

AMENDMENTS TO PENNSYLVANIA RULES OF PROFESSIONAL CONDUCT

Pennsylvania Rules of Professional Conduct

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

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(g) in the course of representing a client, knowingly manifest by words or conduct, discrimination and/or harassment, on the basis of race, color, sex, sexual orientation, national origin, age, disability or religion. A lawyer shall not retaliate against a person who complains about such discrimination or harassment by the lawyer, who files a discrimination or harassment complaint against the lawyer, or who cooperates with, or assists in, an investigation of such complaints. Paragraph (g) of this Rule does not preclude a lawyer's consideration of or reference to the above-referenced classifications, when such consideration or reference is appropriate under the law and relevant to an issue in a legal proceeding or matter, or to the proper administration of justice. A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of Paragraph (g) of this Rule.

Comment:

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[5] Paragraph (g) of this Rule identifies the special importance of a lawyer's words or conduct, in representing a client, that manifest discrimination or harassment against others based upon race, color, sex, sexual orientation, national origin, age, disability or religion. A lawyer acts as an officer of the court and is licensed to practice by the state. The manifestation of bias or prejudice by a lawyer, in representing a client, fosters discrimination in the provision of services in the state judicial system, creates a substantial likelihood of material prejudice by impairing the integrity and fairness of the judicial system, and undermines public confidence in the fair and impartial administration of justice.

[6] Paragraph (g) of this Rule is designed, in part, to reflect the Supreme Court of Pennsylvania Unified Judicial System of Pennsylvania Policy on Non-Discrimination and Equal Employment Opportunity (“Policy”).¹ The purpose of the Policy is “to ensure that all personnel of the UJS and related personnel (as defined in 42 Pa.C.S.A. Section 102 as judicial officers, personal staff, administrative staff, central staff, district attorneys, public defenders, sheriffs and other officers serving process or enforcing orders, registers of wills, prothonotaries, clerks of the courts, clerks of the orphans’ court division, coroners, jury commissioners, probation officials and the personnel of all of the foregoing), attorneys, applicants for employment, and court users (including but not limited to litigants, witnesses, jurors and volunteers) are treated in a dignified, civil, respectful, and non-discriminatory manner. This Policy prohibiting all forms of discrimination and harassment is intended to apply to all individuals having business with the Unified Judicial System of Pennsylvania (UJS).”²

[7] Whether a lawyer’s conduct constitutes professional misconduct in violation of Paragraph (g) of this Rule can be determined only by a review of all of the circumstances; e.g., the gravity of the acts and whether the acts are part of a pattern of prohibited conduct. For the purpose of Paragraph (g) of this Rule, “manifest ... discrimination and/or harassment” is defined as words or conduct that the lawyer knows discriminate against or harass any individual or group. The terms “discrimination” and “harassment” shall have the meanings ascribed to them in the Policy.³

[8] For purposes of Paragraph (g) of this Rule, sexual harassment does not refer to socially acceptable behavior or occasional compliments of a socially acceptable nature. It refers to behavior that a reasonable person could and does consider unwelcome or personally offensive.

[9] Charges of retaliation are viewed as separate and distinct from the original disciplinary complaint and may result in disciplinary action, even though the original harassment or discrimination complaint is dismissed. A finding that a complaint alleging violation of

¹ Supreme Court of Pennsylvania Unified Judicial System of Pennsylvania Policy on Non-discrimination and Equal Employment Opportunity, 2 Pa. Code §201-211.

² Id. at 5.

³ Id. at 2-4.

Paragraph (g) of this Rule was made solely for the purpose of achieving a tactical advantage in litigation shall be considered evidence of ethical misconduct.