

**From:** Del Ciampo, Joseph  
**Sent:** Monday, February 1, 2021 8:14 AM  
**To:** Del Ciampo, Joseph  
**Subject:** Report on Working Group; RC ID # 2020-012-Proposal to amend Rule 8.4 of the Rules of Professional Conduct regarding Harassing or Discriminatory Conduct

Dear Justice McDonald and Judges,

*At its previous meeting on January 11, the Committee instructed Counsel to facilitate a working group to review the proposal concerning Rule 8.4, to include Statewide Grievance Counsel Michael Bowler; Chief Disciplinary Counsel Brian Staines; Attorney Cecil Thomas, President of the Connecticut Bar Association; Attorney Marcy Stovall, of the Connecticut Bar Association Standing Committee on Professional Ethics; and staff from the Legal Services Office. We arranged a meeting to take place on Wednesday, January 27 via Microsoft Teams. Attorneys Bowler, Staines, Thomas, Stovall, Del Ciampo and O'Donnell were present at the meeting. The concerns raised by the Statewide Grievance Committee in the comment letter that they previously submitted by email on December 29, identified in the materials as RC ID # 2020-012 ff were discussed. The following is a report of that discussion and the outcomes of the meeting:*

While Attorney Bowler expressed that SGC neither supported nor rejected the proposal, and that he was not in a position to suggest language that might address the concerns that SGC had regarding the proposal, specifically that the proposed language failed to provide adequate guidance to members of the bar as to what conduct would be prohibited and failed to provide adequate guidance to the bar regulators to allow them to easily enforce the rule. He expressed the position of SGC that the current Rule 8.4 (4) and the broad array of case law interpreting and extending it were sufficient to address the type of conduct contemplated by the new proposal, and already served as a catch-all provision. He and Attorney Staines provided several examples of actual cases where Rule 8.4 (4) was used to discipline attorneys for conduct not specifically related to the representation of a client, and Attorney Bowler reiterated that the courts have long looked past the Commentary to Rule 8.4 which would appear to limit the scope of Rule 8.4 (4). He also pointed to this interpretation by the courts as part of the reason while definitions would need to be in the body of the rule rather than the commentary.

Both Attorney Stovall and Attorney Thomas outlined their position that the new language would cover conduct that did not seem to be within the auspices of the existing Rule 8.4 (4). Attorney Stovall also outlined her position that the Rules, rather than to merely outline prohibited conduct as a means to discipline attorney, were aspirational in nature and should set ethical guideposts. They also both expressed a belief that the language of their proposal was already much more specific than the existing rule in terms of definitions and incorporating substantive law.

After an extensive, productive discussion, Counsel indicated that he would report back to the Rules Committee regarding the outcome of the meeting.

On January 29, 2021, Attorney Thomas informed the working group that the CBA we would not be revising the CBA proposal (2020-012c) at the present time but looks forward to the opportunity to discuss the proposal with the Rules Committee at its February meeting. (See correspondence from Attorney Thomas in list of materials.)

Thank you.

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