The National Legal Foundation

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May 31, 2018

Chief Justice Robert J. Lynn, Chairperson
New Hampshire Supreme Court
Advisory Committee on Rules
1 Charles Doe Drive
Concord, NH 03301

Attn: Ms. Carolyn Koegler, Secretary
(submitted via email: rulescomment@courts.state.nh.us)

Re: Comment Letter of the National Legal Foundation and the Congressional Prayer Caucus Foundation re Proposed Amendments to New Hampshire Rule of Professional Conduct 8.4 and Updates to the Ethics Committee Comment

Dear Chief Justice Lynn and Members of the Advisory Committee on Rules:

The National Legal Foundation (NLF), joined by the Congressional Prayer Caucus Foundation, respectfully submits these comments with respect to the three options for amending New Hampshire Rule of Professional Conduct 8.4 by adding a subsection (g) ("proposed rule") that is based on the ABA Model Rule 8.4(g) ("model rule"). The NLF is a public interest law firm dedicated to the defense of First Amendment liberties. We write on behalf of ourselves and our donors and supporters, including those in New Hampshire. The NLF has had a significant federal and state court practice since 1985, including representing numerous parties and *amici* before the Supreme Court of the United States and the supreme courts of several states.

The Congressional Prayer Caucus Foundation (CPCF) is an organization established to protect religious freedom, preserve America's Judeo-Christian heritage, and promote prayer, including as it has traditionally been exercised in Congress and other public places. CPCF reaches across all denominational, socioeconomic, political, racial, and cultural dividing lines. CPCF has an associated national network of citizens, legislators, pastors, business owners, and opinion leaders, including supporters in New Hampshire.

We agree with much of what the Christian Legal Society (CLS) expressed in its comments, submitted to the Court on May 25, 2018. Those comments noted the substantial body of scholarly and professional criticism focusing on the model rule's constitutional deficiencies. CLS also ably summarized the negative track record of the model rule to date, its potential for

censoring speech and debate that undergird a free society,[1] and its difficulty gaining traction because of its constitutional infirmities.

Those infirmities have been mitigated somewhat in the three versions of the New Hampshire proposed rule, notably by excluding the circular sentence that concludes the model rule ("This paragraph does not preclude legitimate advice or advocacy consistent with these Rules."). Each version of the proposed rule, however, retains other problems present in the model rule**,** particularly with respect to proposed adoption of the model rule's Comment 4, which broadly defines "conduct related to the practice of law."[2]

The model rule, followed substantially in the proposed rule, purports to put lawyers at the forefront of a cultural movement. Even if this cultural movement is justified, the model rule undermines basic fairness with respect to constitutionally protected, sincerely held religious beliefs and ethical standards.

Lest this concern be thought hypothetical, it is instructive to consider the litigation in the United States District Court for the Middle District of Alabama.[3] In that case, a sitting state Supreme Court justice running for reelection "expressed his personal views on a number of highly contentious legal and political issues that his constituents, and the country at large, are currently debating[.]"[4] The Southern Poverty Law Center (SPLC) was offended by the justice's criticism of the majority opinion of the United States Supreme Court decision in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015)—an opinion also strongly criticized by the four dissenting justices—and filed an ethics complaint against the Justice for his "'assault [on] the authority and integrity of the federal judiciary,'"[5] which prompted an ethics investigation and ensuing litigation. The federal district court judge hearing the case "recognized the First Amendment issues implicated by SPLC's attempt to use a state agency to suppress speech . . . ."[6] On May 30, the parties submitted a proposed "Permanent Injunction and Judgment" granting the Alabama Supreme Court Justice a permanent injunction (and attorneys' fees) with respect to enforcing the canon in question "to proscribe or punish any public comment by a judge unless the public comment can reasonably be expected to affect the outcome or impair the fairness of a proceeding pending or impending in any court." The injunction will also apply to two related canons.[7] Similarly, each version of the proposed rule change will make it easier to attack New Hampshire lawyers' First Amendment rights.

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[1] As CLS notes, "we live at a time when many people, including lawyers, are willing to suppress the free speech of those with whom they disagree. At a time when freedom of speech needs more breathing space, not less, ABA Model Rue 8.4(g) threatens to suffocate attorneys' speech." (CLS Comment Letter, p. 1.)

