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NJ Bar Advocates Adopting Anti-Bias Rule With Broader Reach in Legal Profession

Charles Toutant, New Jersey Law Journal

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New Jersey lawyers may soon be subject to stronger ethics rules against harassing and discriminatory conduct, standards that would apply in more settings.

The [New Jersey State Bar Association has asked](#) Chief Justice Stuart Rabner to align [RPC 8.4\(g\)](#) with a [model version](#) of that rule adopted by the American Bar Association. If the change is adopted, lawyers could be brought before disciplinary authorities for their interactions with others in their firm or law office, at bar association events or in business or social events related to the practice of law.

The ABA adopted the expanded model rule in September 2016 on the recommendation of its Diversity and Inclusion 360 Commission, according to Thomas Prol, the immediate past president of the New Jersey State Bar Association. Prol, on behalf of the association, sent a letter on May 16 asking Rabner to adopt the revised RPC 8.4(g). The letter was signed before the end of Prol's term.

The rule now in effect in New Jersey prohibits conduct that is discriminatory based on race, color, religion, age, sex, sexual orientation, national orientation, language, marital status, socioeconomic status or handicap. The rule applies to conduct in a professional capacity that is intended or likely to cause harm. Employment discrimination allegations are excluded from the current rule except when they result in a final agency or judicial determination.

The proposed revision would ban harassment as well as discrimination based on the same list of protected classes. The revised RPC 8.4(g) omits the employment exception, and covers conduct that is related in any way to the practice of law, including meeting with a client, managing a law firm or participating in bar association activities.

A note to the ABA model rule explains that it prohibits harassment or discrimination in conduct related to the practice of law, which 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 social activities in connection with the practice of law."

"As officers of the court, lawyers are charged with exhibiting the highest degree of ethics and professionalism in every facet of their lives that is connected to the practice of law," Prol said in his letter to Rabner. "ABA Model Rule 8.4(g) reflects that ideal and ensures that lawyers maintain the dignity and respect of the profession in any action, without undermining their ability to zealously advocate for their clients," he said in the letter. Adopting the revised rule, the letter said, "will bring New Jersey's legal profession closer to the goal of eradicating the cancer of discrimination and harassing behavior from our noble profession."

Glenn Reiser of LoFaro & Reiser in Hackensack, who represents lawyers in ethics proceedings, said the revision as proposed seems overbroad and duplicative. The existing RPC 4.4 already proscribes much of the conduct covered in the new version of RPC 8.4(g), said Reiser. In addition, the new bill would permit parties to bring ethics complaints solely to harass lawyers, he said.

"To me, it's overregulation. There's not a need for it," said Reiser of the proposed revision. "I've had several clients who've been railroaded through the system and have been vindicated after thousands of dollars in fees. When the force of government comes down on a lawyer in private practice, it's quite a burden to deal with."

Reiser also objected to the notion that a lawyer should face disciplinary action over a discrimination complaint by a law firm employee, even after facing court proceedings. "To add another level of claims against somebody—to me, it's not necessary."

The existing rules give ample protection to the public, Reiser said.

Prol said the proposed revisions to RPC 8.4(g) are "important and meaningful changes. It brings it into modern times and brings attorneys to account for their conduct in all aspects of their work." The revised rule includes "many carve-outs" to protect lawyers and doesn't "preclude legitimate advice and advocacy."

Prol, in a phone interview, defended the notion of a disciplinary proceeding against a lawyer for an employee's discrimination complaint.

"You could make the same argument for [violations of] any number of RPCs. It's a red herring to single out discrimination and say there should be no ethical proceeding," Prol said.

A judiciary spokesman did not return a call about the bar association proposal.

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