
From: The Lawyers Collaborative for Diversity <bnjlcd1@gmail.com>
Sent: Wednesday, October 21, 2020 5:16 PM
To: Rules Committee
Cc: director@lcd-ne.org; gina.mazzariello@boehringer-ingelheim.com
Subject: LCD Correspondence: Proposed Amended Connecticut Rule of Professional Conduct 8.4(7)
Attachments: CBAProposed Amended CT Rule of Professional Conduct 8.4_.pdf; LCD Correspondence_Proposed Amended CT Rule of Professional Conduct 8.4.pdf

Good evening,

Attached are comments on behalf of the Lawyers Collaborative for Diversity (“LCD”), in support of the adoption of the Connecticut Bar Association's ("CBA") proposed amendment to Rule 8.4 of the Connecticut Rules of Professional Conduct that would define discrimination, harassment and sexual harassment as professional misconduct

Please contact me with any questions,

Brittany

BRITTANY N. JAMES | PROGRAM MANAGER
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Sent Via Email to (RulesCommittee@jud.ct.gov)

October 21, 2020

Honorable Andrew J. McDonald
Connecticut Supreme Court
Chair, Superior Court Rules Committee
231 Capital Avenue
Hartford, CT 06106

Re: Proposal to Amend Rule 8.4 of the Connecticut Rules of Professional Conduct to define discrimination, harassment and sexual harassment in conduct related to the practice of law as professional misconduct

Dear Justice McDonald,

I write on behalf of the Lawyers Collaborative for Diversity (“LCD”) to urge the adoption of 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.

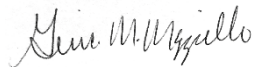
LCD is a Connecticut non-profit organization whose membership includes the State’s leading corporations, law firms, public sector entities, law schools and affinity bar associations. Our mission is to increase the recruitment, retention and promotion of lawyers of color and other diverse individuals in the state of CT. Discrimination and/or harassment of individuals on the basis of any protected class status in the practice of law runs directly counter to this mission and in any event should never be tolerated.

We have reviewed the CBA’s Proposed Amended Rule 8.4(7) and Amended Commentary, as conveyed to this committee in the CBA’s correspondence dated September 11, 2020 (copy enclosed). In our view, these amendments reflect an appropriate standard of ethical conduct in the practice of law in Connecticut and, indeed, represent a very basic standard that makes utmost sense. Having been approved by a substantial majority of the CBA House of Delegates at a special meeting held on September 10, 2020, the amendments are the ultimate result of extensive deliberative process involving several CBA committees and constituents.

The LCD Board of Directors voted unanimously to lend our support to this effort and we therefore strongly urge the Rules Committee to adopt Proposed Amended Rule 8.4(7) and the Amended Commentary, without delay. Should Your Honor or other members of the Rules Committee have any related questions for us, we would be happy to provide additional information.

Thank you for your consideration.

Respectfully submitted,



Gina M. Mazzariello
2020-21 President
Lawyers Collaborative for Diversity

Enclosure

cc: Joelle A. Murchison (via email)

Proposed Amendment of Connecticut Rule 8.4 and Official Commentary, showing variations from current Rule 8.4 and related Commentary (additions to current version underlined; [deletions from current version in brackets])

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

- (1) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- 2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (4) Engage in conduct that is prejudicial to the administration of justice;
- (5) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; [or]
- (6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law[.]; or

(7) Engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, color, ancestry, sex, pregnancy, religion, national origin, ethnicity, disability, status as a veteran, age, sexual orientation, gender identity, gender expression or marital status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation, or to provide advice, assistance or advocacy consistent with these Rules.

Official Commentary:

Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Subdivision (1), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of wilful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, which have no specific connection to fitness for the practice of law. Although a lawyer is personally

answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation. Counseling or assisting a client with regard to conduct expressly permitted under Connecticut law is not conduct that reflects adversely on a lawyer's fitness notwithstanding any conflict with federal or other law. Nothing in this commentary shall be construed to provide a defense to a presentment filed pursuant to Practice Book Section 2-41.

[A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates subdivision (4) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate subdivision (4). A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists.]

Discrimination and harassment in the practice of law undermine confidence in the legal profession and the legal system. Discrimination includes harmful verbal or physical conduct directed at an individual or individuals that manifests bias or prejudice on the basis of one or more of the protected categories. Not all conduct that involves consideration of these characteristics manifests bias or prejudice: there may be a legitimate nondiscriminatory basis for the conduct.

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.

The substantive law of antidiscrimination and antiharassment statutes and case law should guide application of paragraph (7), where applicable. Where the conduct in question is subject to federal or state antidiscrimination or antiharassment law, a lawyer's conduct does not violate paragraph (7) when the conduct does not violate such law. Moreover, an administrative or judicial finding of a violation of state or federal antidiscrimination or antiharassment laws does not alone establish a violation of paragraph (7).

