

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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20 **OFFICIAL COMMENTARY**

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