Dear ABA Standing Committee on Ethics and Professional Responsibility, and Other Relevant Parties:

I am a California lawyer who questions elements of the proposed amendments of ABA Model Rule of Professional Conduct 8.4 and Comment [3] to Rule 8.4. They seem well-meant, but may go either too far or not far enough. So if there are amendments at all, they should be done carefully, and with heavy reference to what other commenters have said about the proposed amendments.

Racial discrimination, for one, is a vile thing, and one can see why the ABA would want to discourage it. Some of the other items mentioned in the proposed amendments, though, have vague or shifting elements: e.g., sexual orientation, gender identity, marital or socioeconomic status.

Would, for example, the legal team of the U.S. Catholic Bishops' conference have to hire a gay or transgender lawyer who wishes to oppose everything that his or her (if the lawyer claims to have any gender at all) employers have been traditionally doing in matters of sexual orientation or gender matters?

There may also be a difference between status and conduct/ideology, e.g., it may be questionable to reject a gay client who has a personal injury claim over a falling toaster, but it may not be as questionable to reject that client if that client is suing a church you belong to over whether that church should offer him a wedding facility or not.

Also, it is not made clear if people in polyamorous or polygamous relationships are given "sexual orientation" or "marital" protection.

Arguendo, why should they or their children not be protected as much as anybody else?

Speaking of "children": would the proposed amendments protect those with a professed sexual attraction to underage children, as long as they are merely talking about it and not actually having illegal carnal contact with such children? (Obviously, the present author does not support protection for those with a professed sexual attraction to underage children--or to animals, plants, vacuum cleaners, etc.)

And re "socioeconomic status": much of legal practice, to be frank, may revolve around wealthy (or even "obscenely wealthy") partners) making gigantic incomes while those lower down the totem pole, and maybe working much harder, make a lot less money. Is that practice going to be abolished?

Moreover, since country clubs, or other venues that tend to cater to the wealthy, are often places of snobbery and gross display of conspicuous consumption (again being frank here), will membership of those organizations be abolished for ABA members? ...Could not purchase of a Porsche or high-end BMW by a partner or other high-income lawyer be seen as an act of "status dominance" or "class intimidation" under certain circumstances, and forbiddable under the proposed rule amendments?

Finally: despite a supposed respect for sexual equality these days, one often sees at legal meetings or events, men dressed basically identically (suits, ties), while women are often in much more variegated and colorful, and frequently more expensive than men's wear, items like dresses, jewelry, shoes, etc. Is this practice going to be condemned as "sexist"? And who will be blamed? Will women be blamed for being "ostentatious", or will men be blamed for "not trying as hard as women"?

The mind reels.

One could formulate other hypotheticals, but those above may be enough to give pause about the proposed amendments.

So while the proposed amendments are well-meant, they may also open a Pandora's box. What exactly should be done, e.g., either scrapping the amendments completely, or alternatively, keeping the amendment about "harassment", but changing the part about "discrimination" so that it would lead to fewer absurd consequences, is up to you. Again, though, please consider the comments submitted to you and act according to what wisdom or moderation you find there.
The fewer lawyers you offend or befuddle, the more may consider joining the ABA at some point, after all.

Thank you for your time,

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