

#2016-009

NHWBA
NEW HAMPSHIRE WOMEN'S BAR
ASSOCIATION

June 1, 2018

VIA HAND-DELIVERY

New Hampshire Supreme Court
Advisory Committee on Rules
1 Charles Doe Drive
Concord, NH 03301

Re: Proposed New Hampshire Rule of Professional Conduct 8.4(g)

Dear Members of the New Hampshire Supreme Court Advisory Committee on Rules:

On behalf of the New Hampshire Women's Bar Association (NHWBA)'s Board of Directors, I hereby respectfully submit the following comments regarding the merits, and necessity, of Proposed New Hampshire Rule of Professional Conduct 8.4(g), Appendix K. Please note that these comments echo an earlier letter of support that the NHWBA submitted to this Committee on or about March 5, 2018.

The mission of the NHWBA is to promote and support the advancement and interests of women in our legal community through leadership, professional development, education, and the exchange of ideas between our members and the community. For more than twenty years, the NHWBA has supported female attorneys in New Hampshire by, among other actions, responding to the challenges that women face in the legal profession. Unfortunately, two of the challenges that women continue to face in our profession are discrimination and harassment based on, among other things, gender, gender identity, and marital status. Such misconduct occurs in workplaces, in interactions with colleagues, opposing counsel, and clients, and even in our Courts.

Based on our members' shared experiences, the NHWBA can confidently state that the majority of our members have experienced harassing and/or discriminating behavior while practicing law in New Hampshire. Our members' shared experiences range from the overt to microaggressions; however, regardless of the severity of these experiences, the conclusion is the same: harassment and discrimination persist, despite efforts to make improvements.

Recent data gathered from members of the New Hampshire Bar supports this conclusion and rebuts the thought that such misconduct is not a problem in our Bar and in our legal community. This data shows that while the proportion of female attorneys in New Hampshire continues to rise (currently 37%), the number of female equity partners in private practice continues to lag well behind the number of male equity partners. New Hampshire Bar Association's 2017 Draft Gender Equality Survey Results, at 1. While male and female attorneys work and bill similar hours per week, male attorneys have higher median salaries and billing rates. These differences still exist after accounting for age and experience. Id.

New Hampshire Supreme Court Advisory Committee on Rules
June 1, 2018

Further, 67% of respondents to the Gender Equality Survey, including 86% of female respondents, feel that there is “an old boy network” in our Bar, and 81% of respondents, including 91% of female respondents, feel that it benefits male attorneys over female attorneys. *Id.* at p. 2. Even more disappointing are the figures regarding harassment and discrimination that members of our Bar have faced:

Observed or Experienced Inappropriate Behavior At Least Once in Past Year	Outside of Court With Attorneys	In Court/Chambers With			
		Judge or Master	Attorney	Clerk or Bailiff	Law Enforcement
Sexist jokes	49%	8%	23%	10%	15%
Use of titles, terms of endearment	45%	14%	30%	15%	15%
Condescending treatment	43%	19%	33%	10%	17%
Comments on apparel/appearance	41%	9%	21%	11%	13%
Verbal advances	17%	1%	6%	3%	5%
Inappropriate touching	9%	>1%	4%	3%	4%

Id. These figures are difficult to ignore. More to the point, they cannot be ignored and they must be acted upon. It is our understanding that 25 states to date have already approved and implemented a Rule similar to Proposed New Hampshire Rule of Professional Conduct 8.4(g) contained in Appendix K. The New Hampshire Bar should follow their lead and example, and seize, not squander, this opportunity to act. Such action would serve the best interests of the members of our Bar.

There is no room in our Bar and in our legal community for harassment or discrimination based on race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation, or mental status. The responsibility is on all of us to take measures to prohibit such misconduct from continuing to occur, and we should all hold ourselves, as legal professionals, to higher standards that promote fairness and equality among all members of the Bar. Proposed New Hampshire Rule of Professional Conduct 8.4(g) contained in Appendix K is an important and necessary step towards condemning harassing and discriminating behavior in our profession, which, unfortunately, is warranted.

The NHWBA supports the version of Proposed New Hampshire Rule of Professional Conduct 8.4(g) that is contained within Appendix K, and it strongly urges the Committee to adopt it without further delay.

Very truly yours,


Christina A. Ferrari, Esquire
President-Elect
NHWBA Board of Directors