[2] CLS's comments ably describe the overbreadth of this proposed Comment (CLS Comment Letter, pp. 3-4).

[3] *Parker v. Judicial Inquiry Comm'n of the State of Ala.*, No. 2:16-CV-442-WKW, 2017 WL 3820958, (M.D. Ala., Aug. 31, 2017) and 2018 WL 1144981 (M.D. Ala., Mar. 2, 2018).

[4] *Parker*, 2017 WL 3820958 at 3.

[5] *Id.* (quoting SPLC's complaint).

[6] *Id.* (internal quotation and citation omitted).

[7] *Parker v. Judicial Inquiry Comm'n of the State of Ala.*, No. 2:16-CV-442-WKW (M.D. Ala., May 30, 2018) (proposed Permanent Injunction and Judgment (ecf # 108-1)).

In considering the merits of the proposed rule, the turbulence encountered on the model rule's journey thus far is telling. As detailed in the CLS comments (at pages 4, 12, and 18-23, submitted May 25, 2018), numerous jurisdictions have noted grave reservations about the wisdom and constitutionality of the model rule. As CLS notes in its comments (at page 17), the ABA's claim that multiple jurisdictions have adopted this rule is factually incorrect; only one (Vermont) has done so, and every state attorney general who has considered the proposed rule has found it constitutionally defective in multiple respects.

Much of the thinking and advocacy that undergird the push for the model rule's adoption also ignore credible and significant health and social science data that should signal skepticism in approaching the expansive scope of the proposed rule's language. There is well-founded concern that the proposed rule would align the State of New Hampshire behind those who are most actively pushing an expansive definition of "sexual orientation," "gender identity," and "marital status," to the degree that any "discrimination," broadly defined, will override religious, speech, assembly, and other freedoms.

Although the categories of "sexual orientation," "gender identity," and "marital status" are among statutorily protected categories in New Hampshire ("gender identity" having just been added) for purposes of employment, fair housing, and public accommodations, there are a number of relevant considerations that urge caution in their use in a rule of this sort. We outline several of them below, in part to explain more fully the key difference between homosexual and transgender *inclinations* and *conduct*[8] and in part to reinforce that the public policy debate on such conduct is not closed but is still being informed by substantial health and social science evidence.[9]

Religiously Informed Views on Sexual Orientation, Gender Identity, and Marital Status

Christians are called to love and serve all persons, including those with a homosexual orientation or those who feel a closer association to the gender other than their biological sex. However, most orthodox Christians (and those of other religions) sincerely believe that their Holy Scriptures (not to mention biology) identify same-sex intercourse and rejection of one's birth gender as both unnatural and immoral. Thus, although Christian lawyers would not (and overwhelmingly do not) refuse to take work from persons who identify themselves as gay or transgender *when the work does not involve supporting that lifestyle* (e.g., representation as a

[8] In fact, the definition of "sexual orientation" in New Hampshire's anti-discrimination law tacitly recognizes the difference between inclination and conduct. The term is defined to mean "having or being perceived as having an orientation for heterosexuality, bisexuality, or homosexuality. This definition is intended to describe the status of persons and does not render lawful any conduct prohibited by the criminal laws of this state or impose any duty on a religious organization. This definition does not confer legislative approval of such status, but is intended to assure basic rights afforded under this chapter." N.H. Rev. Stat. Ann. §354-A:2, XIV-c.

[9] See, e.g., Mayer & McHugh, "Sexuality and Gender," 50 *The New Atlantis* 8 (Fall 2016), noting (1) that there is limited evidence that social stressors such as discrimination and stigma contribute to the elevated risk of poor mental health outcomes for non-heterosexual and transgender populations and (2) that more high-quality longitudinal studies are necessary for the "social stress model" to be a useful tool for understanding public health concerns.

victim of a car accident), many would have ethical qualms in working for such a person or organization if the representation directly or indirectly advanced the cause of such lifestyles or helped entrench their participants in it. It is not discrimination on the basis of sexual orientation or gender identity to refuse to approve or support same-sex intercourse or gender "transformations." Rather, it recognizes the difference between personhood and activity. Persons are just as much persons if they never engage in sexual intercourse, of whatever kind.

