

1 **7.13.20**

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3 **Proposed 2020 Amendment of Connecticut Rule 8.4(7) and Official Commentary, Showing**  
4 **Changes from 2016 Proposal**

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6 **Rule 8.4. Misconduct**

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8 It is professional misconduct for a lawyer to:

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11 (7) Engage in conduct that the lawyer knows[ingly] or reasonably should know is harassment or  
12 [knowingly engage in a] discrimination[ory act] on the basis of race, color, ancestry, sex,  
13 pregnancy, religion, national origin, ethnicity, [physical] disability, [mental disability]status as a  
14 veteran, age, sexual orientation, gender identity, gender expression[,] or marital status [or  
15 socioeconomic status] in conduct related to the practice of law. This paragraph does not limit the  
16 ability of a lawyer to:(A) accept, decline or withdraw from a representation; or [(B)] to provide  
17 advice, assistance, or advocacy consistent with these Rules[related to the practice of law].

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21 **OFFICIAL COMMENTARY**

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25 Discrimination and harassment [by lawyers] in the practice of law undermine[s] confidence in  
26 the legal profession and the legal system. Discrimination [means taking an adverse action]  
27 includes harmful verbal or physical conduct directed at an individual or individuals [on the basis  
28 of the protected categories] that manifests bias or prejudice on the basis of one or more of the  
29 protected categories[ towards others]. Not all [adverse actions] conduct that involves  
30 consideration of these characteristics manifests bias or prejudice: there may be a legitimate  
31 nondiscriminatory motive for the action. [For example, consideration of a person's disability  
32 would not be discriminatory if it rendered the person incapable of performing a required  
33 function, such as serving as an expert witness.]

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35 Harassment includes severe [and] or pervasive derogatory or demeaning verbal or physical  
36 conduct. Harassment on the basis of sex includes unwelcome sexual advances, requests for  
37 sexual favors, and other unwelcome verbal or physical conduct of a sexual nature.

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39 The substantive law of antidiscrimination and anti[-]harassment statutes and case law should  
40 guide application of paragraph (7), where applicable. Where the conduct in question is subject to  
41 [a lawyer acts in accordance with] federal or[and] state anti[-]discrimination or antiharassment  
42 law[s], a lawyer's conduct does not violate paragraph (7) when the conduct does not violate such  
43 law[this rule]. Moreover, an administrative or judicial finding of a violation of state or federal  
44 anti[-]discrimination or antiharassment laws does not alone establish a violation of paragraph (7).

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46 A lawyer's conduct does not violate paragraph (7) when the conduct in question is [consistent  
47 with the lawyer's rights] protected under the First Amendment of the Constitution of the United  
48 States or Article First, Section 4 of the Connecticut Constitution.

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50 Conduct related to the practice of law includes representing clients; interacting with witnesses,  
51 coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or  
52 managing a law firm or law practice; and participating in bar association, business or [social]  
53 professional activities or events in connection with the practice of law.

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55 [A lawyer's conduct does not violate paragraph (7) when the conduct in question is consistent  
56 with the lawyer's rights under the First Amendment of the Constitution of the United States or  
57 Article First, Section 4 of the Connecticut Constitution.] Lawyers also may engage in conduct  
58 undertaken to promote diversity, equity and inclusion without violating this Rule by, for  
59 example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse  
60 employees or sponsoring diverse law student organizations.

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62 A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does  
63 not alone establish a violation of paragraph (7). Moreover, no disciplinary violation may be  
64 found where a lawyer exercises a peremptory challenge on a basis that is permitted under  
65 substantive law. A lawyer does not violate paragraph (7) by limiting the scope or subject matter  
66 of the lawyer's practice or by limiting the lawyer's practice to members of underserved  
67 populations in accordance with these Rules and other law. A lawyer may charge and collect  
68 reasonable fees and expenses for a representation. Rule 1.5(a). Lawyers also should be mindful  
69 of their professional obligations under Rule 6.1 to provide legal services to those who are unable  
70 to pay, and their obligation under Rule 6.2 not to avoid appointments from a tribunal except for  
71 good cause. *See* Rule 6.2(1), (2) and (3). A lawyer's representation of a client does not  
72 constitute an endorsement by the lawyer of the client's views or activities. *See* Rule 1.2(b).

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