

PENNSYLVANIA LAWYERS BEHAVING BADLY: IS 8.4(g) A SOLUTION?

Ellen Brotman & Amy Coco***

I. INTRODUCTION

In 2016, after many years of debate, the American Bar Association (“ABA”) adopted Model Rule of Professional Conduct 8.4(g), broadening the definition of attorney misconduct to include “conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin,

* Ellen C. Brotman, Esq. is the founder of BrotmanLaw in Philadelphia, Pennsylvania. Her practice focuses on professional responsibility, and ethics. Prior to starting BrotmanLaw, Ms. Brotman was a partner at Montgomery McCracken Walker & Rhoads LLP where she defended criminal cases in federal courts and represented professionals in state disciplinary proceedings. From 1995 to 1998, as an assistant federal defender with the Defender Association of Philadelphia, Ms. Brotman provided criminal defense for indigent clients in federal court at trial and appellate levels. Ms. Brotman also served as a law clerk to the Honorable Lee P. Gagliardi, United States District Judge, Southern District of New York. Ms. Brotman is a past board member of the National Association of Criminal Defense Lawyers and currently sits on the board of the Pennsylvania Association of Criminal Defense Lawyers, where she serves on the Publications Committee and the Lawyers’ Assistance Task Force. Ms. Brotman also sits on the Professional Guidance Committee of the Philadelphia Bar Association and the Professional Responsibility Committee of the Pennsylvania Bar Association. Ms. Brotman has been recognized by Best Lawyers® / The Best Lawyers in America® and SuperLawyers® since 2007. In 2014, she was one of the Legal Intelligencer’s Women of the Year. Ms. Brotman is also Chair of the Board of the People’s Emergency Center Foundation in Philadelphia, an organization dedicated to improving the lives of homeless families.

** Amy Coco, a shareholder at DiBella Weinheimer, has for more than 25 years focused her practice on representing lawyers, judges, and law students including in civil litigation matters; ethics and professional responsibility representation and counseling; practice before the Disciplinary Board, Board of Law Examiners, Court of Judicial Discipline, and the Client Security Fund; law firm organization and structure, including employment matters related to lawyers; risk management and law practice management counseling. She serves as the Pennsylvania Bar Association’s Woman At Large Governor, Vice-Chair of the PBA’s Diversity Equity and Inclusion Team and Vice-Chair of the PBA’s Legal Ethics and Professional Responsibility Committee. She is a Governor of the Allegheny County Bar Association, serves as Chair of the ACBA’s Lawyer Professional Liability Committee and a Duty Officer for the ACBA’s Ethics Committee. She is the Director of Pitt Law School’s Incubator program helping lawyers set up solo practices and has taught business ethics and accounting and finance law at the University of Pittsburgh’s Katz School of Business. She regularly speaks and writes about Ethics, Avoiding Legal Malpractice, and Law Practice Management issues. She has been recognized by her peers as a Super Lawyer for several years in Professional Liability defense and is AV Preeminent Rated by Martindale Hubbell.

ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.”¹

While many states had affirmative rules or comments to Rule 8.4(d)² that already reflected these values, few states defined attorney misconduct to include discrimination and sexual harassment, specifically.³ Despite this gap in attorney regulation, the new rule was not universally embraced. For example, in Montana, the state legislature passed a joint resolution condemning the amended Rule 8.4 on First Amendment grounds.⁴ The Texas and Louisiana Attorneys General also recommended against adopting the amended rule.⁵ As of the drafting of this Article, only Vermont, Maine, New Hampshire, Missouri, Colorado, and New Mexico have adopted a version of the rule.⁶

1. MODEL RULES OF PRO. CONDUCT r. 8.4(g) (AM. BAR ASS’N 2020). Prior to the adoption of 8.4(g), the Model Rules contained a comment defining a violation of 8.4(d) to include harassment and discrimination. Kristine A. Kubes et al., *The Evolution of Model Rule 8.4(g): Working to Eliminate Bias, Discrimination and Harassment in the Practice of Law*, A.B.A. 1, 3-4 (Mar. 12, 2019), https://www.americanbar.org/groups/construction_industry/publications/under_construction/2019/spring/model-rule-8-4. While this comment addressed harassment and discrimination, “its focus is only in the context of 8.4(d), prejudice to the ‘administration of justice,’” and thus failed to address harassment and discrimination in the context of a lawyer’s conduct related to the practice of law. *Id.* at 4.

2. MODEL RULES OF PRO. CONDUCT r. 8.4(d) (AM. BAR ASS’N 2020) (prohibiting conduct that is prejudicial to the administration of justice).

3. For example, California Rule 2-400 states, in pertinent part, that:

In the management or operation of a law practice, a member shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race, national origin, sex, sexual orientation, religion, age or disability in: (1) hiring, promoting, discharging, or otherwise determining the conditions of employment of any person; or (2) accepting or terminating representation of any client.

CAL. RULES OF PRO. CONDUCT r. 2-400(B) (2018). Similarly, Massachusetts Rule 3.4(i) prohibits any attorney “in appearing in a professional capacity before a tribunal, [from] engag[ing] in conduct manifesting bias or prejudice based on race, sex, religion, national origin, disability, age, or sexual orientation against a party, witness, counsel, or other person.” MASS. SUP. JUD. CT. PRO. CONDUCT r. 3.4(i) (2020). *But see* 48 Pa.B. 2936 (“At present, *in contrast with many other jurisdictions*, Pennsylvania’s rules do not address harassment or discrimination in the black letter law or in the comments.”) (emphasis added).

4. S.J. 0015, 2017 Leg., 65th Sess. (Mont. 2017).

5. Tex. Att’y Gen. Op. KP-0123 (Dec. 20, 2016); La. Att’y Gen. Op. 17-0114 (Sept. 8, 2017). *See* Kubes et al., *supra* note 1, at 15 (“[T]he Texas Attorney General opined that Rule 8.4(g) would severely restrict attorneys’ ability to engage in meaningful debate on a range of important social and political issues’”); *id.* at 16 (“[T]he expansive phrase ‘conduct related to the practice of law’ [the Louisiana Attorney General found was] ‘unconstitutionally broad as it prohibits and chills a substantial amount of constitutionally protected speech and conduct.’”).

