For the reasons detailed in the comments of the Christian Legal Society (Comments of the Christian Legal Society on Proposed Rule 8.4(g) and Comment (3), by David Nammo, March 10, 2016), I must oppose the proposed amendment to the text of and comment to Rule 8.4(g). It is misguided and, I believe, illegal, to threaten disciplinary action, not to mention its social opprobrium and stigma, against attorneys on such vague terms, without even acknowledgement in the amended rule of any “safe harbor” for legal speech and conduct that is protected by the US Constitution, federal statutes - - like Title VII of the Civil Rights Act of 1964 [Sections 701(j), 702 and 703e(2)] and the Religious Freedom Restoration Act of 1993, 20 USC 2000bb et seq - - state constitutions, and state statutes and local ordinances. Indeed, the proposed amendments would trample explicit fundamental civil liberties in the promotion of characteristics that neither the Supreme Court of the U.S. nor the Congress have defined as even protected rights (sexual orientation and gender identity).

If the Association intends to amend the Rule notwithstanding its facial invalidity, then I urge it be improved as suggested by CLS:

“(g) in the course of representing a client, knowingly harass or knowingly discriminate against persons on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status, when such conduct is prejudicial to the administration of justice, except when such conduct is undertaken because of the lawyer’s sincerely held religious beliefs, or is speech or conduct protected by the First Amendment or other applicable federal or state laws.”

Comment

“[3] Paragraph (g) applies only to conduct in the course of representing a client. Consistent with longstanding principles behind the Rules of Professional Conduct, declining representation based on religious, moral, or ethical considerations is not proscribed by this rule. This rule does not apply to speech or conduct undertaken by a lawyer because of his or her sincerely held religious beliefs, or speech or conduct otherwise protected by the First Amendment, including the rights of free speech, protected by applicable federal or state laws.
Legitimate advocacy respecting the listed factors in the rule does not violate paragraph (g). The term “harass” includes only conduct that is so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to the administration of justice.”

Thank you for considering my views.

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