

An Indecent Exposure of the Rules of Legal Ethics

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ABSTRACT. Thousands of attorneys experience rape and sexual assault by clients, as well as indecent exposure, public masturbation, unwanted touching, verbal threats, and stalking. These incidents are not often publicly reported, but client sexual violence against attorneys is not uncommon. The ethical rules currently fail to account for an attorney who has experienced client sexual violence, whether to allow for termination of representation or to mitigate future harm to other lawyers. While the ethical rules are usually thought of as neutral, this Article critically examines the gender stereotypes and structures of oppression corseting the rules. Relying on a fifty-state survey of U.S. ethical rules and personal experiences with sexual violence while practicing law as a cisgender white woman and abolitionist, the author explores what type of ethical guidance would be appropriate for attorneys who have experienced client sexual violence.

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For lawyers and law students who have experienced client sexual violence, here are two good resources: *After Sexual Assault*, RAINN, <https://rainn.org/after-sexual-assault> and Lawyers Concerned for Lawyers, <https://mnlcl.org/>.

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INTRODUCTION

In 2020, Cook County, Illinois, settled a hostile work environment lawsuit brought by female public defenders and law clerks.¹ The plaintiffs alleged that Cook County enacted policies and practices that fostered an environment where male detainees repeatedly engaged in sexual misconduct with impunity.² This misconduct included repeatedly exposing their penises, masturbating, committing other acts of sexual violence, making verbal threats, and subjecting female public defenders and law clerks to unwanted touching and harassment.³ Five hundred thirty-four female public defenders and law clerks in Cook County alleged that almost all females were specifically and systemically targeted, while male public defenders and clerks were not.⁴

I learned of the Cook County settlement after sharing my own experience with a colleague about a client who exposed his penis and masturbated in front of me during a jail visit. I thought I was alone, but the Cook County case makes clear that sexual violence by clients against attorneys is not an uncommon

1. Gregory Pratt, *\$14M OK'd to settle suit over indecent behavior by inmates*, CHI. TRIB. (Nov. 20, 2020); Frank Main, *\$14 million settlement proposed in lawsuit over Cook County inmates masturbating in front of female public defenders*, CHI. SUN-TIMES (Feb. 23, 2020), <https://chicago.suntimes.com/news/2020/2/23/21149566/14-million-settlement-lawsuit-inmates-masturbating-cook-county-jail-tom-dart-amy-campanelli> [<https://perma.cc/UF3Y-D52T>].

2. See Complaint, *Brown v. Cook County et al.*, No. 17-CV-8085 (N.E. Ill. Nov. 8, 2017), ECF No. 1; Memorandum of Law in Support of the Plaintiffs' Motion for Preliminary Approval of Proposed Class Action Settlement, *Brown v. Cook County et al.*, No. 17-CV-8085 (N.E. Ill. Feb. 21, 2020), ECF No. 249.

3. Compl., *supra* note 2, at ¶ 6; Main, *supra* note 1.

4. *Id.*

experience.⁵ This problem extends beyond public defenders to attorneys across the board.⁶ As many as 33-45% of all female attorneys experience sexual

5. This Article uses a broad definition of “sexual violence” to describe a wide range of unwanted behaviors, which do not all include physical contact. The U.S. Department of Justice (“DOJ”) defines “sexual violence” as “a specific constellation of crimes including sexual harassment, sexual assault, and rape.” *Overview of Rape and Sexual Violence*, NAT’L INST. OF JUST., U.S. DEPT. OF JUST. (Oct. 25, 2010), <https://nij.ojp.gov/topics/articles/overview-rape-and-sexual-violence> [<https://perma.cc/L543-LD6B>]. The DOJ further defines “sexual assault” to cover “a wide range of unwanted behaviors—up to but not including penetration—that are attempted or completed against a victim’s will or when a victim cannot consent because of age, disability, or the influence of alcohol or drugs,” including “voyeurism” and “exposure to exhibitionism.” *Id.*

6. See STILL BROKEN: SEXUAL HARASSMENT AND MISCONDUCT IN THE LEGAL PROFESSION-A NATIONAL STUDY, WOMEN LAW. ON GUARD, INC. 27 (2020), <https://womenlawyersonguard.org/still-broken/> [<https://perma.cc/NU4M-KWQU>] (15% of attorneys reported being sexually harassed or worse by clients in a 2020 survey. Reported harassment of attorneys by clients actually increased from 11% of attorneys reporting sexual harassment by clients more than 30 years ago, to 16% 6-10 years ago, and 15% in the last five years); Ty Alper, *Third Party Sexual Harassment: The Challenge of Title IX Obligations for Law School Clinics*, 96 WASH. L. REV. 1, 6 (2021) (quoting Caroline Spiezio “[s]exual harassment by clients is not uncommon in the legal industry, with stories ranging from uncomfortable comments to repeated unwanted propositions and even sexual assault” and Debra Cassens Weiss “one in three female lawyers have been sexually harassed in a work context according to a recently released global survey of nearly 7,000 lawyers in 135 countries”); *Study reveals ‘chronic’ legal workplace harassment; Young Lawyers take action*, YOURABA (Jul. 2019), <https://www.americanbar.org/news/abanews/publications/youraba/2019/july-2019/study-reveals-chronic-legal-workplace-harassment--young-lawyers/> [<https://perma.cc/2ZJ6-VBSS>]; Peter Jan Honigsberg et al., *When the Client Harasses the Attorney - Recognizing Third-Party Sexual Harassment in the Legal Profession*, 28 U.S.F. L. REV. 715 (1994) (“According to the Prentice Hall Law & Business Survey of Women Litigators, 44.9% of all women attorneys surveyed reported that they had been harassed by clients during the past five years. The final report of the Ninth Circuit Gender Bias Task Force found in July 1993 that 39% of female attorneys said they have been the subject of unwanted sexual advances or other forms of sexual harassment by clients.”). There is at least one other reported case of a female public defender being harassed by clients. See, e.g., *LaRose v. King County*, 8 Wn. App. 2d 90, 437 P.3d 701 (2019) (public defender harassed and stalked by a client files hostile work environment suit). In addition, there is reason to believe that the actual number of female lawyers experiencing client sexual violence may be even higher than 45% in some states, because though there are not many statistics available on client sexual violence against attorneys, there have been several surveys in recent years regarding threats of violence and physical assaults by clients against attorneys. See Stephen D. Kelson, *Violence in the Legal Profession*, UTAH BAR ASSN. (2018), https://paralegals.utahbar.org/uploads/9/1/9/4/91940160/violence_in_the_legal_profession_-_stephen_kelson.pdf [hereinafter Kelson, *Violence in the Legal Profession*]. Stephen D. Kelson has conducted surveys on violence against attorneys together with 28 state bar associations in the United States and has received more than 28,000 attorney responses. *Id.* Mr. Kelson does not break down the threats and physical assaults so that we could tell if any of it was sexual violence. Nonetheless, it is interesting to note that according to his surveys, over 45% of attorneys in most states have received threats of violence or experienced physical assaults at some point in their careers. *Id.*; see also Stephen D. Kelson, *Violence Against the Utah Legal Profession*, 19 UTAH BAR J. 8 (2006) (discussing the first state-wide survey concerning violence against members of the Utah Bar. Though that survey did not focus on sexual violence, it found that 45.9% of the 8,737 respondents reported they had been threatened or physically assaulted at least once.). Similarly, Mr. Kelson did a survey of the Nevada Bar and found that 40% of the 1,029 respondents had been threatened and/or physically assaulted at least once in their career. See STEVE D. KELSON, VIOLENCE AGAINST THE NEVADA LEGAL PROFESSION: RESULTS OF THE 2012 SURVEY (2012), https://www.nvbar.org/wp-content/uploads/NevLawyer_Aug_2012_Violence_Survey_2-1.pdf. See also Stephen Kelson, *Violence Against Lawyers*, 23 J. LEGAL PRO. 197 (1999); Mark Hansen, *Lawyers in Harm’s Way*, 84 A.B.A. J. 93 (1998) (reporting that in 1998, “an informal survey sent by fax last fall to members of the American Bar Association (“ABA”) Section of Family Law” found that 17% of family lawyers had been threatened by their own client.).

harassment,⁷ or worse, by clients sometime during their careers.⁸ Female attorneys of color and queer attorneys experience even higher rates of client sexual violence.⁹ Most incidents of sexual violence remain unreported, unprosecuted, and unremedied.¹⁰ Moreover, sexual violence is a common form of trauma,¹¹ and attorneys experiencing client sexual violence likely experience posttraumatic stress disorder (PTSD).¹²

The lack of ethical guidance for attorneys who experience sexual violence by clients raises important ethical questions. Among these questions are whether the attorney can report the sexual violence and to whom they can report it, and

7. The quoted studies do not state whether these statistics are for cisgender, female-presenting attorneys, or otherwise.

8. See STILL BROKEN, *supra* note 6 at 4-6 (91% of the harassers were reported to be men, only 6% women).

9. Black women, indigenous women and other women of color are at a disproportionate risk of sexual violence. See Jameta Nicole Barlow, *Black women, the forgotten survivors of sexual assault*, AM. PSYCH. ASSN (Feb. 1, 2020), <https://www.apa.org/topics/sexual-assault-harassment/black-women-sexual-violence> [<https://perma.cc/DC5V-LP5G>]; Matt Gonzales, *Five Years of #MeToo: Sexual Harassment Still Common in Workplaces*, SHRM (Dec. 21, 2023), <https://www.shrm.org/topics-tools/news/inclusion-diversity/five-years-metoo-sexual-harassment-still-common-workplaces> [<https://perma.cc/V9WZ-4M2W>]. While I could not find any studies citing statistics which included the race or transgender status of attorneys experiencing sexual violence, incidences of sexual violence are likely even higher for attorneys of color and transgender attorneys. See, e.g., *id.*; Rebecca L. Stotzer, *Violence against transgender people: A review of United States data*, 14 AGGRESSION & VIOLENT BEHAV. 170 (2009), <https://www.sciencedirect.com/science/article/abs/pii/S1359178909000202?via%3Dihub>. Moreover, a recent study of bullying in the legal profession in Illinois found that 38% of female lawyers were bullied at work in the past year compared to 15% of male lawyers. ILLINOIS SUPREME COURT COMMISSION ON PROFESSIONALISM, BULLYING IN THE LEGAL PROFESSION: A STUDY OF ILLINOIS' LAWYERS' EXPERIENCES AND RECOMMENDATIONS FOR CHANGE 10 (2024), <https://www.2civility.org/bullying-in-the-legal-profession/> [<https://perma.cc/CK4T-VNJL>]. Lawyers of color and gay and lesbian lawyers were bullied at higher rates than their white, straight counterparts. *Id.*

10. See CATHARINE A. MACKINNON, SEX EQUALITY 742 (2d. Ed. 2007) [hereinafter SEX EQUALITY]; *Statistics about sexual violence*, NAT'L SEXUAL VIOLENCE RES. CTR., https://www.nsvrc.org/sites/default/files/publications_nsvrc_factsheet_media-packet_statistics-about-sexual-violence_0.pdf; *Sexual Assault Remains Dramatically Underreported*, BRENNAN CTR. JUST. (Oct. 4, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/sexual-assault-remains-dramatically-underreported> [<https://perma.cc/QF47-8GGC>]; *The Criminal Justice System*, RAINN: STATISTICS, <https://www.rainn.org/statistics/criminal-justice-system> [<https://perma.cc/XS45-CUAY>]; *Most Sexual Assaults Go Unreported, Unsolved, Unpunished*, THE UPTAKE, <https://theuptake.org/most-sexual-assaults-go-unreported-unsolved-unpunished/> [<https://perma.cc/3KD6-ZKZZ>].

11. See Emily R. Dworkin, Anna E. Jaffe, & Michele Bedard-Gilligan, *PTSD in the year following sexual assault: A meta-analysis of prospective students*, 24 TRAUMA VIOLENCE ABUSE (Jul. 19, 2021), <https://pmc.ncbi.nlm.nih.gov/articles/PMC8766599/> [<https://perma.cc/523Y-V5D3>]; Deeya Halder, *Domestic violence work as a lens for trauma-informed lawyering in MALIKA KAUR & LINDSAY HARRIS, HOW TO ACCOUNT FOR TRAUMA AND EMOTIONS IN LAW TEACHING* 156, 158 (2024) (“Trauma is defined as occurring when individuals subjectively experience a threat to life, bodily integrity or sanity, which overwhelms their ability to cope with that threat.”).

12. See Dworkin et al., *supra* note 11; Betsy J. Grey, *PTSD, Biomarkers, and Rape Prosecutions*, 48 ARIZ. ST. L.J. 935, 941-42 (2016) (discussing sexual violence within DSM-5 diagnostic criteria for posttraumatic stress disorder); Alexa Sardina & Alissa R. Ackerman, *Restorative Justice in Cases of Sexual Harm*, 25 CUNY L. REV. 1, 36 (2022) (discussing how those who have experienced sexual harm are six times more likely to suffer from posttraumatic stress disorder); Jennifer Brobst, *The Impact of Secondary Traumatic Stress Among Family Attorneys Working with Trauma-Exposed Clients: Implications for Practice and Professional Responsibility*, 10 J. HEALTH & BIOMEDICAL L. 1, 41-50 (2014) (discussing methods to remedy traumatic stress in attorneys).

whether the attorney must continue representing their client. Employing feminist legal methods and hoping to avoid “covering”¹³—the coerced downplaying of crucial aspects of oneself—I adopt the autoethnographic method of self-narrative, used recently by a growing number of legal scholars, and share some of my own relevant experiences.¹⁴

This Article argues that gender stereotypes and structural oppression corseting the ethical rules¹⁵ hinder the ability of attorneys who have experienced client sexual violence to contribute both to the legal profession and our society in general. In fact, the ethical rules are premised on the lawyer being a stereotypical all-powerful man (a white, straight, cisgender man) and do not consider the lawyer as woman or otherwise as someone capable of being overpowered and forced to engage in sexual conduct. This Article provides proposals for addressing the problem of client sexual violence against attorneys, including creating greater awareness of this problem, transforming existing conditions that allow for the sexual violence to take place, as fought for by courageous advocates and survivors, and suggested amendments to the ethical rules.

In Part I of this Article, I highlight some of my own experiences with sexual violence while practicing law—as a cisgender white woman and abolitionist—and I connect those experiences to my research into ethics and the practice of law to explore what type of ethical guidance would be appropriate under similar circumstances. Part II provides a brief history of sexual violence in U.S. law, including in criminal law, civil law, and the ethical rules, as well as an overview of feminist and abolitionist legal theory and methods. Part III critically examines the ethical rules that may apply when a client commits sexual violence against their attorney, while Part IV offers proposals to address this epidemic.

I. SELF-NARRATIVE: EXPERIENCING SEXUAL VIOLENCE WHILE PRACTICING LAW

In this Part, I share my own experiences to help demonstrate how sexual violence is directed at women practicing law and to explain some of the problems

13. See Kenji Yoshino, *Covering*, 111 YALE L.J. 769 (2002).

14. See, e.g., *id.*; *infra* note 21 and accompanying text. See also Terrell Carter, Rachel Lopez et al., *Redeeming Justice*, 116 NW. U. L. REV. 315 (2021); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989).

15. This Article uses the term ‘ethical rules’ to refer to the rules, regulations, standards, and guidance applicable to lawyers in the United States. See Lauren E. Bartlett, *A Human Rights Code of Conduct: Ambitious Moral Aspiration for a Public Interest Law Office or Law Clinic*, 91 ST. JOHN’S L. REV. 559, 567-82 (2017). In addition, I have completed a fifty-state survey (plus Washington, D.C.) of the state rules of professional conduct are considered here, as well as statutes, case law, and ethics advisory opinions as related to client sexual violence. See Fifty State Survey of Ethical Rules Related to Sexual Violence, https://docs.google.com/spreadsheets/d/1utFG2_0PAM7jyVj3hwDMTaj0zh7dVPhmoRNcg3GeU7A/edit?usp=sharing [<https://perma.cc/PTP5-TFUN>] [hereinafter Fifty State Survey].

attorneys encounter in the aftermath of sexual violence. I do not share all the experiences I have had with sexual violence, inside and outside of the practice of law. My purpose here is to share enough to ground my research in lived experience while remaining mindful of not oversharing.¹⁶

The epidemic of client sexual violence against attorneys is not a topic that has been written about much in legal scholarship.¹⁷ Here, I use the autoethnographic method of self-narrative,¹⁸ a method commonly used by feminist legal theorists,¹⁹ to ground my scholarship in experience,²⁰ and to help identify harms which have not been recognized in ethical rules or have been minimized because the experiences of women are not adequately expressed in the law. A growing number of legal scholars are using self-narrative.²¹ For example, Professor Maybell Romero discussed her own experiences of rape and sexual assault, as well as prosecuting such cases in her article “*Ruined*”,²² offering a “contemporary embodiment” of “legal experiences” and a “lens to view the issue at the heart of [this] article.”²³ In *Exiting the American Dream*, Professor Jayesh Rathod wrote about his experience as a gay man of color and as a son of immigrants to offer a real-life counter story that challenges prevailing narratives about law and society.²⁴ Increasingly, the use of self-narrative is important to record authentic accounts of real world experiences as a factual basis for legal analysis. I offer my own self-narrative to help facilitate a feminist and abolitionist critique of the ethical rules, with an end goal of transforming how the legal profession addresses client sexual violence.

16. See, e.g., Heidi Borst, *Trauma Dumping: Signs, Effects And Strategies for Overcoming It*, FORBES (Sept. 28, 2023), <https://www.forbes.com/health/mind/trauma-dumping/> [https://perma.cc/D26J-LMDR].

17. But see Honigsberg et al., *supra* note 6 (discussing sexual harassment of attorneys by clients); Alper, *supra* note 6 (discussing sexual harassment by clients of law students).

18. See Maybell Romero, “*Ruined*”, 111 GEO. L.J. 237, 255-57 (2022).

19. See KATHRYN M. STANCHI ET AL., FEMINIST JUDGMENTS 15-17, 411 (2016); Robin West, *Women in the Legal Academy: A Brief History of Feminist Legal Theory*, 977 FORDHAM L. REV. 993 (2018); Angela P. Harris, *Race and Essentialism*, 42 STAN. L. REV. 581, 615-16 (1990).

20. See MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 13 (1999).

21. In *Scholarship Against Desire*, Professor Shari Motro shared her early experiences with non-marital sex, as well as her personal experiences navigating the law review placement process, in an article arguing for “a more authentic ethos” for the legal profession. Shari Motro, *Scholarship Against Desire*, 27 YALE J. L. & HUMAN. 115 (2015). Professors Katherine A. MacFarlane and Katie Eyer disclosed their disabilities in the footnotes of law review articles they have written about disability and the law. Katherine A. MacFarlane, *Accommodation Discrimination*, 72 AM. U. L. REV. 1971, n.110 (2023); Katie Eyer, *Claiming Disability*, 101 B.U.L. REV. 547, n. 149 (2020). Professor Etienne C. Toussaint wrote about his childhood in the South Bronx and the personal influence hip hop’s Black radical tradition had in helping him theorize the Black experience in America in his article *Tragedies of the Cultural Commons*. Etienne C. Toussaint, *Tragedies of the Cultural Commons*, 10 CALIF. L. REV. 1777, 1779-90 (2022). See also Yoshino, *supra* note 13; KAUR & HARRIS, *supra* note 11, at 14.