6. *See* VT. PRO. CONDUCT R. 8.4(g) (2009) (limited to employment decisions); ME. PRO. CONDUCT R. 8.4(g) (2014) (“It is professional misconduct for a lawyer to . . . engage in conduct or communication related to the practice of law that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity.”); N.H. PRO. CONDUCT R. 8.4(g) (2004) (“It is

Pennsylvania favored adopting Rule 8.4(g) and—after a lengthy Note and Comment period where multiple versions were considered⁷—adopted a version of the ABA rule that was to go into effect on December 8, 2020.⁸ However, in *Greenberg v. Haggerty*, a federal court declared that the rule violated the First Amendment and enjoined it from being enforced.⁹ The Court amended the rule to its current version, providing that it is “professional misconduct” for a lawyer to: “[I]n the practice of law, knowingly engage in conduct constituting harassment of discrimination based upon race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status.”¹⁰

In *Greenberg*, the plaintiff again raised a constitutional challenge, and the matter remains in litigation.¹¹ We leave the discussion of the

professional misconduct for a lawyer to . . . take any action, while acting as a lawyer in any context, if the lawyer knows or it is obvious that the action has the primary purpose to embarrass, harass or burden another person, including conduct motivated by animus against the other person based upon the other person’s race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation, marital status or gender identity.”); MO. SUP. CT. R. 4-8.4(g) (2021) (“It is professional misconduct for a lawyer to . . . manifest by words or conduct, in representing a client, bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status. This Rule 4-8.4(g) does not preclude legitimate advocacy when race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or other similar factors, are issues.”); COLO. PRO. CONDUCT R. 8.4(g) (2018) (“It is professional misconduct for a lawyer to . . . engage in conduct, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person’s race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, whether that conduct is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process . . .”); N.M. PRO. CONDUCT R. 16-804(G) (2019) (“It is professional misconduct for a lawyer to . . . engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, or marital status in conduct related to the practice of law. . . . This paragraph does not preclude legitimate advice or advocacy consistent with these rules.”).

7. See 48 Pa.B. 2936 (discussing the four-year process of consideration in adopting the rule).

8. See 50 Pa.B. 3011; see also *Greenberg v. Haggerty*, 2020 Pa. No. 20-3822 (E.D. Pa. Feb. 7, 2022).

9. 491 F. Supp. 3d 12, 31-33 (E.D. Pa. 2020). The Pennsylvania Supreme Court and the Disciplinary Board appealed, but later dismissed their appeals, opting instead to amend. See *Greenberg v. Haggerty*, No. 20-3602 (3d Cir. Mar. 17, 2021) (mem.).

10. Amendment of Rule 8.4 of the Pennsylvania Rules of Professional Conduct, 51 Pa.B. 5190 (Jul. 26, 2021). The court adopted the amended rule without a public comment period. See *id.*; PA. RULES JUD. ADMIN. r. 103(a)(3) (2021) (allowing the court to bypass public comment periods in “exigent” circumstances). The rule includes comments which provide guidance on the substantive rule. See MODEL RULES OF PRO. CONDUCT § 21 (AM. BAR ASS’N 2020).

11. *Greenberg*, 491 F. Supp. 3d at 23. In response to the revised rule, Plaintiffs filed an amended complaint. Verified Amended Complaint for Declaratory and Injunctive Relief at 35, *Greenberg v. Haggerty et al.*, 491 F. Supp. 3d 12 (E.D. Pa. filed Aug. 19, 2021) (No. 20-3822). At the time of writing this Symposium Article, the parties’ motions for summary judgment had just

constitutionality to First Amendment scholars, which we are not. Our viewpoint is based on our shared experiences as litigators who have worked for gender equity throughout our combined sixty years of practice. We also have both spent a significant part of those years defending lawyers accused of violating the Rules of Professional Conduct. Thus, we write as Respondents' counsel who want the rules to comply with the demands of substantive and procedural due process and as practicing attorneys who want the rules to reflect the importance of equity and equality in our profession. Unlike other professions, the legal profession is self-regulated.¹² With the freedom to draft our own regulations and shape our own disciplinary process comes the responsibility to make certain that this regulation reflects the values that support equal opportunity and freedom from harassment and discrimination.

The questions we examine here are these:

- Will the new rule provide greater protection for women and minorities, and will that protection extend beyond clients?
- How will the rule affect the prosecution and defense of attorney misconduct?
- Is the new version of Model Rule 8.4(g) sufficiently tailored to provide notice of what conduct is sanctionable, particularly in the area of sexual harassment?

To answer these questions, in Part I, we provide a quick overview of the Pennsylvania attorney disciplinary process.¹³ Part II discusses recent disciplinary cases involving sexual misconduct.¹⁴ The cases to be discussed are:

- *Office of Disciplinary Counsel v. Jonathan Altman*,¹⁵ involving sexual misconduct with a client;
- *Office of Disciplinary Counsel v. Methuselah Z. O. Bradley, IV*,¹⁶ involving sexual misconduct with another lawyer;

been argued before the honorable Judge Chad K. Kenney. See PROCEEDINGS, 2:20CV3822, U.S. DISTRICT COURT DOCKET, PA. E., <https://tinyurl.com/yckt9yt2> (last visited Apr. 23, 2022).

12. See MODEL RULES OF PRO. CONDUCT PREAMBLE ¶ 10 (AM. BAR ASS'N 2020).

13. See *infra* Part II.

14. See *infra* Part III.

15. 228 A.3d 508 (Pa. 2020).

16. No. 74 DB 2019 (Pa. Aug. 10, 2020).

- *Office of Disciplinary Counsel v. William Lynch*,¹⁷ involving sexual misconduct with a member of the public;
- *Office of Disciplinary Counsel v. Timothy McMahon*,¹⁸ involving sexual misconduct at a bar conference.

In the context of this discussion, we will explore how application of Rule 8.4(g) would have affected the prosecution, defense, and analyses of these cases.¹⁹

Part III provides our conclusion that Rule 8.4(g) is necessary to fill a gap in disciplinary enforcement to sanction harassment and discriminatory conduct that may not warrant criminal prosecution.²⁰ Further, because each Rule of Professional Conduct reflects a value that the legal profession deems worthy of promotion and protection, Rule 8.4(g) is necessary to support equity for all attorneys.

