We write in support of the amendment to 8.4 that would add a sub-section (g) to make clear that unlawful harassment and unlawful discrimination constitute a violation of the bar rules.

To begin, to the extent that opposition comes from those who have not been harassed or discriminated against before, it may well be difficult to imagine that a problem exists. But it does. For many of us it is a compilation of stories over the years; Pine Tree has now done a survey to add to all of our personal anecdotes. It is clear that harassment and discrimination continue, particularly for female attorneys.

There are those opponents to this amendment who claim that the amendment is duplicative. The view from the ground level – not from an academic look at the language on the books – is that the amendment is NOT duplicative. Not only has the current language failed to put a stop to existing harassment and discrimination but the existing language finally makes clear that harassment and discrimination are just as serious as other unlawful conduct. Victims are unlikely to come forward without that reassurance. And for those who continue to behave in a manner that would be covered by the clearer language – it removes any ambiguity about whether they should continue acting as they have.

It is probably unlikely that we will ever remove from our profession bullying and offensive conduct used as a power tool. But such conduct is much more malevolent and intentional when it adds as an overlay gender based or sexual comments or conduct. Weaponizing gender (or race or religion or disability or any other protected category) is more troubling from an ethical perspective to the extent it is nearly always more intentional.

Claims that suggest that this amendment is both duplicative and yet, *at the very same time*, makes it possible for ethical complaints against innocent attorneys not meaning to have inaccessible offices or against firms that mistakenly discriminate against some population defy logic. It can't be both. And the bottom line is that Bar Counsel is able to sift between those charges that include intentional acts of any kind of unethical behavior and those acts that deserve simply a warning or caution.

Claims that the amendment would create a species of super-offenses that no lawyer should have to worry about simply operate to create a hysteria over what those same detractors claim is already in the bar rules. If an attorney is using "unlawful harassment" or "unlawful discrimination" as a tool in their arsenal against opposing counsel, then that conduct by definition adversely reflects on their honesty, fitness, and trustworthiness. It also prejudices the administration of justice: such weaponizing of another's gender or race or other immutable characteristic prejudices a justice system that must by law be blind to such characteristics. It is inconsistent to claim we have a justice system blind to such characteristics while allowing those same characteristics to be weaponized as a tool of a lawyer's trade.

To those who might argue that this amendment would prohibit unlawful discrimination or harassment on an attorney's private time…..shame. We are officers of the court at all times.

Those who cannot tolerate that concept should not be officers of the court. And that precise argument has already been rejected by Bar Counsel – for example, there was an attorney who was stalking and sending sexual messages to a woman whose defense to bar counsel was that it was on his own time. That argument was rejected, as it should have been. Our ethical behavior does not end when we walk out of the law firm door or out of the courthouse.

We support the amendment of 8.4.

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