The orthodox Christian view that separates the person from the offensive activity is not generally accepted by either the LGBT community or, increasingly, administrative and judicial officials. *E.g., Christian Legal Soc'y Chapter v. Martinez*, 130 S. Ct. 2971, 2980 (2010) (recounting state university's labeling of CLS chapter's requirement that leaders not engage in sexual intercourse outside marriage between a man and a woman as "sexual orientation" and "religious" discrimination, although the case was decided on other grounds). Christian attorneys are often representing citizens whose refusals, made for religious reasons, to support the LGBT lifestyle or participate in LGBT events are attacked as "sexual orientation" or "marital status" discrimination. *E.g.*, *In re Klein*, Case Nos. 44-14 *et al.*, Final Order, Ore. Bureau of Labor and Indus. (July 2, 2015); *Masterpiece Cakeshop v. Colo. Civil Rights Comm'n* (2015COA115), cert. granted, 137 S.Ct. 2290 (U.S. June 26, 2017) (No. 16-111) (argued Dec. 5, 2017). Each of the three options for the proposed rule, if adopted without change, could be used in similar ways against attorneys acting in accord with their basic constitutional freedoms. And, of course, this could affect not just Christian attorneys, but also those of other faiths, such as Judaism and Islam, that teach the immorality of homosexual conduct.

The view that distinguishes the person from the activity may not be held currently by a majority of the ABA's leadership, but it is held by many lawyers in New Hampshire and nationwide and is religiously, scientifically, and logically informed. It appears that those who sponsor adoption of the model rule are not satisfied with the pace of change across the country. The ABA Ethics Committee in its December 22, 2015, memorandum ("ABA Memorandum") quoted (at 2) from the "eloquence" of the Oregon New Lawyers Division that "[t]here is a need for a cultural shift in understanding." In uncritically accepting that there is such a "need" for a "cultural shift" and in seeking to advance it, the proponents of the proposed rule have taken an unwise step that should not be endorsed and followed by New Hampshire. At a minimum, New Hampshire's approach to this subject should be more nuanced to recognize and exempt constitutionally protected speech and conduct motivated by sincerely held religious beliefs and to clarify exactly what is being proscribed. New Hampshire's nondiscrimination law recognizes that it can come in conflict with religiously motivated freedoms and provides exemptions for religious organizations.[10] It is not just organizations that exercise religiously motivated speech and action. Individuals, including lawyers, do so as well.

[10] N.H. Rev. Stat. Ann. §354-A:13.II. provides: "Nothing in this chapter shall prohibit a religious organization . . . from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, or national origin." N.H. Rev. Stat. Ann. §354-A:18. provides: "Nothing contained in this chapter shall be construed to bar any religious or denominational institution or organization . . . from limiting admission to or giving preference to persons of the same religion or denomination

Suggested Revisions to the Proposed Rule

We support the formulation of a black-letter ethics rule addressing inappropriate, invidious discrimination. Such a provision would properly address discrimination based on uncontroversial and constitutionally protected categories, such as race, religion, color, national origin, and sex. However, the inclusion of "sexual orientation," "gender identity," and "marital status" as nondiscrimination categories in the proposed rule is ill-advised unless those terms are more carefully defined and limitations more clearly specified to prevent an unconstitutional application of the proposed rule.

1. Proposed use of "sexual orientation"

The category of "sexual orientation" should not be included in the text of the rule. It is not a category uniformly recognized throughout the country, and it is subject to misinterpretation and abuse. *See* Todd A. Salzman & Michael G. Lawler, *The Sexual Person* 150 (2008) ("The meaning of the phrase 'sexual orientation' is complex and not universally agreed upon.") Perhaps more importantly, the phrase "sexual orientation" should not encompass same-sex marriage, since the act of marriage, with its accompanying sexual intimacy, goes much beyond whether an individual is simply attracted to another person of the same sex. Suitable clarifying language would be along these lines: "The [proposed] rule does not extend to a lawyer's refusal to approve or support same-sex conduct, refusal to represent an individual in a matter related to such conduct, or expressed opposition to such conduct."[11]

Without the clarification that "sexual orientation" discrimination does not encompass a lawyer's refusal to approve or support same-sex *conduct*, refusal to represent an individual in a matter related to such *conduct*, or expressed opposition to such *conduct*, lawyers could be driven out of the practice because of their sincerely held and constitutionally protected religious beliefs. To use the proposed rule to coerce an attorney to represent clients to support the advancing of

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or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained."

