



The Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness

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FOR IMMEDIATE RELEASE

Third Circuit Court of Appeals Upholds Rule Prohibiting Knowing Harassment and Discrimination in the Practice of Law

*U.S. Appeals Court sides with The Pennsylvania Interbranch Commission for Racial, Gender and Ethnic Fairness
and Other Amici that Plaintiff lacks standing to challenge the rule of professional conduct*

Harrisburg, August 31, 2023 – The Pennsylvania Interbranch Commission for Racial, Gender, and Ethnic Fairness (“Interbranch Commission”) celebrates the decision of the United States Court of Appeals for the Third Circuit to reverse an Eastern District Court ruling striking down Pennsylvania Rule of Professional Procedure 8.4(g). Adopted in 2020, Rule 8.4(g) prohibits attorneys from knowingly engaging in harassment and discrimination based upon race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status in the practice of law. “It is well-established that harassment and discrimination has and continues to adversely impact the most vulnerable and historically disadvantaged members of the legal profession. For nearly two decades, the Interbranch Commission has been working with other stakeholders to combat harassment and discrimination in all three branches government as well as the legal profession. There are many to thank for this long-fought victory that paves the way for Pennsylvania to join 39 other states, the District of Columbia, and three U.S. territories in restricting this type of conduct.”

The Lawsuit

Before Rule 8.4(g) could be enforced, Plaintiff, Zachary Greenberg, filed a pre-enforcement lawsuit to stop the rule from going into effect. Mr. Greenberg, a Pennsylvania attorney who gives continuing legal education programs on the First Amendment quoting purportedly offensive language from judicial opinions and on arguably controversial topics, said he feared future disciplinary action should Rule 8.4(g) be implemented. In short, he argued that Rule 8.4(g) violates the First Amendment and is unconstitutionally vague. The Eastern District agreed and stopped enforcement of Rule 8.4(g). Defendants appealed. The Interbranch Commission filed an Amicus Curiae Brief with the Pennsylvania Bar Association, Philadelphia Bar Association, and Allegheny County Bar Association in support of reversal of the District Court decision.

The Third Circuit Ruling

The Third Circuit determined that the new rule of professional conduct would not stop Mr. Greenberg from speaking or presenting continuing legal education programs because Rule 8.4(g) does not prohibit quoting offensive words or expressing controversial ideas. As written, Rule 8.4(g), “prohibits only harassment and discrimination that is knowing or intentional.” The Court continued, “His planned speech does not arguably violate the Rule, and he faces no credible threat of enforcement.” Mr. Greenberg argued that his speech would be chilled, but the Court ultimately concluded that any chill would not be reasonably caused by Rule 8.4(g).

Historical Context

The Interbranch Commission alongside many other stakeholders has diligently worked towards the passage of Rule 8.4(g) for approximately two decades. The Pennsylvania Supreme Court appointed a special committee to study racial and gender bias in the Pennsylvania justice system. After three and a half years, that study culminated in a lengthy report with nearly 200 recommendations to address inequities. The Interbranch Commission was specifically created to implement

recommendations from that report. One of the very first recommendations was to implement codes of conduct governing judges, attorneys, and court personnel. The Interbranch Commission engaged in years of research, benchmarking the work of other states in drafting and enacting similar codes of conduct, and submitted comments to the Pennsylvania Judicial Council and Pennsylvania Disciplinary Board on several iterations of draft language. In June 2020, the Pennsylvania Supreme Court enacted Rule 8.4(g), prohibiting harassment and discrimination by attorneys while practicing law. The Interbranch Commission advocated for similar amendments to the Judicial Conduct Code, and these amendments were approved in June 2013.

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Founded in 2005, the Interbranch Commission was established by all three branches of Pennsylvania government. Its mission is to implement recommendations from the 2003 study by the Supreme Court on Racial and Gender Bias in the Justice System, and generally eliminate bias and discrimination within all three branches of government.

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For more information on the Interbranch Commission:

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