II. THE PENNSYLVANIA DISCIPLINARY PROCESS

Each state's disciplinary process is unique. In Pennsylvania, Article V, Section 10(c) of the Pennsylvania Constitution states that "[t]he Supreme Court shall have the power to prescribe general rules . . . for admission to the bar and to practice law."²¹ Thus, the Supreme Court is empowered to exclusively govern the practice of law.²² The Disciplinary Board is the agency that enforces the Pennsylvania Rules of Professional Conduct, the Pennsylvania Rules of Disciplinary Enforcement and the Pennsylvania Disciplinary Board Rules.²³ The Board is appointed by the court and is comprised of ten lawyers and two non-lawyers.²⁴ The Board appoints Hearing Committee Members to assist in the administration of the process.²⁵ These Hearing Committee Members are Pennsylvania attorneys;²⁶ both the Board position and the Hearing Committee positions are unpaid, honorary positions.²⁷

17. No. 70 DB 2020 (Disciplinary Bd. Rpt. Dec. 2021) (Sup. Ct. Order Jan. 2022).

18. No. 159 DB 2020 (Disciplinary Bd. Rpt. Sept. 2019) (Sup. Ct. Order Oct. 2019).

19. *See infra* Part III.

20. *See infra* Part III.D.

21. PA. CONST. art. V, § 10(c).

22. *Beyers v. Richmond*, 937 A.2d 1082, 1089 (Pa. 2007); *Commonwealth v. Stern*, 701 A.2d 568, 570-71 (Pa. 1997).

23. PA. RULES OF DISCIPLINARY ENF'T § 205(c) (2021).

24. *Id.* § 205(a).

25. *Id.* § 205(c).

26. *Id.*

27. *See, e.g., Questionnaire for Judicial Nominees*, U.S. SENATE COMM. ON THE JUDICIARY 1, 22 (Jun. 16, 2014), <https://www.judiciary.senate.gov/imo/media/doc/Kearney%20Senate%20Questionnaire%>

Disciplinary sanctions are not designed to punish, but rather are intended to protect the public from unfit attorneys and to maintain the integrity of the legal system.²⁸ Discipline is imposed on a case-by-case basis, considering the “totality of the facts” presented, including any aggravating or mitigating factors.²⁹ However, even though each attorney disciplinary matter must be resolved according to its unique facts and circumstances, the court nevertheless endeavors to maintain “consistency in the results reached in disciplinary cases so that similar misconduct is not punished in radically different ways”³⁰

The Office of Disciplinary Counsel (“ODC”)³¹ investigates complaints against attorneys, which may be received several ways, (including through the Disciplinary Board website).³² If a complaint is deemed sufficiently supported, the ODC will send a Request for Statement of Respondent’s Position.³³ The ODC has the authority to exercise its discretion to dismiss a complaint after it has reviewed the response.³⁴ If the ODC decides not to dismiss the complaint, it makes a recommendation, which is reviewed by a Hearing Committee Member.³⁵ The recommendation can be the imposition of an informal admonition, a private reprimand by the Board, a public reprimand by the Board, or the filing of a Petition for Discipline.³⁶

During the investigation process, there is an opportunity for the ODC and the Respondent attorney to agree to facts and ask the Board, and then the court, to approve a Joint Petition for Discipline on Consent.³⁷ If there is no agreement, a Petition for Discipline is filed and a Hearing Committee of three attorneys takes evidence on the alleged violations.³⁸ The Committee issues a report and recommendation to the Disciplinary Board.³⁹ If the parties object to the Committee’s Recommendation, they can file Briefs on Exceptions to the Disciplinary

20Final.pdf (showing that when Mark A. Kearney served as a Member of a Hearing Committee of the Disciplinary Board of the Pennsylvania Supreme Court, he was unpaid).

28. Off. of Disciplinary Couns. v. Christie, 639 A.2d 782, 785 (Pa. 1994).

29. Off. of Disciplinary Couns. v. Lucarini, 472 A.2d 186, 189-90 (Pa. 1983).

30. *Id.* at 190.

31. PA. DISCIPLINARY BD. RULES AND PROC. § 87.1 (2021).

32. THE DISCIPLINARY BD. OF THE SUP. CT. OF PA., <https://www.padisciplinaryboard.org> (last visited Apr. 23, 2022).

33. PA. DISCIPLINARY BD. RULES AND PROC. § 87.7 (2021).

34. *Id.* § 87.8(a)(1); *see* PA. RULES OF DISCIPLINARY ENF’T 208 § (a)(2)(i) (2021).

35. PA. RULES OF DISCIPLINARY ENF’T § 205(c)(7)(i) (2021).

36. *Id.* § 207(b)(2).

37. *Id.* § 215(d).

38. *Id.* § 208(a)(4).

39. PA. DISCIPLINARY BD. RULES AND PROC. § 89.171 (2021).

Board and request oral argument.⁴⁰ The Board reviews the matter *de novo* and then issues its own report and recommendation to the court, which also conducts a *de novo* review.⁴¹

The types of discipline available are: (1) an informal admonition from the Chief Disciplinary Counsel; (2) a private reprimand from the Board, administered by a single Board member; (3) a public reprimand from a three-member panel of the Board; (4) a suspension of less than one year; (5) a suspension of more than one year; and (6) disbarment.⁴² A suspension of more than one year requires an attorney to go through a lengthy and difficult reinstatement process.⁴³ Reinstatement is granted when the attorney proves, by clear and convincing evidence, that they have

[T]he moral qualifications, competency and learning in law required for admission to practice law in this Commonwealth and that the resumption of the practice of law within the Commonwealth by such person will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest.⁴⁴

III. THE *ALTMAN*, *BRADLEY*, *LYNCH* AND *MCMAHON* CASES

A. Office of Disciplinary Counsel v. Jonathan Altman⁴⁵

In April 2020, the Pennsylvania Supreme Court disbarred Jonathan F. Altman for violating Rule 1.8(j) by engaging in sexual relations with a client and Rule 1.8(a) and (e) for engaging in improper financial transactions with the same client.⁴⁶ The client was a single mother of four children.⁴⁷ She sought Altman's assistance with a potential lawsuit against her ex-husband regarding unpaid taxes.⁴⁸ She advised Altman that her second husband had recently died, and she had serious financial problems.⁴⁹ Altman represented the client for several years; that

40. PA. RULES OF DISCIPLINARY ENF'T § 208(d)(1) (2021).

41. *Id.* § 208(d)(2)(iii).

42. *Id.* § 204(a).

43. *Id.* § 218(a)(1), (c)(1), (c)(2).

44. *Id.* § 218(c)(3) (2021).

45. 228 A.3d 508 (Pa. 2020).

46. *See id.* at 515, 518.

47. *See id.* at 510.

