

Judicial Council of Georgia
Access, Fairness, and Public Trust and Confidence Committee
Wednesday, November 9, 2016

11:30 a.m. – 1:45 p.m.

Administrative Office of the Courts Training Room
244 Washington Street, S.W.
Suite 300
Atlanta, Georgia 30334

Conference Call Information
Telephone # 1-877-273-4202
Conference Room Number: 9583294

Lunch, 11:30 to 12 Noon

(1) Welcome and Introductions – 10 minutes (beginning promptly at Noon)

- Justice Robert Benham and Justice Carol W. Hunstein, Presiding
 - Antonio DelCampo, Georgia Hispanic Bar Association, New Member
 - Jana Edmondson-Cooper, Commission on Interpreters, New Member
 - Judge Jane Morrison, Stonewall Bar Association, New Member
 - Council of Accountability Court Judges Appointee (TBD)

(2) Written Reports

- Summary of September 14, 2016, Meeting
- Upcoming Events – SAVE THE DATE
 - Georgia Reflections on Ferguson, December 15, 2016, 9 a.m. to 5 p.m.
 - NAWJ Kick-Off Reception, January 6, 2017, 4:30 p.m. to 5:30 p.m.

Project and Community Updates – 50 minutes

- (3) AFPTC Committee Orders – Karlise Y. Grier – 2 minutes
- (4) Georgia State University Center for Access to Justice – 10 minutes
 - Lauren Sudeall Lucas, Assistant Professor of Law, Georgia State University
- (5) Presentation on ABA Rule 8.4 and Georgia Implications – 10 minutes
 - Paula Frederick, General Counsel, State Bar of Georgia
- (6) Information Technology and Access and Fairness Issues – 15 minutes
 - Steve Craft, Assistant Chief Public Defender, Chattahoochee Judicial Circuit
- (7) Georgia Reflections on Ferguson – The Role of the Courts – 5 minutes
 - Judge Latish Dear-Jackson
- (8) Human Trafficking and the Courts Summit on October 6, 2016 – 2 minutes
 - Michelle Barclay
- (9) GLSP Eliminating Barriers CLE on October 20, 2016 – 2 minutes
 - Jana Edmondson-Cooper
- (10) National Association of Women Judges 2017 Annual Conference – 2 minutes
 - Justice Hunstein and Judge Doyle

- (11) Court-based Self-Help Project – 2 minutes
 - Judge Robert Rodatus
- (12) ADA Handbook & ADA Mental Health and Developmental Disabilities Supp. – 10 minutes
 - Proposal for Judicial Council Position Statement or Supreme Court Order on the ADA
 - Tracy Johnson
- (13) 2017 Committee Projects – 25 minutes
 - 1. Training on ADA, Access to Justice for LBGTQ Individuals and Implicit Bias.
 - Tentative Date and Location: April 24, 2017, State Bar of Georgia
 - Proposed Keynote Speaker Judge Bernice Donald
6th Circuit U.S. Court of Appeals (Invited)
 - 2. Special Sub-committee on Diversity in the Judicial System (Review 1996 Commission Order for historical context (attached), NAWJ Resolution (attached), and Special Sub-committee proposal)
 - Needs a vote and Committee Approval to send to Judicial Council
 - Will need a member of AFPTCC to chair the Sub-Committee
 - Will request Suggestions for Committee members
 - May model sub-committee work on Fulton Division Task Force Model

Proposal 1: The Judicial Diversity Special Sub-Committee of the AFPTCC will study information regarding diversity in the judicial system, and recommend a position statement and accompanying guidelines, best practices and protocols to assist stakeholders of the judicial branch in addressing public concerns regarding diversity in the judicial system. This Special Sub-committee will complete its work on or before December 31, 2017, and the Special Sub-Committee shall thereafter present its recommendations to the AFPTCC and to the Judicial Council of Georgia.

Proposal 2: The Committee adopt the NAWJ Resolution on trial court diversity.

