Dear ABA Standing Committee on Ethics and Professional Responsibility:

You’ve already received dozens of comments on the proposed amendments to Rule 8.4 and the comments thereto, illustrating that the points against the proposed change are indeed voluminous. I could personally write pages and pages of cogent, logical points with sound evidence to support all the conclusions. I will only focus on a small portion, due to time constraints, but it is worthwhile to spend at least this much time, attempting to refute a foolish and unwise change to the ethical standards.

The following is the statement that was provided as support for the amendment, and incorrectly, as an eloquent statement of the need:

“There is a need for a cultural shift in understanding the inherent integrity of people regardless of their race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status or disability, to be captured in the rules of professional conduct.

This is true because the Model Rules are supposed to ensure the integrity of the legal profession. Indeed, it is a rhetorical question to ask “what is more important to the integrity of the law than ensuring that those who seek out legal representation are not subject to discrimination, harassment or intimidation simply because of the color of their skin, their gender or gender identity, having a disability or being lesbian, gay, or bisexual?”

Nothing of either the assertion of eloquence, nor the actual content of this statement could be further from the truth, which I’ll illustrate briefly.

First, the rhetorical question is ridiculous as a rhetorical question, as it is a long, run-on, compound and complex statement, which makes it nearly impossible to be obviously true. Any evidence course should have enabled any attorney to have quickly identified this problem. “Objection, compound question!” So to answer the question, as is proper, there are many things (“a list as long as my arm,” to use an American colloquialism) more important. Since the list is so long, I’ll summarize the content of most of the correct answers as follows: that the guilty be punished, the innocent go free, and persons are protected from others’ wrongdoing – justice. All of the things in the list for the question, while some very important, are distractions from what should be the true objective of the law: justice.

Second, it is impossible to prove (because it isn’t true with respect to many of the items), with respect to the first assertion above about the need for a cultural shift, that all of these things justify even the cultural shift, much less that changing Rule 8.4 is the right, or even a good, or even not a bad, way to do so. In order to weigh things as lawyers are and should be trained to do, each and every one of the listed classes should be proven a proper class to protect to a high degree of proof, and causation shown as to each one, as to how this rule will actually so protect them.

It is also a ridiculous assertion that the need for “a cultural shift” is caused (“This is true because...”) by the Model Rules having the purpose “to ensure the integrity of the legal profession.”

Furthermore, only a very small minority of very radical persons (criminals, I would say, and impossible to eliminate, except by focusing on doing justice) don’t understand the inherent integrity of all people (i.e., that human beings should be respected as human beings and treated in a moral and dignified manner, regardless of their faults, changeable or unchangeable). It is however, necessary and appropriate to discriminate between humans for the purposes of just punishment and protection of others in society, based on some objective moral standard of right and wrong.
(e.g., it isn’t ordinarily appropriate to imprison a human being against his or her will, but we accept it is appropriate when they’ve injured their fellow man in some way, as defined by the appropriate authorities). The proposed Rule 8.4 list does not reflect universally accepted behavioral norms for extra protection.

The only good thing about this entire statement is one word: simply. No one should be discriminated against (incidentally, no person should be harassed at all, and much like adding a Bill of Rights to the Constitution did reduce all the other rights – ceding them to the government – as expected by the Anti-Federalists, this reduces protection against harassment generally, implying that harassment is alright for some classes of persons) “simply” because of almost anything, except in a very precise context (e.g., a person could be rightly discriminated against “simply” because of his skin color if the purpose were to test make-up of that particular tone.). The reader of the previous example may shrug it off as extreme, but it illustrates that the design of the comment and the change is really using logical fallacies rather than debate and evidence to support the conclusion. Something like, “you know what I mean,” would then be used to justify the vague (and inappropriate) use of the term “discriminate”. In order to further advance the argument, more logical fallacy mixes classes that a huge majority would agree shouldn’t typically be discriminated against (e.g., unchangeables: color, gender, etc.) with others that may not be able to persuade even a majority of their merit as protected classes.

Such a modification to the Rules will impair the practice of law irreparably, causing some of the lawyers and potential lawyers most understanding and capable of doing justice to avoid the practice entirely. It will cause the others to focus on tangential issues rather than the ultimate objective of justice itself.

Any changes to ethical rules should be proven beyond a very high evidentiary standard to be necessary and very precise and limited as to language. This broad, vague, and unproven language will really only accomplish the objectives of a group of persons with an ultra-liberal political ideology, will have a terribly detrimental effect on the law generally, and will do nothing to really protect the interests of those groups purportedly protected.

This change would simply be a case of tyranny of the minority (a group of lawyers dictating for all society what should and should not be determined as right and wrong, rather than following an objective standard). It should not be tolerated!

This change would demonstrate that we don’t know what is important (justice) and therefore aren’t capable of regulating ourselves after all (an observation which many Americans would already have made on their own). It should not be adopted!

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