



**NWSBA**  
NORTHWEST SUBURBAN  
BAR ASSOCIATION

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April 23, 2019

Michael Scodro

Chair of the AOIC Committee on Professional Responsibility

Mayer Brown

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Re: Illinois Professional Ethic Rule Changes: Sexual harassment/misconduct

Dear Mr. Scodro:

As a Bar Association, we take very seriously our roles in promoting diversity, civility and professionalism in the courtroom, boardroom, offices and with our clients. We have seen an increasing awareness of sexual harassment and accountability over the years. Over the last year, we have met, discussed and had several CLE trainings on Rule 1.8(j) of the Illinois Rules of Professional Responsibility for attorneys in Illinois, during which the topic of attorney sexual misconduct, harassment and workplace rules of civility have arisen. We also discussed the instances of sexual harassment in the Court system, judiciary and bar and questioned whether we are doing enough to reduce the number of sexual harassment incidents within our profession.

As currently written, Rule 1.8(j), (comments 17-18), state:

“A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.”

Rule 8.4(j) states:

It is professional misconduct for a lawyer to violate a federal, state or local statute or ordinance that prohibits discrimination based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status by conduct that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including: the seriousness of the act; whether the lawyer

knew that the act was prohibited by statute or ordinance; whether the act was part of a pattern of prohibited conduct; and whether the act was committed in connection with the lawyer's professional activities. No charge of professional misconduct may be brought pursuant to this paragraph until a court or administrative agency of competent jurisdiction has found that the lawyer has engaged in an unlawful discriminatory act, and the finding of the court or administrative agency has become final and enforceable and any right of judicial review has been exhausted.

These specific rules are very limited and fail to cover many aspects pertaining to our ethical responsibilities. The rules, as written, are client centric, as they should be. While, 8.4(j) clearly expands those responsibilities beyond the attorney-client relationship to the workplace at large, we have experienced feed-back from our three CLE presentations that cause us to question whether attorneys understand that professional misconduct includes work place harassment and how we, as lawyers, treat other attorneys, paralegals and staff. Sexual misconduct and sexual harassment are not even defined. Do attorneys and judges view discrimination differently as harassment? Do these rules apply to attorneys who volunteers or hold positions in bar associations, and should comments be added? Would it be beneficial to add a requirement for education, training and assistance as we do for substance abuse and diversity?

We support an action plan that would encourage your committees to:

- 1) review the rule in light of its language;
- 2) discuss the Rules' intentions and whether they are being met as currently worded;
- 3) examine developments in other jurisdictions; and
- 4) create a taskforce that could evaluate whether further initiatives such as training and education should be established.

In the aspirational language of the Model Rules and in the Illinois Supreme Court Rules of Professional Responsibility, lawyers and judges are taught that they represent "justice," the judicial system, integrity and the highest ethical standards. Sexual harassment or misconduct has no place in our profession, and we must do more to reduce the number of incidents. While we have had only nine (9) harassment cases adjudicated by the ARDC in the last year and a half, that number cannot be used as the bar; there can be no doubt that the incidents are under-reported. The comments made at our CLEs, from young and older attorneys alike, demonstrate that more often than not, inappropriate conduct is not being reported. Attorneys and judges would clearly benefit from additional training on these issues. In fact, our Young Lawyers Committee has asked for us to put on another seminar on this topic.

We look forward to working with the Committee and thank you for taking on this important task.

Sincerely,

Michael Rothmann  
President of the Northwest Suburban Bar Association

CC: Chief Justice Lloyd Karmeier  
Justice Anne Burke  
Steve Pflaum, Illinois Judicial Ethics Committee Chair, Neal, Gerber &  
Eisenberg; spflaum@nge.com  
Mary Gerak,  
Scott Kozlov & Richard Adler – Co-Chairs of NWSBA Ethics Committee