- 3. ICJE/ICLE Presentation at State Bar of Georgia Annual Meeting on Transparency in the Courts (No Report)

- (14) **2017 Committee Meeting Date Proposals – 15 minutes**
(Please have your calendars Available)

First Proposal: February 8, 2017; May 10, 2017; September 13, 2017; November 8, 2017

Second Proposal: February 1, 2017; May 3, 2017; November 1, 2017

- (15) Old Business – 5 minutes
- (16) New Business – 5 minutes
- (17) Adjourn

Judicial Council of Georgia
Access, Fairness, and Public Trust and Confidence Committee
November 9, 2016

Orders Establishing AFPTC Committee



SUPREME COURT OF GEORGIA

Atlanta February 4, 2016

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

Upon consideration, the Court hereby establishes the Judicial Council Access, Fairness, Public Trust and Confidence Standing Committee with the mission of improving the public's trust in the judicial branch by focusing on access and fairness through the elimination of systemic barriers related to gender, race, ethnicity, sexual orientation, national origin, disability, indigence, and language. This Committee is created as a successor to the Access, Fairness, Public Trust and Confidence Standing Committee which shall sunset on February 9, 2016. The Administrative Office of the Courts shall provide staff support to the Committee.

In accordance with the Bylaws of the Judicial Council of Georgia, membership shall include at least one current Judicial Council member. Future membership terms shall run concurrent to the Judicial Council strategic plans. The following members are hereby appointed to the Judicial Council Access, Fairness, Public Trust and Confidence Standing Committee for terms ending June 30, 2018:

Justice Robert Benham	Supreme Court of Georgia
Justice Carol W. Hunstein	Supreme Court of Georgia
Chief Judge Sara L. Doyle	Court of Appeals of Georgia
Judge Horace J. Johnson, Jr.	Superior Court, Alcovy Circuit
Judge Gail S. Tusan	Superior Court, Atlanta Circuit
Judge Jason B. Thompson	State Court of Fayette County
Judge Cassandra Kirk	Magistrate Court of Fulton County
Judge Sherry Moore	Probate Court of Jackson County
Judge LaTisha Dear Jackson	Municipal Court of Stone Mountain
Presiding Judge Robert V. Rodatus	Juvenile Court of Gwinnett County
Tracy Johnson	Clerk/Court Administrator Representative 1
Will Simmons	Clerk/Court Administrator Representative 2
V. Sharon Edenfield, Esq.	State Bar of Georgia Young Lawyers Division

Joy Lampley-Fortson, Esq.
Lori Gelchion, Esq.
Coy Johnson, Jr., Esq.
Monica Khant, Esq.
David M. Sneed, Esq.

Ga Association of Black Women Attorneys
Georgia Association of Women Lawyers
Gate City Bar Association
Ga Asian Pacific American Bar Association
State Bar of Georgia

Justice Robert Benham and Justice Carol W. Hunstein shall serve as Co-Chairpersons until further designated.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from
the minutes of the Supreme Court of Georgia

Witness my signature and the seal of said court hereto
affixed the day and year last above written.

 Clerk



SUPREME COURT OF GEORGIA

Atlanta

October 12, 2016

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

Pursuant to the authority of this Court, the mission of the Judicial Council Access, Fairness, Public Trust and Confidence Standing Committee is hereby modified to include gender identity.

Upon consideration, the following members are hereby appointed to the Committee for terms ending June 30, 2018:

Judge Joseph H. Booth, Superior Court, Piedmont Circuit, who will serve for Judge Horace J. Johnson, Jr. who is no longer able to serve;

Judge of an Accountability Court, chosen by the President of the Council of Accountability Court Judges;

Mr. Antonio Del Campo, Georgia Hispanic Bar Association;

Judge Jane Morrison, Stonewall Bar Association; and

Ms. Jana Edmondson-Cooper, Georgia Commission on Interpreters.

At the conclusion of a member's term as specified above, his or her successor and all subsequent successors will serve a term of three years and be chosen by the Chair or President of the respective groups. If prior to June 30, 2018, a committee member is unable to serve for a full term his or her successor and all subsequent successors will be chosen by the Chair or President of the respective groups to complete the unexpired term.

In accordance with the Bylaws of the Judicial Council, committee membership may include advisory members appointed, as needed, by each Standing Committee Chair. Advisory members may be heard but shall not be entitled to vote.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Theresa A. Bannet, Clerk

Judicial Council of Georgia
Access, Fairness, and Public Trust and Confidence Committee
November 9, 2016

(2) Written Reports – Summary of September 14, 2016 Meeting

Judicial Council of Georgia
Access, Fairness, and Public Trust and Confidence Committee
Meeting Summary-Wednesday, September 14, 2016
Ratley Training Room
244 Washington Street, S.W. Suite 300
Atlanta, Georgia 30334

The meeting was called to order at 12:00 p.m. and was adjourned at 1:50 p.m.