[11] That such clarification is needed is demonstrated by *Ward v. Wilbanks*, No. 09-cv-11237, 2010 WL 3026428 (E.D. Mich. July 26, 2010), *rev'd sub nom.*, *Ward v. Polite*, 667 F.3d 727 (6th Cir. 2012), and other recent cases. Ward was dismissed from her graduate counseling program by a state university because, although she did not object to counseling homosexual individuals generally, she did not want to counsel them in preparation for a same-sex marriage, which she believed to be unethical. She, therefore, sought to refer such counseling to others instead. The school was not satisfied with this resolution and found her beliefs inconsistent with the American Counseling Association Code of Ethics, which prohibits discrimination on the basis of sexual orientation. The school (and the district court) rejected the distinction between personhood (which homosexuals share with all other persons) and conduct (such as same-sex marriage and relations). (The Sixth Circuit did not reach the issue, but reversed because the student was not given the opportunity to show that the refusal to allow her to refer was applied to her in a discriminatory manner due to her speech and faith.)

conduct that the attorney considers harmful to both the individuals involved and to our society violates several constitutional protections, including compelled speech and assembly.

Finally, if "sexual orientation" is included, Comment 5 should be deleted or modified to exclude "gender identity" (see discussion below), and the proposed rule should clarify that the category of "sex" does not include "sexual orientation" or "gender identity." Interpreting "sex" to include "sexual orientation" and "gender identity" is a position put forward in proposed federal regulations by the EEOC in the prior administration and upheld as a reasonable reading of the term by two en banc federal courts of appeals over vigorous dissents, but, as both history and current dissenting opinions demonstrate, they are not universally accepted or approved expansions of the category of "sex."[12]

2. Proposed use of "gender identity"

Although "gender identity" is not explicitly mentioned in the three versions of the proposed rule, proposed Comment 5[13] would draw it in under all three versions. Whether directly or indirectly, "gender identity" should not be included in the proposed rule as a nondiscrimination category for several reasons.

- *The movement for official acknowledgement that taking transgender actions is "normal," and that such inclinations should even be encouraged, contrasts with social science studies documenting the dramatic, long-term deleterious effects on those who have elected to have transgender medical procedures performed.*[14] By including this term, the

[12] With respect to whether Title VII of the Civil Rights Act of 1964 extends to "sexual orientation," there is a split among the U.S. Circuit Courts of Appeal. In *Hively v. Ivy Tech Community College*, 853 F.3d 339 (7th Cir. 2017) (*en banc*) and *Zarda v. Altitude Express, Inc.*, 2018 WL 1040820 (2d Cir. 2018) (*en banc*), two Circuits overruled prior precedent in their courts and concluded that Title VII's protected categories include sexual orientation as a subset of discrimination on the basis of sex. In *Evans v. Georgia Regional Hospital*, 850 F.3d 1248 (11th Cir. 2017), however, an Eleventh Circuit panel held that the protected categories under Title VII do not include sexual orientation.

[13] "As used in this Rule, discrimination and harassment based upon 'sex' and 'sexual orientation' are intended to encompass . . . discrimination and harassment based upon gender identity."

[14] Dr. Paul McHugh, former Chief of Psychiatry at Johns Hopkins Hospital, noted that gender identity confusion is a mental disorder that deserves understanding, treatment, and prevention and that the suicide rate among those who had "reassignment" surgery is 20 times higher than that among non-transgender people. Dr. McHugh also noted studies show that 70% - 80% of children who express transgender feelings spontaneously lose such feelings over time. P. McHugh, "Transgender Surgery Isn't the Solution," 6/12/14 *Wall St. J.*, available at http://www.wsj.com/articles/paul-mchugh-transgender-surgery-isnt-the-solution-1402615120 (last visited 5/11/18); *see also* Cal. Health Interview Study, *reported in* Center for American Progress, "How to Close the LGBT Health Disparities Gap," www.americanprogress.org/issues/lgbt/report/2009/12/21/7048 (last visited 5/11/18) ("[t]ransgender adults are much more likely to have suicide ideation" (2% heterosexual; 5% gay; 50% transgender)).

proposed rule helps perpetuate a pretense that ignores physical reality and social science results, unfairly and improperly accusing those who do not support transvestitism and gender transfers of "harassment" and "discrimination."