22. Romero, *supra* note 18.

23. *Id.* at 279-80.

24. Jayesh Rathod, *Exiting the American Dream*, 72 UCLA L. REV. DISC. 122, 125 (2024).

In sharing my own experiences, I also hope to avoid “covering.”²⁵ Covering is the coerced downplay of crucial aspects of oneself, including gender, sexuality, disability, race, and more, for protection from discrimination and other harms.²⁶ As I learned more about the practice of covering, I realized that I had been covering my status as a woman in the practice of law earlier in my career. For example, I never told the stories I share below, except behind closed doors to other women. Upon reflection, I believe I was covering because I feared potential discrimination, so it felt unsafe to do anything other than assimilate. But I am trying to do better now, and this Article is a start. I am no longer downplaying my experiences as a woman practicing law.

My first experience with sexual violence in the practice of law occurred when I was in law school. Like many lawyers, I began practicing law as a law student in a clinic. As a student attorney, I represented tenants in landlord-tenant cases. There was a judge on the bench at that time, who, whenever problems with housing conditions arose, would personally inspect the property instead of relying solely on testimony and evidence presented in the courtroom. She would meet with the attorneys and clients at the premises to conduct an inspection. On one occasion, I had a case before this judge, and she decided to do an inspection of my client’s apartment. I arrived early for the inspection along with my client, an elderly gentleman who only spoke Spanish, and the landlord. While we were waiting for the judge and the landlord’s attorney to arrive, the landlord asked my client to show him some of the problems with the apartment. I served as interpreter for my client as we took the landlord around the apartment, pointing out holes in the walls where rats came in and a very leaky pipe under the bathtub.

As soon as everyone else arrived, my client took me aside and he told me in Spanish that while I was bending over the bathtub point out the leaky pipe, the landlord had taken photos of me on his cell phone. I was wearing a brown polyester skirt suit with a flounced hem, as I often did at that time. My client hinted that the photos he took were inappropriate to say the least. I immediately froze and the room muffled around me. I was in shock and completely caught off guard. I did not know what to do. Later, when I returned to the clinic’s office, I told my supervising attorney what had happened. She was shocked and turned red, but she did not say much. However, when we were all in court together again, she directed me to tell the judge about the photos. Even though I did not want to, she told me to request that the judge order the landlord to delete the photos. This all took place in a large public courtroom full of more than a hundred people—landlords, tenants, other law students, and lawyers. Somehow, I was able to get up and say the necessary words, but I do not remember doing it. Again, I froze.

25. See Yoshino, *supra* note 13.

26. *Id.*

The experience of being directed to report the situation to the judge stuck with me. I did not want to report it, and when I did, I did not feel like it did any good. In truth, it felt pointless: there was no way to know if the landlord really did delete the photos. I felt embarrassed both for myself and for my client, who not only had to inform me about the incident but also endured its recounting in open court. Ultimately, I left the courtroom that day still feeling harmed and taken advantage of by the landlord.

Since then, I have been reluctant to report any sexual misconduct I have experienced in the practice of law. I have experienced men masturbating through the windows in their jail cells from far away while I was visiting with clients, just as the female public defenders alleged in the Cook County case. I have never reported those incidents. However, the incident that led me to pursue this scholarship was more personal, because it was my own client masturbating at me. The day it happened, I was visiting my client in jail in a professional visiting booth by myself when he suddenly pulled out his penis and masturbated at me.²⁷

At that point, he had been my client for over a year, and I thought we had a trusting, loyal client-attorney relationship. During my visits, our conversations extended beyond his case to include personal topics such as favorite books and personal dreams. I had spoken to his mother many times and had met some of his other family members. I went to visit him in jail almost every week because it was often hard to communicate with him except during those visits. He had never hinted at having feelings for me or thinking of me in any way other than as his attorney. When he began masturbating, I immediately yelled “NO” and left. When I got back to my office, my phone was ringing. I picked it up, and it was him. I told him that I did not want to talk and hung up the phone. He continued to call all afternoon, and I did not pick up. I left my office scared, shaking, and unable to concentrate. Again, I froze.

I was not sure that I could tell anyone what happened. I was also not sure I could still trust my client or continue to represent him. Did I have a conflict of interest? I worried that if I did have a conflict of interest, how would I be able to extricate myself from the representation without creating difficulties for my client? I had no desire to punish my client and cared deeply for his well-being. I believed—then and now—that this situation could have been avoided if he had not been caged for far too long awaiting trial in a cruel, tortuous jail permeated

27. One of the reasons I have been worried about sharing this story is that the reader may assume my client was a Black man and sexual violence has been weaponized against Black men by White women for far too long and too often. *See, e.g.*, Harris, *supra* note 19, at 600; HARPER LEE, *TO KILL A MOCKINGBIRD* (1960). However, I take some solace in the words of Amanda Gorman, former National Youth Poet Laureate: “...Sturdy as crouched valleys, proud as hard-baked earth, there is nothing more natural than a woman who knows the worth of making the choice to raise her voice.” Amanda Gorman, *The Hill We Climb*, ELLE (2018), <https://www.elle.com/uk/life-and-culture/culture/a35276230/amanda-gormans-poem-the-hill-we-climb/> [<https://perma.cc/79H6-E8CE>].

by toxic masculinity²⁸ and without access to adequate health care.²⁹ Also, given what happened to me as a clinic student, I had no desire to report the incident. I wanted to rewind time and somehow prevent it from happening in the first place. But that was not possible, and now I felt unsafe around my client. I did not want to visit him or speak to him. I also did not want any other attorneys to endure what I had experienced.

Eventually, I decided to confide in a colleague about what happened, and during our conversation, she mentioned the Cook County case. I arranged for another colleague to assume representation of my client. This colleague visited my client to discuss what occurred. They explain that such behavior was inappropriate and could result in termination of representation. My client claimed no recollection of any inappropriate actions. My colleague reported back to me and indicated that the issue was resolved. Later on, I received a letter from my client asking me to keep the incident secret. I shared the letter with my colleague who took over the case. I felt my credibility had been questioned and I had to prove that I was telling the truth.

When I was trying to figure out what to do in the aftermath of this incident, I talked to my colleagues. I looked for relevant articles. I tried searching the American Bar Association's ("ABA") Center for Professional Responsibility website,³⁰ and I wracked my brain about what I knew from my previous research on the ethical rules. I also looked to the ABA Model Rules of Professional Conduct, as I often do, and what I found astonished me. Apparently, I had potentially violated the rules of professional conduct when my client initiated sexual activity, and I failed to ensure that the attorney-client relationship remained professional.³¹ It was also unclear whether I could disclose what my client had done or withdraw from representation. Again, I froze.

It was as if I was back in that skirt suit trying to follow rules that seemed to work against me. I could not believe that after being sexually assaulted, I sought ethical guidance only to find that my profession blamed me for the assault. Blame for sexual violence should never be placed on the receiving end of harm,

28. See, e.g., Terry A. Kupers, *The Role of Misogyny and Homophobia in Prison Sexual Abuse*, 18 UCLA WOMEN'S L. J. 107, 113 (2010); SpearIt, *Gender Violence in Prison & Hyper-Masculinities in the 'Hood*, 37 WASH. U. J.L. & POL'Y 89, 96 (2011) ("negative treatment of women in society is the ideology by which prisoners express power behind bars, or as one warden in a Florida prison explains, '[t]his society away from society mirrors the actual society out there.'"); Leigh Goodmark, *Should Domestic Violence Be Decriminalized?*, 40 HARV. J.L. & GENDER 53, 87 (2017).

29. See, e.g., Sam McCann, *Health Care Behind Bars: Missed Appointments, No Standards, and High Costs*, VERA INST. (Jun. 29, 2022), <https://www.vera.org/news/health-care-behind-bars-missed-appointments-no-standards-and-high-costs> [<https://perma.cc/LM78-D8D3>]; Marcella Alsan et al., *Health Care in U.S. Correctional Facilities – A Limited and Threatened Constitutional Right*, 388 NEW ENG. J. MED. 847 (Mar. 1, 2023), <https://www.nejm.org/doi/full/10.1056/NEJMms2211252>.

30. *Ctr. For Pro. Responsibility*, A.B.A., https://www.americanbar.org/groups/professional_responsibility/ [<https://perma.cc/4EER-5VQL>].

31. MODEL RULES OF PRO. CONDUCT r. 1.8(j) (A.B.A., amended 2025) [hereinafter MODEL RULES OF PRO. CONDUCT]. See also *Disciplinary Counsel v. Porter*, 182 N.E.3d 1188, 1196 (Ohio 2021).

but the legal profession is culpable if we do not change our culture and root out gender stereotypes in the ethical rules that hinder the effective practice of law.

My previous scholarship addresses these stereotypes and demonstrates the historical exclusion of women from ethical rulemaking.³² I have also highlighted problems with gendered and discriminatory language used in lawyer's oaths across the U.S.³³ The revelation that, instead of providing ethical guidance to attorneys experiencing client sexual violence, the rules at best fail to contemplate client sexual violence and at worst place the blame on the attorney, struck me in a whole new and terrible way. Thus, an (indecent) exposure of the gender stereotypes and structural oppression in the rules of legal ethics is required.

Part II below starts with a historical look at how U.S. law generally refuses to recognize most forms of sexual violence against women. It then examines the ethical rules and uses feminist and abolitionist methods to explore the rules in the context of the epidemic of client sexual violence.

II. SEXUAL VIOLENCE AND U.S. LAW: A BACKGROUND

Countless lawyers have experienced a wide range of client sexual violence, including rape,³⁴ sexual assault,³⁵ and sexual harassment.³⁶ While it is not uncommon for a lawyer to experience such client violence, the ethical rules are silent on this phenomenon. This part of the Article provides a historical background on U.S. law and sexual violence, as well as a discussion of the evolution of the ethical rules that relate to client sexual violence. Using feminist and abolitionist methods and perspectives, this Part ends with a critical discussion of the ethical rules related to sexual violence.

32. See Lauren E. Bartlett, *Human Rights and Lawyer's Oaths*, 36 GEO. J. LEGAL ETHICS 411, 414-22 (2023).

33. See *id.*

34. Most state statutes currently define "rape" as nonconsensual oral, anal, or vaginal penetration of the victim by body parts or objects using force, threats of bodily harm. See DOJ, *supra* note 5.

35. "Sexual assault" covers a wide range of unwanted behaviors—up to but not including penetration—that are attempted or completed against a victim's will. Sexual assault may involve actual or threatened physical force and may include intentional touching (of the victim's genitals, anus, groin, or breast), voyeurism, exposure to exhibitionism, undesired exposure to pornography, or a public display of images that were taken in a private context or when the victim was unaware. See *id.*

36. There is some overlap between "sexual assault" and "sexual harassment," but sexual harassment usually ranges from degrading remarks, gestures, and jokes to indecent exposure, being touched, grabbed, pinched, or brushed against in a sexual way. In employment settings, it has been defined as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct that enters into employment decisions or conduct that unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment." See *id.*

A. A Brief History of Sexual Violence and U.S. Law

For hundreds of years, U.S. law has refused to recognize most forms of sexual violence against women. Historically, at common law, rape was theorized as a crime that could not have men or Black women as victims.³⁷ Instead, it was a crime that could be committed by men against white women only.³⁸ In addition, marital rape exemptions—exemptions from prosecution for husbands who raped their wives³⁹—were universal until the late 1970s.⁴⁰ Many states also refused to recognize indecent exposure as harmful,⁴¹ let alone criminalize public masturbation.⁴²

Civil law in the U.S. also largely refused to address sexual violence.⁴³ Historically, the tort of seduction was on rare occasions recognized in common law legal systems—an unmarried woman's father could sue when she became pregnant after rape.⁴⁴ The woman was not the complainant or petitioner—she was not a party to the lawsuit—if she was involved at all it was merely as a witness.⁴⁵ The tort of seduction was not about addressing the rape, but instead about paying for the “harm” caused to the pregnant, unmarried woman's father.⁴⁶

Other forms of sexual violence have remained invisible for hundreds of years as well. There are a gross number of occurrences of sexual violence in institutional settings in the U.S. For example, women in the military are more

37. Harris, *supra* note 19, at 599 (“...the experience of rape did not even exist for black women. During slavery, the rape of a black woman by any man, white or black, was simply not a crime.”). *See also, e.g.*, THOMAS A. FOSTER ET AL., *RETHINKING RUFUS: SEXUAL VIOLATIONS OF ENSLAVED MEN* 2 (2019); Susan Estrich, *Rape*, 95 *YALE L.J.* 1087, 1150 (1986).

38. Harris, *supra* note 19, at 599 (“During slavery, the rape of a black woman by any man, white or black, was simply not a crime.”).

39. Historically, husbands were exempt from prosecution raping their wives. *See* Romero, *supra* note 18, at 256; Lalanya Weintraub Siegel, *Note, The Marital Rape Exemption: Evolution to Extinction*, 43 *CLEV. ST. L. REV.* 351, 352 (1995).

40. Catharine A. Mackinnon, *Disputing Male Sovereignty: On United States v. Morrison*, 114 *HARV. L. REV.* 135, 142 (1995) (citing Lalanya Weintraub Siegel). Nebraska was the first state to completely abolish the marital exemption in 1976. *See* Weintraub Siegel, *supra* note 39, at 352. *See also* RICHARD A. POSNER AND KATHARINE B. SILBAUGH, *A GUIDE TO AMERICAN'S SEX LAWS* 35-43 (1996).

41. Missouri did not criminalize public indecency until 2004. *See* MO. REV. STAT. §566.093; STUART P. GREEN, *CRIMINALIZING SEX: A UNIFIED LIBERAL THEORY* 228-29 (2020) (dismissing the idea that indecent exposure causes any physical, economic, or psychological harm). *But see* Brenna Cheyne Miller, *Fact or Phallus? Considering the Constitutionality of Texas's Cyber-Flashing Law Under the True Threat Doctrine*, 8 *TEX. A&M L. REV.* 423, 435 (2021).

42. *See, e.g.*, Kery Murakami, *Public masturbation not a crime in Maryland*, *WASH. POST* (Dec. 18, 2018), <https://www.washingtonpost.com/express/2018/12/18/can-you-masturbate-metro-its-murky-maryland/> [<https://perma.cc/6L6N-W3MU>].

43. *See* SEX EQUALITY, *supra* note 10, at 742-43. *See also* Jennifer Wriggins, *Domestic Violence Torts*, 75 *S. CAL. L. REV.* 121, 129-144 (2001).

44. *See* SEX EQUALITY, *supra* note 10 at 742-43 (citing Jane E. Larson, *Women Understand So Little, They Call My Good Nature “Deceit”: A Feminist Rethinking of Seduction*, 93 *COLUM. L. REV.* 374 (1993) and Martha Chamallas & Linda K. Kerber, “*Women, Mothers, and the Law of Fright: A History*”, 88 *MICH. L. REV.* 814 (1990)).

45. *See* Larson, *supra* note 44.

46. *See id.*

likely to be raped by their colleagues than killed in combat.⁴⁷ Sexual violence on college and university campuses is also pervasive—26.4% of female undergraduate students have been sexually assaulted.⁴⁸ Rape, sexual assault and other forms of sexual violence are widespread in prison and jails in the U.S.⁴⁹ Sexual violence in immigration detention centers runs rampant.⁵⁰ For far too long, women have been forced to endure sexual violence, generation after generation, without adequate redress.⁵¹

Recognition of sexual harassment and other forms of sexual violence that do not involve physical violence was not widespread until the last few decades. The term “sexual harassment”⁵² did not exist until the late 1970s, when it was adopted to describe the sexual violence so many people experienced in the workplace.⁵³ Advocates for anti-sexual harassment laws developed a legal framework grounded in the theory that sexual subordination is sex discrimination.⁵⁴ This was a unique framing at the time it was developed, coming directly out of the burgeoning feminist movement.⁵⁵ Anti-sexual harassment laws remain

47. See Hannah Brenner, Kathleen Darcy & Sheryl Kubiak, *Sexual Violence as an Occupational Hazard & Condition of Confinement in the Closed Institutional Systems of the Military and Detention*, 44 PEPP. L. REV. 881, 881 (2017).

48. See *Campus Sexual Violence*, RAINN: STATISTICS, <https://www.rainn.org/statistics/campus-sexual-violence> [<https://perma.cc/XH7X-RU5K>].

49. U.S. DEP’T OF JUST., OFF. OF JUST. PROGRAMS, BUREAU OF JUST. STATISTICS, SURVEY OF SEXUAL VICTIMIZATION IN ADULT CORRECTIONAL FACILITIES, 2012-2018 – STATISTICAL TABLES, <https://bjs.ojp.gov/library/publications/survey-sexual-victimization-adult-correctional-facilities-2012-2018> [<https://perma.cc/9TJU-NPTH>]; U.S. DEP’T OF JUST., SEXUAL VICTIMIZATION REPORTED BY ADULT CORRECTIONAL AUTHORITIES, 2019-2020 – STATISTICAL TABLES 9-10 (Jul. 2024), <https://bjs.ojp.gov/document/svraca1920st.pdf>. See also Bennett Capers, *Real Rape Too*, 99 CALIF. L. REV. 1259, 1261 (2011); Kim Shayo Buchanan, *Our Prisons, Ourselves: Race, Gender and the Rule of Law*, 29 YALE L. & POL’Y REV. 1, 26-27 (2010).

50. See Brenner et al., *supra* note 47, at 881.

51. See, e.g., Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 446 (2019); Donna Coker, *Crime Logic, Campus Sexual Assault, and Restorative Justice*, 49 TEX. TECH L. REV. 147, 155 (2016) (discussing police dismissiveness and hostility toward women’s reporting of sexual violence on campus); ROSE CORRIGAN, *UP AGAINST A WALL: RAPE REFORM AND THE FAILURE OF SUCCESS* (2013) (examining the dramatic under reporting and under enforcement of violations of criminal laws relating to rape and sexual assault).

52. Title VII prohibits “sexual harassment” in the workplace, which includes a variety of behaviors such as “unwelcome sexual advances or unwanted touching, offensive remarks about a person’s sex, or requests for sexual favors. Any person, regardless of sex, gender identity, or sexual orientation, can be a harasser or a victim of sexual harassment. A harasser can be a supervisor, co-worker, or even a third-party who is not employed by the employer, such as a customer or client.” *What You Should Know About Sexual Harassment in the Workplace*, U.S. DEP’T OF JUST., BUREAU OF JUST. STATISTICS, <https://www.justice.gov/crt/what-you-should-know-about-sexual-harassment-workplace#:~:text=Title%20VII%2C%20one%20of%20the,or%20requests%20for%20sexual%20favors> [<https://perma.cc/KE9V-NHYF>].

53. See CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN* 27 (1979); Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1685 (1998).

