what you're comfortable with
  - If you don't agree with the policies and the practices of your employer, your mental health may benefit if you look for other opportunities



## HYPOTHETICAL #3

- Marilyn, an associate attorney, is invited to happy hour after work with a group of other associate attorneys. While at happy hour, one of the associate attorneys uses language and vernacular which exhibits bias you are not comfortable with. When you become uncomfortable, another associate tells you “relax, there aren’t any of them here and we’re not in the office.” You believe strongly that this language shouldn’t be used at all, and you’re conflicted about what to do. The possible backfire of your weighed options gives you anxiety.
- **Discussion**
- **Possible Actions for Marilyn**
  - Make a point in front of the group that bias shouldn’t be accepted just because the persons who might be offended aren’t present
    - May be able to make your point without ostracizing yourself from the group from future social invitations if you can address the matter delicately
  - Speak to the associate who made the comment privately. Let them know that bias language makes you uncomfortable and offends you irrespective of who you are in front of
    - Have the same positive effect as above without embarrassing your co-worker, just be careful having these conversations at work
  - Avoid social interaction with that group of colleagues in the future
    - Will avoid the situation but may make you feel isolated or excluded at work, possibly having a negative mental health effect for you





# SOLO PRACTITIONER: RAVI CATTRY, ESQ.

- **Introduction and background**
- **Microaggressions by clients**
  - Difficulty in addressing these with clients when relying on their business and possible referrals to maintain solo practice
- **Explaining bias in the court system to client**
  - 51% of female attorneys reported that they agreed with the statement that male judges appear to give more credibility to statements/arguments of male attorneys than female attorneys; 29% of female attorneys reported the same credibility issue from female judges (New York State Judicial Committee n Women in the Courts, Gender Survey 2020)
  - 27% of female attorneys reported that male judges appeared to give more credibility to male witnesses whereas the same was reported at 16% with female judges (New York State Judicial Committee n Women in the Courts, Gender Survey 2020)
- **Microaggressions by other attorneys**
  - Rules of Professional Conduct 3.3(f)(1): In appearing as a lawyer before a tribunal a lawyer shall not engage in undignified or discourteous conduct
  - 32% of female attorneys reported that they were often addressed by their first name or terms of endearment by other attorneys while male attorneys were addressed by surname or title while 37% reported that this occurred sometimes (New York State Judicial Committee n Women in the Courts, Gender Survey 2020)



# HYPOTHETICAL #1

- Rachel, a solo practitioner, is meeting with Male Potential Client who was referred to her by a colleague to discuss a divorce proceeding. During the meeting, Rachel discusses the procedure for procuring a divorce and the various aspects of the court filing, going into detail based on Male Potential Client's specific facts. At the end of the meeting the potential client states to Rachel, "I would have preferred to work with a male attorney but you really know what you're doing. I think you should be able to actually handle my case."
- **Discussion**
- **Possible Actions for Rachel**
  - Advise the potential client of her qualifications and experience
  - Pretend you did not hear the comment
  - Advise the potential client that he is welcome to hire a male attorney if he so chooses



## HYPOTHETICAL #2

- Rachel, a white attorney, has been retained by Anna, a woman of color, to help her obtain a divorce. Anna has three children and is currently not working while studying for her master's degree in social work. Anna's soon to be ex-husband, Kevin, is working full-time as a licensed electrician. The nature of the case has required Anna to file a motion for child support and spousal maintenance. During the court appearance with the parties present, Rachel argues that Anna stopped working to attend school with Kevin's permission two years prior to starting the divorce while Kevin's lawyer argues that she suddenly quit prior to filing for divorce. After listening to both lawyers, the judge, a white man, states, "The husband states Wife suddenly just quit working. She needs to deal with the reality that she will have to work and cannot expect her baby daddy to pay for all of her expenses." After the court appearance, Anna tells Rachel that she believes that the judge is unable to make a fair decision on her motion because of the comments made during the court appearance and asks whether she can get a new judge.
- **Discussion**
- **Options for Rachel**
  - Advise Anna that she can take the decision out of the hands of the judge by trying to settle the motion.
  - Advise Anna that this type of implicit bias inherently exists in the court system and it is possible to report judicial misconduct to the New York State Commission on Judicial Conduct but this specific incident may not be deemed misconduct by the commission. Also that recusal of a judge is decided by that judge and in this matter the judge may not agree to recuse himself.
  - Correct the judge in the moment and restate that Anna contends that she stopped working with agreement from Kevin and at the very least the Court must consider the submitted motion in order to make a decision on this issue and that is not Anna asking for her husband to pay all of her expenses, only support due to her and the children as required by the law.