- *The term "gender identity" is unconstitutionally vague.* This term has no fixed meaning and, by definition, is the product of an individual, subjective determination that may conflict with how the individual objectively appears to others. Moreover, because of its subjectivity, the term is malleable and can even be used by an individual in a temporally inconsistent manner.[15] Needless to say, such ambiguity in the term raises serious vagueness concerns. In fact, the ABA Ethics Committee, which drafted the proposed rule, demonstrated the ambiguity of the term when it stated (December 22, 2015, memorandum, at 5) that the term *gender identity* recognizes that "a new social awareness of the individuality of gender has changed the traditional binary concept of sexuality." Any "identity" subject to changeable, subjective "individuality" untethered to time or objective biology is, by definition, vague and subject to abuse.

To reiterate, Christians (and others) do not believe those with transgender inclinations are any less persons for having such inclinations, but that is not the same as approving and being able to support or advocate for *actions* taken in furtherance of that inclination or to advance its spread. Christians recognize that they themselves and all other persons take immoral actions. Christians are enjoined by their Scriptures to love and serve all persons, even though they do not approve of the immoral actions persons perform.[16]

3. Proposed use of "marital status"

The term *marital status* is hopelessly ambiguous. It is obviously not an inherent condition like race, ethnicity, or sex, but what exactly it covers is unclear, and its meaning is not well settled or accepted.

The ABA Ethics Committee indicated (ABA Memorandum, at 5) that it included this term based on the Supreme Court of the United States' *Obergefell* decision and on "the rise in single parenthood." This explanation provides more questions than answers. If the reference to *Obergefell* is meant to suggest that a lawyer could not discriminate against those in a same-sex marriage, "marital status" adds nothing to "sexual orientation." Moreover, *Obergefell* did not

[15] "The term [transgender] includes androgynous and gender queer people, drag queens and drag kings, transsexual people, and those who identify as bi-gendered, third gender or two spirit. 'Gender identity' refers to one's inner sense of being female, male, or some other gender . . . . Indeed, when used to categorically describe a group of people, even all of the terms mentioned above may be insufficient . . ., individuals may identify as any combination of gender identity referents simultaneously or identify differently in different contexts or communities." *Self-Determination in a Gender Fundamentalist State: Toward Legal Liberation of Transgender Identities*, 12 Tex. J. on C.L. & C.R. 101, 103-04 (2006). *See also DeJohn v. Temple Univ.*, 537 F.3d 301, 381 & n.20 (3d Cir. 2008) (noting fluidity of the term *gender*).

[16] *See John 8:2-11* (New Int'l Version) (story of Jesus not condemning the woman caught in adultery but telling her to "leave your life of sin").

overturn the public policy of many States that still *disfavors* same-sex marriage, even though those States may no longer prohibit a civil ceremony.[17]

To the extent the ABA included "marital status" based on the implication that there is some kind of invidious discrimination against single parents, the support mustered for that was exactly zero. The reason why representation (or employment at a law firm) would be refused because a person is single but has a child goes unarticulated and its occurrence unproven. Nondiscrimination categories should not be proliferated without cause.

A broad reading of *marital status* could also intrude in law firm hiring decisions. Relational skills are of major importance in both client contacts and in the close working quarters of a law firm. If someone has been divorced repeatedly, it is a possible indicator of relational difficulties, failures to honor commitments, and other immaturities in that person. Would asking about the facts and circumstances of such a personal history, and/or basing a non-hiring decision in part on it, be "harassment" or "knowing discrimination" on the basis of "marital status?" Would that be true if the person's marital history was well known to the recruiter and in the community, and she based her refusal to hire in part on that knowledge? After all, the practice of law is not just a "big city" profession; it is also practiced in scores of small communities.

