



COMMENTS OF WOMEN LAWYERS ON GUARD INC., IN SUPPORT OF THE RECOMMENDATION BY THE DISTRICT OF COLUMBIA BAR TO AMEND RULE 8.4 OF THE DISTRICT OF COLUMBIA RULES OF PROFESSIONAL CONDUCT

In response to the Court’s November 13, 2024, request for public comment, Women Lawyers On Guard Inc., writes in strong support of the recommendation by the District of Columbia Bar to amend Rule 8.4 (Misconduct) of the Rules of Professional Conduct to prohibit harassing and discriminatory behavior by a lawyer directed at another person with respect to the practice of law, which would include abusive conduct that occurs beyond the courtroom or outside the representation of a specific client. The proposed amendment has been the subject of careful review for more than five years. It is time to adopt the Bar’s recommendation and amend Rule 8.4 to ensure that harassment and discrimination have no place in the practice of law.

Women Lawyers on Guard Inc. (WLG) is a national tax-exempt, non-partisan organization that harnesses the power of lawyers and the law to preserve, protect and defend the democratic values of equality, justice and equal opportunity for all. WLG collaborates with other non-profits that share its mission, signs on to amicus briefs, and works to address sexual misconduct and harassment, women’s health, gender pay equity, and other salient issues in the legal profession or affecting women and families.

In 2020, following its own in-depth national study of sexual harassment and misconduct in the legal profession, WLG published a report of its findings— “Still Broken: Sexual Harassment and Misconduct in the Legal Profession, A National Study.” <https://womenlawyersonguard.org/wp-content/uploads/2020/03/Still-Broken-Full-Report-FINAL-3-14-2020.pdf>. WLG’s Report concludes that sexual harassment and misconduct are “widespread” in the legal profession and that “the system for addressing sexual harassment in the legal profession is ‘still broken’.” The Study recommends “creating new and stricter anti-sexual harassment policies in legal workplaces.” *Id.* WLG is continuing its advocacy to address sexual harassment in the legal profession through its follow-up program, “Conversations with Men” that helps individuals and organizations create better anti-harassment frameworks. <https://womenlawyersonguard.org/conversationswithmen/>.

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The District of Columbia Bar (D.C. Bar) is the largest unified bar in the country and, as of December 2024, has more than 117,000 members around the world and is administered by a membership-elected Board of Governors (BOG). It is a leader in the legal profession in promoting equal justice under law. This includes working to eliminate discrimination, harassment, and bias by lawyers—not just in the courtroom, but wherever a lawyer’s conduct relates to the practice of law.

To this end, in 2016, the D.C. Bar tasked its Rules of Professional Conduct Review Committee (Review Committee) to study whether the District should recommend amending the D.C. Rules of Professional Conduct to adopt a provision similar to the then recently amended ABA Model Rule 8.4 that prohibited conduct by a lawyer related to the practice of law involving harassment or discrimination against members of specified groups. In 2019, the Review Committee recommended that Model Rule 8.4 essentially be adopted. Public comment was solicited. Considering criticism of the proposed amendment, the Review Committee undertook further study and revision of its proposal.

Following that revision, in March 2021, the Review Committee transmitted its 42-page report and recommendation to the BOG for review. On April 13, 2021, the BOG unanimously approved the recommendation that Rule 8.4 be amended to include subsection (h) and corresponding Comments. The new paragraph would make it professional misconduct for a lawyer to

(h) engage in conduct directed at another person, with respect to the practice of law, that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, color, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, family responsibility, or socioeconomic status. This Rule does not limit the ability of a lawyer to accept, decline or, in accordance with Rule 1.16, withdraw from a representation. This Rule does not preclude providing legitimate advice or engaging in legitimate advocacy consistent with these Rules.

On April 15, 2021, the BOG transmitted the proposed amendment to Rule 8.4 to the District of Columbia Court of Appeals for approval. On November 13, 2024, the Court solicited public comment on the proposed amendment.

The legal profession is self-regulating. The Rules of Professional Conduct provide the framework for lawyers’ professional conduct. Recommended Rule 8.4(h) and its corresponding Comments serve important purposes. First, they tell the public the legal profession will not tolerate harassment or discrimination in the practice of law. Comment [3] to proposed Rule 8.4(h) states

the premise that the concept of human equality and respect for all individuals lies at the very heart of our legal system. A lawyer whose conduct demonstrates hostility or indifference toward the principle of equal justice under the law may thereby manifest a lack of character required of members of the legal profession.

Second, the Rule and Comments put lawyers on notice that refraining from prohibited conduct is a requirement of professional responsibility, the violation of which could expose them to sanctions. The Rule and Comments provide guidance to lawyers concerning conduct that constitutes prohibited action to avoid professional sanctions.

Despite the passage of time since the Review Committee began its study of Rule 8.4 and made its recommendation, the need for the Rule remains. As described in the Review Committee's Report and Recommendation, discrimination, harassment and bias are serious problems in the legal profession, including conduct by lawyers in the practice of law beyond the courtroom or outside the courtroom. WLG's own 2020 Study, *Still Broken*, confirms an alarming level and quality of harassment and discrimination in the legal profession.

WLG's *Still Broken* report contains a number of important recommendations including these three: holding perpetrators individually accountable, implementing more effective reporting and independent investigation mechanisms, and providing for more transparency in the process of addressing sexual harassment. Proposed Rule 8.4 (h) and corresponding Comments fulfill these recommendations effectively. The need for a "black letter" rule prohibiting such conduct by lawyers remains real and immediate.

WLG urges the Court to adopt the Bar's recommendation to amend Rule 8.4 to add subsection (h) and the corresponding Rule 8.4(h) Comments. Such a rule and guidance will make clear that the legal profession recognizes and accepts its responsibility to prohibit discrimination and harassment in the practice of law.

Respectfully submitted,

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