48. *Id.*

49. *Id.*

representation included, *inter alia*, the sale of her house and a child custody matter.⁵⁰

Prior to the hearing the parties stipulated to the following facts:

- Altman preyed upon the client's vulnerabilities and had a sexual relationship with her from January 2013 through September 2014;
- Altman knew about her dire financial straits and knew that she would do anything to regain and retain custody of her children;
- Altman repeatedly told the client that she would not regain nor retain custody of her children without his assistance;
- Altman intimidated the client, causing her to believe she needed his assistance;
- Altman threatened to withdraw as her attorney if she did not comply with all his requests for sexual favors to his satisfaction;
- Altman caused her to fear he would show up at her home and harass her family;
- Altman caused her to experience physical ailments and endure emotional trauma due to his demands for sexual favors while reminding her that she would lose her children;
- The client paid Altman \$23,500.00 for his services.⁵¹

Altman also provided the client with his credit cards to purchase several retail goods to keep her from telling Altman's wife about the affair.⁵² He agreed to loan her money and he paid for repairs to her house.⁵³ Later, he attempted to take money from the sale of her home to repay himself and for fees, then filed a separate collection action against her using inaccurate billing records to support his claim.⁵⁴

Altman testified that he learned, "I can't put myself in a position where I'm alone with a female" (and that) the conduct occurred because he was in a "weakened state" and "not strong enough to resist."⁵⁵ Altman characterized the relationship as consensual and asserted that the victim had received the benefit of his legal services.⁵⁶ The Hearing Committee found that

50. *Id.* at 510.

51. *Id.* at 512-13.

52. *Id.* at 511.

53. *Id.* at 511, 513.

54. *Id.* at 511.

55. *Id.* at 513.

56. *Id.* at 518.

[Altman] had no regard for his client, no understanding of his position as a fiduciary and no regard for the integrity of the legal system, [Altman] still has not demonstrated that he understands the position of trust he holds as an attorney; he has not acknowledged that he misused his position as an attorney; and he has not accepted responsibility for the depth of his misconduct. Respondent is a risk to current and potential clients and he denigrates the integrity of the profession.⁵⁷

The Hearing Committee, Disciplinary Board, and, ultimately, the Supreme Court found disbarment to be the appropriate discipline.⁵⁸ The court indicated that disbarment is not a *per se* requirement for a sexual relationship with the client, and it was not simply these facts that justified disbarment.⁵⁹ Rather, it was Altman's failure to take responsibility for his conduct that moved the sanction from lengthy suspension to disbarment.⁶⁰

This case predated the effective date of Rule 8.4(g) and so no analysis of Altman's conduct as harassment or discrimination was included. We hope that application of Rule 8.4(g), might have had a salutary effect on Altman's defense. Had Altman's attorney considered the purposes of 8.4(g), he might have recognized Altman's testimony as classic misogyny and victim-blaming. Altman's testimony that his lesson was not to be "alone with a female" revealed that he views all his interactions with women as opportunities for sex, which he is powerless to resist.⁶¹ His solution is to never meet a woman alone, including, we assume, as co-counsel or opposing counsel.⁶² Following this reasoning to its logical conclusion, women pose too great a risk to male attorneys to be either peers or clients. This defense was based on discriminatory assumptions, which might have been more carefully examined if 8.4(g) had been applied.

57. Off. of Disciplinary Couns. v. Altman, No. 158 DB 2017 at 14-15 (Disciplinary Bd. Rpt. Dec. 3, 2018).

58. *Altman*, 228 A.3d at 514, 519-20.

59. *Id.* at 517, 519.

60. *Id.* at 516-17, 519.

61. *Id.* at 517.

62. *Id.* For a fuller explanation of why this attitude is rooted in misogyny, see Paul Waldman, *Opinion: Pence's Unwillingness to Be Alone with a Woman Is a Symptom of a Bigger Problem*, WASH. POST (Mar. 30, 2017), <https://www.washingtonpost.com/blogs/plum-line/wp/2017/03/30/pences-unwillingness-to-be-alone-with-a-woman-is-a-symptom-of-a-bigger-problem/>; W. Brad Johnson & David G. Smith, *Men Shouldn't Refuse to Be Alone with Female Colleagues*, HARV. BUS. REV. (May 5, 2017), <https://hbr.org/2017/05/men-shouldnt-refuse-to-be-alone-with-female-colleagues>.

However, because a client was involved, Rule 1.8(j) applied.⁶³ This rule recognizes that an imbalance of power exists between a lawyer and his client, which the lawyer must not exploit for his personal gain.⁶⁴ However, Rule 8.4(g) augments and strengthens 1.8(j). Rule 1.8(j) applies only to actual sexual relations; it does not apply to making unwanted advances or inappropriate comments of a sexual nature toward a client.⁶⁵ Rule 8.4(g) makes those preliminary steps inappropriate and provides notice to lawyers that conduct that exploits clients for the attorney's personal romantic interest is also subject to discipline.⁶⁶ Rule 8.4(g) and 1.8(j) work together to protect clients from sexual advances, inappropriate comments and romantic relationships.

The Hearing Committee, the Board, and the Supreme Court all recognized that Altman failed to recognize the seriousness of his misconduct or accept responsibility for it.⁶⁷ However, the profession would have benefitted from a discussion of the application of Rule 8.4(g) to these facts and an express, specific elucidation of how Altman's testimony and attitude towards women was discriminatory.

*B. Office of Disciplinary Counsel v. Methuselah Z. O. Bradley, IV*⁶⁸

On August 10, 2020, the Supreme Court of Pennsylvania suspended Philadelphia attorney Methuselah Bradley for one year, based on a criminal conviction for "harassment by offensive touching or threat," a petty disorderly persons offense, in violation of N.J.S.A. 2C:33-4(b).⁶⁹ Conviction of a crime, by itself, is grounds for discipline in Pennsylvania.⁷⁰

According to the facts found by the Disciplinary Board, Bradley, a lawyer with decades of experience practicing in Pennsylvania, arranged to meet a young female lawyer on his boat.⁷¹ The meeting was purportedly to assist her with drafting a complicated motion in a case in which they represented co-defendants.⁷² Once on the boat, Bradley

63. *Altman*, 228 A.3d at 510. It is important to recognize that Rule 1.8(j) is a relatively recent addition to the Rules of Professional Conduct, becoming effective less than twenty years ago, on January 1, 2005. Hannah T. Stille, Comment, *Attorney-Client Sexual Relationships: A Call for States to Adopt Model Rule 1.8(j)*, 32 J. AM. ACAD. MATRIM. LAWS. 499, 499 (2020).

64. *Altman*, 228 A.3d at 518.