54. See Marion Crain & Ken Matheny, *Sexual Harassment and Solidarity*, 87 GEO. WASH. L. REV. 56, 71 (2019); Lua Kamal Yuille, *Liberating Sexual Harassment Law*, 22 MICH. J. GENDER & L. 345, 353-54 (2015).

55. See, e.g., Crain & Matheny, *supra* note 54, at 70.

fundamentally rooted in sex discrimination,⁵⁶ although other laws designed to deal with sexual violence have not adopted the same framework.⁵⁷ It was not until the 1980s that sex discrimination was prohibited in the context of employment and job advancement at law firms.⁵⁸ In 1989, the U.S. Supreme Court recognized for the first time that sex stereotypes, when used as standards for professional job advancement, are a form of sex discrimination under Title VII.⁵⁹

Domestic violence⁶⁰ was recognized as a pervasive problem and a form of sex discrimination on both the international and national stage in the 1990s.⁶¹ In 1993, violence against women was identified as a human rights violation by the World Conference on Human Rights.⁶² In 1994, a United Nations Special Rapporteur on violence against women and girls was appointed.⁶³ The U.S. Congress also passed the Violence Against Women Act in 1994, providing for the first time in federal law that “[a]ll persons within the United States shall have the right to be free from crimes of violence motivated by gender.”⁶⁴ However, the U.S. Supreme Court’s jurisprudence has made it clear that there is no due process right to be free from gender-based violence, nor does a legal remedy exist for victims of domestic violence whom the police have failed to protect.⁶⁵ In other words, the U.S. legal system does not impose affirmative obligations on

56. See Yuille, *supra* note 54, at 353.

57. See, e.g., Deborah L. Brake, *Back to Basics: Excavating the Sex Discrimination Roots of Campus Sexual Assault*, 6 TENN. J. RACE, GENDER & SOC. JUST. 7, 15 (2017).

58. See *Hishon v. King*, 467 U.S. 69 (1984) (holding that Title VII bound the respondent law firm to consider the associate attorney for partnership without regard to her sex).

59. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (holding that sex stereotype when used as standards for job advancement, are a form of sex discrimination under Title VII, even when other motives are also present). Plaintiff Ann Hopkins was employed by an accounting firm, but this rule was later reaffirmed in cases involving law firm partnership such as *Ezold v. Wolf*, 983 F.2d 509, 524 (3d Cir. 1992), *cert. denied*, 510 U.S. 826 (1993).

60. “Domestic violence” can be defined as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. It can include physical, sexual, emotional, economic, psychological, or technological actions or threats of actions. See *Domestic Violence*, U.S. DEP’T OF JUST., OFF. ON VIOLENCE AGAINST WOMEN, <https://www.justice.gov/ovw/domestic-violence> [<https://perma.cc/24JL-HTKY>].

61. See *NOW’s History with VAWA (Part One)*, NAT’L ORG. FOR WOMEN (Nov. 2, 2022), <https://now.org/news-history-with-vawa-part-one/> [<https://perma.cc/2VWF-9GY3>]; U.N. Declaration on the Elimination of Violence Against Women, G.A. Res. 104, U.N. GAOR, 48th Sess., U.N. Doc. A/48/629 (1993), <https://undocs.org/en/A/RES/48/104>. See also Julie Goldscheid, *Gender Violence and Work: Reckoning with the Boundaries of Sex Discrimination Law*, 18 COLUM. J. GENDER & L. 61, 71-72 (2008).

62. See World Conference on Hum. Rts., *Vienna Declaration and Programme of Action*, U.N. Doc. A/CONF.157/23 (1993), <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>.

63. See *Special Rapporteur on violence against women*, U.N. OFF. OF THE HIGH COMM’R ON HUM. RTS., <https://www.ohchr.org/en/special-procedures/sr-violence-against-women>.

64. 42 U.S.C. § 13981(b) (1994).

65. See *Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005). See also Carrie Bettinger-Lopez, *Human Rights at Home: Domestic Violence as a Human Rights Violation*, 40 COLUM. HUM. RTS. L. REV. 19, 44 (2008) (arguing that the Supreme Court’s decision in *Town of Castle Rock* weakened incentives for police to respond appropriately to domestic violence victims).

the government to ensure protection for its people against gender-based violence.⁶⁶

More recently, the #MeToo movement⁶⁷ helped uplift survivors' narratives of sexual violence in the workplace and catalyzed a global interest in taking sexual violence seriously.⁶⁸ Many scholars credit the #MeToo movement with strengthening accountability measures for sexual violence, especially for sexual harassment and sexual assault that occurs in the workplace.⁶⁹ Professor Catharine MacKinnon observed that the #MeToo movement succeeded where sexual harassment laws had failed.⁷⁰ According to MacKinnon, this movement helped dismantle "the two biggest barriers to ending sexual harassment in law and in life: the disbelief and trivializing dehumanization of its victims."⁷¹

Despite some setbacks, courageous advocates and gender-based survivors have continued to lead prevention efforts.⁷² Today, addressing gender-based violence is an important part of the social consciousness in the U.S., and many state and local, tribal and territorial laws and policies provide protections.⁷³ Additionally, the 2020 Cook County case, brought by female public defenders and law clerks, represents a dramatic shift in U.S. law over the past fifty years toward recognizing sexual violence against women at work as sex discrimination worthy of a remedy under the law. Moreover, the settlement in that case was only possible because of the advocates and survivors courageously working to put a spotlight on sexual violence, arguing for dramatic changes in the legal profession.

66. See Bettinger-Lopez, *supra* note 65, at 44.

67. For a good explanation and background of the #MeToo movement, see Angela Onwuachi-Willig, *What About #UsToo?: The Invisibility of Race in the #MeToo Movement*, 128 YALE L.J. FORUM 105, 106-07 (2018); Joanna L. Grossman, *Sexual Harassment in the Post-Weinstein World*, 11 U.C. IRVINE L. REV. 943, 944-956 (2021); Crain & Matheny, *supra* note 54, at 61; Elizabeth C. Tippet, *The Legal Implications of the MeToo Movement*, 103 MINN. L. REV. 230, 233 (2018). See also THE WHITE HOUSE, U.S. NATIONAL PLAN TO END GENDER-BASED VIOLENCE: STRATEGIES FOR ACTION 4 (May 2023), <https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/05/National-Plan-to-End-GBV.pdf>.

68. See Katherine Yon Ebricht, *Taking #MeToo Seriously in the Legal Profession*, 32 GEO. J. LEGAL ETHICS 57,74 (2019); Linda S. Greene, et al., *Talking About Black Lives Matter and #MeToo*, 34 WIS. J.L. GENDER & SOC'Y 109, 120-44 (2019); Kaela R. Dunn, *Lessons from #MeToo and #BlackLivesMatter: Changing Narratives in the Courtroom*, 100 B.U.L. REV. 2367, 2369 (2020).

69. See Tippet, *supra* note 67, at 272-73; Julie Goldscheid, *#MeToo, Sexual Harassment, and Accountability: Considering the Role of Restorative Approaches*, 36 OHIO ST. J. ON DISP. RESOL. 689, 694-95 (2021).

70. Catharine A. MacKinnon, *#MeToo Has Done What the Law Could Not*, N.Y. TIMES (Feb. 4, 2018), <https://www.nytimes.com/2018/02/04/opinion/metoo-law-legal-system.html> [<https://perma.cc/BTN5-JCJF>].

71. *Id.*

72. See, e.g., WHITE HOUSE, *supra* note 67, at 4-5.

73. See *id.* at 4.

B. Evolution of the Ethical Rules Related to Sexual Violence

Similar to how other areas of law in the U.S. have historically omitted addressing sexual violence, the legal profession's systems of ethical regulation failed to recognize sexual violence until recently.⁷⁴

Ethical regulation of sexual violence in the legal profession began with prohibitions on sexual relationships between lawyers and clients. The first ethics opinion regarding the sexual conduct of lawyers came in 1979 regarding a lawyer's affair with a client in Oregon.⁷⁵ In 1983, the Maryland State Bar advised that an "intimate personal relationship" between a lawyer and client could "have an adverse effect on the lawyer's ability to protect the client's interest."⁷⁶ In 1990, the Illinois Task Force on Gender Bias in the Courts released a report on lawyer sexual misconduct and called the problem a "systemic, unchanging and consistent trend."⁷⁷ California, Illinois, and Oregon all attempted to draft rules covering attorney-client sexual relations in the early 1990s.⁷⁸ At the same time, additional state courts also began grappling with this issue.⁷⁹

Then, in 1992, the ABA released a formal ethics opinion on sexual relations with clients.⁸⁰ That opinion concluded that "a sexual relationship during the course of representation can seriously harm the client's interests" and that there is "a danger of impairment to the lawyer's representation associated with a sexual relationship between lawyer and client." The opinion also stated that "[i]f such a sexual relationship occurs, and the impairment is not avoided, the lawyer will have violated ethical obligations to the client."⁸¹

However, the ABA Model Rules had no provision regarding sexual conduct until 2002 when Model Rule 1.8(j) was added.⁸² Model Rule 1.8(j) states: "A

74. In the United States, the state bar associations and state supreme courts regulate attorneys who are licensed to practice law. See Karis Stephen, et al., *Regulating the Legal Profession*, THE REGUL. REV. (Feb. 5, 2022), <https://www.theregreview.org/2022/02/05/saturday-seminar-regulating-legal-profession/> [<https://perma.cc/2W54-F6TG>] ("The United States lacks a nationwide structure for regulating attorneys.").

75. Ralph H. Brock, *Sex, Clients, & Legal Ethics*, 64 TEX. B. J. 234, 238 (2001) (citing OR. STATE BAR, ETHICS OP. 429 (May 1979)).

76. *Id.* (citing MD. STATE BAR, ETHICS OP. 84-9 (Sept. 7, 1983)). The Maryland opinion was followed shortly by a similar opinion from the Alaska Bar Association in 1987. *Id.*; AK. BAR ASS'N, ETHICS OP. 88-1 (Nov. 3, 1987).

77. A.B.A., Comm. on Ethics & Pro. Resp., Formal Op. 92-364, FN 2 (1992).

78. *Id.* (citing Cal. Proposed Rule 3-120; Ill. Proposed Rule 1.17; Or. Proposed Rule 107-139).

79. See, e.g., *Florida Bar v. McHenry*, 605 So.2d 459, 460 (Fla. 1992); *Otis' Case*, 609 A.2d 1199, 1203 (N.H. 1992); *Iowa Supreme Court Bd. of Pro. Ethics & Conduct v. Hill*, 540 N.W.2d 43, 44 (Iowa 1995); *Matter of Berg*, 955 P.2d 1240 (Kan. 1998); *In re Ashy*, 721 So. 2d 859, 859 (La. 1998).

80. Formal Op. 92-364, *supra* note 77.

81. *Id.*

82. See Casey W. Baker, *Attorney-Client Sexual Relationships in the #MeToo Era: Understanding Current State Approaches and Working towards a Better Rule*, 49 SW. L. REV. 243, 253-57 (2020); MODEL RULES OF PRO. CONDUCT r. 1.8(j). See also Florence Vincent, *Regulating Intimacy of Lawyers: Why Is It Needed and How Should It Be Approached?*, 33 U. TOL. L. REV. 645, 672-73 (2002); Abed Awad, *Attorney-Client Sexual Relations*, 22 J. LEGAL PRO. 131, 137-48 (1998).

lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.”⁸³ Given that the Model Rules guide the development and adoption of the state rules of professional conduct,⁸⁴ the addition of Model Rule 1.8(j) was influential. Today, all but ten states and Washington, D.C. have adopted rules prohibiting attorneys from engaging in sex with clients under certain circumstances.⁸⁵ Some states have gone even further by imposing a duty on attorneys to ensure that no sexual conduct takes place between attorney and client.⁸⁶

More recently, in 2016, the ABA added Model Rule 8.4(g), prohibiting lawyers from engaging in sexual harassment and discrimination on the basis of sex, among other misconduct.⁸⁷ The comments to Rule 8.4(g) make it clear that “[s]exual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature.”⁸⁸ There has been backlash against Rule 8.4(g) concerning its restriction on attorney speech,⁸⁹ and the vast majority of states have chosen not to adopt the

83. MODEL RULES OF PRO. CONDUCT r. 1.8(j).

84. See, e.g., Bartlett, *supra* note 15, at 571; N. Gregory Smith, *Sexual Misconduct by Louisiana Lawyers*, 81 LA. L. REV. 767, 768 (2021) (pointing out that “[s]ome states had previously adopted rules on lawyer sexual misconduct” and citing Christian F. Southwick, *Ardor and Advocacy: Attorney-Client Sexual Relations and the Regulatory Impulse in Texas and across the Nation*, 44 S. TEX. L. REV. 307, 321-22 (2002)).

85. All states but Georgia, Louisiana, Maryland, Michigan, New Jersey, Oklahoma, Rhode Island, Tennessee, Texas, Virginia, and also Washington, D.C., prohibit sexual relations with clients in some manner in their rules of professional conduct. See Fifty State Survey, *supra* note 15. See also Baker, *supra* note 82, at 253-57 (“As of December 1, 2019, eleven states, plus the District of Columbia, have not expressly prohibited sexual relations between attorneys and clients, and five states have adopted prohibitions that are materially weaker than Model Rule 1.8(j)”); Smith, *supra* note 84, at 768 (“... Louisiana has not adopted the ABA rule. In fact, no provision of the Louisiana Rules of Professional Conduct explicitly deals with sexual conduct by lawyers. But this does not mean that the sexual conduct of Louisiana lawyers is unregulated.”).

86. Ohio and Pennsylvania. See Fifty State Survey, *supra* note 15. See also Part III B., *infra*.

87. MODEL RULES OF PRO. CONDUCT r. 8.4(g) provides:

It is professional misconduct for a lawyer to engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.

See also Andrew F. Halaby & Brianna L. Long, *New Model Rule of Professional Conduct 8.4(g): Legislative History, Enforceability Questions, and a Call for Scholarship*, 41 J. LEGAL PRO. 201, 202 (2017). Kristine A. Kubes, Cara D. Davis & Mary E. Schwind, *The Evolution of Model Rule 8.4(g): Working to Eliminate Bias, Discrimination, and Harassment in the Practice of Law*, A.B.A. (Mar. 12, 2019),

https://www.americanbar.org/groups/construction_industry/publications/under_construction/2019/spring/model-rule-8-4/ [<https://perma.cc/3VHQ-7448>].

88. MODEL RULES OF PRO. CONDUCT r. 8.4(g), cmt 3.

89. See, e.g., Dennis A. Rendleman, *ABA Model Rule 8.4(g): Then and Now*, A.B.A. PUB. LAW. (Jan. 20, 2023), https://www.americanbar.org/groups/government_public/publications/public-lawyer/2023-winter/aba-model-rule-8-4-g-then-now/ [<https://perma.cc/L6VV-DE3X>]; Josh Blackman, *ABA Model Rule 8.4(g) in the States*, 68 CATH. U.L. REV. 629 (2019); Margaret Tarkington, *Reckless Abandon: The Shadow of Model Rule 8.4(g) and a Path Forward*, 95 ST. JOHN’S L. REV. 121, 121-25 (2021).

Rule.⁹⁰ There was some hope that Rule 8.4(g) would lead to a #MeToo movement in the legal profession, but so far that has not happened.⁹¹

C. Applying Feminist and Abolitionist Methods and Perspectives to the Ethical Rules

This Section of the Article uses feminist legal methods and perspectives to challenge underlying assumptions, beliefs, and hierarchies within the ethical rules regarding client sexual violence.⁹² By critically examining these issues, it puts a spotlight on a problem which has been ignored for far too long. Abolition feminism is also used to explore how combatting structural oppression and transforming the conditions that allow for client sexual violence in the first place can be empowering for advocates and survivors.

While the ethical rules are usually thought of as neutral, the application of feminist legal theory in this analysis challenges that presumption by revealing underlying value systems and methodological biases.⁹³ In fact, the ethical rules implicitly presume the lawyer embodies a male stereotype of power and privilege—specifically that of a white, straight, cisgender man.

Professor MacKinnon argued that gender stereotypes, such as lawyers being gendered male—also known as sex stereotypes or gender role stereotypes⁹⁴—are a primary mechanism for reinforcing sex discrimination towards women.⁹⁵ MacKinnon and other scholars explain that gender stereotypes are premised on overly broad generalizations of the social, biological, and cognitive differences

90. See, e.g., Blackman, *supra* note 89; Tarkington, *supra* note 89.

91. See, e.g., Ebright, *supra* note 68, at 75 (querying “[w]hen will #MeToo reach the legal profession: the partnership and the bench? When will we move beyond an abstract and unimplemented discussion of gender equality?”); Amy J. Kellogg, *#MeToo: Ethical Obligations for Attorneys with Evolving Sexual Harassment Legislation*, BUS. LAW TODAY (Dec. 28, 2019), <https://businesslawtoday.org/2018/12/metoo-ethical-obligations-attorneys-evolving-sexual-harassment-legislation/> [<https://perma.cc/5N8E-DHQL>]. But see Leah E. Smith, *Lawyers Too: Addressing Sexual Harassment in the Legal Field Through the Rules of Professional Responsibility*, 41 WOMEN’S RIGHTS L. REP. 194 (2020) (arguing that Rule 8.4(g) is evidence of a #Metoo movement in the legal profession).

92. There are so many terrific overviews explaining the history and wide umbrella of feminist legal methods and perspectives. See, e.g., STANCHI ET AL., *supra* note 19, at 15-22; CHAMALLAS, *supra* note 20; DEBORAH L. BRAKE, *THE OXFORD HANDBOOK OF FEMINISM AND LAW IN THE UNITED STATES* (2021); Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 830 (1990); ADRIEN KATHERINE WING, *CRITICAL RACE FEMINISM* (2003).

93. See CHAMALLAS, *supra* note 20 (“For the most part, legal subjects tend to be described using neutral categories, unmodified by any particular viewpoint or methodological orientation.”); STANCHI ET AL., *supra* note 19, at 4-5. I particularly identify with third-wave feminism, scholars who have focused on intersectionality and anti-essentialism in feminist legal theory. See, e.g., Bridget Crawford, *Toward a Third-Wave Feminist Legal Theory: Young Women, Pornography, and the Praxis of Pleasure*, 14 MICH. J. OF GENDER & L. 99 (2007); Harris, *supra* note 19; Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHIC. LEGAL F. 139 (1989).