On its face, it is also conceivable that "marital status" discrimination would include, for example, when a Christian attorney, for religious reasons, refused to craft a prenuptial agreement for previously divorced individuals because the lawyer held the belief that the Bible disallows most remarriage after divorce if the divorced spouse is still alive. Similarly, would a family law attorney who refuses for religious reasons to assist a same-sex couple adopt a child have engaged in improper "marital status" discrimination?

The "marital status" category is simply too vague, pliable, and potentially subject to abuse to be used in the proposed rule. It fails due process analysis and could intrude on many decisions and actions that are constitutionally protected.

Conclusion

Article 4 of New Hampshire's Bill of Rights (section 1 of New Hampshire's Constitution) provides: "Among the natural rights, some are, in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the Rights of Conscience." Article 5 provides for religious freedom: "Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner

[17] In this respect, the right of a same-sex couple to a civil marriage parallels the right of a woman to a pre-viability abortion. Although such abortions may not be prohibited by governments, *see Planned Parenthood of Se. Pa. v. Casey,* 505 U.S. 833 (1992), the Supreme Court has repeatedly upheld the right of federal, state, and municipal governments to disfavor abortion and not to fund the practice. *E.g., Webster v. Reproductive Health Serv.*, 492 U.S. 490 (1989); *Williams v. Zbarez*, 448 U.S. 358 (1980); *Harris v. McRae*, 448 U.S. 297 (1980); *Poelker v. Doe*, 432 U.S. 519 (1977); *Maher v. Roe*, 432 U.S. 464 (1977); *Beal v. Doe*, 432 U.S. 438 (1977).

and season most agreeable to the dictates of his own conscience; or for his religious profession, sentiments, or persuasion; provided he doth not disturb the public peace or disturb others in their religious worship." (Emphasis added.)

For the reasons detailed above, we encourage the Committee not to recommend adoption by the New Hampshire Supreme Court of any of the three options. If one of the three is to be recommended, the version presented in Appendix L should be preferred, with the following revisions to the proposed text:

- Remove "sexual orientation" and "gender identity" as nondiscrimination categories for purposes of this rule. At a minimum:
    - add additional language that "this rule does not include a lawyer's refusal to approve or support same-sex or gender transfer conduct, refusal to represent an individual in a matter related to such conduct, or expressed opposition to such conduct;"
    - remove the proposed Comment 5,[18] and add language that "the terms *sex* and *sexual orientation* do not overlap with each other and neither of those terms overlaps with the term *gender identity*."
- Remove "marital status" as a nondiscrimination category for purposes of this rule.
- Omit adoption of ABA Comment 4,[19] as that comment would be unconstitutionally overbroad in its application.

Christians do, indeed, believe that all people are created equal by God, and they also believe that God has set moral absolutes for behavior for those he has created, including that life is sacred from conception to natural death, that sexual intercourse is only ethical when between a man and woman married to each other, and that violating God's moral norms does not bring true liberty either to an individual or to a culture. Social science amply supports the wisdom of these religious principles.

The text of the proposed rule is susceptible of being used to attack those who sincerely hold religiously based views on and object to what they understand to be sexual libertinism. This is no idle threat, as the desire of some in the LGBT movement is quite evident to punish and drum out of the public conversation any who disagree with them and who express their religious beliefs that homosexual and transgender conduct are immoral and deleterious to our civil society, as well as to the individuals involved. (*See, e.g., infra* at page 2, the details of the Alabama Judicial

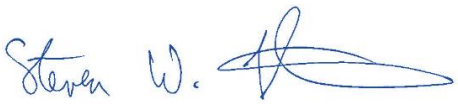
[18] Proposed Comment 5 provides: "As used in this Rule, discrimination and harassment based upon 'sex' and 'sexual orientation' are intended to encompass same-sex discrimination and harassment, as well as discrimination and harassment based upon gender identity."

[19] The ABA's Comment 4 to the Model Rule provides: "Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law. Lawyers may engage in conduct undertaken to promote diversity and inclusion without violating this Rule by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations."

Inquiry Commission case.) The New Hampshire Supreme Court should not provide a platform for such actions by adopting this proposed rule.

Thank you for the opportunity to provide these comments and for your consideration of them.

Sincerely,



Steven W. Fitschen
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