65. MODEL RULES OF PRO. CONDUCT r. 1.8(j) (AM. BAR ASS'N 2020).

66. MODEL RULES OF PRO. CONDUCT r. 8.4(g) (AM. BAR ASS'N 2020).

67. *Altman*, 228 A.3d at 514, 516, 519.

68. No. 74 DB 2019 (Pa. Aug. 10, 2020).

69. *Id.* at 1, 6.

70. PA. RULES OF DISCIPLINARY ENF'T §§ 203(b)(1), 214(h) (2021).

71. *Bradley*, *supra* note 68, at 3, 4.

72. *Id.*

locked the lawyer into the cabin with him, threatened her, assaulted her by grabbing her buttocks, and kissed her.⁷³ The young lawyer insisted that Bradley stop attacking her and release her from the cabin.⁷⁴

A few days later, this young lawyer brought charges in New Jersey and filed a disciplinary complaint.⁷⁵ Bradley contested the New Jersey charges.⁷⁶ He was found guilty and fined \$100 in court costs.⁷⁷ However, because the conviction was punishable by thirty days in prison, it met the Board's definition of crime and, therefore, the conviction had to be self-disclosed to the Disciplinary Board.⁷⁸ Bradley failed to report his conviction to the Board because his attorney had advised him that his conviction was "like a traffic ticket" or a "parking ticket."⁷⁹

At the hearing, the young lawyer testified that she was "angry, upset, scared, petrified," and felt that her trust in an older, more experienced lawyer had been betrayed.⁸⁰ She also testified that she was so afraid of repercussions in her career based on Bradley's connections in Philadelphia that she considered quitting the legal profession altogether.⁸¹ The sexual assault and further trauma of testifying caused her to suffer such anxiety and fear that, in addition to seeking professional counseling, she stopped practicing law in Pennsylvania and moved back to New Jersey.⁸² This tangible, negative effect on her practice demonstrates the connection between harassment of women and their earning ability.

The Board found that the public reprimand recommended by the Hearing Committee and the six-month suspension sought by the Office of Disciplinary Counsel were both insufficient.⁸³ The Board partly based their decision on Bradley's failure to take responsibility, either by conceding he had done anything wrong or acknowledging the harm he had caused to his victim.⁸⁴ The Board concluded that "[a] one-year period of suspension will make clear to the bar that intentional nonconsensual touching of another, in this case a fellow member of the bar, will not be tolerated."⁸⁵

73. *Id.* at 4-5.

74. *Id.* at 5.

75. *Id.* at 6.

76. *Id.*

77. *Id.* at 7.

78. *See* PA. RULES OF DISCIPLINARY ENF'T R. 214(h) (2021).

79. *Bradley*, *supra* note 68, at 13.

80. *Id.* at 5.

81. *Id.* at 5-6.

82. *Id.* at 8.

83. *Id.* at 11.

84. *Id.* at 13.

85. *Id.* at 18.

Why did the Hearing Committee feel that no suspension period was warranted for a lawyer who exploited the balance of power in a professional relationship and who expressed no remorse for deceiving, attacking, humiliating, and traumatizing his fellow attorney? Why did the Board feel that an attorney who failed to accept responsibility did not have to prove his fitness to practice law through a reinstatement hearing? We raise these questions while recognizing two things: (1) a suspension is a harsh sanction; and (2) there was a dearth of precedent supporting a longer suspension in a case not involving a client. Precedent was lacking because without a criminal conviction, the rules provided no means to prosecute sexual harassment in non-client matters. Criminal convictions in sexual misconduct cases are infrequent because sexual harassment is rarely reported, and even when reported, less than half the cases result in charges.⁸⁶

Because Rule 8.4(g) was not in effect when this case was investigated and prosecuted by the Board, the disciplinary prosecution was based solely on the criminal case and the failure to report the conviction. While the Board did not specifically express this, the fact that the criminal case was a “summary offense” with a negligible penalty necessarily limited the sanction.⁸⁷ As Respondents’ counsel, we have always observed that the Board follows the unsurprising principle that the more seriously the sentencing court adjudges the misconduct, the more seriously the Board considers the misconduct. Thus, in a society where sexual offenses are underreported, misunderstood, and minimized by law enforcement, the feedback loop between the criminal justice system and the disciplinary system creates a danger that these cases will not be sanctioned appropriately.

Would the outcome of this case have been different if the ODC could have charged a violation of Rule 8.4(g)? Rule 8.4 is entitled “Misconduct,” and it lists the different behaviors that support an imposition of a sanction.⁸⁸ For instance, breaking a Rule of Professional Conduct, interfering with the administration of justice, or committing a “criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects”⁸⁹ A conviction for wire fraud falls into this category, but it also constitutes another type of misconduct identified by a separate subsection of 8.4: “[C]onduct involving dishonesty, fraud, deceit or

86. *The Criminal Justice System: Statistics*, RAINN, <https://www.rainn.org/statistics/criminal-justice-system> (last visited Apr. 23, 2022).

87. *Bradley*, *supra* note 68, at 7.

88. MODEL RULES OF PRO. CONDUCT r. 8.4 (AM. BAR ASS’N 2021).

89. *Id.* r. 8.4(b).

misrepresentation”⁹⁰ This separate subsection emphasizes that truthfulness is a value that the profession must promote and protect with or without a conviction. Thus, untethering the disciplinary case from the criminal prosecution allows the harassing behavior to be judged separately, independent of how the criminal justice system views it, because the profession places a high value on preventing harassment and discrimination. It also emphasizes the seriousness of the case in plain arithmetic terms: the attorney is being sanctioned for two kinds of misconduct—the commission of a crime and the harassment of another.

The new subsection to the rule applies to this conduct, occurring as it did after-hours between two attorneys.⁹¹ The question is, did this conduct occur “in the practice of law”?⁹² Two attorneys meeting to discuss a case is certainly within the practice of law, wherever and whenever it occurs. Did Bradley “knowingly engage in conduct constituting harassment . . . based upon sex”?⁹³ Yes, because he knowingly attempted to coerce his victim for sex and used his professional reputation as a lever of power against her.⁹⁴

How would the application of the rule have changed the defense of the case? As Respondents’ attorneys, we advise our clients to accept responsibility, attempt to remediate the harm, and demonstrate that the misconduct will not reoccur. For instance, in this case, Bradley could have admitted his wrongdoing, apologized in writing to the victim, and expressed his remorse to the Board for the injury to the profession. Had he apologized and expressed remorse for his conduct early on, he might have mitigated the harm to the victim by relieving her of her fear that he would retaliate against her. This fear motivated her to move out of his sphere of influence in Philadelphia.⁹⁵ We also often advise our clients to educate themselves on their misconduct by taking topical Continuing Legal Education courses. These steps could have alleviated the victim’s fears and provided a basis for the Board to find no continuing danger of the conduct reoccurring.

