



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

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U.S. Supreme Court Declines to Hear Appeal Challenging Third Circuit’s Decision to Uphold Anti-Harassment and -Discrimination Rule for PA Attorneys

The Court’s Decision Allows the Rule, for Which The Pennsylvania Interbranch Commission for Racial, Gender, and Ethnic Fairness and Others have Long Advocated, to Take Effect

Harrisburg, May 3, 2024 – The Pennsylvania Interbranch Commission for Racial, Gender, and Ethnic Fairness (“Interbranch Commission”) celebrates the decision of the United States Supreme Court, [issued](#) on Monday, April 22, to decline to hear an appeal from a Pennsylvania lawyer challenging Pennsylvania Rule of Professional Conduct 8.4(g). The Rule prohibits attorneys from knowingly engaging in harassment or 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.

Harassment and discrimination continue to adversely impact 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 within this profession and in all three branches of government. “The Interbranch Commission welcomes the application of Rule 8.4(g), which will improve public confidence in the Pennsylvania justice system by making knowing harassment or discrimination of individuals from protected classes a violation of the Rule of Professional Conduct,” said Interbranch Commission Executive Director, Maraleen Shields.

There are many to thank for this long-fought victory, which 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.

Rule 8.4(g): Origin Story and Legal Background

Pennsylvania Rule of Professional Conduct 8.4(g) was adopted in 2020 in response to the publication of a similar, [model rule](#) previously adopted by the American Bar Association in 2016. However, before Rule 8.4(g) could be enforced, Zachary Greenberg filed a pre-enforcement lawsuit to stop the rule from taking effect. Mr. Greenberg is a Pennsylvania attorney who provides continuing legal education programs on the First Amendment that quote purportedly offensive language from judicial opinions and on arguably controversial topics. Mr. Greenberg argued that he could potentially face future disciplinary action if Rule 8.4(g) was permitted to proceed. In its opinion in March 2022, the District Court for the Eastern District of PA agreed, preventing the enforcement of the Rule. When the Disciplinary Board of the Supreme Court of PA appealed, the Interbranch Commission filed an [Amicus Curiae Brief](#) with the Pennsylvania, Philadelphia, and Allegheny County Bar Associations, supporting the reversal of the District Court decision.

In August 2023, the Third Circuit Court [held](#) that the new rule of professional conduct does not prevent Mr. Greenberg from engaging in protected speech or presenting continuing legal education programs. The Court affirmed that Rule 8.4(g) does not prohibit quoting offensive words or expressing controversial ideas; rather, it employs a fair and workable standard, prohibiting “only harassment and discrimination that is knowing or intentional.” The Court ruled that Mr. Greenberg’s “planned speech does not arguably violate the Rule,” nor does he face any “credible threat of enforcement.” Mr. Greenberg contested the Court’s holding by filing a petition for rehearing. Upon the denial of that request, he filed a petition with the U.S. Supreme Court.

Historical Context

The Interbranch Commission, alongside many other stakeholders, has diligently advocated for the passage of Rule 8.4(g) for nearly two decades. In 1999, the Supreme Court of Pennsylvania 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 2003 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 2013, the Court approved the amendments to the Judicial Code of Conduct for which the Interbranch Commission had advocated. In June 2020, the Supreme Court of Pennsylvania enacted Rule 8.4(g), the analog rule for attorneys, prohibiting harassment and discrimination in the practice of law.

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Founded in 2005, the Interbranch Commission was established by all three branches of Pennsylvania government. The purpose of the Interbranch Commission is to promote equal application of the law. The Interbranch Commission fulfills its purpose by implementing the recommendations from the 2003 study described above; investigating and implementing new initiatives that may not have been addressed by that study; suggesting ways to reduce bias in all three branches of Pennsylvania government; raising both public and professional awareness of its work; and increasing public confidence in Pennsylvania government.

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For more information on the Interbranch Commission:

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