94. See SEX EQUALITY, *supra* note 10, at 162-177.

95. *Id.*; see also Whitney Woodington, *The Cognitive Foundations of Formal Equality: Incorporating Gender Schema Theory to Eliminate Sex Discrimination Towards Women in the Legal Profession*, 34 L. & PSYCHOL. REV. 135, 151-52 (2010).

between women and men.⁹⁶ Gender stereotypes function as a primary indicator of socially acceptable traits and behaviors, which creates strong social pressure for both men and women to conform to those characteristics, and in turn helps reinforce sex discrimination toward women.⁹⁷

In the legal profession, gender stereotypes play out in a plethora of ways. The gender wage gap persists across all levels of attorneys.⁹⁸ Male and female attorneys with similar qualifications do not obtain similar positions, such as partner at a firm, at the same rates.⁹⁹ Moreover, women and queer lawyers must also contend with “body politics” which are played out through dress codes, policies that deny the materiality of pregnancy and breast-feeding, and experiences of sexual harassment and violence.¹⁰⁰

Gender stereotypes also play out when it comes to law and regulations regarding sexual violence, including with regard to the credibility of women and queer attorneys in reporting sex discrimination and sexual violence.¹⁰¹ Credibility is systematically discounted on account of gender.¹⁰² Moreover, Professor MacKinnon emphasized that the “[l]aw collaborates by depriving women of credibility through the institutionalized belief that we are likely to lie about sexual assault and by legally defining sexual assault from the point of view of the perpetrator.”¹⁰³

The refusal, until very recently, to recognize sexual violence in the ethical rules has been, at least in part, because women who endured sexual violence

96. See SEX EQUALITY, *supra* note 10; Woodington, *supra* note 95, at 140.

97. *Id.* at 141.

98. See, e.g., Milan Markovic and Gabriele Plickert, *The Gender Pay Gap and High-Achieving Women in the Legal Profession*, 47 LAW & SOC. INQUIRY 1 (2022); Laura Pecenco & Mary Blair-Loy, *Legal Professions: The Status of Women and Men*, UNIV. OF CAL., SAN DIEGO: CTR. FOR RESEARCH ON GENDER IN THE PROFESSIONS (2013), https://crg-stemm.ucsd.edu/_files/articles/GenderinLegalProfessionsCaseStudy.pdf; Fiona M. Kay & Elizabeth Gorman, *Women in the Legal Profession*, 4 ANN. REV. OF L. AND SOC. SCI. 299–332 (2008).

99. *Id.* Sexual harassment and sex discrimination contribute to glass ceilings. See Cynthia Fuchs Epstein, et al., *Glass Ceilings and Open Doors: Women’s Advancement in the Legal Profession*, 64 FORD. L. REV. 303 (1994); Kathleen E. Hull & Robert L. Nelson, *Gender Inequality in Law: Problems of Structure and Agency in Recent Studies of Gender in Anglo-American Legal Professions*, 23 L. & SOC. INQUIRY 681, 689 (2006).

100. See Hull & Nelson, *supra* note 99, at 688; Sheryl L. Axelrod, *The Underrepresentation of Women at the Highest Levels of the Legal Profession*, L. PRAC. TODAY (Oct. 5, 2022), https://www.americanbar.org/groups/law_practice/resources/law-practice-today/2022-october/despite-all-the-profession-has-to-gain-from-our-greater-inclusion-women/ [<https://perma.cc/X729-686T>]; *Profile of the Legal Profession 2023, Women*, A.B.A., <https://www.americanbar.org/news/profile-legal-profession/women/> [<https://perma.cc/SZA8-LM6N>].

101. See Niwako Yamawaki, *Rape Perception and the Function of Ambivalent Sexism and Gender-Role Traditionality*, 22 J. INTERPERSONAL VIOLENCE 406, 418–21 (2007) (suggesting that negative beliefs about women—that they tend to exaggerate issues; that they want to manipulate men and take men’s power via their feminine sexuality—often held by those who endorse hostile sexism lead such individuals to ascribe to beliefs that minimize and trivialize sexual violence); Swetha Ballakrishnen & Sarah B. Lawsky, *Law, Legal Socializations & Epistemic Justice*, 47 L. & SOC. INQUIRY 1026 (2022).

102. DEBORAH TUERKHEIMER, CREDIBLE: WHY WE DOUBT ACCUSERS AND PROTECT ABUSERS 236 (2021).

103. CATHARINE A. MCKINNON, BUTTERFLY POLITICS 29 (2017).

were historically excluded from the processes through which community rules were made, interpreted, and enforced.¹⁰⁴ Women were not in the room when the laws regarding sexual violence were being made.¹⁰⁵ Women were not even allowed to vote on who should be in the room, and Black women were not allowed to vote for fifty plus more years.¹⁰⁶ Women were also not allowed to serve on juries,¹⁰⁷ and women could not be the lawyers representing women in cases involving sexual violence.¹⁰⁸ Moreover, women's lived experiences with sexual violence are not accorded the gravity they deserve within the U.S. legal system.¹⁰⁹

Men, members of the group more likely to commit sexual violence than to experience it, have defined the legal and social rules through the legal and social processes from which women, the most likely to be victimized by sexual

104. See SEX EQUALITY, *supra* note 10; KATHLEEN KIM, KEVIN LAPP & JENNIFER LEE, FEMINIST JUDGMENTS: IMMIGRATION LAW OPINIONS REWRITTEN 9 (2023) (“For much of U.S. history, that power was exclusively held by white men in the role of legislators, judges, and law enforcers. As law makers and enforcers who lived middle- or upper-class lives, they enshrined their own supremacy and codified, or imposed through the exercise of their power, the subordination of women, people of color, the poor, and outsiders.”). The first tenured female Asian American was Mari Matsuda in 1998 at the University of California, Los Angeles. See *Mari Matsuda*, UNIV. OF HAW., MANOA, <https://manoa.hawaii.edu/speakers/mari-matsuda/> [<https://perma.cc/GHK2-7AEB>].

105. Although the U.S. Congress first met in 1789, Jeannette Rankin was the first woman elected to U.S. Congress in 1916. See *The First Federal Congress*, NAT’L ARCH. REC. ADMIN., https://www.archives.gov/exhibits/treasures_of_congress/text/page2_text.html#:~:text=The%20Congress%20of%20the%20United,important%20Congress%20in%20U.S.%20history [<https://perma.cc/5DZG-JGFY>]; *Jeannette Rankin*, U.S. SENATE, <https://www.senate.gov/about/origins-foundations/electing-appointing-senators/jeannette-rankin-senate-campaign.htm#:~:text=No%20history%20of%20American%20representative,singular%20event%20occurred%20in%201916> [<https://perma.cc/F53Z-VLHP>]. See also *Profile of the Legal Profession 2023*, *supra* note 100.

106. The 19th Amendment to the U.S. Constitution made it illegal to deny the right to vote to any citizen based on their sex, granting women the right to vote. U.S. CONST. amend. XIX. It was ratified in 1920. See *19th Amendment to the U.S. Constitution: Women’s Right to Vote*, NAT’L ARCH. REC. ADMIN., <https://www.archives.gov/milestone-documents/19th-amendment> [<https://perma.cc/SCB8-G2YC>]. Black women were constitutionally allowed to vote after the ratification of the 19th amendment in 1920, but most Black women had to wait almost fifty more years until the passage of the 1965 Voting Rights Act. See Martha S. Jones, *What the 19th Amendment Meant for Black Women*, POLITICO (Aug. 26, 2020), <https://www.politico.com/news/magazine/2020/08/26/19th-amendment-meant-for-black-women-400995> [<https://perma.cc/L6NC-S79Q>].

107. The Civil Rights Act of 1957 gave women the right to serve on federal juries, but it was not until 1973 that all 50 states passed similar legislation. See *History made when women were allowed to serve on jury*, AP NEWS (Nov. 16, 2018), <https://apnews.com/article/50fb651b7fb84221887f8a7534a87fff> [<https://perma.cc/679H-XSED>]; Vivian N. Rotenstein & Valerie P. Hans, *Gentlewomen of the Jury*, 29 MICH. J. GENDER & L. 243 (2022).

108. It was not until 1971 that the U.S. Supreme Court prohibited barring women from practicing law. See *Reed v. Reed*, 404 U.S. 71 (1971).

109. See Kaela R. Dunn, *Lessons from #MeToo and #BlackLivesMatter: Changing Narratives in the Courtroom*, 100 B.U.L. REV. 2367, 2369 (2020) (“Legal conceptions of both sexual and racial violence have developed through narratives that have historically undermined the lived experiences of both women and Black people, and particularly of Black women.”); Julie Goldscheid, *Elusive Equality in Domestic and Sexual Violence Law Reform*, 34 FLA. ST. U. L. REV. 731, 733 (2007) (“Domestic and sexual violence now is widely recognized in the United States, but responses to it increasingly are neutralized and bureaucratized.”); Jill C. Engle, *Sexual Violence, Intangible Harm, and the Promise of Transformative Remedies*, 79 WASH. & LEE L. REV. 1045, 1050-51 (2022).

violence, have been denied access.¹¹⁰ Sexual violence was baked into the legal profession by men from its beginnings.¹¹¹ This helps explain how so much of our law and regulations, including the ethical rules, have been drafted and continue to operate today.¹¹² As Professor Shari Motro has so eloquently pointed out: “Naming the role that manmade law has played in the seemingly intractable prevalence of sexual violence might help disabuse us of the notion that one-sided sex reflects nature’s law.”¹¹³

Moreover, for far too long “taking sexual violence seriously” has meant prosecution and imprisonment of particular perpetrators and certain types of sexual violence.¹¹⁴ Abolition feminism rejects this paradigm and the associated emphasis on the arrest, prosecution, and imprisonment of men who commit sexual violence.¹¹⁵ Instead, abolition feminists call for addressing the harms committed and centering the concerns and experiences of the person who was harmed.¹¹⁶ And an understanding that “harm originates from situations dominated by stress, scarcity, and oppression, one way to prevent violence is to make sure that people have support to get the things they need.”¹¹⁷

From an abolition feminist perspective, the struggle against sexual violence and the struggle against state violence in prisons and jails is one and the same.¹¹⁸

110. See SEX EQUALITY, *supra* note 10 at 743.

111. See, e.g., Kate Galloway, *Homosexuality, Sexual Misconduct and Gendered Violence in England’s Pre-Modern Legal Profession*, 261 PAST & PRESENT 86, 87 (Nov. 2023), <https://academic.oup.com/past/article/261/1/86/6731835> (arguing that in the historic United Kingdom “sexual misconduct and violence against women were structural features in the making of the common law profession, becoming embedded in its roots as it consolidated into a distinctive all-male community”); SUZIE MILLER, PRIMA FACIE 94 (2022) (“The law of sexual assault spins on the wrong axis.”).

112. See Romero, *supra* note 18, at 248.

113. See Motro, *supra* note 21, at 135 (emphasis removed).

114. See, e.g., Part II.A, *supra*; U.S. DEP’T OF JUSTICE, OFF. ON VIOLENCE AGAINST WOMEN, 30 YEARS OF THE VIOLENCE AGAINST WOMEN ACT 5-6 (2025), <https://www.justice.gov/media/1385701/dl?inline>.

115. See *Statement on Gender Violence and the Prison Industrial Complex*, INCITE! (2001), <https://incite-national.org/incite-critical-resistance-statement/> [<https://perma.cc/6GJ4-TEJJ>]; see also ANGELA Y. DAVIS ET AL., ABOLITION FEMINISM NOW 57 (2022) [hereinafter ABOLITION FEMINISM NOW].

116. See MARIAME KABA, WE DO THIS ‘TIL WE FREE US 59 (2021); see also *id.* at 44-45 (“There is a spectrum of sexual harm. Not everything is rape. Yet everything that feels like a violation is harm.”); Allegra M. McLeod, *Prison abolition and Grounded*, 62 UCLA L. REV. 1156, 1237-39 (2015) (“An abolitionist ethic and framework require a fundamental reorientation in how we think and act, one far beyond the sorts of aspirational demands entailed by retributive justice. To be oriented toward the abolition of criminal punishment and to conceptualize justice in a broader framework of social equality and prevention of harm is to suspend at least much of the time what are now basic, instinctual reactions to particular sorts of wrongdoing, reactions of vengeance and anger that have become core to social thought and practice. A shift toward abolition would involve transforming ourselves and some of our most deeply held ideas and practices about blame, responsibility, and desert.”).

117. Kaba, *supra* note 116, at 59.

118. ABOLITION FEMINISM NOW, *supra* note 115; see also ALLEGRA M. MCLEOD, ABOLITIONIST CRITIQUE OF VIOLENCE 528-29 (“Abolitionist organizers in Chicago and elsewhere underscore these connections between interpersonal violence, militarism, environmental harm, and social abandonment, and they highlight how the harms of interpersonal violence relate to the threats posed by environmental toxicity, policing, and other causes of premature death imposed on people in disenfranchised neighborhoods.”); Audre Lorde, *The Master’s Tools Will Never Dismantle the Master’s House* in THE

Holding perpetrators accountable by putting them in prison or jail will merely lead to more state violence, which in turn leads to more sexual violence.¹¹⁹ Abolition feminists instead focus on holding perpetrators accountable through measures such as restricting access to specific groups and spaces, requiring payment of restitution and making a public apology, and more.¹²⁰ As Mariame Kaba noted in her book *We do this 'til we free us*, there are feminists who would say, in the words of former political prisoner Susan Saxe, “[m]y feminism does not drive me into the arms of the state, but even further from it.”

To me, practicing law with an abolition feminist ethic means that when a client commits sexual violence, a concerted effort is made to not report the misconduct to law enforcement in order to avoid subjecting the client to carceral punishment. Beyond that, it means reorienting from a framework of calling for punishment, retaliation, and state control of the perpetrator, and instead fighting to transform the underlying conditions that enable sexual violence to occur in the first place.¹²¹

For the Cook County public defenders who brought forth the hostile work environment case, this meant seeking structural changes to the lockup environments and client meeting protocols, rather than seeking punitive measures against their clients.¹²² This Article similarly argues not for the prosecution and punishment of clients who commit sexual violence against their attorneys. Instead, greater attention should be paid to how structural oppression—through the ethical rules themselves and attorney disciplinary systems—impacts attorneys who have experienced client sexual violence.

Exploring the historical exclusion of sexual violence in U.S. law, as well as the gender stereotypes that constrain ethical rules, helps to explain why the ethical rules fail to contemplate client sexual violence against attorneys. The Part

SELECTED WORKS OF AUDRE LORDE 41 (Roxanne Gay ed., 2020) (“the master’s tools will never dismantle the master’s house.”).

119. See Kaba, *supra* note 116; Kupers, *supra* note 28; SpearIt, *supra* note 28. See also Goodmark, *supra* note 28, at 87 (“Prisoners bring these problematic notions of masculinity into the prison, have experiences that further shape, warp, and reproduce those norms, and return to their communities with those ideas—a process that SpearIt has called ‘cycles of destructive masculinity.’”).

120. Kaba, *supra* note 116, at 137.

121. See *id.*

122. The female public defenders and law clerks in the Cook County hostile work environment case sought structural changes, such as being escorted by officers through lockup, a different configuration of professional meeting rooms so that female attorneys were not within reaching distance of clients, and no windows allowing detainees to expose themselves to attorneys. Compl., *supra* note 2, at ¶¶ 30-38. However, they also sought to keep detainees with a reported masturbation incident in handcuffs during meetings with female attorneys and law clerks. In addition, they sought to make those clients wear a special jumpsuit with a padlock on the back designed to disallow public masturbation. See Mem., *supra* note 2, at 2. Keeping clients in handcuffs is not in line with Abolitionist Feminist principles, and neither are the jumpsuits designed to disallow public masturbation. See, e.g., Jie Jenny Zou, *In New York, Padlocked Jumpsuits for Prison ‘EXPOSERS’*, MARSHALL PROJECT (Sept. 16, 2015), <https://www.themarshallproject.org/2015/09/16/in-new-york-padlocked-jumpsuits-for-prison-exposers> [<https://perma.cc/HX45-32Z8>] (“This is an extreme form of restraint.”).

of the Article below delves into the intricacies of the ethical rules to emphasize how this problem hinders the effective practice of law in many circumstances.

III. A CRITICAL EXAMINATION OF THE ETHICAL RULES RELATED TO SEXUAL VIOLENCE

The ethical regulation of attorney conduct in the U.S. is accomplished through a hodgepodge of statutes, regulations, lawyer's oaths, case law, advisory opinions and more.¹²³ This Part of the Article critically examines the ethical rules that relate to sexual violence, relying on a fifty-state survey of state rules of professional conduct, case law, and ethics opinions.¹²⁴ The ABA Model Rules of Professional Conduct will also be discussed here, given that the Model Rules guide the development and adoption of the rules of professional conduct by states.¹²⁵

The ethical rules currently fail to account for a lawyer who has experienced client sexual violence, whether it be rape or indecent exposure. For example, the ethical rules do not provide an appropriate path for a lawyer who has been raped by a client to terminate representation or mitigate further harm that could be done by that client to other lawyers in the future. A reworking of the ethical rules is needed to center the concerns and experiences of the harmed attorneys instead of centering primarily on the perpetrators.

This Part is organized into six Sections: (A) Duty to Withdraw; (B) Prohibition on Sexual Conduct with Clients; (C) Prohibition on Conflicts of Interest; (D) Duty of Confidentiality; (E) Prohibition on Sexual Harassment and other Misconduct; and (F) Standards for Imposing Lawyer Sanctions.

A. *Duty to Withdraw*

The ability to withdraw from a case involving a client who has committed sexual violence against their attorney would be an important option for harm reduction and may be required where concurrent conflicts of interest are created by client sexual violence. However, the ethical rules regarding withdrawal are not easily navigable in these situations.

Withdrawal from representation, including in cases involving sexual conduct with clients, may be required by the ethical rules in certain circumstances. ABA Model Rule 1.16 requires lawyers to try to withdraw if the representation will result in violation of the rules of professional conduct or other law.¹²⁶ If sexual conduct with a client leads to incompetent representation, or a

123. See Bartlett, *supra* note 15, at 567-582; Bartlett, *supra* note 32, at 413.

124. See Fifty State Survey, *supra* note 15.

125. See Bartlett, *supra* note 15, at 568.

126. MODEL RULES OF PRO. CONDUCT r. 1.16(a).

concurrent conflict of interest exists without informed consent, the lawyer is also required to withdraw under Rule 1.16. Moreover, if the lawyer makes a disclosure of confidential information under Rule 1.6, the lawyer must withdraw.¹²⁷

Lawyers have been disciplined for failing to withdraw after engaging in sexual conduct with a client.¹²⁸ Lawyers have also been disciplined for failing to withdraw after engaging in sexual conduct with a client because a concurrent conflict of interest existed, and the client has failed to give informed consent in writing.¹²⁹ However, these cases did not deal with client sexual violence against attorneys.

Lawyers facing client sexual violence may also choose to try to withdraw voluntarily. Under Rule 1.16(b), a lawyer may try to withdraw if:

- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement...
- (7) other good cause for withdrawal exists.¹³⁰

However, moving to withdraw will require attorneys to stay vigilant regarding the confidentiality obligations, as they may be unable to disclose key facts that would otherwise help persuade a court to approve their withdrawal request.¹³¹ Moreover, withdrawal in these situations is not automatic. The lawyer may still be at the mercy of the court to grant the withdrawal.¹³² Even in cases where clients have committed physical violence against their attorney, courts have refused to grant withdrawal.¹³³ For example, in Ohio, a judge refused to

127. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 66 cmt. f (Am. Law Inst. 2000) (explaining that an attorney must withdraw following a Model Rule 1.6 disclosure “unless the client gives informed consent to the lawyer’s continued representation notwithstanding the lawyer’s adverse use or disclosure of information”). See also MODEL RULES OF PRO. CONDUCT r. 1.16, r. 1.6.

