O'Donnell, Shanna

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Sent:	Wednesday, December 2, 2020 2:21 PM
To:	Rules Committee
Subject:	Comments on Proposal to Amend Rule 8.4 of the Rules of Professional Conduct
Attachments:	Letter to Justice McDonald.docx
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Attached please find my submission requesting you reject this proposed rule change. Thank you for your consideration.

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December 2, 2020

(Via email to RulesCommittee@jud.ct.gov)
Honorable Andrew J. McDonald Connecticut Supreme Court
Chair, Superior Court Rules Committee
231 Capital Avenue
Hartford, CT 06106

Re: My Objections to The Proposal to Amend Rule 8.4 of the Connecticut Rules of Professional Conduct

Dear Justice McDonald,

I am writing in my personal capacity to object to the proposed amendment to Rule 8.4 of the Connecticut Rules of Professional Conduct that would define discrimination, harassment and sexual harassment as professional misconduct. Though I am a member of CBA, CCDLA, CTLA and many other out of state and national professional bar associations; this is, as I said above, in my personal professional capacity and not on behalf of any organization that may or may not agree with my views on this matter or any other members of my firm. I have been a lawyer since 1992 and, with one small interlude of 3 years, I have practiced exclusively in the areas of criminal defense and civil rights.

No reasonable person can disagree with the premise that discrimination, harassment, and sexual harassment are bad things. They are, for the most part, illegal under criminal and civil statutes. My objection to the proposed rule change is that it is not needed nor it is a problem in the practice of law generally and certainly not in the State of Connecticut. The proposed rule is overly broad and poorly composed. This is evidenced by the fact it would be by far the longest subsection of Rule 8.4, and has so many exceptions and explanations in the rule itself and the commentary that it will be difficult to ascertain what is misconduct and it will create needless and possibly endless grievance procedures to enforce, and ultimately define, misconduct under this rule. The exceptions and definitions are so confusing they even seem to include and exclude Title VII violations at the same time.

Another major problem is the use of "reasonably should know" that "conduct", which includes words, is discrimination or harassment. That is a concept that is constantly in transition. For example, even though it is a legally correct definition codified in statute and regulation,

people have sincere beliefs that using the term "illegal alien" is discriminatory, racist and harassment. Even though I am the son of a long time permanent resident alien and now naturalized citizen from Guatemala; I myself have used the term on many occasions cross examining witnesses at trial and in questioning potential jurors during Voir Dire. That is just one example of many problems this rule can create. Some other examples:

1. A lawyer supports the BDS movement against the government of Israel.
2. A lawyer supports building a wall at the international border and displays a "Build the Wall" sign at his or her law firm.
3. A lawyer cross examines a witness in a criminal trial over the use of aliases that contain racist epithets, as is not uncommon in criminal trials. Even if you feel that is clearly excluded, the lawyer discuses with his employees or associates the wisdom of and/or method to so cross examine.
4. A lawyer believes the breakdown of the nuclear family has had a negative impact on society and believes laws should be formulated to address those concerns.
5. A lawyer believes Justice Kavanaugh's accusers are liars and says as much.
6. People who hold all kinds of views critical of military service (the examples are endless).

I do not necessarily believe this proposed rule as is per se in violation of the First Amendment. Parts are, but certainly not the totality of it or in its intent. It clearly encompasses conduct that is not protected by the First Amendment. Others disagree and think this proposed rule is on its face unconstitutional. But either way, to think there won't be challenges based on its language and lengthy explanations that both expand and contract the definition by persons who in good faith believe it is a per se violation of the First Amendment would be naïve. There is no doubt people will in good faith file complaints against lawyers about conduct that is constitutionally protected. Some will do so in bad faith, but that is always the case with every rule as to every profession. Local panels and many statewide panels will undoubtedly see this complex rule in different ways that will require litigation to resolve.

Thus, this will create needless litigation, complaints and administrative grievance proceedings for a problem that does not exist. Certainly, it is not a problem that is not already prohibited by the Rules, criminal statutes and/or regulations. I personally know lawyers that have been suspended and disbarred (as they should have been) for sexually harassing clients, lawyers who have been disciplined for harassment based on protected classes or just to be jerks for violating Rule 8.4(4), sued for Title VII violations, etc. I believe this is an attempt to look like we are addressing societies larger problems with a poorly composed rule, full of confusing and contradictory definitions and exceptions, that really address nothing that is not already addressed by existing rules and laws and will create needless expense to all concerned (enforcers, investigators and respondents to complaints). This is not needed and will also cause confusion.

This is turn undermines instead of enhances the practice of law and our profession. Therefor, I request you reject the proposed Amendment to Rule 8.4.

Thank you for your consideration of my submission. In the meantime, I remain

Sincerely,

J. Patten Brown, III, Esq.