

1 **August 21, 2020**

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3 **Proposed Amendment of Connecticut Rule 8.4(7) and Official Commentary**
4 **(CBA 8.4(7) Working Group)**

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6 **Rule 8.4. Misconduct**

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8 It is professional misconduct for a lawyer to:

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

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19 **OFFICIAL COMMENTARY**

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

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30 Harassment includes severe or pervasive derogatory or demeaning verbal or physical conduct.
31 Harassment on the basis of sex includes unwelcome sexual advances, requests for sexual favors
32 and other unwelcome verbal or physical conduct of a sexual nature.

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

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

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45 Conduct related to the practice of law includes representing clients; interacting with witnesses,
46 coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or

47 managing a law firm or law practice; and participating in bar association, business or
48 professional activities or events in connection with the practice of law. Lawyers may engage in
49 conduct undertaken to promote diversity, equity and inclusion without violating this Rule by, for
50 example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse
51 employees or sponsoring diverse law student organizations.

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