128. See, e.g., *Bd. of Pro. Resp. of Supreme Ct. of Tennessee v. Prewitt*, 647 S.W.3d 357, 370 (Tenn. 2022) (holding attorney violated Rule 1.3 and Rule 1.16 when she failed to act with promptness to withdraw after she realized her personal relationship with her client hindered her ability to represent him in the lawsuit); *State ex rel. Nebraska State Bar Ass’n v. Denton*, 258 Neb. 600, 607 (2000) (holding that the lawyer engaging in sexual relations with his client violated his duty to withdraw from employment if the lawyer knows or it is obvious that continued employment will result in a violation of the disciplinary rules).

129. See, e.g., *In re Robinson*, 209 A.3d 570, 576 (Vt. 2019) (holding that client did not give informed consent to attorney continuing to represent her after engaging in sexual relations created a conflict of interest); *Chief Disciplinary Couns. v. Zelotes*, 98 A.3d 852, 866 (Ct. 2014) (finding the attorney failed to obtain his client’s written informed consent regarding the conflicts of interest and held that the attorney violated the prohibition against concurrent conflicts of interest when he pursued both a professional and romantic relationship with his client).

130. MODEL RULES OF PRO. CONDUCT r. 1.16(b).

131. See *infra* Part III.B. See also, e.g., *United States v. Alexander*, 287 F.3d 811, 816-17 (9th Cir. 2002).

132. See, e.g., MODEL RULES OF PRO. CONDUCT r. 1.16(c).

133. See, e.g., MODEL RULES OF PRO. CONDUCT r. 1.16(c); *State v. Williams*, 99 Ohio St.3d 493, 497 (2003) (Defendant assaulted his attorney in open court and afterward the court denied the attorney leave

allow an attorney to withdraw during a trial after his client physically assaulted him in open court.¹³⁴ Other state courts have similarly refused motions to withdraw after physical assaults on attorneys.¹³⁵

In addition, courts may require certain conditions be met to approve a withdrawal or may refuse to grant withdrawal altogether. ABA Model Rule 1.16(d) requires the following from withdrawing lawyers to:

[T]ake steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred....¹³⁶

Therefore “contact and communication with the client may continue even after a successful withdrawal.”¹³⁷ An attorney who has been sexually assaulted by a client may be forced to communicate with the client after a motion to withdraw is granted. Forcing attorneys to maintain client relationships after experiencing sexual violence can inflict additional trauma and lead to increased risk of developing PTSD¹³⁸—a reality that the ethical rules fail to account for due to their inherent gender stereotyping. The ethical rules do not contemplate that an attorney may be harmed by further contact with an abusive client.

These limits on withdrawal can create an untenable situation for attorneys experiencing client sexual violence, particularly for sole practitioners without

to withdraw); Alper, *supra* note 6, at 32-33 (describing the conditions put in place in California before withdrawal is permitted). Little has been written about the doctrine of forfeiture of the right to counsel, and less about the ethical implications of forfeiture. See Carolyn T. Hartwick, *Losing the Right to Counsel: Exploring and Reforming Waiver by Conduct and Forfeiture in State Courts*, 172 U. PA. L. REV. 1401, 1404 (2024) (citing Sarah Gerwig-Moore, *Gideon's Vuvuzela: Reconciling the Sixth Amendment's Promises with the Doctrines of Forfeiture and Implicit Waiver of Counsel*, 81 MISS. L.J. 439, 442 (2012)). The doctrine of forfeiture of the right to counsel establishes that defendants can lose the right to counsel in a criminal proceeding as a result of a defendant's misconduct toward the court or the defendant's attorney. This doctrine may seem to imply that attorneys are given leave to withdraw in those situations as of right. See, e.g., Stephen A. Gerst, *Forfeiture of the Right to Counsel: A Doctrine Unhinged from the Constitution*, 58 CLEV. ST. L. REV. 97, 98 (2010). However, many courts have found clients' physical violence against their attorney to not require forfeiture of counsel. See, e.g., *Gilchrist v. O'Keefe*, 260 F.3d 87, 99-100 (2d Cir. 2001) (defendant punched his attorney in the head and that was insufficient to justify forfeiture of counsel); *King v. Super. Ct.*, 132 Cal. Rptr. 2d 585, 588-89 (Cal. Ct. App. 2003) (reversing forfeiture where defendant head-butted his attorney).

134. *Williams*, *supra* note 133.

135. See, e.g., *Gilchrist*, *supra* note 133; *King*, *supra* note 133.

136. MODEL RULES OF PRO. CONDUCT r. 1.16(d).

137. Alper, *supra* note 6, at 32.

138. See, e.g., Sehrish Sayed et al., *Risk Factors for the Development of Psychopathology Following Trauma*, 70 CURRENT PSYCHIATRY REP. 1, 4 (2015) (suggesting that being re-exposed to trauma too soon may lead to retraumatization and increased risk of PTSD); Debra Kaysen, et al., *Living in Danger: The Impact of Chronic Traumatization and the Traumatic Context on Posttraumatic Stress Disorder*, 4 TRAUMA, VIOLENCE & ABUSE 247, 260 (2003) (“chronic traumatization is more difficult to study than single-incident traumas and yet appears to have profound effects on the victims.”); Eve B. Carlson & Constance J. Dalenberg, *A Conceptual Framework for the Impact of Traumatic Experiences*, 1 TRAUMA VIOLENCE & ABUSE 19-20 (2000) (“...supported by studies of...an association between previous exposure to traumatic events and increased risk of PTSD after a trauma.”).

colleagues to assume representation. If I had been without colleagues to take over representation after my client masturbated at me in jail, I would have faced impossible choices: continue representing him, attempt withdrawal at the risk of violating confidentiality obligations, or acknowledge professional misconduct to justify withdrawal. Regardless of my approach, I might still have been compelled to maintain communication with an abusive client.

Moreover, non-disclosure and withdrawal do nothing to protect the next attorney who is appointed to represent an abusive client—they too could face sexual violence. Who benefits when a lawyer does not disclose a client's sexual violence and withdraws from representation? Is it the client? The public? The profession?¹³⁹ This does not need to be the only possible outcome, and it is discriminatory to allow these harms to continue to plague female and other attorneys who are more likely to experience client sexual violence. Instead of ignoring the problem, the legal profession should choose to center the needs of the harmed attorneys and mitigate future harm.

B. Prohibition on Sex with Clients

We are all aware that there is a prohibition on attorney sexual conduct with clients in the U.S.¹⁴⁰ Model Rule 1.8(j) states that a “lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.”¹⁴¹ Comment 20 to Model Rule 1.8 goes on to state that the “Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.”¹⁴² Twenty-six states have adopted Model Rule 1.8(j) verbatim.¹⁴³ Another eight states have adopted their

139. David Luban has recognized this dilemma: “...if a client adamantly insists on a morally repugnant course of action, the lawyer’s only recourse is to resign. Since resignation is a very drastic step, causing the lawyer financial loss, generating hard feelings, and tagging her with a reputation as a quitter, it is too much to expect that lawyers will resign very often rather than cave in to their clients.” DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* 159 (1988). David Luban also argued for a redraft of the rules of ethics “to allow lawyers to forego immoral tactics...without withdrawing, even if their clients insist that they use these tactics...” *Id.*

140. See, e.g., Christian F. Southwick, *Ardor and Advocacy: Attorney-Client Sexual Relations and the Regulatory Impulse in Texas and Across the Nation*, 44 S. TEX. L. REV. 307, 325 (2002) (discussing cases where the court said attorneys should be aware such conduct is unacceptable even without explicit rules prohibiting it).

141. MODEL RULES OF PRO. CONDUCT r. 1.8(j).

142. This rule is relatively new, California adopted it in 2018. See Scott B. Garner and Suzanne Burke Spencer, *Ethics 2.0: A Snapshot of the Revamped Rules of Professional Conduct*, 60 ORANGE CNTY. LAW. 22, 24 (2018). However, the ABA issued an ethics opinion as early as 1992 regarding sexual relationships between attorneys and clients. See Formal Op. 92-364, *supra* note 77, at 1 (“A sexual relationship between lawyer and client may involve unfair exploitation of the lawyer’s fiduciary position, and/or significantly impair a lawyer’s ability to represent the client competently, and therefore may violate both the Model Rules of Professional Conduct and the Model Code of Professional Responsibility”).

143. See Fifty State Survey, *supra* note 15. In addition to those twenty-six states, another six states adopted a modified version of Model Rule 1.8(j). Alaska adopted the language in Model Rule 1.8(j)

own rule prohibiting sexual relations with clients.¹⁴⁴ Only eleven states have defined the terms sexual relations or sexual conduct.¹⁴⁵ Some states rely on the comments to either Model Rule 1.7 or Rule 1.8 to make it clear that sexual relations with clients are prohibited in most circumstances.¹⁴⁶ Several other states do not explicitly mention sexual relations with clients in their rules.¹⁴⁷ For example, Michigan notes that while it declined to adopt Model Rule 1.8, a lawyer may be disciplined for “conduct that is contrary to justice, ethics, honesty, or good morals” and that a “lawyer who has a conflict of interest, whose actions interfere with effective representation, who takes advantage of a client’s vulnerability, or whose behavior is immoral risks severe sanctions.”¹⁴⁸

At first glance it might not seem that the prohibition on sexual relations with clients applies to the incident I described above with my client or to the situation

verbatim but then added the following “and the sexual relationship does not create a conflict under Rule 1.7(a)(2).” ALASKA R. PRO. CONDUCT r. 1.8(j) (2022). Oregon added “or have sexual relations with a representative of a current client of the lawyer if the sexual relations would, or would likely, damage or prejudice the client in the representation.” OR. R. PRO. CONDUCT 1.8(j)(1) (2024). Similarly, Minnesota, Washington, and Wisconsin added several subsections after the model rule language. *See* MINN. R. PRO. CONDUCT r. 1.8(j) (2005); WASH. R. PRO. CONDUCT r. 1.8(j) (2015); WIS. R. PRO. CONDUCT r. 1.8(j) (2007). West Virginia changed the model rule language just slightly to “[a] lawyer shall not have sexual relations with a client whom the lawyer personally represents during the legal representation unless a consensual sexual relationship existed between them at the commencement of the lawyer/client relationship.” W. VA. R. PRO. CONDUCT r. 1.8(j) (2014).

144. Alabama, California, Florida, Massachusetts, New York, North Carolina, South Carolina, and Utah have adopted their own rules. *See* Fifty State Survey, *supra* note 15; ALA. R. PRO. CONDUCT r. 1.8(l) (2008); CAL. R. PRO. CONDUCT r. 1.8.10 (2023); FLA. R. PRO. CONDUCT r. 4-8.4 (2018); MASS. R. PRO. CONDUCT r. 1.8(j) (2015); N.Y. R. PRO. CONDUCT r. 1.8(j) (2022); N.C. R. PRO. CONDUCT r. 1.19 (2023); S.C. R. PRO. CONDUCT r. 1.8(m) (2018); UTAH R. PRO. CONDUCT r. 1.8(j) (2017).

145. California, Massachusetts, Minnesota, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Utah, West Virginia, and Wisconsin have adopted a definition of sexual relations. *See* Fifty State Survey, *supra* note 15; CAL. R. PRO. CONDUCT r. 1.8.10(b) (2023); MASS. R. PRO. CONDUCT r. 1.0(o) (2015); MINN. R. PRO. CONDUCT r. 1.8(j)(1) (2005); N.Y. R. PRO. CONDUCT r. 1.0(u) (2022); N.C. R. PRO. CONDUCT r. 1.19(a) (2023); OKLA. R. PRO. CONDUCT r. 1.7, cmt 12 (2024); OR. R. PRO. CONDUCT r. 1.8(j)(1) (2024); PA. R. PRO. CONDUCT r. 1.8(j), cmt 17 (2024); UTAH R. PRO. CONDUCT r. 1.8(j)(1)-(2) (2021); W. VA. R. PRO. CONDUCT r. 1.8(j) (2014); WIS. R. PRO. CONDUCT r. 1.8(j)(1) (2007). In addition, Connecticut defines “harassment” to include “severe or pervasive derogatory or demeaning verbal or physical conduct. Harassment on the basis of sex includes unwelcome sexual advances, requests for sexual favors and other unwelcome verbal or physical conduct of a sexual nature.” CONN. R. PRO. CONDUCT r. 8.4, cmts (2022).

146. Maryland, South Carolina, and Tennessee only refer to a prohibition on sexual relations in comments to Rules 1.7 or 1.8, and not in the rules directly. *See id.*; MD. R. PRO. CONDUCT r. 19-301.7, cmt 12 (2024); S.C. R. PRO. CONDUCT r. 1.8(m) (2022); TENN. R. PRO. CONDUCT r. 1.7, cmt 12 (2011).

147. Georgia, Louisiana, Maryland, Michigan, New Jersey, Oklahoma, Rhode Island, Tennessee, Texas, Virginia, and Washington, D.C. have adopted no prohibition in their rules of professional conduct, or in the comments to the rules, on sexual relations with clients. *See* Fifty State Survey, *supra* note 15; *In re Tante*, 264 Ga. 692 (1994); *Sanders v. Gore*, 95-660 (La. Ct. App. 3d Cir. 1996); *Atty. Griev. Comm’n of Md. v. Hall*, 408 Md. 306 (2009); *People v. Hassan*, 2013 Mich. App. LEXIS 1326 (Mich. Ct. App. 2013); *In re Principato*, 139 N.J. 456, 460-61 (1995); *State ex rel. Okla. Bar Ass’n v. Downes*, 2005 OK 33, 58-62 (2005); *In re DiPippo*, 678 A.2d 454 (R.I. 1996); *Prewitt*, *supra* note 128; *Terrell v. Mazaheri*, 676 S.W.3d 116, 125-26 (Tex. Ct. App. 2023); *Brown v. Va. State Bar ex rel. Sixth Dist. Comm.*, 886 S.E.2d 492, 501-02 (Va. 2023). However, with the exceptions of Michigan, Texas, and Washington D.C., each of those jurisdictions have case law indicating that at least sometimes sexual relations with clients is prohibited.

148. MICH. R. PRO. CONDUCT r. 1.8, cmts (2025).

of the female public defenders in Cook County. However, that may depend on the definition of ‘sex’, ‘sexual relations’, ‘sexual activity’ or ‘sexual conduct’ adopted in the ethical rules. As mentioned above, the ABA Model Rules do not define sexual relations and only eleven states have defined the term.¹⁴⁹

The Oregon, North Carolina and West Virginia rules of professional conduct use comparable language in their definitions of ‘sexual relations’ or ‘sexual activity.’ Oregon defines ‘sexual relations’ or ‘sexual activity’ as the following:

[S]exual intercourse or any touching of the sexual or other intimate parts of *a person or causing such person* to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire *of either party*.¹⁵⁰

This definition is worded so broadly that it could encapsulate the client who touched his penis for the purpose of his own sexual desire. However, on its face, that does not seem to be what the drafters were contemplating when they drafted this language. Moreover, some might attempt the harmful argument that a client’s sexual misconduct was somehow *caused* by an attorney’s gender identity or sexual orientation—a classic example of victim-blaming that has no place in ethical analysis.

North Carolina’s definition of ‘sexual activity’ is more specific and includes:

(1) sexual intercourse; or (2) *any touching of a person* or causing such person *to touch the lawyer* for the purpose of arousing or gratifying the sexual desire of either party.”¹⁵¹ In addition, North Carolina prohibits lawyers from engaging in “sexual communications” with clients. It defines ‘sexual communications’ as “(1) requesting or actively participating in sexually explicit conversation; or requesting or transmitting messages, images, audio, video, or other content that contain nudity or sexually explicit material.”¹⁵²

North Carolina and Pennsylvania are the only two states that explicitly contemplate sexting in their prohibition on sexual conduct with clients.¹⁵³ However, some other state courts have found that sending messages of a sexual nature does not constitute ‘sexual relations’ as prohibited by Rule 1.8(j),¹⁵⁴ while others have determined that sexting does.¹⁵⁵ If sexting is included in the definition of ‘sexual relations’ then it seems indecent exposure and public masturbation ought to be included as well.

149. See *supra* note 145 and accompanying text.

150. OR. R. PRO. CONDUCT r. 1.8(j) (2024) (emphasis added).

151. N.C. R. PRO. CONDUCT r. 1.19(a) (2023) (emphasis added).

152. *Id.* at 1.19(b).

153. *Id.*; PA. R. PRO. CONDUCT r. 1.8(j), cmt. 17 (2024).

154. See, e.g., *Lawyer Disciplinary Bd. v. Sayre*, 242 W. Va. 246, 256 (2019).

155. See e.g., *In re Stanton*, 376 P.3d 693, 696 (2016) (an “intimate,” non-sexual relationship counted as “sexual relations”); *Chief Disciplinary Counsel v. Zelotes*, 152 Conn. App. 380, 383 (2014); *State ex rel. Okla. Bar Ass’n v. Hixson*, 397 P.3d 483, 489 (Ok. 2017) (soliciting his client, via text message, to engage in prostitution).

The California and Utah Rules of Professional Conduct define ‘sexual relations’ as sexual intercourse or the touching of an intimate part of *another person* for the purpose of sexual arousal, gratification, or abuse.¹⁵⁶ This definition is broader than Oregon’s definition. When reading California’s and Pennsylvania’s rules and definitions together, they indicate that a lawyer shall not engage in either: 1) sexual intercourse; or 2) the *touching* of an intimate part of *another person*. This language seems to prohibit the lawyer from touching the intimate parts of a client, and not the other way around. It also does not seem to contemplate indecent exposure and public masturbation.

New York’s prohibition states that “[a] lawyer shall not...in domestic relations matters, enter into sexual relations with a client during the course of the lawyer’s representation of the client.”¹⁵⁷ Because it is worded broadly, this part of the New York rule seems to possibly prohibit sexual relations occurring without the lawyer’s consent, such as a sexual assault against an attorney. In addition, New York Rule 1.0(u) defines ‘sexual relations’ as “sexual intercourse or the touching of an intimate part of *the lawyer or another person* for the purpose of sexual arousal, sexual gratification or sexual abuse.”¹⁵⁸ Here, New York included the touching of the lawyer for sexual arousal as a prohibited act but again not public masturbation. Further, the comment to Rule 1.8(j) in New York states that “[e]ven when sexual relations between a lawyer and client are permitted under paragraph (j), however, they may lead to incompetent representation in violation of Rule 1.1.”¹⁵⁹ The notion that attorneys could be deemed professionally incompetent due to their victimization by a client’s sexual violence creates a disturbing paradox. In New York, this could be a reality: an attorney sexually assaulted by a client might be considered incompetent to continue representation precisely because of the client’s misconduct.

