July 21, 2016

Myles Lynk
Chair, Standing Committee on Ethics & Professional Responsibility
c/o Dennis Rendlemen
American Bar Association
312 N. Clark Street
21st Floor
Chicago, IL  60654

Re:  Support for ABA Resolution 109

Dear Mr. Lynk and Members of the Committee:

On behalf of the Legal Aid Society – Employment Law Center, I would like to express the organization’s support for the proposed amendment to Model Rule 8.4, which explicitly addresses discrimination and harassment within the legal profession.

Founded in 1916, the LAS-ELC is the oldest legal aid agency in the Western United States. It is one of the nation’s leading nonprofits providing legal assistance and representation to low-income workers of all backgrounds and cultures. Since it began focusing on employment issues in 1970, the LAS-ELC has become a national leader in providing legal assistance, advocacy, and representation to the “invisible poor”: low-income, unemployed, or marginalized workers, particularly those who are further stigmatized and discriminated against on the basis of their race, gender, sexual orientation, gender identity, gender expression, national origin, disability, age, height or weight, military or veteran status, and/or status as a victim of domestic or sexual violence.

In March 2016, I participated as a panelist (along with Paula Frederick, Reginald Turner and Jim Allmendinger) at the ABA mid-winter meeting of the Section of Labor and Employment Law’s Ethics & Professional Responsibility Committee on the topic of the amendments to the Model Rule. The paper I submitted in connection with the panel is attached here. Resolution 109’s proposed Rule 8.4 is preferable to earlier versions of the proposed Rule (including the version I commented on in my paper, which included a “knowingly” requirement).¹

¹ Resolution 109’s proposed Rule 8.4 is preferable to earlier versions of the proposed Rule that would have required harassment or discrimination be committed “knowingly.” Such a requirement would be out of step...
The lack of diversity in the legal profession is well-documented. Women comprise only one-third of lawyers. Only 5.3 percent of attorneys are African-American, 4.2 percent are Asian, and 3.2 percent are Latino. Lawyers with disabilities make up 2.6 percent of those in the legal profession. Members of the LGBT community are also underrepresented at just two percent.

Discrimination within the legal profession impacts more than just attorneys and legal staff. Lawyers are stewards of the country’s most important institutions, including the criminal justice system and the courts. The ABA Report on Public Perceptions of the American Justice System (1999) shows that nearly 70 percent of African-Americans and Latinos believe racial and ethnic minorities are treated worse by lawyers. The profession should impose standards such as proposed Model Rule 8.4 as a first step toward remedying this mistrust and repairing relations with the communities that are most in need of legal services.

The Legal Aid Society – Employment Law Center believes that ratifying the proposed amendment to Model Rule 8.4 is an important step toward realizing a more representative and just profession.

While the Legal Aid Society – Employment Law Center supports the proposed amendment to Model Rule 8.4, we also recognize that the amendment could go further to address the problem of discrimination in the legal profession. The proposed Rule’s list of protected categories is not expansive enough and should include gender expression as well as status as a victim of domestic and/or sexual violence, height and weight, and military and veteran status. Despite these concerns, the Legal Aid Society – Employment Law Center is in strong support of the proposed Rule.

The inclusion of a formal rule prohibiting discrimination and harassment among attorneys is an overdue and important step toward promoting a more diverse profession that accurately reflects the society it serves.

The Legal Aid Society – Employment Law Center respectfully urges ratification of the proposed amendments to Model Rule 8.4.

Sincerely,

Elizabeth Kristen
Director Gender Equity & LGBT Rights Program

with Title VII of the Civil Rights Act of 1964. The proposed Rule in its current form without the “knowingly” requirement is a vast improvement.

2 Helia Garrido Hull, Diversity in the Legal Profession: Moving From Rhetoric to Reality, 4 Colum. J. Race & L. 1, 6-7 (2013).

3 Id. at 8.

4 Id. at 9.

5 Id. at 10. Notably, sixty percent of out LGBT lawyers are employed in only four cities: San Francisco, New York, D.C., and Los Angeles. Id. at 11.