



LOUISIANA DISTRICT ATTORNEYS ASSOCIATION

EXECUTIVE DIRECTOR
E. PETE ADAMS

August 31, 2017

Ms. Dona Kay Renegar
President
Louisiana State Bar Association
601 St. Charles Avenue
New Orleans, Louisiana 70130

RE: Proposed New Disciplinary Rule 8.4h

Dear President Renegar:

Please accept this letter as the Louisiana District Attorneys Association's formal opposition to the proposed changes to Disciplinary Rule 8.4, more specifically to the proposed new Rule 8.4h submitted on March 24, 2017.

While this proposed change is promoted as an anti-discrimination standard of professional conduct, it is in fact a vague, over-broad, and unconstitutional regulation of the practice of law. The proposed rule would prohibit lawyers from engaging in "conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, age, gender, sexual orientation, national origin, marital status, or disability".

Discrimination is defined as "recognition and understanding the difference between one thing and another". The practice of law is largely an exercise of discrimination between choices in varying circumstances. Lawyers are constantly called upon to discriminate between right and wrong. Illegal discrimination, however, occurs when the recognition and understanding of differences is based on a protected status and is acted upon. The proposed rule invites a questioning of a lawyer's motivation for each of a multitude of critical and tactical legal decisions made in an adversarial environment. The consequences would be clearly harmful to public confidence in the legal profession.

Much of the conduct intended to be prohibited by the proposed rule is proscribed and punishable by State and / or Federal law. A violation of any of those statutes would be grounds for disciplinary action without the adoption of the proposed rule change. The development and adoption of anti-discrimination statutes involves a delicate and deliberate balancing of the public interest and constitutional freedoms that should not be hastily dispatched. Conduct deemed to be beyond the scope of anti-discrimination statutes and therefore not punishable under the law, should not be proscribed by this vague disciplinary rule.

The proposed rule is especially problematic for prosecutors. The prosecutor's mission is to seek justice. Seeking justice commonly requires that a prosecutor exercise broad discretion in charging decisions and in plea negotiations. These decisions made in the pursuit of justice may often result in a defendant's loss

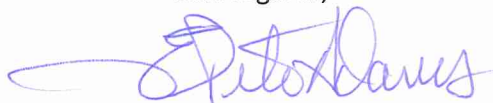
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of liberty or property. When this occurs, many of these defendants perceive that their prosecutions are a form of harassment or a result of discrimination. A common denominator among criminals is their failure to accept responsibility for their conduct. This proposed rule would be an invitation for a vast number of criminal defendants to frivolously blame their fate on alleged discrimination or harassment by prosecutors. The listed classes present a menu of grounds from which these disgruntled offenders can choose to retaliate against their prosecutor. Judges, public defenders and criminal defense lawyers would also be easy targets for similar frivolous claims from disgruntled defendants.

Ironically, adoption of the proposed rule would also expose the Office of Disciplinary Counsel to the same menu of frivolous claims of harassment and discrimination for prosecuting under the new standard.

In conclusion, the proposed rule change is unnecessary, unwise, and impractical. We urge that it be rejected.

Best regards,



E. Pete Adams
Executive Director

EPA:rbj

cc: Louisiana Supreme Court
All Elected District Attorneys