Overall, it seems that the existing definitions of sexual relations are limited to sexual intercourse, touching, and maybe sexting. The rules do not seem to contemplate indecent exposure and public masturbation. However, it is important to keep in mind that in forty states and Washington, D.C. there is no definition of ‘sexual relations.’ It is also important to note that the ethical rules regarding sex are newly adopted in most states. For example, Missouri adopted

156. CAL. R. PRO. CONDUCT r. 1.8.10(b) (2023) (emphasis added); UTAH R. PRO. CONDUCT r. 1-8(j)(1) (emphasis added). The California Rules go on to state that if a person other than the client alleges a violation of this rule, no Notice of Disciplinary Charges may be filed by the State Bar against a lawyer under this rule until the State Bar has attempted to obtain the client’s statement regarding, and has considered, whether the client would be unduly burdened by further investigation or a charge. *Id.*; r. 1.8.10(c). California’s relevant rule states “[a] lawyer shall not engage in sexual relations with a current client.” *Id.*; r. 1.8.10(a).

157. N.Y. R. PRO. CONDUCT r. 1.8(j) (2022).

158. *Id.*; Rule 1.0(u) (emphasis added). Similarly, Massachusetts defines “sexual relations” as sexual intercourse or the intentional touching of an intimate part of the lawyer or another person for the purpose of sexual arousal or sexual gratification. MASS. R. PRO. CONDUCT r. 1.0(o) (2015).

159. See also *Matter of Benedict*, 206 A.D.3d 84, 86, 168 N.Y.S.3d 641, 643 (2022).

Rule 1.8(j) in 2021, and there are no disciplinary cases yet defining ‘sexual relations’ in Missouri.¹⁶⁰ It may be that courts have not grappled with these facts yet. And for the courts that have determined that sexting constitutes ‘sexual relations,’ it is possible that they may soon find indecent exposure or public masturbation to amount to ‘sexual relations.’

It is not just the definitions of sexual conduct (or lack thereof) within the ethical rules that are problematic. Some ethical rules emphasize that sexual relations with clients are prohibited regardless of whether the *relationship is consensual* and regardless of the *absence of prejudice to the client*.¹⁶¹ The emphasis on the consensual nature of the relationship and absence of prejudice to the client is likely trying to address some evidentiary issues and situations where the attorney’s spouse is the client.¹⁶² However, in the context of client sexual violence against the attorney, the same language can be read to imply that the attorney has violated the rule regardless of whether the attorney consented to the sexual violence by the client. The rule only emphasizes prejudice to the client, with no mention of negative consequences or prejudice to the attorney.¹⁶³

What is more, the Ohio Supreme Court in 2021 in *Disciplinary Counsel v. Porter* held that “[r]egardless of whether a client initiates or consents to sexual activity with the lawyer, it is the lawyer’s duty to ensure that the attorney-client relationship remains on a professional level.”¹⁶⁴

The *Porter* case was not about client sexual violence against an attorney. The client in *Porter* initiated sexual contact and the attorney representing them consented. However, the language the court uses in *Porter* is not very forgiving

160. MO. R. PRO. CONDUCT r. 1.8(j) (2021).

161. MODEL RULES OF PRO. CONDUCT r. 1.8(j), cmt. 20 (emphasis added).

162. See, e.g., OR. STATE. BAR RES. NO. 7 (1992) (“A lawyer shall not have sexual relations with a current client or representative of a current client... This rule shall not apply where the sexual relations are between spouses or began prior to the establishment of the lawyer-client relationship and where the lawyer’s professional judgment is not or reasonably will not be affected by the sexual relationship.”); 1991 Ill. S. Res. 361, 87th Ill. Gen. Assembly (1991) (urging the prohibition of “sexual relationships during the period of the attorney-client relationship, unless the client is the spouse of the attorney, the sexual relationship predates the commencement of the attorney-client relationship, or some other situation exists in which the court deems the prohibition would not detract from the attorney’s representation of the client”); CAL. R. PRO. CONDUCT r. 1.8.10 (2023) (“A lawyer shall not engage in sexual relations with a current client who is not the lawyer’s spouse or registered domestic partner, unless a consensual sexual relationship existed between them when the lawyer-client relationship commenced”); N.Y. R. PRO. CONDUCT r. 1.8(j)(1) (2022) (“Rule 1.8(j)(1) shall not apply to sexual relations between lawyers and their spouses or to ongoing consensual sexual relationships that predate the initiation of the client-lawyer relationship.”). But see, e.g., VA. ETHICS OP. 1853 (2009) (“...the relationship is likely to involve unfair exploitation of the lawyer’s fiduciary position and also presents a significant risk that the lawyer will not be able to represent the client competently, diligently, and objectively. Any purported consent by the client would be suspect and would rarely be effective.”).

163. It is an odd juxtaposition that the Model Rules maintain that sexual relationships that predate the legal representation are allowable, but at the same time emphasize that the rules are violated by sexual relations with clients regardless of the absence of prejudice to the client. See MODEL RULES OF PRO. CONDUCT r. 1.8(j); see also OKLA. ETHICS OP. 311 (1998) (“A consensual sexual relationship that predates the lawyer-client relationship may raise the same ethical questions...”).

164. *Porter*, *supra* note 31.

of an attorney who “allows” sexual activity to occur with a client. And it is not just Ohio that believes the attorney has a duty to ensure that the attorney-client relationship remains professional. In Fall 2023, the Disciplinary Board of the Supreme Court of Pennsylvania released a report emphasizing that the purpose of Rule 1.8(j) was to “clarify and reinforce to the profession that lawyers have an ethical obligation to keep their relationships with clients professional.”¹⁶⁵

In the context of a client’s sexual violence against the attorney, it is not clear at all that the blame would not be placed on the attorney in Ohio or Pennsylvania, even if the client forces sexual relations on the attorney. In such cases, the attorney would be seen as having breached the duty to maintain a professional attorney–client relationship.

Lastly, the ethical rules related to sexual violence have noted the unequal power dynamics between attorneys and clients, stressing that the lawyer has a dominant position over the client. For example, comments to the rules in North Carolina state that the “same factors that led the client to place his or her trust and reliance in the lawyer also have the potential to place the lawyer in a position of dominance and the client in a position of vulnerability.”¹⁶⁶ In New Mexico, the comments state that the attorney-client “relationship is almost always unequal...”¹⁶⁷ Similarly, in Tennessee, the comments indicate that “the client’s dependence on the lawyer’s knowledge of the law is likely to make the relationship between the lawyer and client unequal.”¹⁶⁸

These comments reflect an assumption that attorneys are supposed to be all-powerful (and likely male), and there is no need to even contemplate a situation in which an attorney could be forced into sexual relations with a client. Maybe there is also an underlying belief that attorneys always have the choice—and the power—to prevent sexual violence before it occurs. All of this points to the ethical rules being drafted with the gender stereotype script of ‘lawyer’ as an all-powerful male, who is never at risk of being forced into sexual relations.¹⁶⁹ The ethical rules do not contemplate the lawyer as a woman or other person who has been sexually assaulted by her client.

165. *Resolution Regarding Proposed Amendments to Comments to Rule of Professional Conduct 1.8(j)*, PHILA. BAR ASS’N (2023), https://philadelphiabar.org/?pg=ResSept23_1 [<https://perma.cc/J89W-8QTV>]. Pennsylvania has been very focused on Rule 1.8(j) this year: in October 2024, the Pennsylvania Supreme Court amended Rule 1.8(j) to add a statement that “sexual relations” includes, but is not limited to, communications of a sexual nature. *In re: Amendment of Rule 1.8 of the Pennsylvania Rules of Professional Conduct*, No. 251 Disciplinary Dkt. (Pa. Sup. Ct. Oct. 9, 2024), <https://www.pacourts.us/assets/opinions/Supreme/out/Order%20Entered%20-%20106100215283948548.pdf>. See also PA. R. PRO. CONDUCT r. 1.8(j) (2024).

166. N.C. R. PRO. CONDUCT r. 1.19, cmt. 1 (2023).

167. N.M. R. PRO. CONDUCT r. 16-107, cmt. 12 (2008).

168. TENN. R. PRO. CONDUCT r. 1.7, cmt. 12 (2011). See also *Prewitt*, *supra* note 128 (holding sexual relationship between lawyer and client exacerbates inherent inequality in attorney-client relationship); *In re Vogel*, 482 S.W.3d 520, 544 (Tenn. 2016) (describing client dependence on lawyer demonstrating inherently unequal relationship and emphasizes that sexual relationships often result from a lawyer’s exploitation of that power imbalance).

169. See *supra* Part II.C.

C. Prohibition on Concurrent Conflicts of Interest

The issue of client sexual violence against attorneys is also relevant to concurrent conflicts of interest. The comments to ABA Model Rule 1.8¹⁷⁰ state that sexual relationships that predate the client-lawyer relationship are *not* prohibited, but that lawyers should “consider whether the lawyer’s ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).”¹⁷¹ Model Rule 1.7(a)(2) emphasizes that a “lawyer shall not represent a client if the representation involves a concurrent conflict of interest.” Rule 1.7(a)(2) then defines a ‘concurrent conflict of interest’ to include a “significant risk that the representation of a client will be *materially limited by a personal interest of the lawyer*.”¹⁷² Related case law further connects the dots, with courts and disciplinary boards finding that a concurrent conflict of interest arises when sexual conduct occurs between an attorney and client after representation has begun.¹⁷³

One could see that a lawyer has personal interest in not being sexually assaulted and that interest could affect, if not materially limit, the legal representation. However, there is no reported case law or comments on the issue of sexual violence by a client against their attorney in this context of concurrent conflicts of interest. Most of the case law on Rule 1.7(a)(2) is focused on the monetary personal interests of the lawyer and the client.¹⁷⁴ There are some cases where lawyers have been found to have a conflict of interest when the lawyer engages in sexual harassment of the client.¹⁷⁵ In those cases, the courts have

170. See *infra* Part III.B. for more on the prohibition of sexual relations with clients.

171. MODEL RULES OF PRO. CONDUCT r. 1.8, cmt. 21 (emphasis added).

172. *Id.* at 1.7(a)(2) (emphasis added).

173. See, e.g., *Brown v. Virginia State Bar ex rel. Sixth Dist. Comm.*, 886 S.E.2d 492, 494 (Va. 2023) (holding that the attorney who engaged in a sexual relationship with the client while representing the client in a divorce allowed his personal and prurient interests in client to interfere with her legal needs, and therefore caused the concurrent conflict of interest); *Robinson, supra* note 129, at 584 (holding that sexual relationships with clients create a significant risk of the attorney’s personal interests materially limiting the representation of the client to create a concurrent conflict of interest); *Hixson, supra* note 155, at 489 (holding that repetitively seeking physical sexual relationship with the client and sexting created a conflict of interest).

174. See, e.g., *Prewitt, supra* note 128, at 375–76 (holding attorney billed more during the romantic relationship establishing that she put her financial interests ahead of her client’s interests); *Att’y Griev. Comm’n of Md. v. Maiden*, 279 A.3d 940, 948 (Md. 2022) (holding that the attorney created a conflict of interest by claiming a 50% share of any punitive damages her client might obtain without obtaining her client’s written informed consent); *In re: Schambach*, 726 So. 2d 892, 896 (La. 1999) (suspending the attorney for three years for using a consensual sexual relationship to obtain more than \$40,000 from his client).

175. See, e.g., *In re Neill*, 681 S.W.3d 194, 200 (Mo. 2024) (holding attorney’s conduct constituted sexual harassment and found this conduct amounted to a failure to avoid conflicts of interest in violation of Rule 4-1.7(a)(2)); *In re Purdy*, 661 S.W.3d 796, 800 (Mo. 2023) (holding that attorney’s sexual harassment and unwanted, improper sexual touching of six vulnerable clients indicated that the attorney’s personal and sexual interest interfered with his clients’ legal needs, and therefore created a concurrent conflict of interest); *State ex rel. Okla. Bar Ass’n v. Stout*, 451 P.3d 155, 158 (Ok. 2017) (holding that the attorney’s unwanted sexual advances and engaging in communications of a sexual nature with his clients violated the prohibition against concurrent conflicts of interest based on the substantial risk of the

focused on the lawyer's personal interest in *desiring* a sexual relationship as materially limiting the client's interests in legal representation.¹⁷⁶

Model Rule 1.7(b) goes on to state that even when a concurrent conflict of interest exists, the lawyer may still represent the client if "the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation."¹⁷⁷ Massachusetts' further clarifies this rule by stating that "[u]nless it would be clear to a reasonable person that a sexual relationship with the client would not materially affect the representation, the lawyer should either avoid the sexual relationship or withdraw from the representation."¹⁷⁸

For the purposes of client sexual violence, what factors would make it reasonable to believe that an attorney can continue to provide competent and diligent representation after sexual violence occurs? The comments to North Carolina's rule prohibiting sexual conduct with suggest two relevant considerations: (1) the extent of the lawyer's emotional involvement and (2) the probability the lawyer might become an adverse witness in the client's case.¹⁷⁹ Oklahoma tells lawyers to "strictly scrutinize whether sexual relations with a client may result in harm to the client or impair the representation."¹⁸⁰ Florida requires attorneys to consider whether the sexual conduct would "negatively affect the client's interest...or...the exercise of the lawyer's independent professional judgment..."¹⁸¹ Additional factors may include the type of case,¹⁸²

representation being materially limited by personal interests of the attorney); *In Matter of Piatt*, 951 P.2d 889, 891 (1997) ("Sexual harassment by a lawyer serves the lawyer's interest and not the client's. Asking wholly inappropriate questions and making obscene comments to a client undermines trust in the lawyer and the representation.").

176. *See, e.g., People v. Beecher*, 224 P.3d 442, 450 (Colo. O.P.D.J. 2009) (finding that even if the lawyer's relationship with the client was not sexual, their close personal relationship caused him to lose the objectivity and independent judgment necessary to represent the client); *see also Piatt, supra* note 175 at 891.

177. MODEL RULES OF PRO. CONDUCT r. 1.7(b)(1). *But see* MD. R. PRO. CONDUCT r. 1.7, cmt. 12 (2024) ("A sexual relationship with a client, whether or not in violation of criminal law, will create an impermissible conflict between the interests of the client and those of the attorney if (1) the representation of the client would be materially limited by the sexual relationship and (2) it is unreasonable for the attorney to believe the attorney can provide competent and diligent representation. Under those circumstances, informed consent by the client is ineffective.").

178. MASS. R. PRO. CONDUCT r. 1.7, cmt. 12 (2015).

179. *See* N.C. R. PRO. CONDUCT r. 1.19, cmt. 4 (2023) ("Sexual conduct between lawyer and client...presents a significant danger that the lawyer's ability to represent the client competently may be adversely affected because of the lawyer's emotional involvement. This emotional involvement has the potential to undercut the objective detachment that is demanded for adequate representation...a lawyer who is sexually involved with his or her client risks becoming an adverse witness to his or her own client in a divorce action where there are issues of adultery and child custody to resolve."); *See also* N.M. R. PRO. CONDUCT r. 16-107, cmt. 12 (2008) ("...such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment.").

180. OKLA. R. PRO. CONDUCT r. 1.7, cmt. 12 (2024).

181. FLA. R. PRO. CONDUCT r. 4-8.4(i), cmt (2018).

182. Much of the law related to sexual relations with clients before Model Rule 1.8(j) was introduced focused on attorneys engaging in sexual relations with family law clients or "vulnerable" clients, which courts defined to include indigent clients and clients with mental health or addiction issues. *See, e.g., In re Principato*, 139 N.J. 456, 460-61 (1995); *Disciplinary Counsel v. Booher*, 664 N.E.2d 522, 522-23

the point in the client's case when the sexual violence occurred, and prejudice to the administration of justice.¹⁸³

If the attorney reasonably believes that representation of the client can continue after sexual violence, the attorney will then need to get the client to give informed consent in writing.¹⁸⁴ What does that writing look like? Perhaps a statement that says the following: "I acknowledge I assaulted you and I believe that will not materially limit your representation of me going forward." Who would sign that? I would never advise a client to sign that for another lawyer.¹⁸⁵ North Carolina's comment to its rule prohibiting sexual conduct with clients states that "[t]he present rule clarifies that sexual conduct with a client is damaging to the client-lawyer relationship and creates an impermissible conflict of interest that *cannot* be ameliorated by the consent of the client."¹⁸⁶ Therefore, at least in North Carolina, there is no way to get around the conflict of interest created by the sexual conduct between client and attorney. The attorney in such cases must withdraw from representation.

D. Duty of Confidentiality

Addressing and transforming the conditions that allow for client sexual violence requires disclosure of the problem. However, the ethical rules present a significant problem: attorneys cannot generally reveal information related to the representation of a client without the client's informed consent.¹⁸⁷ The ethical rules in almost every jurisdiction in the U.S. preclude the disclosure of any information relating to the representation of a client, including client sexual violence against an attorney.¹⁸⁸ However, there are certain circumstances in which the duty of confidentiality will not apply. ABA Model Rule 1.6(b)(1) makes it clear that the lawyer may relay information to the extent the lawyer reasonably believes necessary to prevent reasonably certain death or substantial

(1996); *In re Berg*, 264 Kan. 254, 265-81 (1998); *In re Weinstock*, 241 A.D.2d 1, 2 (N.Y. 1998); *see also In re Purdy*, 661 S.W.3d 796, 803 (Mo. 2023); *Disciplinary Couns. v. Nowicki*, 2023-Ohio-3079, 1, 17-20 (Ohio 2023); N.C. R. PRO. CONDUCT r. 1.8(M) (2023). New York's comments to Rule 1.7 also state: "A lawyer is prohibited from engaging in sexual relations with a client in domestic relations matters." N.Y. R. PRO. CONDUCT r. 1.7, cmt. 12 (2022).

183. Was it during intake? During a trial? After sentencing? In deciding whether to allow attorneys to withdraw from representation, courts often weigh the point in the case at which the motion to withdraw is requested. *See, e.g., Williams, supra* note 133, at 497 (disallowing attorney from withdrawing after client physically assaults him during trial). *See also* OKLA. BAR ASS'N ETHICS OP. No. 311 (6) (2024).

184. Model Rule 1.7(b) requires the lawyer with a concurrent conflict of interest to ensure that "each affected client gives informed consent, confirmed in writing." MODEL RULES OF PRO. CONDUCT r. 1.7(b).

185. In South Carolina, Comment 21 to Rule 1.8 states that "a sexual relationship between lawyer and client is not appropriate, and the client's own emotional involvement renders it unlikely that a client can give adequate informed consent to the relationship." S.C. R. PRO. CONDUCT r. 1.8, cmt. 21 (2018).

186. N.C. R. PRO. CONDUCT r. 1.19, cmt. 1 (2023) (emphasis added).

187. *See* MODEL RULES OF PRO. CONDUCT r. 1.6.

188. *See id.*; Alper, *supra* note 6, at 31-32; Fifty State Survey, *supra* note 15.

bodily harm.¹⁸⁹ Comment 6 to Model Rule 1.6(b) further clarifies that “[s]uch harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat.”¹⁹⁰ All fifty U.S. states and Washington, D.C. have adopted some form of ABA Model Rule 1.6.¹⁹¹ Most states have also adopted discretionary language indicating that confidential information may be disclosed to the extent the lawyer “reasonably believes reasonably necessary to prevent reasonably certain death or substantial bodily harm”¹⁹² or to “prevent reasonably certain death or substantial bodily harm or to the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interest or property of another...”¹⁹³

However, some states vary as to when attorneys can disclose and what is disclosable. Michigan’s rule allows attorneys to disclose the *intention* of a client to commit a crime.¹⁹⁴ In Texas, lawyers may disclose client confidences when they believe “it is necessary to do so in order to prevent the client from committing a criminal or fraudulent act.”¹⁹⁵ Texas does not require the act be a crime,¹⁹⁶ or that it cause *substantial* bodily harm or reasonably certain death,¹⁹⁷ which may be applicable in the context of client sexual violence.