Access, Fairness, Public Trust and Confidence Committee members present: Justice Robert Benham; Justice Carol Hunstein; Judge Sara L. Doyle; Judge Robert Rodatus; Ms. Tracy Johnson; Judge Cassandra Kirk; Judge LaTisha Dear Jackson; Mr. Coy Johnson; Judge Sherry Moore (by telephone); Judge Gail Tusan; Mr. David Sneed (via telephone); Lori Gelchion (via telephone)

Others Present: Ms. Karlise Grier, Committee staff person, Contractor for Judicial Council Administrative Office of the Courts (JCAOC); Ms. Cynthia Clanton, Director, AOC; Mr. Mike Galifianakis, State ADA Coordinator's Office; Ms. Stacey Peace, State ADA Coordinator's Office; Ms. Ms. Michelle Barclay, JCAOC; Ms. Patricia Buonodono JCAOC; Mr. Bruce Shaw, JCAOC Was Jessica Farah also at the meeting - ?

(1) Welcome and Introductions

(2) Written Reports

- **Summary of May 11, 2016, Meeting**
- **Future Meeting Dates**
 - **November 9, 2016, 11:30 a.m. to 2:00 p.m.**
- **Upcoming Events – SAVE THE DATE**
 - **Human Trafficking and the Courts Summit, October 6, 2016, 8:15 a.m. to 5 p.m.**
 - **Eliminating Barriers to Justice III, October 20, 2016, 10 a.m. to 4 p.m.**
 - **Georgia Reflections on Ferguson, December 15, 2016, 9 a.m. to 5 p.m.**
 - **NAWJ Kick-Off Reception, January 6, 2017, 4:30 p.m. to 5:30 p.m.**
-

Project and Community Updates

(3) ADA Handbook Update

Ms. Stacey Peace informed the Committee that the Handbook was in the final editing phase and that final comments were due by September 30. Ms. Karlise Grier asked the Committee if anyone was willing to give it one more read through for grammar and spelling mistakes to which Judge Tusan agreed. The Committee also gave feedback on cover and tab options at this meeting.

(4) ADA Handbook – Mental Health & Dev. Disabilities Update

Ms. Tracy Johnson informed the Committee that a subcommittee has met twice to begin developing a companion to the ADA Handbook on mental health and developmental disabilities. Courts face many challenges when dealing with these issues such as identifying those with mental disabilities, a lack of the training, and balancing access and accommodations with safety and security. There are no court protocols in Georgia for dealing with these issues. Other states do have bench cards on dealing with mental health issues which the subcommittee is reviewing now. The next subcommittee meeting will take place on September 23rd.

(5) Human Trafficking and the Courts Summit on 10-6-16

Ms. Michelle Barclay informed the committee of the registration numbers and described the robust agenda to the Committee. The Summit is being funded by a grant from the State Justice Institute and matching funds from the Georgia Attorney General's office.

(6) Georgia Reflections on Ferguson Summit

Judge LaTisha Dear Jackson informed the Committee that the event is being held on December 15, 2016, on the Bill of Rights Day in Macon, Georgia. The draft agenda for this summit was distributed and a brief overview given.

(7) NAWJ Conference – Access to Justice: Past, Present, and Future

Justice Hunstein and Judge Doyle co-chair the NAWJ planning committee. A Friends Committee and Education Committee has been established. The Friends Committee co-chaired by Allegra Lawrence-Hardy and Tish McDonald will assist with fund raising and the Education Committee chaired by Judges Tusan, Judge Gosselin, and Judge Weaver will develop the curriculum. A reception will be held at the 11th circuit on Thursday, October 12, 2017.

(8) Court Based Self-Help Programs

Judge Rodatus informed the Committee that a subcommittee has been reviewing programs established across the state and will take the knowledge gained to develop a handbook on how to set up self-help programs.

(9) Eliminating Barriers to Justice III CLE – Thursday, October 20, 2016, 10:00 a.m.

Ms. Karlise Grier wanted to make the Committee aware of this event, of which the AFPTCC is a co-sponsor in name.

(10) Report from Council of Accountability Courts Training

Ms. Karlise Grier reported on the presentations that go hand in hand with the work of the AFPTCC.

(11) Report on June 18, 2016, Meeting with diversity bar leaders

Justices Benham and Hunstein attended this meeting and included a report in the materials.

