



## ABA ban on Sexual Harassment in Law and at Law Firms

Rule 8.4: Misconduct. It is professional misconduct for a lawyer to:

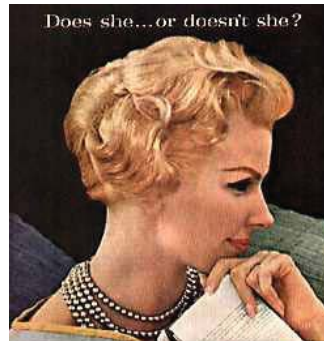
...

(g) ENGAGE IN CONDUCT THAT THE LAWYER KNOWS OR REASONABLY SHOULD KNOW IS [sexual] HARASSMENT OR DISCRIMINATION...

...

[3] Harassment includes [the usual] ...and other unwelcome verbal or physical conduct of a sexual nature in **conduct related to the practice of law ...**

[4] **Conduct related to the practice of law** includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law.



**... have a lawyer-client  
relationship**

Paterno v. NCAA, CCP Centre Co., 2013-2082, 8.12.16, Sr. J. Leete



PSU Bd. Of  
Trustees



PSU Special  
Investigative Task  
Force [SITF]

Freeh, Sporkin  
& Sullivan,  
LLP  
[Pepper  
Hamilton]

PSU Bd. Of  
Trustees



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Freeh, Sporkin &  
Sullivan, LLP  
[Pepper  
Hamilton]



...Trustees, on behalf of the SITF has **engaged us to represent the SITF...**

[as] independent, external legal **counsel to the SITF**; [Provide] a written report to the SITF and other parties as so directed by the SITF...

[and] recommendations to the SITF and Trustees ....

FSS will act under the **sole direction of the SITF**

Legal **services for the SITF' s benefit**, for which the Trustees will be billed.

...our engagement is **solely related to the SITF** established by the Trustees.... **Not** ...any individuals or entities not named as clients ....

PSU Bd. Of Trustees



PSU Special Investigative Task Force (SITF)

Freeh, Sporkin & Sullivan, LLP  
[Pepper Hamilton]



## Attorney-Client Privilege

**The SITF was not merely an entity standing in the stead of Penn State...although conceived and initiated by the Board of Trustees, had autonomy....**

**PSU has no standing to assert attorney-client privilege as to communication between SITF and FSS.**

PSU Bd. Of Trustees



PSU Special Investigative Task Force (SITF)

Freeh, Sporkin & Sullivan, LLP  
[Pepper Hamilton]



## Waiver

**FSS attorneys communicated with the Trustees, the SITF, and attorneys for Penn State. Since Penn State was not a client of FSS... no privilege attaches to said communication and any confidential material disclosed ... has resulted in a waiver....**

PSU Bd. Of Trustees



PSU Special Investigative Task Force (STIF)

Freeh, Sporkin & Sullivan, LLP  
[Pepper Hamilton]



## Work Product

**FSS work product is not relevant to the subject matter of Plaintiffs' claims, and thus... not discoverable [so long as not shared with the Defendants]**



**... have a lawyer-client relationship with her President?**

Comm. V. Spanier, 2016 PA Super 14, 1.22.2016  
<http://www.pacourts.us/assets/files/setting-4310/file-4932.pdf?cb=b97324>



**GRAND JURY TESTIMONY:**

**..., she responded that the majority of information that he supplied was false.**

**...“...he is—that he is not a person of integrity. He lied to me.” Id. at 70. ...**

**“I can’t get inside his mind, but the fact is that there is no doubt that he lied to me. I can’t think of any reason, other reason for lying than trying to hide it from me.” Id.**



**... communications between a putative client and corporate counsel are generally privileged *prior* to counsel informing the individual of the distinction between representing the individual as an agent of the corporation and representing the person in his or her personal capacity.**



**Although Spanier *knew* Ms. Baldwin was general counsel for Penn State, this knowledge does not ipso facto result in Spanier *understanding* that she represented him solely in an agency capacity before the grand jury.**



...communications between [the GC and president] may be personally privileged... [especially where] **...not general business matters** related to the ...University....

..., the communications ...concerned the rights and responsibilities of Spanier relative to appearing before a grand jury and **not** Penn State's corporate rights.

... an attorney-client relationship existed between Spanier and Ms. Baldwin before and during his grand jury testimony, thereby giving rise to an attorney-client privilege. ... **rendering her incompetent to testify.**



## **OBSTREPEROSITY:**

the short course for  
Higher Ed Lawyers



Are you

1. The lawyer whose conduct is in question?
2. The opponent complainer?
3. A Judge?
4. A client in desperate need of legal help?





Obstreperosity  
At its Worst



Obstreperosity  
At its Best



Tianamen Square, Beijing, 1989

**As trial ends, surreal scene  
leaves defense lawyer  
stunned with Taser, tackled  
by U.S. Marshals**



Lawyer denies brandishing his gun  
during a deposition;  
court reporter kept typing in tense situation

10.6.16

***"I always carry a gun because I'm an  
attorney and people don't like me."***

[http://www.abajournal.com/news/article/motion\\_claims\\_lawyer\\_pulled\\_out\\_a\\_gun\\_during\\_deposition\\_court\\_reporter\\_cont](http://www.abajournal.com/news/article/motion_claims_lawyer_pulled_out_a_gun_during_deposition_court_reporter_cont)



D: Did you just call me a **dipshit**?”

P: “Yes. Dipshit. Yes.

Def.Lawyer: This depo is over.

...

D: You called me a dipshit, **mother f\*\*\*er**.

P: Yeah. You’re a **dipshit, f\*\*\*er**

...

P: **F\*\*k** you.

...

**P: Are you ready for it?**

...

**D: I’m ready all day long.**

***DL: No good—no good can come from this.***



D: He’s got a gun in his back pocket. The mother f\*\*\*er comes to a deposition with a gun.

P: I have a CCW [concealed carry weapon] dumbass.

D: I don’t give a f\*\*\*k about a CCW. I’ll own your fucking ass.