It is unclear whether the application of the new rule, by itself, would have changed the result. This case was decided after *Altman*, which presented a more nuanced approach to gender attitudes and power dynamics, albeit in the context of attorney and client. But despite the egregiousness of the misconduct in *Bradley*, and the seriousness of the

90. *Id.* r. 8.4(c).

91. *Id.* r. 8.4(g).

92. 51 Pa.B. 5190.

93. *Id.*

94. *Bradley*, *supra* note 68, at 18.

95. *Id.* at 8.

harm it caused, the act itself appeared to be a one-time event. Also, Bradley had practiced for decades without any prior disciplinary history, a strong mitigating factor.⁹⁶

However, whether the sanction would have been harsher is only one metric. The importance of the application of Rule 8.4(g) is also to acknowledge the harm to the victim. To the victim, this was not a “traffic ticket.” Instead, it was an event that changed her life, destroyed her trust, and caused her to leave her geographical area of practice altogether.⁹⁷ The use of coercion to extort sex deprives a person of their sense of safety, which thus limits their freedom and financial prospects.⁹⁸ The specific nature of this misconduct must be expressly and specifically acknowledged to validate the victim’s perception and understanding of the nature of the offense they have suffered.

C. Office of Disciplinary Counsel v. William H. Lynch, Jr.⁹⁹

The misconduct in the *Lynch* matter also spanned a brief period. It consisted of a campaign of harassment and terror against a public member because she declined to become romantically involved with Lynch.¹⁰⁰ Lynch admitted that he acted out of “anger” at this rejection.¹⁰¹ His conduct was described by the Hearing Committee as “repulsive and inexcusable.”¹⁰² The Hearing Committee also found that Lynch “‘showed a complete disrespect for the legal system’ and used ‘his position as an attorney to prey upon Ms. S.’”¹⁰³ Despite this strong description, the Hearing Committee recommended a suspension of only one year and one day, retroactive to Lynch’s date of temporary suspension.¹⁰⁴ The Board rejected this result, instead recommending a three-year, non-retroactive suspension, which the court approved on January 6, 2022.¹⁰⁵

96. *Id.* at 3.

97. *Id.* at 5-6, 9, 13-14.

98. *Id.* at 18. The victim’s career choices and decisions, in this instance, are no longer driven by the normal internal and external considerations, but instead are governed by trauma and fear. *See Gender Survey 2020*, N.Y.S. JUD. COMM. ON WOMEN IN THE CTS. 1, 12, 44, 52, 119 (2020), <https://nycourts.gov/LegacyPDFS/ip/womeninthecourts/Gender-Survey-2020.pdf>.

99. No. 70 DB 2020 (Pa. Jan. 6, 2022).

100. *Id.* at 5-7. *But see id.* at 31 (explaining that Lynch’s “egregious criminal acts toward his victim lasted for a longer period of time than Bradley’s . . .”).

101. *Id.* at 15.

102. *Id.* at 32.

103. *Id.* While the name of the victim was made public during the prosecution of former attorney Lynch, the authors have no wish to amplify this public knowledge and will refer to the victim as “Ms. S.”

104. *Id.* at 32.

105. *Id.* at 25, 32-33.

Lynch first met his victim in August 2019.¹⁰⁶ For the next few weeks, they met for casual and friendly meals.¹⁰⁷ On September 5, 2019, Lynch sent Ms. S sexually explicit text messages.¹⁰⁸ Ms. S objected to these messages and made clear that she was not interested in a romantic relationship with Lynch.¹⁰⁹ For the next several days, Lynch sent Ms. S a barrage of “sexually explicit and derogatory text messages,” left her threatening voicemails in which he threatened to come to her work, told her he had many firearms in his possession, threatened to sue her, and threatened to use his law license and contacts to have her deported.¹¹⁰ On September 7, 2019, Ms. S told Lynch never to contact her again.¹¹¹ For the next week, Lynch sent Ms. S “more than 90 text messages that were sexually explicit, inappropriate, disparaging and threatening.”¹¹²

This behavior persisted until September 11, 2019, when Ms. S reported this conduct to the local police; Lynch was arrested the next day.¹¹³ On December 18, 2019, Lynch was charged with stalking in violation of 18 Pa. C.S.A. § 2709.1(a)(2), a misdemeanor of the first degree; harassment in violation of 18 Pa. C.S.A. § 2709(a)(4), a summary offense; and disorderly conduct in violation of 18 Pa. C.S.A. § 5503(a)(4), a misdemeanor of the third degree.¹¹⁴

On February 4, 2020, Lynch pled guilty to the stalking charge in the Chester County Court of Common Pleas to: (a) Count 1, stalking in violation of 18 Pa. C.S.A. § 2709.1(a)(2), a misdemeanor of the first degree.¹¹⁵ He was sentenced to two days to twenty-three months in prison.¹¹⁶ He was also ordered to receive a mental health evaluation and follow all treatment recommendations.¹¹⁷ He served two days and remained under probation supervision for the remaining time.¹¹⁸

Based on this conviction, the Office of Disciplinary Counsel sought and obtained a temporary suspension Order on July 13, 2020.¹¹⁹ On August 17, 2020, the Office of Disciplinary Counsel filed a Petition for Discipline alleging violations of Rule 8.4(a), which defines

106. *Id.* at 4.

107. *Id.*

108. *Id.*

109. *Id.* at 5.

110. *Id.* at 5, 7.

111. *Id.* at 6.

112. *Id.* at 7.

113. *Id.* at 8-9.

114. *Id.* at 10.

115. *Id.*

116. *Id.* at 12.

117. *Id.*

118. *Id.*

119. *Id.* at 1.

misconduct as the violation of a Rule of Professional Conduct, Rule 8.4(b), misconduct through criminal conviction, and Rule 8.4(c), misconduct through dishonesty.¹²⁰ At the time, Rule 8.4(g) had not yet gone into effect. Prior to the hearing, Lynch admitted the violations.

