

## **ATTORNEY SPEECH DISCUSSION POINTS**

- Did Attorney Venom engage in professional misconduct under NH Rule 8.4(g)
  - During the mediation?
  - At the Inns meeting?
- Which Rule 8.4(g) is better – NH or the ABA Model Rule/VT?
- Is NH’s standard - “knows or it is obvious that the action has the primary purpose to embarrass, harass or burden” - superior or inferior to VT’s standard - “know or reasonably should know it is discrimination or harassment”?
- Does “taking any action, while acting as a lawyer in any context” under NH’s rule proscribe verbal conduct designed to embarrass, harass or burden another?
- Could an attorney’s statement of a hateful opinion designed to embarrass or burden another subject the attorney to discipline under New Hampshire’s rule?
- What does burdening someone mean, anyways? Is this standard facially overbroad?
- Why did New Hampshire include both sanctions and safeguards related to religion, when the ABA and Vermont rule did not? In what circumstances could statements motivated by animus towards a person’s religion constitute professional misconduct for attorneys in New Hampshire?

## **STUDENT SPEECH DISCUSSION POINTS/QUESTIONS**

- How does the fact that Ima Bigott is a high school student impact the analysis?
- Would the analysis of the Ima Bigott fact pattern change if the school had a history of anti-Semitic fights amongst students? If so, how would the analysis change?
- How does the Court's holding in Mahanoy impact the Ima Bigott fact pattern where this was off-campus speech?
- Should schools stand *in loco parentis*, or "in the place of parents," when the parents in question are bigots with a demonstrated inability to parent properly?
- Are there any circumstances when a school can discipline a student for off-campus political speech, or should that speech be universally protected?
- Would your analysis change if a student counter-protestor was filmed counter-protesting against Ima Bigott and the activity led to a walkout of the All-Aryan Glee Club?
- How does the fact that Bigott does not have social media accounts impact the analysis?
- What concerns might the school have about this language that rises above the level of "mere discomfort"?

## EMPLOYEE SPEECH DISCUSSION POINTS/QUESTIONS

### Proposed Questions for the Employee's Advocate

1. Doesn't the first tweet relate to internal working conditions that would only be relevant to Mr. Inspector and his coworkers?
2. Shouldn't the Town have the right to control speech that relates directly to work that it commissioned?
3. Mr. Inspector performs a job function where he has discretion to make decisions that impact townspeople – isn't it a reasonable concern for the Town that the public will lose faith that Mr. Inspector will treat them fairly?
4. Hasn't the Town met its burden to establish reasonable prediction of disruption by showing that a townspeople called to complain, and a local reporter wrote a story about the incident?
5. How is RSA 98-E applicable to the second tweet? How does that tweet involve an opinion on a government entity or its policies?

### Proposed Questions for the Employer's Advocate

1. Doesn't the first tweet – which addresses the safety of public employees – relate to an inherent matter of public concern protected by the First Amendment?
2. Shouldn't public employees be able to participate in public discourse and share their opinions without jeopardizing their livelihoods?
3. Has the Town met its burden to establish a reasonable prediction of disruption where the Town Manager took no steps to determine, or even clearly assess, whether the single newspaper article was likely to impair harmony within the workplace but instead summarily terminated Mr. Inspector?
4. While the courts have recognized that police officers occupy a special status of trust within communities, which in turn has supported determinations that speech indicating bias will likely hinder their effectiveness and their police departments, can that same rationale be extended here to the office of a building inspector?
5. The first tweet plainly expresses an opinion critical of the town's policies and was posted to a public forum. Under those facts, how is Mr. Inspector's termination not a clear violation of RSA 98-E?