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NEWS RELEASE

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State's Three Largest Bar Associations File Joint Amicus Brief in Support of Professional Rule Prohibiting 'Knowing' Harassment and Discrimination

PITTSBURGH – The state's three largest bar associations, the Pennsylvania Bar Association, the Philadelphia Bar Association and the Allegheny County Bar Association, have jointly filed an amicus brief in the United States Court of Appeals for the Third Circuit in support of the implementation of Rule 8.4(g) of the Rules of Professional Conduct. The rule prohibits a lawyer, in the practice of law, from knowingly engaging in harassment or discrimination based upon race, gender, religion, disability and other protected characteristics. The Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness also is a signatory to the amicus brief.

This is the latest in the continuing effort by the three bar associations to support Rule 8.4(g). In March of this year, a U.S. district court judge enjoined implementation of Rule 8.4(g). The Disciplinary Board of the Supreme Court of Pennsylvania appealed that decision to the Third Circuit Court of Appeals.

"We continue to advocate our support for Rule 8.4(g) because every person participating in our justice system should be able to do so without any concern of harassment or discrimination," said Jay N. Silberblatt, President, Pennsylvania Bar Association. "We're pleased to have both the Philadelphia Bar and Allegheny County Bar associations as well as the Interbranch Commission add their voices in support of this common-sense addition to our professional rules of conduct."

"We were proud to collaborate with the Pennsylvania and Allegheny County bar associations and the Interbranch Commission on the amicus brief in support of Rule 8.4(g). It is a variation of Rule 8.4 (g) of the American Bar Association's Model Rules of Professional Conduct and is similar to provisions adopted by other states," Philadelphia Bar Association Chancellor Wesley R. Payne IV added. "Our association has long supported the addition of an anti-discrimination provision to the Rules of Professional Conduct because we believe there is no place for discrimination and harassment in the practice of law."

"It is of paramount importance that both litigants and legal professionals have equal access to a justice system free from harassment and discrimination," said Allegheny County Bar Association President Erica Laughlin. "The ACBA proudly stands with the PBA and Philadelphia Bar Association in support of Rule 8.4(g), which helps accomplish that goal. We need to hold people accountable for bad behavior and help restore faith in the legal system. Rule 8.4(g) stands to do just that."

For the Pennsylvania Bar Association, support for amending Rule 8.4(g) stretches back to 2016 when its House of Delegates expressed support for the adoption of a prohibition of knowing harassment and discrimination in the practice of law, in a recommendation cosponsored by the association's Commission on Women in the Profession and the Legal Ethics and Professional Responsibility Committee, among other committees and sections.

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The Philadelphia Bar Association’s Board of Governors unanimously passed a resolution supporting the ABA’s Model Rule 8.4(g) within weeks of the adoption in 2016. The association has continued to support the adoption of a variation on the rule in the commonwealth.

In June 2020, the Pennsylvania Supreme Court adopted a version of Rule 8.4(g) that was later challenged in federal court, resulting in a December 2020 ruling enjoining the enforcement of the rule when it was slated to go into effect.

The Disciplinary Board of the Pennsylvania Supreme Court appealed that ruling, and in March 2021, withdrew that appeal with the intention to propose an amended rule taking the District Court’s ruling into account. In the meantime, several other states have moved forward with anti-discrimination rules.

Last July, the Pennsylvania Bar Association and the Philadelphia Bar Association commended the Supreme Court for acting promptly and deliberately by amending the first iteration of Rule 8.4(g) to address the district court’s reservations.

The amended rule approved by the Pennsylvania Supreme Court is a narrower variation of the ABA’s Model Rules of Professional Conduct. As amended, Rule 8.4(g) includes helpful commentary explaining that the rule addresses conduct in the practice of law, including interaction with witnesses, co-workers, court personnel, lawyers or others, as well as participation on judicial boards, continuing legal education seminars, and bench-bar conferences. The terms “harassment” and “discrimination” were clearly defined in the comments, the amicus brief noted, along with a limitation excluding application of the rule in certain circumstances that might present First Amendment concerns.

A copy of the amicus brief can be found here: <https://www.acba.org/wp-content/uploads/2022/09/Filed-Amicus-Brief-of-PBA.pdf>. (Source: Pennsylvania Bar Association, 100 South Street, Harrisburg, PA 17101)

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Founded in 1895, the Pennsylvania Bar Association strives to promote justice, professional excellence and respect for the law; improve public understanding of the legal system; facilitate access of legal services; and serve the lawyer members of the state’s largest organized bar association.

The Philadelphia Bar Association, founded in 1802, is the preeminent metropolitan association of lawyers in the United States. It is a keystone in the ongoing developments of the Philadelphia and Pennsylvania legal systems. With more than 200 years of dedicated service to stand on, the Philadelphia Bar Association is firmly rooted in the Philadelphia community as a steady and reliable bellwether.

Chartered in 1870 and headquartered in downtown Pittsburgh, the Allegheny County Bar Association is a professional organization with approximately 5,500 member attorneys, judges, district justices, legal administrators and paralegals.

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About the ACBA

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