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#MeToo's Reach Falling Short Of BigLaw Rainmakers

By **Andrew Strickler**

Law360, Vancouver, British Columbia (May 30, 2019, 9:09 PM EDT) -- BigLaw is continuing to evade the problem of rainmakers committing sexual harassment or undercutting women and minority lawyers, a panel of experts said Thursday.

Even with the impact of the #MeToo movement increasingly evident across the profession, many of the biggest firm moneymakers are not coming under the heightened scrutiny of workplace behavior, said panelists at the [American Bar Association's](#) National Conference on Professional Responsibility in Vancouver, British Columbia.

Fear that questioning a key partner about their treatment of subordinates will trigger their resignation leads to these institutional blinders, said Dayna Underhill, a litigator and partner at [Holland & Knight LLP](#) in Portland, Oregon.

"Law firms are a place where power and the exercise of power is encouraged and managing that power is very, very difficult," Underhill told the audience of more than 100 professional liability lawyers. "And lawyers who tend to wield power the most tend to be really great rainmakers, and addressing bad behavior in rainmakers is complex."

Some attorneys simply change firms to avoid professional blowback, the panelists said.

The #MeToo movement, which began in 2017, has brought long-overdue attention to the issue of sexual harassment and gender disparities in the legal industry, the panelists said. The cultural watershed has also forced firms to strengthen anti-discrimination training, encourage reporting and **shed mandatory arbitration provisions**, among other measures. Meanwhile, **a slew of lawsuits** brought by female lawyers and others alleging discrimination is helping keep the pressure on firms to figure out how and why the problems persist, the panelists said.

But Underhill said many firm managers who are otherwise committed to addressing gender and racial disparities remain reluctant to question their most powerful partners or probe the

internal dynamics of "siloes," money-generating practices.

"Who wants to see a million or two or three or four or 10 walk out the door ... because their bad behavior is the focus of attention?" she said. "Most law firms crawl under a blanket rather than deal with problems created by the big rainmakers, and we have to address those people."

Legal ethics expert Chuck Lundberg, who moderated the discussion, called #MeToo a "reckoning" for the industry.

Prior to the movement, "sexual harassment in law firms was thought of as a claims avoidance issue: 'We don't want to be sued,'" he said. "That has completely changed. It has become a matter of firm culture and the deepest concern focused on firm reputation."

He also noted that the largest firms have taken some steps to address rainmakers, such as questioning a lateral candidate about why they are leaving their old firm, if they'd ever been the subject of a sexual harassment or bias complaint and if they'd left a previous firm under threat of being terminated.

Before #MeToo, "none of the firms asked that question ... but now they do, and it's trickling down" to smaller firms, he said.

Wendy Muchman of the Illinois Attorney Registration and Disciplinary Commission said that, anecdotally, it appeared that judges overseeing disciplinary cases involving sexual harassment claims have been handing down tougher sanctions since the #MeToo movement began.

"An apology or someone giving some kind of 'old boys' club' excuse doesn't look like it's going as far as it used to," Muchman told Law360 after the panel.

But BigLaw's historically male-dominated leadership and tolerance for misbehaving lawyers, as well as firms' concerns about confidentiality, continue to stymie progress, particularly in reining in "bad actor" lawyers at the top of the food chain.

Kelly Dermody of Lieff Cabraser Heimann & Bernstein LLP, a nationally recognized expert on gender discrimination, sharply questioned the real impact of anti-harassment training, calling it a "failure" in making a significant impact on workplace behavior and climate.

She also pointed to an "apparatus of secrecy" in which lawyers and human resources executives work to protect confidentiality in anticipation of sexual harassment litigation rather than asking questions that might "lead to uncomfortable places."

Lawyers' own self-regard is hindering more significant progress for the industry, she said.

"I'm here to tell you that racism and sexism are alive and well in our law firms and the profession," she said. "Lawyers think they're fair, that they judge facts and apply rules, and therefore they're very hard to coach and to help understand how they contribute to cultures that are completely toxic."

--Editing by Alanna Weissman.