The Board's Report summarized the harm done to the victim:

- She “lived in fear that Respondent would kill her or her son.”
- She purchased a gun, learned to shoot, and took self-defense classes.
- She “obtained a different car because she was afraid Respondent would recognize her old one.”
- She feared she would lose her employment because Respondent threatened to come to her office and cause a scene.
- She feared he would have her deported.
- Her fears were “heightened by her knowledge that Respondent was a lawyer and had specifically referenced his abilities as a lawyer to make good on his threats.”
- The experience had “changed her” and left a “huge scar.”¹²¹

In explanation, Lynch offered that he had acted in “extreme anger.”¹²² Lynch also provided testimony from mental health professionals that he “ha[d] a clearer recognition that his anger had been out of control and that his conduct had been excessive.”¹²³ Lynch expressed remorse about his conduct, but it focused on the “heavy price” he was paying, with no acknowledgment of the permanent, traumatizing effect it had on his victim.¹²⁴ Lynch's attorney attempted to depict him as “a sad case.”¹²⁵ The Board rejected this argument as “inept, insensitive and tone-deaf . . .”¹²⁶

Discipline in the form of a three-year suspension with no retroactivity is harsh. The maximum amount of suspension in Pennsylvania is five years.¹²⁷ The reinstatement process is so long that a suspended attorney can begin the process nine months before his reinstatement ends.¹²⁸ It is hard to say whether this sanction would have been more severe if a Rule 8.4(g) violation had also been alleged. However, as in the other cases based on criminal convictions, the light

120. *Id.* at 15.

121. *Id.* at 21-22.

122. *Id.* at 22.

123. *Id.* at 24.

124. *Id.* at 28-29.

125. *Id.* at 31.

126. *Id.*

127. PA. RULES OF DISCIPLINARY ENF'T R. 204(a)(2) (2021).

128. PA. DISCIPLINARY BD. RULES AND PROC. § 89.272(c) (2021).

sentence in the criminal case was likely a limiting factor on the disciplinary sanction.

The benefit of applying Rule 8.4(g) to this case is that it would have framed the argument more clearly as an example of the type of sexual harassment that the profession will not tolerate. For instance, one major point that the Board did not specifically address might have been discussed and condemned: Lynch defended his case based on his poor “anger management” when Ms. S rejected his advances.¹²⁹ Lynch believed that although he did not manage it appropriately, that anger itself was a justified response because of an apparent belief that he is entitled to a sexual relationship with the woman of his choice.¹³⁰ This sense of entitlement derives from a feeling of superiority and primacy that has threatened women for centuries, making them subject to sexual harassment and assault wherever they go, including in their employment as lawyers.¹³¹ As women have moved into the law profession in greater numbers, an unacceptably high percentage of them have reported being harassed or discriminated against in the workplace.¹³²

In its report, the Board highlighted that a person who acts intentionally to terrorize another human being is not fit to be a lawyer.¹³³ But the Board missed this one point: Lynch’s anger at being rejected was not justified.¹³⁴ Using this anger as an excuse or an explanation is an aggravating factor, not a mitigating one.

Perhaps, if this had been charged as a Rule 8.4(g) violation, Lynch’s lawyer might have reconsidered his “I-was-justifiably-angry-at-being-rejected” defense and instead focused on a recognition of the harm he had caused. Also, while we have presented a lengthy discussion of the case, we have omitted some other

129. *Lynch*, *supra* note 99, at 22.

130. *Id.* at 9.

131. ROBERTA D. LIEBENBERG & STEPHANIE A. SCHARF, WALKING OUT THE DOOR: THE FACTS, FIGURES, AND FUTURE OF EXPERIENCED WOMEN LAWYERS IN PRIVATE PRACTICE 8 (Am. Bar. Ass’n & Am. Law. Media Intel., 2019) <https://www.theredbeegroup.com/wp-content/uploads/2020/02/walking-out-the-door-report-FINAL.pdf>.

132. *Id.*; *see also* DEBORAH L. RHODE, ABA COMMISSION ON WOMEN IN THE PROFESSION, THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION 18-19 (2001) <https://womenlaw.law.stanford.edu/pdf/aba.unfinished.agenda.pdf> (citing survey results indicating that one-half to two-thirds of women lawyers experienced or observed sexual harassment); *Gender Survey 2020*, *supra* note 98 at 21-22, 24, 25 (relaying survey results from 5,000 attorneys, where close to half of female attorneys reported that they were subject to unwelcome contact, one-quarter suffered unwelcome physical contact, and forty-four percent sometimes experienced verbal or nonverbal harassment).

133. *Lynch*, *supra* note 99, at 5-8, 21-22, 32.

134. *Id.* at 22-23. The Board, relying on the Committee before it, emphasized that Lynch did not show remorse for his actions and their effect on the victim, but did not emphasize that the anger was misplaced entirely. *Id.*

examples of Lynch's activity during early September 2019. This activity pointed to the possibility of severe mental illness, even suggesting a psychotic break with reality.¹³⁵ Mental illness has been recognized as a mitigating factor in Pennsylvania.¹³⁶ Rather than justifying his misconduct with his misplaced entitlement and anger, Lynch may have been able to argue that he was suffering from a mental illness which caused this conduct and that he was responsibly treating this illness so that such conduct would not reoccur. As it is, at his reinstatement hearing, Lynch will be required to prove, by clear and convincing evidence, that he has recognized his wrongdoing and has taken qualitative and quantitative rehabilitative steps to earn his license back.

D. Office of Disciplinary Counsel v. Timothy J. McMahon¹³⁷

The *McMahon* case was litigated prior to the three previously discussed cases. In July 2017, McMahon attended the Dauphin County Bench Bar Conference at the Omni Bedford Springs resort.¹³⁸ On the first evening of the conference, he went to the bar and got very drunk.¹³⁹ He then accosted female attorneys seated near him, touched two of them on sensitive areas of their bodies, and began similar behavior toward a third female attorney after those two attorneys left.¹⁴⁰ When others attempted to intervene, McMahon persisted, became belligerent, and four security staff members had to escort him to his room.¹⁴¹

At the time of the event, Bedford Springs contacted the police because of McMahon's disruptive and belligerent interactions with their staff.¹⁴² The female attorneys pressed charges and McMahon was charged with multiple counts of harassment, sexual assault, and other infractions.¹⁴³ Ultimately, he plead guilty to "Harassment—Course of Conduct with No Legitimate Purpose, 18 Pa.C.S. § 2709(a)(3), a Summary Offense, and Disorderly Conduct—Engaging in Fighting, 18 Pa.C.S. § 5503(a)(1), a Third Degree Misdemeanor."¹⁴⁴

McMahon resigned from the law firm and was dismissed from the Bar Association.¹⁴⁵ He consented to a public reprimand and a Joint

135. *Id.* at 6-9.

