It would seem that lawyers must be able to knowingly discriminate based on socioeconomic status since they must determine whether prospective clients can pay their bills, taking into account pro bono responsibilities as a portion of every lawyer’s required professional conduct.

A lawyer should be able to decline representation if declining representation is an exercise of a constitutionally protected freedom. The rule seeks to create a presumption that declining representation is not a constitutionally protected freedom. This does not appear to be an established legal principle. Constitutional freedoms in the context of supplying legal services have not been adjudicated.

If I decline to represent a pornographic website in a copyright matter, isn’t that “knowing discrimination” based on that potential client’s “political belief” that consenting sex among adults displayed on camera and streamed over the Internet is just fine?

It is hard to see how prohibiting discriminating choices in representing a client based on one’s “political beliefs” could possibly be constitutional. Does that mean that a died-in-the-wool Democrat would not be allowed to decline to represent George Bush in the Florida “hanging chads” case?

There is no point in mentioning Constitutionally protected freedoms given that you then take them all away by saying that they have no effect on the discrimination provisions of the Model Rule.

The statement in the Conclusion of the Memorandum that “normative standards of conduct” further the public interest is inaccurate. Consider how abominable certain “normative” behaviors have been throughout history, including but not limited to child sacrifice, women not holding property or being allowed to vote, Jews being killed because they are Jewish. Please find a better way to describe whatever you are trying to accomplish than using the term “normative standards of conduct”. Merriam Webster defines “normative” as being “based on what is considered to be the USUAL OR correct way of doing something.” If lawyers don’t use terms precisely, who will?

Thank you for the opportunity to comment.

Anne

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