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# What Attorneys Are Saying About Pa.'s New Anti-Bias Rule

By [James Boyle](#) | August 2, 2021, 4:43 PM EDT

Pennsylvania attorneys will be committing misconduct if they engage in discriminatory or harassing behavior while practicing law, according to a new rule adopted last week by the state Supreme Court.

The court approved new language for the state's Professional Rules of Conduct Rule 8.4(g), or the anti-bias rule. The revision makes it "professional misconduct" for an attorney to "knowingly engage in conduct constituting harassment or discrimination" based on race, sex, religion or other categories in the course of practicing law.

Comments supporting the rule change further define which actions constitute practicing law, including interacting with co-workers, clients and court personnel while appearing in proceedings, operating a law practice, and participating in judicial boards or continuing legal education seminars. Actions that are not governed by the new rule include speeches, debates or presentations unrelated to the attorney's practice.

The [Pennsylvania Supreme Court adopted the revised language](#) with clearer definitions of actions considered practicing law after a Philadelphia attorney [successfully argued](#) for an injunction on a previous version of the new rule.

U.S. District Judge Chad Kenney agreed with plaintiff Zachary Greenberg in December that the older version would have a chilling effect on attorneys advocating for the constitutionality of hate speech and the due process rights of individuals accused of sexual assault.

Justice Sallie Updyke Mundy dissented from the high court's decision to adopt the rule, saying that the changes made to the new version "fail to cure the rule's unconstitutional nature." The rule will be effective Aug. 25 — 30 days after the Supreme Court's approval.

Attorneys talked with Law360 Pulse about their reaction to the revised anti-harassment and discrimination rule and whether it clears up the problems with the old language.

## Amy Coco

Partner

Weinheimer Haber & Coco PC



"This is what I do, I represent lawyers, judges and law students, and I do ethics work," Coco said. "I am a governor at-large for the [Pennsylvania Bar Association](#) and a governor for the Allegheny County Bar Association. I've been involved at both the PBA and ACBA in the development of this rule since the beginning."

"I am an advocate for this rule, the legal profession needs this rule," Coco said. "I am thrilled the Supreme Court and the Disciplinary Board acted so swiftly to amend what they had previously done to address the concerns raised in the [Greenberg] lawsuit. This rule is much better and takes out the language that is arguably ambiguous. It's now gone."

"This new language, to me, very clearly targets only what we want to target," Coco said. "It much more succinctly states the kind of conduct that lawyers should not be engaged in. No one, including the bar associations, wanted to legislate lawyers holding opinions or engaging in conduct outside the practice of law that is designed to advocate for something not socially acceptable. You can, for example, hold an opinion that gay marriage should not exist, and you can advocate for that. What you can't do is harass or discriminate against someone who is in a gay marriage, because that marriage is legal."

## Adam Schulman

Senior Attorney

Hamilton Lincoln Law Institute



Schulman is part of the team that represented Greenberg in his lawsuit seeking an injunction against the previously proposed rule. Schulman said in an email to Law360 Pulse that he agreed with Justice Mundy's dissenting opinion.

"The amendments do not remedy the unconstitutionality pinpointed in Judge Kenney's opinion from last December," Schulman said. "Instead, they basically smuggle the First Amendment violation from the body of the rule into the comments by prohibiting speech that denigrates or manifests

aversion or hostility."

## Joseph Williams

Partner, Pollock Begg  
President, Allegheny County Bar Association



"The Allegheny County Bar Association supports the modified Rule 8.4(g) as drafted and adopted by the Pennsylvania Supreme Court," Williams said. "I think it is important to keep in mind lawyers and members of the judiciary are often looked upon by the rest of society to implement societal change. We could not accomplish that without addressing harassment and discrimination. We have to practice what we preach."

"The intention of the new version isn't dramatically different from the original proposal," Williams said. "They cleaned up the rule a bit, with the most notable change in the explanatory comments, which defines what it means to be engaged in conduct tied to the practice of law. It is clear what types of examples the rule would apply. Saying things in a speech that is not tied to a legal case would not be a violation of the rule."

## Beth Weisser

Partner  
Fox Rothschild LLP



"I'm pleased the Pennsylvania Supreme Court adopted the rule," Weisser said. "I think it's a huge step in the right direction. I'm in favor of anything to help deter bias and harassment in the legal profession."

"I am in my second term as co-chair of the Professional Guidance Committee at the [Philadelphia Bar Association](#), and I am on its Professional Responsibility Committee," Weisser said.

"Unfortunately, I have seen firsthand and also conferred with colleagues that have seen situations where this rule would have been applicable."

"Pennsylvania is moving in the right direction," Weisser said. "It is joining a number of states to make it professional misconduct to engage in this behavior. The rule is long overdue, and I am

cautiously optimistic that the new rule will help alleviate that undeniably unacceptable behavior."

--Editing by Orlando Lorenzo.