## HYPOTHETICAL #3

- Rachel, an attorney of color who has been practicing matrimonial law for about ten years, works in a small practice with one other attorney. Rachel's adversary in a case, John Smith, is a white male attorney who has been practicing matrimonial law for over thirty years. There is also Attorney for the Child assigned to the case who is a white male attorney practicing for a little over ten years. Prior to the start of the conference, the attorneys are discussing the case and John asks Rachel if she needs to talk to her boss before agreeing to any aspect in the case. Throughout the conference John keeps interrupting Rachel as she speaks and keeps referring to her as "the young lady" whereas he calls Attorney for the Child by his surname or counselor.
- **Discussion**
- **Options for Rachel**
  - Advise John that she is the primary attorney on the matter and that she does not need to "report" to a boss or ask a boss's "permission" in order to resolve issues in the case.
  - Address the interruptions directly, tell John that he has had his chance to speak and to allow her to complete her argument without interruption
  - Advise John to either refer to her by her surname or "counselor"
  - Ignore John's comments and accept that she will have to deal with them in order to resolve the client's case



# PARTNER OR MANAGER: MARK S. ANDERSON, ESQ.

- **Introduction and background**
- **Professionalism in the office**
  - Best way to take the temperature – have transparent conversations with the staff, informal and formal. Don't just address diversity but also mental health in these conversations.
  - Make sure you're informed of the relevant laws and governing bodies for the conversations and issuing policies
    - FLSA, sexual harassment standards, unemployment disputes, internal disputes, benefits, salary etc.
  - **Policing social media and discussions about social injustices**
    - Recent case law shows that speech and behavior in the office may be prohibited, but an employer can not maintain a record of off-duty political activities or force employees to disclose them
      - *Marquardt v. Carlton*, 971 F.3d 546 (6<sup>th</sup> Cir. 2020)
      - As your business becomes bigger, you may need an office policy manual
        - *NLRB v. Pier Sixty, LLC*, No. 15-1841 (2d Cir. 2017)
        - *Jones v. Gulf Coast Health Care of Delaware*, No.16-11142 (11th Cir. 2017)
    - A 2018 study at MetLife showed 70% of employees say companies “must” and 52% of employees expect their companies to tackle societal issues – Companies can't ignore social issues and keep their employees happy



# HYPOTHETICAL #1

- Partner at Law Firm invites employees to watch a speech by the head of an LGBTQ organization after hours in an available conference room. Many employees attend. In a Facebook post on an employee's private page, the employee wrote "Apparently at Law Firm, if you're not into politics, you're not part of the cool kids group." Another Law Firm employee comments on the post saying "from what I hear, you can only get ahead at Law Firm if you're a liberal robot." Other members of Law Firm are upset and noticeably less friendly the following day. How can or should you as Partner Manager of Law Firm address this?
- **Discussion**
- **Advice for Partner Manager**
  - This is a good opportunity to step into the mentor role with the Employees- illustrate how social media can 'make it' to the wrong ears or eyes and how it could be taken when you're bad mouthing your boss
  - Caution against posts of this nature for this reason, but don't make it a 'policy' that opinions can't be expressed- just that there may be consequences not only of the superiors but of other employees who see
  - Open the conversation and the opportunity for the Employees to explain why they feel this way about the firm or if there are other instances that need to be addressed leading to the feelings expressed in the post



## HYPOTHETICAL #2

- Law Firm has casual Friday every Friday- and it's GREAT for moral and the atmosphere at Law Firm. The dress code is casual, Law Firm pays for lunch for the office, and everyone looks forward to Fridays at the office. One employee is wearing a hooded swear shirt in compliance with the casual dress code for most of the day, however in the afternoon the office becomes exceptionally warm. Employee removed the hooded sweatshirt displaying a large tattoo on his arm that says "F\*#@ THE POLICE". How can or should you as Partner Manager of Law Firm address this?
- **Discussion**
- **Advice for Partner Manager**
  - Creating a policy about the use of certain speech is narrow enough not to 'discount' the benefits of casual Friday if tattoos do not exhibit profanity
  - Creating a policy builds a culture of trust and equality among senior leaders, managers and employees because persons on any level can reference to or point to the policy
  - Though employers can not police employees off duty political opinions or activities, employers can prohibit speech that is profane or defamatory
    - *Marquardt v. Carlton*, 971 F.3d 546 (6<sup>th</sup> Cir. 2020)



