

From: [Markus May](#)
To: [RulesCommittee](#)
Subject: Proposed Rule 8.4(j)
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I fear the proposed rule 8.4(j) will result in chilling attorney speech and opinions and is unnecessary. First of all, what problem is it trying to address that is not already covered by existing rules? If it is just a few “rogue” lawyers “harassing or discriminating” people, this approach is not warranted in the first place. Second, if there is a problem that is trying to be addressed, there has to be a better way than to enact a rule which violates free speech and which attempts to create a “thought police” where people are not given the ability to have differing opinions. The legal profession has always been on the forefront of ideas and thinking and yet this rule limits how people can think. Here are a number of issues with the language:

1. With subjective criteria such as “harassment” people will not have a bright guideline of what is or is not acceptable.
2. How will the ARDC know which “harassment” to enforce and what not to enforce? For example, two colleagues at a firm get into an argument related to a news event regarding one of the factors – which colleague is considered “correct” and being harassed or can they both be harassed? How would the ARDC decide to sanction between two people with differing views?
3. Won’t this just cause more division in the legal field and encourage people to make harassment claims when they are upset with colleagues or others?
4. Why would anyone want to hire anyone that is different from themselves? Won’t this hurt diversity?
5. These days political speech and topics often relate to the listed factors. What issues does that create when people discuss immigration, reparations, helping the poor, whether gender expression should be a protected class for discrimination purposes, etc. at work? Will all those topics now be taboo at work, bar functions, in the courthouse halls, etc.?

As written, couldn’t the following rather common behaviors be considered harassment by someone?

6. If someone receives or sends a joke on their computer at work that is offensive to someone.
7. Having a law firm social function at a comedy club especially when you “should know” that comedians can be “inappropriate” in their jokes.
8. Someone staring at someone’s chest or other body parts.
9. Commenting on someone’s dress, body, etc. including mentioning someone “looking pregnant” or “showing too much skin” or looking unprofessional.
10. Could having a function where alcohol is served and people get a little “looser” result in liability? After hours events? Bar functions? Etc.

I believe all people are created by God. I also believe God is perfect and makes no mistakes. If I express that view someone may think I am harassing them because they believe there is no God. Or if I state life begins at conception or sex should be between a man and a woman that could be considered harassment by some people. That would then subject me to sanctions and potentially losing the ability to practice law?

Someone told me that if I use a certain hand symbol which I think means “ok” he interpreted that as being a “proud boys” symbol. So now the burden would be on me to stay up on all social norms and if I accidentally make a statement or use a word that I have used for years, that is no longer socially acceptable, I could be sanctioned? These are all very chilling and scary thoughts to me.

The issue with the proposed language is the words “harassment or discrimination.” If the policy is limited to engaging in *illegal* conduct, that would be fine. But if I am supposed to “reasonably know” a statement is considered harassment or discriminatory, that goes too far in my opinion. This smacks too much of thought control and a suppression of opinions that is antithetical to the freedom of thought and ideas that is a hallmark of both this country and the legal profession.

If a person states any opinion on any of the various factors listed, that opinion is likely to be considered harassing to some person. If I indicate to a white supremacist that all people are created equal, that person may find this to be harassing conduct. Or if I state “black lives matter” or “all lives matter” either statement is considered harassing to some people. There should not be a rule where such a subjective standard can result in sanctions.

There is nothing wrong with the prior subsection (j) language as it prohibits illegal conduct and provides a remedy. I have not been made aware of a problem that needs to be addressed that warrants changing the rule. There is no pervasive issue with attorney conduct that needs to be addressed.

All of the above examples just show how the proposed rule will stifle discussion and discourse and rather lead to fear about what you can and cannot say. Basically a “police state” where people cannot freely discuss important topics. Absent a truly compelling problem with the way attorneys are conducting themselves on a regular basis, I think the proposed rule does more damage than good.

Very Truly Yours,

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