Nevada’s ethical rules permit attorneys to disclose confidential information to prevent clients from committing criminal or fraudulent acts that use the attorney’s services. However, before making such disclosure, attorneys must

189. MODEL RULES OF PRO. CONDUCT r. 1.6(b)(1). See also Formal Op. 25-515, *infra* note 205. While ABA ethics opinions are not binding, they can lead the way to changes to the ABA Model Rules. See, e.g., *Ethics Opinions*, A.B.A., CTR. FOR PRO. RESP., https://www.americanbar.org/groups/professional_responsibility/publications/#:~:text=ABA%20Formal%20Ethics%20Opinions%20are,of%20the%20American%20Bar%20Association [<https://perma.cc/JH4M-H3BS>] (“ABA Formal Opinions are not binding authority in any jurisdiction without adoption in such a jurisdiction. They are persuasive authority and express policy of the American Bar Association”); *Smith v. United States*, 2018 WL 558940, at *3 (S.D. Ohio 2018) (holding ABA ethics opinion not binding on court); Bartlett, *supra* note 15, at 568.

190. MODEL RULES OF PRO. CONDUCT r. 1.6, cmt. 20. While Rule 1.6(b) lists several other exceptions to the duty of confidentiality, none of the other exceptions relate to physical harm. For example, Model Rule 1.6(b)(2) and (3) provide for exceptions to the duty of confidentiality to prevent injury to the *financial* interests or *property* of another. See MODEL RULES OF PRO. CONDUCT r. 1.6.

191. See Jeffrey Segal & Michael Sacopolos, *The Emotionally Labile Client: Attorney Duties When a Client Threatens Violence*, 4 ELON L. REV. 55, 60 (2012); see also Fifty State Survey, *supra* note 15.

192. See MODEL RULES OF PRO. CONDUCT r. 1.6, cmt. 6.

193. *Id.* See also Fifty State Survey, *supra* note 15; N.H. R. PRO. CONDUCT r. 1.6 (2025) (attorneys can disclose “information relating to the representation of a client” to “prevent reasonably certain death or substantial bodily harm or to the client from committing a criminal act that the lawyer believes is likely to result in substantial injury to the financial interest or property of another...”).

194. See MICH. R. PRO. CONDUCT r. 1.6(c)(4) (2025) (emphasis added).

195. TEX. R. PRO. CONDUCT r. 1.05(c)(7) (2025).

196. See *supra* Section II.A. Whether client sexual violence is a state crime may be an issue. For example, in Maryland indecent exposure is not a crime. See Murakami, *supra* note 42.

197. See TEX. R. PRO. CONDUCT r. 1.05(c)(7) (2025).

first make reasonable efforts, when practicable, to persuade the client to take suitable action.¹⁹⁸

In the context of client sexual violence, it would be tricky for the attorney who is being harmed to first try to persuade the client “to take suitable action.”¹⁹⁹ In my case, this would have required me to talk to my client and persuade him not to masturbate at me. Even if he agreed that he would not do it again, it would be hard to trust his word. The expectation that attorneys must engage in such conversations with clients reflects a profound misunderstanding of trauma and power dynamics.

States also differ in what disclosures are allowed even in the face of threats of substantial bodily harm to another person.²⁰⁰ Courts have included sexual abuse of children, client’s threats of suicide, and life-threatening and debilitating illness in the definition of ‘substantial bodily harm’ for the purposes of deciding if information is allowed to be shared by an attorney.²⁰¹ A court in Washington state has held that attorneys have a duty to warn judges of threats of harm.²⁰² On the other hand, information related to sexual harassment has been treated by a Tennessee court as non-disclosable.²⁰³ In addition, arguments have been made that if an incident of violence happened during the course of representation and disclosure would affect the representation, the lawyer would actually have the duty to *fight* disclosure.²⁰⁴

In March 2025, the ABA issued an ethics opinion regarding Model Rule 1.6 stating the following:

[A] lawyer who is the victim of a crime by a client or prospective client may disclose information relating to the representation to the appropriate authority in order to seek an investigation and potential

198. NEV. R. PRO. CONDUCT r. 1.6(b)(2) (2024). *See also* ME. R. PRO. CONDUCT r. 1.6 (c) (2014) (“Before revealing information under paragraph (b) (1), (2), or (3), the lawyer must, if feasible, make a good-faith effort to counsel the client to prevent the harm and advise the client of the lawyer’s ability to reveal information and the consequences thereof.”); OKLA. R. PRO. CONDUCT r. 1.6 (b)(3) (2024) (“[P]rovided that the lawyer has first made reasonable efforts to contact the client so that the client can rectify such criminal or fraudulent act, but the lawyer has been unable to do so, or the lawyer has contacted the client and called upon the client to rectify such criminal or fraudulent act and the client has refused or has been unable to do so...”).

199. *See* NEV., *supra* note 198.

200. *See* Segal & Sacopulos, *supra* note 191, at 69-70. *See also* Fifty State Survey, *supra* note 15.

201. *See In re Blickman*, 164 N.E.3d 708, 710 (Ind. 2020); *People v. Fentress*, 425 N.Y.S.2d 485, 496-97 (Dutchess Cnty. Ct. 1980); *In re Petition to Amend Selected Provisions of Tenn. Supreme Court Rule 8*, 2016 Tenn. LEXIS 529, at *46 (2016).

202. *See State v. Hansen*, 862 P.2d 117, 122 (Wash. 1993).

203. *The Tennessean v. Tenn. Dep’t of Pers.*, No. M2005-02578-COA-R3-CV, 2007 Tenn. App. LEXIS 267, at *4 (Tenn. Ct. App. 2007).

204. *See Alexander*, *supra* note 131, at 816-17; Alper, *supra* note 6, at 31-32. *See also* Davalene Cooper, *The Ethical Rules Lack Ethics: Tort Liability When a Lawyer Fails to Warn a Third Party of a Client’s Threat to Cause Serious Physical Harm or Death*, 36 IDAHO L. REV. 479, 493 (2000) (citing Irma S. Russell, *Cries and Whispers: Environmental Hazards, Model Rule 1.6, and the Attorney’s Conflicting Duties to Clients and Others*, 72 WASH. L. REV. 409, 411-13 (1997) (“Irma S. Russell has argued that the language of Model Rule 1.6 acts to encourage non-disclosure.”)).

prosecution of the alleged offender or other services, remedy, or redress.²⁰⁵

The ethics opinion specifically highlights the problems with the limited exceptions to the duty of confidentiality listed in Model Rule 1.6(b), stating that it is “unreasonable to require lawyers to remain silent when their clients abuse the relationship by committing a crime against the lawyer . . . they cannot be expected to take a bullet from the client and to keep quiet about it.”²⁰⁶ The opinion also noted that the client-lawyer relationship almost certainly cannot continue after the client victimizes the lawyer and the lawyer reports the client’s crime.²⁰⁷ A lawyer, however, still holds an obligation to inform the client that such a disclosure will be—or has been—made.²⁰⁸

This new ethics opinion represents significant progress by explicitly recognizing attorneys who experience client violence and authorizing appropriate disclosure of such incidents. However, the ABA opinion did not define ‘violent crimes,’ nor did it mention sexual violence.²⁰⁹ In addition, the opinion focused heavily on the client’s ‘crime,’ reporting the ‘crime’ to law enforcement authorities, and prosecution of the client’s criminal conduct.²¹⁰ The opinion did not discuss ways to prevent the violence in the first place. Moreover, ABA ethics opinions are not binding and are merely commentary on the ABA Model Rules.²¹¹ It is unclear if states will adopt binding rules that mirror the new ethics opinion.

Therefore, with no rules or case law directly addressing the issue, it is unclear whether an attorney can report client sexual violence to a judge, an employer, or otherwise to prevent future harm without violating ethical rules.²¹² This uncertainty limits an attorney’s options in the aftermath of client sexual violence.²¹³

205. See A.B.A., Comm. on Ethics & Pro. Resp., Formal Op. 25-515 (Mar. 5, 2025), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/ethics-opinions/aba-formal-opinion-515.pdf.

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. See *Ethics Opinions*, *supra* note 189.

212. See Segal & Sacopulos, *supra* note 191, at 69-70. Moreover, the rules of evidence regarding the attorney-client privilege may allow this sort of information to come in as not part of the representation. That’s aside from the legal ethics implications. See, e.g., N.C. R. PRO. CONDUCT r. 1.19, cmt 4 (“[A] blurred line between the professional and personal relationship may make it difficult to predict to what extent client confidences will be protected by the attorney-client privilege in the law of evidence since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship.”).

213. I am not the first to point out that Model Rule 1.6 is out of step with modern law practice. See, e.g., Russell, *supra* note 204; Cooper, *supra* note 204; Alper, *supra* note 6.

E. Prohibition on Lawyers Engaging in Harassment

In researching ethical rules regarding sexual violence, the newish Model Rule 8.4(g) came up over and over again.²¹⁴ Model Rule 8.4(g) prohibits lawyers from “engag[ing] in conduct that the lawyer knows or reasonably should know is harassment or discrimination based on race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.”²¹⁵ This prohibition against harassment targets misconduct by attorneys rather than addressing situations where clients harass attorneys (which reinforces the gender stereotype script of lawyer as all powerful male). However, the definitions of sexual harassment related to Rule 8.4(g) provide some guidance as to how states who have yet to do so may define ‘sexual relations’ in the future. For example, the Connecticut Rules of Professional Conduct Comments to Rule 8.4 include the following definition: “Harassment includes severe or pervasive derogatory or demeaning verbal or physical conduct. Harassment on the basis of sex includes unwelcome sexual advances, requests for sexual favors and other unwelcome verbal or physical conduct of a sexual nature.”²¹⁶ This broad definition of sexual harassment serves as an acknowledgement by the Connecticut bar that many types of behaviors, both verbal and physical, can be construed as sexual harassment. In a state that has not adopted a definition of ‘sexual conduct’ or ‘sexual relations’ for purposes of Rule 1.8(j), this definition could be used by a Connecticut court as fodder for determining whether the lawyer has had sexual relations under Rule 1.8(j).²¹⁷ Applying such a broad definition could unfairly penalize attorneys who experience client sexual violence by implying they somehow failed to prevent the misconduct—effectively blaming victims for their own harassment.

F. Standards for Imposing Lawyer Sanctions

No matter what the ethical rules state, it may be unlikely that a lawyer would be disciplined when a client commits sexual violence against them. My research revealed no case where an attorney was professionally sanctioned after becoming the victim of client sexual misconduct. However, this may be in part because these incidents of sexual violence have not been reported by attorneys; the incidents are largely kept confidential, and the attorneys withdraw without reporting. In addition, the ethical rules regarding sexual conduct with clients are

214. See, e.g., Baker, *supra* note 82, at 248; Smith, *supra* note 84, at 780; Halaby & Long, *supra* note 87.

215. MODEL RULES OF PRO. CONDUCT r. 8.4(g).

216. CONN. R. PRO. CONDUCT r. 8.4, cmts (2022).

217. See *id.* at 1.8.

relatively new.²¹⁸ It could be that these cases will soon be heard as more attorneys feel compelled to share their stories.

However, it is also true that the disciplinary boards and courts that would hear these cases are unlikely to impose sanctions for an entirely different reason. The ABA Standards for Imposing Lawyer Sanctions, although not adopted by all states, provide guidance to disciplinary boards and courts.²¹⁹ The ABA Standards require a finding of intentional, knowing, or negligent action on behalf of the lawyer for disciplinary purposes, as well as an injury to the client.²²⁰ The ABA defines ‘intent’ for the purposes of imposing lawyer sanctions as “the conscious objective or purpose to accomplish a particular result.”²²¹ ‘Knowledge’ is defined as “the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.”²²² ‘Negligence’ is defined as “the failure of a lawyer to heed a substantial risk and that failure must be a deviation from the standard of care that a reasonable lawyer would exercise in the situation.”²²³ The severest sanction for negligent action is a public reprimand, as opposed to disbarment or suspension for intentional or knowing acts, though perhaps

218. See *supra* Part III.B.

219. See A.B.A., STANDARDS FOR IMPOSING LAW. SANCTIONS 1.3 (2019 2d ed.) [hereinafter STANDARDS]; see also, e.g., *Mesmer’s Case*, 173 N.H. 96, 108 (2020); Judith M. Rush, *Disbarment of Impaired Lawyers: Making the Sanction Fit the Crime*, 37 WM. MITCHELL L. REV. 916, 928-29 (2011) (discussing how the Minnesota Standards are similar and different to the ABA Standards in many ways); William A. Williams, *The Whole Is Greater than the Sum of Its Parts*, 49 S.D. L. REV. 373, 395 n.182 (2004) (discussing how South Dakota bases its model for aggravating and mitigating circumstances off the ABA Standards, but noting the state has not adopted the Standards as a whole). Moreover, all states have adopted prefatory statements negating the enforceability of interpretive comments to the Rules of Professional Conduct. See Baker, *supra* note 82, at 265.

220. See, e.g., *Lawyer Disciplinary Bd. v. Sayre*, 242 W. Va. 246, 247 (2019); *Bd. of Pro. Resp. of Sup. Ct. of Tennessee v. Barry*, 545 S.W.3d 408, 421 (Tenn. 2018); *In re Disciplinary Matter Involving Stepovich*, 386 P.3d 1205, 1208-09 (Alaska 2016); *In re Disciplinary Proceeding Against Eugster*, 209 P.3d 435, 446 (Wash. 2009).

221. See STANDARDS, *supra* note 219, at Definitions. See also Sam Phillips, *Reprimand, Probation, Suspension or Disbarment? (How the OCDC Arrives at a Sanction Recommendation)*, 74 J. MO. B. 102, 104 (2018) (discussing how Missouri defines intent and decides sanctions); David Luty, *In the Matter of Mitigation: The Necessity of a Less Discretionary Standard for Sanctioning Lawyers Found Guilty of Intentionally Misappropriating Client Property*, 32 HOFSTRA L. REV. 999, 1013 (2004) (discussing how it is not necessary to show intent under the ABA Standards).

222. See STANDARDS, *supra* note 219, at Definitions. See also Nancy J. Moore, *Mens Rea Standards in Lawyer Disciplinary Codes*, 23 GEO. J. LEGAL ETHICS 1, 38 (2010) (discussing *mens rea* and attorney discipline, including examples of the “knowledge” standard); Barrie Althoff, *Lawyer Disciplinary Sanctions*, 2001 PRO. LAW. 105, 110 (2001) (discussing mental states and attorney discipline); Carol M. Rice, *The Superior Orders Defense in Legal Ethics: Sending the Wrong Message to Young Lawyers*, 32 WAKE FOREST L. REV. 887, 932 (1997) (discussing the “knowledge” standard and its effects on attorney discipline).

223. See STANDARDS, *supra* note 219, at Definitions. See also Robert Kehr, *Lawyer Error: Malpractice, Fiduciary Breach, or Disciplinable Offense*, 29 W. ST. U. L. REV. 235, 244 (2002) (discussing negligence and attorney discipline); Moore, *supra* note 222, at 17; Althoff, *supra* note 222.

multiple violations at the level of negligence could lead to more severe sanctions.²²⁴

In the case of my client masturbating at me in jail, there was absolutely no intentional action on my behalf that led to his behavior. It may be argued that I went into the jail visit knowing that this could occur or even that I behaved negligently in going on a jail visit by myself as a female attorney, but those do not seem like strong arguments for discipline. In addition, my client was in no way injured by the incident. He was not punished or charged for his behavior; there were no consequences for him whatsoever.

Even for the attorneys who are found to have intentionally or knowingly engaged in sexual relations with clients and are disciplined, the sanctions implemented by disciplinary boards and courts have not been severe. Roughly 86% held onto their law licenses, including repeat offenders.²²⁵ For example, a Missouri attorney sexually assaulted four female clients in 2020.²²⁶ Then, in 2021, even after being notified of an ethics investigation into his conduct, he then subsequently sexually assaulted two additional female clients—one after offering her a ride in his car and another whom he groped in open court.²²⁷ The Missouri Supreme Court ultimately suspended the attorney’s law license in 2023, but stated he could ask for his suspension to be lifted in 2024.²²⁸ If multiple incidents of intentional sexual violence committed against clients does not lead to severe sanctions, it seems very unlikely that a disciplinary board or the state supreme court would care about an attorney who was ‘negligent’ in failing to prevent client sexual violence.

Nevertheless, even without the likelihood of disciplinary action, the ethical rules still have influence over attorney conduct,²²⁹ including impacting decisions

224. See, e.g., FLA. ST. LAW. SANCTIONS STANDARD 8.1, <https://www.floridabar.org/rules/sanctions/>; ALA. R. DISC. PROC. r. 8.0 (Ala., amended 2017); TEX. R. DISC. PROC. r. 15.08 (Tex., amended 2024). See also CYNTHIA GRAY, A STUDY OF STATE JUDICIAL DISCIPLINE SANCTIONS 79 (2002).

225. Hannah Albarazi, *Are Attys Being Held Accountable for Client Sexual Contact?*, LAW360 (Jun. 28, 2023), <https://www.law360.com/articles/1693111> [<https://perma.cc/36BA-NP65>].

226. See *id.*

227. See *id.*

228. See *id.*

229. Social scientists agree that people obey regulations for a variety of reasons, including but not limited to threatened sanctions. See RICHARD H. MCADAMS, THE EXPRESSIVE POWERS OF LAW: THEORIES AND LIMITS 6-7 (2015) (“law has expressive powers independent of the legal sanctions threatened on violators and independent of the legitimacy the population perceives in the authority creating and enforcing the law.”); Peter J. May, *Compliance Motivations: Affirmative and Negative Bases*, 38 L. & SOC. REV. 41, 61 (“The traditional perspective is that enforcement and deterrence are necessary for compelling compliance with regulatory directives. A different perspective is that compliance results from a sense of obligation and shared commitments for fulfilling an implicit regulatory social contract.”); Fred C. Zacharias, *Steroids and Legal Ethics Codes: Are Lawyers Rational Actors?*, 85 NOTRE DAME L. REV. 671, 672-3 (2010) (“Although under-enforced ethics provisions have costs, they can also serve a valuable function. They address and guide the conduct of a segment of the bar that does not act entirely upon financial and reputational incentives in ordering its affairs. Some lawyers, for a variety of reasons, simply are willing to follow the rules even if doing so may be economically disadvantageous.”);

about whether to disclose incidents of sexual violence and how to approach withdrawal. Many lawyers, like me, do their best to follow the rules, whenever it makes sense to do so and it is possible.²³⁰ Moreover, if we do not think the ethical rules work in our favor, it undermines the whole point of having these rules. It is very important to consider amendments to ethical rules that are discriminatory or make little sense in terms of purpose and desired outcome. It is also important to think beyond amendments to the ethical rules. The next part will discuss rule changes, as well as additional proposals to address the epidemic of client sexual violence against attorneys.