## HYPOTHETICAL #3

- During a consultation with a client, Partner and Associate are both present in a conference room. During the intake interview, you mention the name of the attorney for your adversary. The client interrupts you to rant “He’s got Jewish attorneys!?! They are the worst. They’ll never stop until you’re dead on the floor.” Associate is Jewish and Partner is not. How should Partner Manager address this both, or either, with the client and Associate.
- **Discussion**
- **Advice for Partner Manager**
  - As stated before, employees expect their employers to stand up for social issues. At minimum, Partner Manager can call Associate in for a meeting and open the floor for Associate to communicate. Asking questions about how Associate is feeling and acknowledging the incident is key
  - Don’t wait until an incident of this nature happens- be proactive in speaking to your employees about firm culture and microaggressions [even though in this instance it was a client]
  - Sometimes a third party manager in the room who may understand the situation better, or make it easier for the employee to be honest





# COURT EMPLOYEE: TIFFANY C. MALCOLM, ESQ.

- **Introduction and background**
- **Microaggressions in the Courthouse**
  - **Defined:** Brief and commonplace daily verbal, behavioral or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory or negative slights and insults toward people of color
    - Sue, Derald Wing – *Journal of American Psychologist* (May- June 2007)
- Power Lies in their invisibility to the perpetrator and, often times, the recipient
- **Effects on your mental health:**

Stress

Depression/anger

Irritation

Resentment

Social Isolation

Frustration

Low self-esteem

Emotional self-doubt

Trauma

Anxiety



# HYPOTHETICAL #1

- Amber, a licensed attorney and woman of color, enters a courtroom for a proceeding during the Court's session. Dressed in a full suit and carrying a purse, Amber proceeds to walk to the front row and take a seat. The Judge immediately stopped the proceeding to yell in open Court that the front row of the gallery is reserved only for attorneys and that that Amber needs to sit in the back of the gallery and wait for her lawyer.
- **Discussion**
- **Suggestions for Amber**
  - Stand and politely introduce herself to the judge and let them know you are a licensed attorney
  - Move and politely address the situation with the Judge or the Court Attorney after the proceeding is concluded
  - Further Discussion: How might these two possible solutions effect Amber's mental health in Court?



## HYPOTHETICAL #2

- Amber, an associate at a law firm and a woman of color, gives ample notice to her current firm and announces to her colleagues that she is taking a position as a law clerk to a new Judge in the Court system. After having worked successfully at her firm for two years, her supervisor organizes a going away party for her. At the celebration, another partner approaches her and asks her what Court and Judge she'll be working for. When Amber politely answers the question, the partner says “oh well that makes sense, they need more diversity in that Court.”
- **Discussion**
- **Suggestions for Amber**
  - Explain to the partner that she applied and interviewed like the other candidates
  - Politely point out that while diversity does give everyone a unique perspective, you don't believe you were hired due to your intersectionality of diverse backgrounds
  - Ignore it and be glad you don't work there anymore



## HYPOTHETICAL #3

- Cameron, a law clerk admitted to practice for approximately 10 years, is conferencing a highly contentious case on Microsoft Teams with three other attorneys who are older and have been practicing much longer. While Cameron is speaking, one of the attorneys proceeds to repeatedly speak over Cameron, ignore the guidance being given, and address the other attorneys directly without any professional deference to Cameron.
- **Discussion**
- **Suggestions for Cameron**
  - Politely ask the attorney to stop interrupting you and advise him that all parties will have equal opportunity to speak
  - Remind all attorneys that the virtual platform makes it very difficult to understand the parties if parties speak over one another
  - Remind the attorneys that the Court staff is an extension of the judge and they should address the staff with the same decorum



# CONCLUSION

- Conclusion Notes
- Questions

