

#2016-009



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

New Hampshire

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aclu-nh.org

Devon Chaffee
Executive Director

September 6, 2018

VIA EMAIL (rulescomment@courts.state.nh.us)

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

Re: Feltes-Herrick Subcommittee Proposed Rule 8.4(g) (#2016-009)

Dear Chief Justice Lynn and the members of the Advisory Committee on Rules:

I write on behalf of the American Civil Liberties Union of New Hampshire (ACLU-NH) concerning the Feltes-Herrick Subcommittee Proposed Rule 8.4(g) to the New Hampshire Rules of Professional Conduct.

The ACLU-NH believes that the goal of eliminating sexual harassment and unlawful discrimination in the legal profession is important to create a more inclusive profession. The ACLU-NH greatly appreciates the work that Senator Feltes, the Ethics Committee Subcommittee, and all the attorneys on this summer's "ad hoc" committee have done on this important issue.

The ACLU-NH would not oppose the Feltes-Herrick Subcommittee Proposed Rule 8.4(g) if there was language added simply defining harassment or discrimination under state or federal law. Under the ACLU-NH's proposal, the proposed Rule 8.4(g) would be as follows:

(g) engage in conduct while acting as a lawyer in any context that is harassment or discrimination under state or federal law on the basis of race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation, marital status, or gender identity; however, statutory or regulatory exemptions, based upon the number of personnel in a law firm, shall not relieve a lawyer of the requirement to comply with this Rule. This paragraph shall not limit the ability of the lawyer to accept, decline or withdraw from representation consistent with other Rules, nor does it infringe on any Constitutional right of a lawyer, including advocacy on matters of public policy, the exercise of religion, or a lawyer's right to advocate for a client.

As the ACLU-NH discussed in its May 31, 2018 comment, we believe that using this "state or federal law" definition is a helpful approach because it expressly borrows the substantive legal definitions of harassment and discrimination that exist in other contexts and simply applies them to lawyers acting in that capacity. By expressly tying the definitions of harassment and discrimination to the existing legal definitions, which in turn have generally been interpreted narrowly to avoid punishing protected speech, we believe that this added language better ensures that the ethics rule will not negatively impact First Amendment rights.

ACLU

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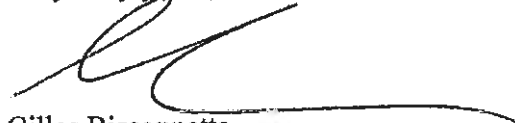
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Thank you for your time and consideration.

Very truly yours,



Gilles Bissonnette
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