

From: [REDACTED]
To: [RulesCommittee](#)
Subject: Comment Letter Opposing Adoption of Proposal 22-06 Amending Rule 8.4(j)
Date: Tuesday, November 7, 2023 12:03:34 PM

Dear Rules Committee:

As I understand it, Proposal 22-06 amending Rule 8.4(j) would eliminate the following language:

No charge of professional misconduct may be brought pursuant to this paragraph until a court or administrative agency of competent jurisdiction has found that the lawyer has engaged in an unlawful discriminatory act, and the finding of the court or administrative agency has become final and enforceable and any right of judicial review has been exhausted.

Rule 8.4 - Misconduct, Ill. Sup. Ct. R. 8.4

The elimination of this language would negatively impact the due process rights of any attorney accused of discrimination. It would also invite retaliatory claims that could adversely affect an attorney's law license while simultaneously making the ARDC an administrative body to adjudicate discrimination claims against lawyers specifically.

As a practical matter, elimination of the current language would allow for the ARDC and Supreme Court to "sentence" an attorney before a determination of guilt, based on a different standard than is required to prove the allegation under state law. It may be argued that the proposed standard is one of common sense—i.e., the alleged act is so obvious that the practitioner should have known better. Yet neither the General Assembly nor United States Congress has codified that into law. Allowing for discipline before a determination of guilt goes against every tenant of justice that attorneys stand for.

Elimination of this language would adversely impact attorneys acting in a supervisory capacity to be sure. Claims of discrimination are brought to the Illinois Department of Human Rights and the Equal Employment Opportunity Commission against employers with most, if not all of the allegations targeting the acts of the supervisor as the basis of the complaint. At times, such claims are brought as a result of displeasure by a disgruntled subordinate employee, rather than due to any evidence of discrimination. These claims should be investigated and adjudicated before a practitioner is disciplined.

Which raises the final issue—the ARDC and Illinois Supreme Court will become the arbiters of claims against practitioners. While the ARDC already investigates claims of misconduct, it would now become the body that determines and recommends discipline for any practitioner accused of discrimination before any administrative agency or court has made a legal finding of the same. This raises serious questions of constitutionality of such a change, as the ARDC belongs to the judicial branch of Illinois government. The Illinois Human Rights Act and Title VII both require exhaustion of administrative remedies before pursuing claims in court; the administrative agencies are part of the executive branch. Accordingly, the proposed rule would violate Article II, Section I of the Illinois Constitution.

As someone who has been subjected to an unfounded claim of discrimination, sued, and suffered harm to their career as a result, the proposed change to the rule would adversely affect my ability to continue to practice law. The possibility that my license could be suspended or even revoked before a court could determine the validity of the claims brought against me would deprive me of the ability to earn a living while simultaneously inflicting reputational harm brought by a negative ARDC adjudication. What happens if the administrative agencies and courts disagree and determine there was no discrimination? The ARDC cannot undo the prior discipline. The harm would already be done.

I implore the Rules Committee to emphatically reject this proposal.

Sincerely,

Nicholas E. Cummings

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