IV. PROPOSALS TO ADDRESS CLIENT SEXUAL VIOLENCE AGAINST ATTORNEYS

Thousands of attorneys have experienced rape and sexual assault, as well as indecent exposure, unwanted touching, public masturbation, verbal threats, and stalking by clients.²³¹ However, the current ethical rules in the U.S. do not even seem to contemplate client sexual violence by clients against attorneys.²³² Moreover, the current rules leave attorneys experiencing client sexual violence in a very difficult situation—they must either continue representing their violent client or risk violating professional rules by requesting permission to withdraw.²³³ Most attorneys experiencing client sexual violence put up with the abuse, remain silent, and the problem of client sexual violence continues to plague the profession.²³⁴ It does not have to be this way; it should not be this way.

The Cook County case brought by female public defenders and law clerks helps demonstrate that it is possible to challenge the status quo and focus on the needs of attorneys who have experienced sexual violence. The Cook County settlement offers ideas for specific structural changes to the lockup environment and systems for safer meetings with clients in jail.²³⁵ However, the problem of

TOM TYLER, *WHY PEOPLE OBEY THE LAW* (1990 (“...people...evaluate laws and the decisions of legal authorities in normative terms, obeying the law if it is legitimate and moral and accepting decisions if they are fairly arrived at.”)). *But see* Fred C. Zacharias, *The Purposes of Lawyer Discipline*, 45 WM. & MARY L. REV. 675, 691 (2003) (“...lawyers are most likely to behave a certain way according to whether they will be punished at all. For lawyers, the key is the damage to reputation and peer admiration that any discipline will produce. Thus, a lawyer’s sense that particular conduct will not result in discipline may encourage him to violate the codes...”).

230. *See* MCADAMS, *supra* note 229; May, *supra* note 229.

231. *See* STILL BROKEN, *supra* note 6; Alper, *supra* note 6; Kelson, *Violence in the Legal Profession*, *supra* note 6.

232. *See supra* Part III.

233. *See id.*

234. Given that I found so few cases regarding client sexual violence against attorneys, this is certainly true. *See supra* notes 5, 9, and accompanying text.

235. The female public defenders and law clerks requested a different configuration of meeting rooms to disallow physical touching by detainees of attorneys, no windows accessible to detainees (who may engage in public masturbation) visible to attorneys entering the jail, and the use of a special jumpsuit

client sexual violence against attorneys is much larger than what the Cook County public defenders and I experienced, and this Part of the Article provides ideas for broadly addressing the epidemic of client sexual violence against attorneys. First, Section A discusses the need to create greater awareness about the epidemic of client sexual violence against attorneys. Section B then focuses on proposed amendments to the rules of professional conduct that center the needs, concerns, and experiences of attorneys harmed by client sexual violence.

A. *Greater Awareness*

The legal profession must address client sexual violence and its associated trauma. Additionally, the profession needs to move beyond reliance on carceral punishment, which ultimately perpetuates sexual violence.²³⁶ Without greater awareness and public acknowledgement of the problem of client sexual violence against attorneys, there is likely to be no change to the conditions that allowed for the violence to take place, which makes the prevention of future client sexual violence exceedingly difficult.²³⁷

In other countries, such as France, there are hotlines for attorneys to report sexual harassment against attorneys.²³⁸ State bar associations in the U.S. could set up similar hotlines. In addition, perhaps the ABA could house such a hotline, or at the very least, encourage attorneys experiencing client sexual violence to report to ethics hotlines already in place in many states.²³⁹ While the reports of sexual violence to the hotline would remain confidential, establishing the hotline and advertising the hotline to members of the bar would be, in and of itself, a

for detainees that zips up the back and does not allow for exposure of the genitals. *See supra* note 122 and accompanying text.

236. *See supra* Section II.C.

237. *See, e.g.,* Gillian R. Chadwick, *Time's Up for Attorney-Client Sexual Violence*, 22 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 76, 81–82 (2022) (discussing problems created by low reporting of incidents attorney sexual misconduct); Philip Bogdanoff, *Me Too: Eliminating Sexual Bias and Harassment at Your Law Firm*, 33 ME. B.J. 22, 23–24 (2018) (discussing problems created by low reporting of sexual harassment in the legal profession); Malinda L. Seymore, *Attorney-Client Sex: A Feminist Critique of the Absence of Regulation*, 15 YALE J.L. & FEMINISM 175, 187 (2003) (discussing the underreporting of sexual violence in the legal profession as a major issue that leads to the status quo being unchallenged).

238. *See Harassment and Discrimination Commission (COMHADIS)*, PARIS BAR, <https://www.avocatparis.org/services-de-l-ordre/commission-harcelement-et-discrimination-comhadis> [<https://perma.cc/ZR5F-3V5H>]. *See also* Rebecca Rosman, *A Proudly Feminist Lawyer Takes a Lead Role Fighting Sexual Violence in France*, WASH. POST (Mar. 12, 2021), https://www.washingtonpost.com/world/a-proudly-feminist-lawyer-takes-a-lead-role-fighting-sexual-violence-in-france/2021/03/12/f433c916-8102-11eb-9ca6-54e187ee4939_story.html [<https://perma.cc/5J5V-LAEU>].

239. Many state bar associations or disciplinary counsel offices have ethics hotlines for lawyers who have questions about the ethics of their own prospective conduct. The ABA Center for Professional Responsibility keeps a list of state ethics hotlines. *See Additional Legal Ethics and Professional Responsibility Resources*, A.B.A.: CTR. FOR PRO. RESP., https://www.americanbar.org/groups/professional_responsibility/resources/links_of_interest/ [<https://perma.cc/2QSK-YMQ9>].

way of creating greater awareness around the epidemic of sexual violence in the legal profession.

The legal profession should initiate a robust public conversation on this topic. Trainings for the legal profession should be provided to discuss personal safety plans,²⁴⁰ workplace protection orders,²⁴¹ and other resources available for lawyers at risk.²⁴² These trainings could help rebut the common misconception that attorneys always have the choice—and the power—to prevent sexual violence before it occurs. The ABA and state bar associations should consider publishing articles on client sexual violence in bar journals and hosting presentations on the topic at annual meetings and conferences.

B. Proposed Amendments to the Ethical Rules

The ethical rules in the U.S. should be reworked to center the needs, concerns and experiences of attorneys being harmed by client sexual violence. The proposals included here focus on the ABA Model Rules of Professional Conduct,²⁴³ however, some state rules are also discussed.

Courts at times often allow attorneys to withdraw from cases where clients have physically assaulted attorneys and even find that defendants who assault their attorneys have forfeited their right to counsel in criminal cases.²⁴⁴ However, courts do not always allow attorneys to withdraw, even after the client commits physical violence against their attorney.²⁴⁵ And it is unclear whether most courts would take sexual violence against attorneys, especially violence that does not involve physical contact, such as indecent exposure and public masturbation, as seriously for the purposes of deciding whether or not to let an attorney withdraw.

240. See, e.g., Lorelai Laird, *The job is killing them: Family lawyers experience threats, violence*, A.B.A. J. (Sept. 1, 2018), https://www.abajournal.com/magazine/article/the_job_is_killing_them_family_lawyers_experience_threats_violence/ [https://perma.cc/F5BJ-BETN].

241. *Workplace Restraining Orders*, WOMENSLAW.ORG, <https://www.womenslaw.org/about-abuse/workplace/workplace-restraining-orders-filed-employers> [https://perma.cc/CXV5-LR6T].

242. See, e.g., *After Sexual Assault*, RAINN, <https://rainn.org/after-sexual-assault> [https://perma.cc/SP33-R7KL] (provides all sorts of guidance on what to do after a sexual assault, including receiving medical attention, reporting to law enforcement, safety planning and more); *Help for Workers Facing Sex Discrimination and Harassment*, NAT'L WOMEN'S LAW CTR., <https://nwlc.org/help-for-workers-facing-sex-discrimination-and-harassment/> [https://perma.cc/4QMA-8FT3] (connecting people facing sex harassment or sex discrimination to attorneys and even paying some legal fees); LAWYERS CONCERNED FOR LAWYERS, <https://mnlcl.org/> [https://perma.cc/X5LU-M79A] (provides support to lawyers, judges, law students, other legal professionals and their immediate family members on any issue that causes stress or distress); A.B.A., WELLBEING TOOLKIT FOR LAWYERS AND LEGAL EMPLOYERS (2018), https://mnlcl.org/wp-content/uploads/2020/10/lis_colap_well-being_toolkit_for_lawyers_legal_employers.authcheckdam.pdf.

243. As noted elsewhere, the Model Rules guide the development and adoption of the state rules of professional conduct. See, e.g., Bartlett, *supra* note 15 at 568. Therefore, changes made to the Model Rules should trickle down to many of the state rules. See *id.*

244. See *supra* note 133 and accompanying text.

245. See *id.*

Therefore, specifically allowing disclosures of client sexual violence against attorneys would be a good first step.

To support attorneys wishing to withdraw after an incident of client sexual violence, the courts (and the ethical rules) need to take sexual violence just as seriously as other types of violence and the credibility of survivors should not to be constantly questioned. An attorney should be allowed to exit the attorney-client relationship because of client sexual violence if they choose to. A comment in the ethical rules indicating that the attorney's disclosure of client sexual violence is sufficient evidence in cases of withdrawal would go far in avoiding credibility problems. Further, this would center the needs of the attorney harmed, giving the attorney the opportunity to define the harm, and allowing the attorney to feel heard and validated.²⁴⁶ Creating greater awareness about client sexual violence against attorneys will also hopefully make courts and bar associations realize the blame and burden of preventing sexual violence should never be placed on the survivor.

An additional idea that would not require amending the ethical rules would be to include in the initial retainer agreement a client's consent to disclose any sexual violence they commit against their attorney.²⁴⁷ Perhaps the consent given in the retainer agreement could be limited to disclosure in a motion to withdraw from legal representation. Providing for consent to disclosure of client sexual violence in the retainer agreement would be one way around confidentiality rules in states with strict limits on disclosure.

It is difficult to propose helpful amendments to Model 1.8(j). Adding a clear definition of 'sexual relations' which explicitly carves out an exception for sexual violence by a client against an attorney may be best.²⁴⁸ For example, 'sexual violence' could be defined in the ethical rules using the Department of Justice's definition cited above.²⁴⁹ Most important here would be adding a comment to Model Rule 1.8 explicitly stating that client sexual violence against attorneys does not violate this rule.

246. This would align with restorative justice practices, which focus on "harm rather than crime, allowing victims to define the harm done to them, requiring offenders to acknowledge the harm, and bringing victims, offenders, and their supporters together to craft a plan that holds offenders accountable for and addresses the harm." Goodmark, *supra* note 28, at 94. This approach would also align with trauma-informed lawyering practices. See Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 382-93 (2016) (discussing foundational hallmarks of trauma-informed lawyering: (1) identifying trauma; (2) adjusting the attorney-client relationship; (3) adapting litigation strategy; and (4) preventing vicarious trauma).

247. Thank you to Professor Jodi Wilson at the University of Memphis Cecil C. Humphreys School of Law for this idea.

248. I was tempted to argue that the best proposed amendment would be to remove Rule 1.8(j) altogether. The problem of attorneys preying on clients for sex could be dealt with under the conflicts of interest rules and with the addition of Rule 8.4(g) prohibiting sexual harassment. However, I realize that there is a lot more to consider in removing Rule 1.8(j), including what taking out that rule would communicate to clients who have experienced sexual violence committed by attorneys.

249. See DOJ, *supra* note 5.

Ohio and Pennsylvania should also consider eliminating their rules that require attorneys to “keep the attorney-client relationship professional.”²⁵⁰ Ohio and Pennsylvania should consider issuing ethics opinions acknowledging that client sexual violence against attorneys is an epidemic. In addition, they should consider issuing guidance to attorneys who have experienced client sexual violence regarding confidentiality, concurrent conflicts of interest, and withdrawal, in line with the suggestions made above.

The ethical rules governing concurrent conflicts of interest should be amended to eliminate requirements that compel lawyers to maintain communication with a client after withdrawing due to client violence.²⁵¹ An added comment to ABA Model Rule 1.16 could state that when the attorney is withdrawing for the reason of client violence, the attorney does not have to make direct contact with the former client. Instead, the attorney should just have to ensure that the steps laid out in ABA Model Rule 1.16(d) are completed, either by staff, another attorney or otherwise. However, many states do not adopt the model comments,²⁵² nor are the comments to the model rules meant to be enforceable.²⁵³

To address the need for public disclosure of client sexual violence against attorneys, an exception should be added to Model Rule 1.6(b) to allow for disclosure of information to the extent the attorney reasonably believes necessary to prevent violence, specifically including sexual violence to an attorney or judge.²⁵⁴ This change would run parallel with the rule in Washington State, allowing for the disclosure of information related to threats to judges.²⁵⁵ If states would like to go further and consider allowing broader disclosures, Georgia’s Rule 1.6, which allows disclosure to avoid or prevent harm to another as a result of client criminal conduct clearly in violation of the law, is a good model.²⁵⁶ As demonstrated by the recent ABA ethics opinions, many courts take physical client violence—and threats of physical violence—against attorneys and judges

250. See *Porter*, *supra* note 31; PHILA. BAR ASS’N, *supra* note 165.

251. See *id.*

252. See, e.g., Lucian T. Pera, *Grading ABA Leadership on Legal Ethics Leadership: State Adoption of the Revised ABA Model Rules of Professional Conduct*, 30 OKLA. CITY U.L. REV. 637, 645 (2005) (“Of the twenty-four states that have thus far completed their Ethics 2000 review, seven state supreme courts (Louisiana, Montana, Minnesota, Nevada, New Jersey, Oregon, and South Dakota) did not adopt the Comments to the ABA Model Rules.”).

253. See MODEL RULES OF PRO. CONDUCT, Scope [14] (“Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.”). See also Ted Schneyer, *The Ali’s Restatement and the ABA’s Model Rules: Rivals or Complements*, 46 OKLA. L. REV. 25, 30 (1993).

254. See, e.g., Sarah Buel & Margaret Drew, *Do Ask and Do Tell: Rethinking the Lawyer’s Duty to Warn in Domestic Violence Cases*, 75 U. CIN. L. REV. 447, 454-55 (2006) (proposing an expansion of exceptions to Model Rule 1.6 for warning potential victims of domestic violence); Anne L. McBride, *Deadly Confidentiality: AIDS and Rule 1.6(b)*, 4 GEO. J. LEGAL ETHICS 435, 436 (1990) (proposing an exception for lawyers to disclose the risk of disease infection).

255. See *Hansen*, *supra* note 202.

256. GA. R. PRO. CONDUCT r. 1.6 (2025).

seriously,²⁵⁷ therefore, this exception should be a welcome addition to the Model Rules.

These ideas are just the beginning. There is much to do to build a sexual-violence-free legal profession. First, we must start dreaming of a sexual-violence-free legal profession and devising ways of making it a reality.²⁵⁸ Second, the legal profession should be supporting attorneys harmed by client sexual violence instead of covering up the harm and trauma associated with sexual violence. To do that, I hope this Article helps generate public conversations about this problem and potential amendments to the ethical rules to center the needs of attorneys harmed by client sexual violence.

CONCLUSION

This Article draws on a fifty-state survey of U.S. ethical rules and my own personal experiences to provide recommendations to address the understudied epidemic of client sexual violence against attorneys. For hundreds of years, U.S. law has refused to recognize most forms of sexual violence against women and the systems of ethical regulation of attorneys have been no different. The gender stereotypes corseting the ethical rules have led to a refusal to recognize, let alone address, client sexual violence against attorneys. That refusal has been, at least in part, because women, queer attorneys, and persons of color, who experience the majority of client sexual violence, were historically excluded from the processes through which the ethical rules were made, interpreted, and enforced. The Cook County hostile work environment case brought by courageous female public defenders and law clerks represents a dramatic shift in U.S. law, towards

257. See STANDARDS, *supra* note 219. In addition, the federal penal code makes it a crime to “assault[t], kidnap, or murder or threatens to assault, kidnap or murder a member of the immediate family of a United States official, a United States judge, a Federal law enforcement officer...” 18 U.S.C. § 115(a)(1)(A). See also *The Disturbing Trend of Threats and Violence Against Judges and the Vital Importance of Judicial Security*, Statement by New York Bar Association President Susan J. Kohlmann, NY. CITY BAR (Jun. 23, 2022), <https://www.nycbar.org/blogs/the-disturbing-trend-of-threats-and-violence-against-judges-and-the-vital-importance-of-judicial-security/> [<https://perma.cc/99TH-VC9K>]; Robert J. Derocher, *A matter of life or death: Bar associations respond to recent attacks on lawyers, judges*, A.B.A., CTR. FOR BAR LEADERSHIP (May-Jun. 2013), https://www.americanbar.org/groups/bar-leadership/publications/bar_leader/2012_13/may_june/matter_life_death_bar_associations_respond_recent_attacks_lawyers_judges/ [<https://perma.cc/L6ER-6MP6>]. The nationwide attention given to the case of the sheriff shooting the judge in Letcher County, Kentucky, also helps demonstrates a broader concern by the general public about violence against the legal profession. See, e.g., Frank Langfitt, *Why was a Kentucky judge killed? So far, it remains a mystery*, NPR (Oct. 12, 2024), <https://www.npr.org/2024/10/11/nx-s1-5138357/kentucky-sheriff-judge-shooting-stines-mullins-courthouse-letcher-daughter-murder-killing> [<https://perma.cc/7DCE-57C5>]. As does Chief Justice Roberts’ 2024 Year-End Report, in which he notes “...there has been a significant uptick in identified threats at all levels of the judiciary...the volume of hostile threats and communications directed at judges has more than tripled over the past decade.” Justice Roberts went on to detail murders of judges and their family members over the last several decades. See *Chief Justice Roberts Issues 2024 Year-End Report*, U.S. SUP. CT. (Dec. 2024), <https://www.supremecourt.gov/publicinfo/year-end/2024year-endreport.pdf>.

258. ROBIN D.G. KELLEY, *FREEDOM DREAMS* xii (2002) (“we must tap the well of our own collective imaginations, that we do what earlier generations have done: dream.”).

recognizing client sexual violence against attorneys as sex discrimination worthy of a remedy under the law. While that is a step in the right direction, greater attention should be paid to this issue and to how the current ethical rules hinder the effective practice of law.

I share my own experiences here to help demonstrate how sexual violence is directed at women practicing law, as well as some of the ethical dilemmas attorneys encounter in the aftermath of client sexual violence against attorneys. Unanswered ethical questions, such as whether an attorney can report client sexual violence and to whom, and whether withdrawal from representation is allowed, limit an attorney's options greatly in the aftermath of sexual violence. It is past time for the legal profession to recognize that attorneys must deal with client sexual violence, and the ethical rules should no longer skirt around this issue. Amendments are needed to center the concerns and experiences of attorneys harmed by client sexual violence and to prevent future trauma and other harms.