

IN THE SUPREME COURT OF PENNSYLVANIA

IN RE: : No. 213
:
AMENDMENT OF RULE 8.4 OF THE : DISCIPLINARY RULES
PENNSYLVANIA RULES OF :
PROFESSIONAL CONDUCT : DOCKET

ORDER

PER CURIAM

AND NOW, this 26th day of July, 2021, upon the recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania, the proposal having been submitted without publication in the interests of justice and efficient administration pursuant to Pa.R.J.A. No. 103(a)(3):

IT IS ORDERED pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Rule 8.4 of the Rules of Professional Conduct is amended in the attached form.

This **ORDER** shall be processed in accordance with Pa.R.J.A. No. 103(a), and shall be effective in 30 days.

Additions to the rules are in bold and are underlined.

Deletions from the rules are shown in bold and brackets.

Justice Mundy files a dissenting statement.

A True Copy Patricia Nicola
As Of 07/26/2021

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

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DISSENTING STATEMENT

JUSTICE MUNDY

JULY 26, 2021

I dissent from the adoption of Rule of Professional Conduct 8.4(g) in its current form and scope. In my view, the proposed amendments fail to cure the Rule's unconstitutional nature as articulated by Judge Kenney in *Greenberg v. Haggerty*, 491 F.Supp.3d 12 (E.D. Pa. 2020).

PENNSYLVANIA RULES OF PROFESSIONAL CONDUCT

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

* * *

(g) in the practice of law, **knowingly engage in [by words or] conduct constituting [knowingly manifest bias or prejudice, or engage in] harassment or discrimination[, as those terms are defined in applicable federal, state or local statutes or ordinances, including but not limited to bias, prejudice, harassment or discrimination]** based upon race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude advice or advocacy consistent with these Rules.

Explanatory Comment:

* * *

[3] For the purposes of paragraph (g), conduct in the practice of law includes [participation in activities that are required for a lawyer to practice law, including but not limited to continuing legal education seminars, bench bar conferences and bar association activities where legal education credits are offered] **(1) interacting with witnesses, coworkers, court personnel, lawyers, or others, while appearing in proceedings before a tribunal or in connection with the representation of a client; (2) operating or managing a law firm or law practice; or (3) participation in judicial boards, conferences, or committees; continuing legal education seminars; bench bar conferences; and bar association activities where legal education credits are offered. The term “the practice of law” does not include speeches, communications, debates, presentations, or publications given or published outside the contexts described in (1)-(3).**

[[4] The substantive law of antidiscrimination and anti-harassment statutes and case law guide application of paragraph (g) and clarify the scope of the prohibited conduct.]

[4] **“Harassment” means conduct that is intended to intimidate, denigrate or show hostility or aversion toward a person on any of the bases listed in**

paragraph (g). “Harassment” includes sexual harassment, which includes but is not limited to sexual advances, requests for sexual favors, and other conduct of a sexual nature that is unwelcome.

[5] “Discrimination” means conduct that a lawyer knows manifests an intention: to treat a person as inferior based on one or more of the characteristics listed in listed in paragraph (g); to disregard relevant considerations of individual characteristics or merit because of one or more of the listed characteristics; or to cause or attempt to cause interference with the fair administration of justice based on one or more of the listed characteristics.

[[5]] [6] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. 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.

[[6]] [7] 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 lawyers. 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.