

From: Phillips, James <jcphillips@chapman.edu>
Sent: Tuesday, November 10, 2020 12:31 PM
To: Rules Committee
Subject: Comment on Proposed Rule 8.4(7)

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Dear Connecticut Rules Committee of the Superior Court,

I write to comment on Connecticut Proposed Rule 8.4(7). I appreciate the thought and effort that has gone into this proposed rule. Certainly, discrimination and harassment have no place in our society and especially no place in a profession that seeks to uphold the rule of law.

Still, the rule, in its current form, is deeply problematic. Discrimination and harassment are vague concepts prone to the human psychological tendencies of confirmation bias and motivated reasoning. We have probably all said something that had absolutely no ill intent, but that was interpreted by another as offensive. Given this, discrimination and harassment need a higher standard than just “reasonably should know” since what is reasonable will be entirely in the eye of body passing judgement on the attorney.

Further, this rule sweeps very broadly, covering any “conduct related to the practice of law.” This could arguably include casual conversations between an attorney and a prospective client at a golf tournament, conversations between attorneys at a firm social event, or arguments an attorney needs to make on behalf of her client in court. Ours is a profession that needs to be able to grapple with society’s toughest issues. And a rule dealing with vague concepts, a low standard for violating the rule, and with such broad coverage that an attorney never knows when it applies and when it doesn’t will make the cure worse than the disease.

Finally, many firms seek to promote racial and gender diversity in their workforce. These efforts, however, would likely run afoul of the proposed rule, resulting in unintended discrimination or harassment against white males, for example.

For these reasons, I encourage the Committee to abandon the proposed rule in its current form.

Sincerely,

James Phillips

Assistant Professor of Law
Fowler School of Law
Chapman University