A lawyer's conduct does not violate paragraph (7) when the conduct in question is protected under the First Amendment of the Constitution of the United States or Article First, Section 4 of the Connecticut Constitution.

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 professional activities or events in connection with the practice of law. Lawyers may engage in

conduct undertaken to promote diversity, equity and inclusion without violating this Rule by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations.

A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of paragraph (7). Moreover, no disciplinary violation may be found where a lawyer exercises a peremptory challenge on a basis that is permitted under substantive law. A lawyer does not violate paragraph (7) by limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice to members of a particular segment of the population in accordance with these Rules and other law. A lawyer may charge and collect reasonable fees and expenses for a representation. Rule 1.5(a). Lawyers also should be mindful of their professional obligations under Rule 6.1 to provide legal services to those who are unable to pay, and their obligation under Rule 6.2 not to avoid appointments from a tribunal except for good cause. See Rule 6.2(1), (2) and (3). A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities. See Rule 1.2(b).

The provisions of Rule 1.2 (d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of a lawyer. The same is true of abuse of positions of private trust, such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

1 **September 11, 2020**

2
3 **Proposed Amendment of Connecticut Rule 8.4(7) and Official Commentary**
4 **(Showing differences between MPRC 8.4(g) and proposed Connecticut RPC 8.4(7)**
5 **(additions to MRPC 8.4(g) underlined;[deletions from MRPC 8.4(g) in brackets]),)**
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7 **Rule 8.4. Misconduct**

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9 It is professional misconduct for a lawyer to:

10 . . .

11
12 (7) Engage in conduct that the lawyer knows or reasonably should know is harassment or
13 discrimination on the basis of race, color, ancestry, sex, pregnancy, religion, national origin,
14 ethnicity, disability, status as a veteran, age, sexual orientation, gender identity, gender
15 expression or marital status [or socioeconomic status] in conduct related to the practice of law.
16 This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a
17 representation [in accordance with Rule 1.16. This paragraph does not preclude] or to provide
18 [legitimate] advice, assistance or advocacy consistent with these Rules.
19
20
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22 OFFICIAL COMMENTARY

23 . . .

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26 Discrimination and harassment[by lawyers in violation of paragraph (g)] in the practice of law
27 undermine confidence in the legal profession and the legal system. [Such d]Discrimination
28 includes harmful verbal or physical conduct directed at an individual or individuals that
29 manifests bias or prejudice [toward others] on the basis of one or more of the protected
30 categories. Not all conduct that involves consideration of these characteristics manifests bias or
31 prejudice: there may be a legitimate nondiscriminatory basis for the conduct.
32

33 Harassment includes [sexual harassment and] severe or pervasive derogatory or demeaning
34 verbal or physical conduct. [Sexual h]Harassment [on the basis of sex] includes unwelcome
35 sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a
36 sexual nature.
37

38 The substantive law of antidiscrimination and antiharassment statutes and case law [may] should
39 guide application of paragraph (7), where applicable. Where the conduct in question is subject to
40 federal or state antidiscrimination or antiharassment law, a lawyer's conduct does not violate
41 paragraph (7) when the conduct does not violate such law. Moreover, an administrative or
42 judicial finding of a violation of state or federal antidiscrimination or antiharassment laws does
43 not alone establish a violation of paragraph (7).
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45 A lawyer's conduct does not violate paragraph (7) when the conduct in question is protected
46 under the First Amendment of the Constitution of the United States or Article First, Section 4 of
47 the Connecticut Constitution.

48
49 Conduct related to the practice of law includes representing clients; interacting with witnesses,
50 coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or
51 managing a law firm or law practice; and participating in bar association, business or [social]
52 professional activities or events in connection with the practice of law. Lawyers may engage in
53 conduct undertaken to promote diversity, equity and inclusion without violating this Rule by, for
54 example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse
55 employees or sponsoring diverse law student organizations.

56
57 A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does
58 not alone establish a violation of paragraph (7). Moreover, no disciplinary violation may be
59 found where a lawyer exercises a peremptory challenge on a basis that is permitted under
60 substantive law. A lawyer does not violate paragraph (7) by limiting the scope or subject matter
61 of the lawyer's practice or by limiting the lawyer's practice to members of [underserved] a
62 particular segment of the population[s] in accordance with these Rules and other law. A lawyer
63 may charge and collect reasonable fees and expenses for a representation. Rule 1.5(a). Lawyers
64 also should be mindful of their professional obligations under Rule 6.1 to provide legal services
65 to those who are unable to pay, and their obligation under Rule 6.2 not to avoid appointments
66 from a tribunal except for good cause. *See* Rule 6.2(1), (2) and (3). A lawyer's representation of
67 a client does not constitute an endorsement by the lawyer of the client's views or activities. *See*
68 Rule 1.2(b).