136. *See* Off. of Disciplinary Couns. v. Braun, 553 A.2d 894, 894-96 (Pa. 1989).

137. No. 159 DB 2019 (Pa. Oct. 2, 2019).

138. *Id.* at 2.

139. *Id.*

140. *Id.* at 2-3.

141. *Id.* at 3.

142. *Id.*

143. *Id.*

144. *Id.* at 3-4.

145. *Id.* at 3.

Petition for Discipline on Consent was filed.¹⁴⁶ The Joint Petition supported the public reprimand as appropriate discipline because his conduct did not involve multiple or ongoing instances of inappropriate sexual behavior, he did not have a position of power over any of the victims, he expressed remorse, and, since the conference, had abstained from alcohol.¹⁴⁷

Just as in the *Bradley* and *Lynch* cases, the basis of the finding of misconduct was a criminal conviction.¹⁴⁸ *McMahon* exemplifies the need for Rule 8.4(g). Had the circumstances not risen to the level of criminal charges, resulting in a conviction, this conduct would have had no professional repercussions. Many occasions of unwelcome and inappropriate sexual advances and touching, especially at legal conferences and bar association events, go unreported.¹⁴⁹ Surveys have indicated that a significant percentage of lawyers have been subject to unwanted and inappropriate sexual advances in the legal profession.¹⁵⁰ When it occurs in the context of a senior lawyer with a junior lawyer or a staff person, it is less likely to be reported.¹⁵¹ This is the exact conduct that Rule 8.4(g) was designed to address. Comment [4] of Rule 8.4(g) specifically provides that “[h]arassment includes sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature.”¹⁵²

Before the advent of Rule 8.4(g), without a criminal conviction for this misconduct, there could be no discipline. Anecdotally, among bar associations and legal event attendees, female lawyers and staff report this type of harassing conduct occurs with regularity and is expected to be laughed off by the victim.¹⁵³ Sexual harassment, predominantly from partner to associate or partner to staff, is far too common in law firms.¹⁵⁴

146. *Id.* at 10.

147. *Id.* at 6-7.

148. *Id.* at 5; MODEL RULES OF PRO. CONDUCT r. 8.4(b) (AM. BAR ASS’N 2020); PA. RULES OF DISCIPLINARY ENF’T r. 203(b)(1) (2021).

149. See LIEBENBERG & SCHARF, *supra* note 131, at 8.

150. *Id.*; see RHODE, *supra* note 132, at 18-19 (citing survey results indicating that one-half of two-thirds of women lawyers experienced or observed sexual harassment); *Gender Survey 2020*, *supra* note 98 at 8-9, 22-24.

151. See Claire Cain Miller, *It’s Not Just Fox: Why Women Don’t Report Sexual Harassment*, N.Y. TIMES (Apr. 10, 2017), <https://www.nytimes.com/2017/04/10/upshot/its-not-just-fox-why-women-dont-report-sexual-harassment.html>.

152. MODEL RULES OF PRO. CONDUCT r. 8.4(g) cmt. 4 (AM. BAR. ASS’N 2020).

153. See RHODE, *supra* note 132, at 19-20.

154. ASS’N OF LAW FIRM ADMIN., SEXUAL HARASSMENT IN THE LEGAL ENVIRONMENT, 2018 SURVEY RESULTS 28 (2018), <https://src.bna.com/z4n> (concluding that 77.7 percent of respondents reported that sexual harassment occurs or occurred in their firm; 35.9 percent of respondents report partner-to-associate sexual harassment; and 54.1 percent of respondents report partner-to-staff harassment).

The profession must have a way to regulate this conduct and ensure that all lawyers are free to work and socialize with their peers without the fear of being harassed and regarded as romantic opportunities.

IV. CONCLUSION

A lawyer is a licensed professional, a fiduciary, an officer of the court, and a public citizen having a “special responsibility for the quality of justice.”¹⁵⁵ The behavior in the above-described cases is the antithesis of the conduct we expect from a person who has taken on these roles. Yet, before the court adopted Rule 8.4(g), the Rules of Professional Conduct were silent on sexual harassment or discrimination apart from the prohibition of sexual relationships with clients. Without Rule 8.4(g), Pennsylvania has no rule that covers harassment of colleagues, paraprofessionals, court or bar association personnel, or members of the public including those who are clients, witnesses or jurors. Nor is there a rule that specifically covers sexual harassment of clients that does not rise to the level of a sexual relationship.

In three of the four cases described above, discipline was based on a criminal conviction.¹⁵⁶ However, reporting this behavior necessitates publicly disclosing the events, which can often be experienced by the victim as a second injury.¹⁵⁷ Many women fear victim blaming, embarrassing questions, or professional repercussions.¹⁵⁸ Making this conduct subject to the disciplinary process allows the complaints to be made confidentially; if the case is resolved through joint discipline on consent, such as in *McMahon*, the victims may maintain their confidentiality.¹⁵⁹

It is beyond dispute that individuals who engage in intentional harassment and discrimination on any basis are behaving in a way that our profession condemns. Because of the special status that allows the legal profession to self-regulate, it is imperative that we ensure that lawyers are not only subject to disciplinary measures when they act in an intentionally harassing and discriminatory way towards clients during

155. See PA. RULES OF PRO. CONDUCT Preamble ¶ 1 (1988) (advising of a lawyer’s duties to clients, in his or her personal or professional life, to the system of justice, and as a public citizen).

156. See *supra* Part III.

157. See Amanda Arnold, *3 Women on What It Was Like to Testify at Their Sexual-Assault Hearings*, CUT (Sept. 26, 2018), <https://www.thecut.com/2018/09/3-women-on-testifying-at-their-sexual-assault-hearings.html> (presenting the personal trauma of three women in connection with offering their testimony).

158. See Miller, *supra* note 151 (stating that women fear they will face “disbelief, inaction, blame or societal and professional retaliation”).

159. No. 159 DB 2019 (Pa. Oct. 2, 2019).

representation, but also when they act towards others in such a fashion. Rules prohibiting and condemning certain behavior are one way in which a society expresses its values. Condemning conduct that demeans any individual's agency and ability to succeed must be specifically expressed. Rule 8.4(g) expresses this condemnation and supports the values of equity and equality, while providing adequate notice of what behavior is sanctionable.