Committee Decision Items

(12) Proposals for New 2017 AFPTC Community Events and Goals – 20 minutes

1. Community Event based on feedback and suggestions received from Diversity Bar Leaders to be held in the First Trimester of the Year (January 2017 to April 2017, depending on the legislative calendar; possibly in Athens, Georgia or at the State Bar of Georgia).

Ms. Karlise Grier presented the following topics for the Committee to consider for 2017 activities.

- * ADA Handbook highlights (inform the community about this current project);
- * Language Access Issues and Consular Services to Foreign Born populations (may be one presentation or two separate presentations). Will also consult with Commissioner Chris Carr on this portion of the program for surging populations
- * Court Services to the LGBTQ Community (possible goal: development of sections for court bench books and handbooks, especially as it relates to transgender issues)
- * IT Issues and Fairness in the Courts
- * Hidden Bias – Injustice on the Bench: *See* http://www.americanbar.org/news/abanews/aba-news-archives/2016/02/hidden_injusticebi.html
- * Should Georgia’s Judicial Cannon’s have non-discrimination provisions similar to the ABA’s Model Rule 8.4? If yes, is it appropriate for AFPTCC to offer leadership/assistance on this issue related to fairness and public trust and confidence? *See* http://www.abajournal.com/news/article/house_of_delegates_strongly_agrees_to_rule_making_discrimination_and_harass/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email
- * Diversity on the Bench (possible goal: the development of a position statement for Judicial Council consideration). *See* http://www.fjc.gov/history/home.nsf/page/judges_diversity.html
<https://apps.americanbar.org/abanet/jd/display/national.cfm>
<http://news.vanderbilt.edu/2016/06/massive-database-shows-state-judges-are-not-representative-of-the-people-they-serve/>
 - Why it is important (or Is it important - ?)
 - If diversity on the Bench is important, should AFPTCC provide leadership and work with stakeholders to develop a policy on this for the Judicial Council’s consideration?

2. CLE on Transparency in the Courts at the State Bar Annual Meeting

- * **Cameras in the courtroom**
- * **Open access to court records**
- * **Open access to court administrative meetings**

3. Other Suggestions

(13) Old Business

(14) New Business & Next Meeting

The next meeting will be held on November 9, 2016 at 11:30 a.m.

(15) Adjourn

Judicial Council of Georgia
Access, Fairness, and Public Trust and Confidence Committee
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(3) Georgia State University Center for Access to Justice



The Center for Access to Justice at Georgia State University College of Law establishes a regional and national base for the study of how lower-income individuals interact with the civil and criminal justice systems. Launched in August 2016, the center was created to shine a light on the specific barriers to equal access in the South and to convene regional stakeholders — including academics, legal practitioners, government actors, and other policymakers — committed to increasing access to justice.

The center's mission is three-fold:

- **COLLABORATION** across disciplines, and between academics, practitioners, and law and policymakers
- **RESEARCH** and advocacy
- **EDUCATION** and community outreach

The center aims to create a convening space within the university context to explore existing obstacles to access to justice and discuss strategies for lasting change. In 2016-2017, the center will organize an interdisciplinary workshop for faculty and graduate students at Georgia State; co-sponsor a CLE program on Eliminating Barriers to Justice, with a focus on challenges facing persons with disabilities, and Limited English Proficient and Deaf/Hard of Hearing persons involved in Georgia's civil and criminal justice systems; celebrate the 59th Henry J. Miller Lecture, which will feature Lisa Foster, director of the Department of Justice's Office for Access to Justice; welcome Vicki Lens, professor of Social Work at Hunter College, to speak about her book *Poor Justice: How the Poor Fare in the Courts*; host a panel on access to justice for the transgender community; and co-sponsor a conference on *Overcriminalization and Indigent Legal Care* with the Jean Beer Blumenfeld Center for Ethics at Georgia State University.

The center also conducts and facilitates research to help identify and better understand the difficulties lower-income individuals face in navigating the justice system. For example, the center was awarded a \$79,000 grant from the Charles Koch Foundation to study the civil legal needs of indigent criminal defendants, a project that involves collaboration with the Sociology and Criminal Justice & Criminology departments at GSU and public defender offices in Fulton and DeKalb county.

In addition, the center seeks to create a supportive environment and serve as a hub for students interested in pursuing public interest or pro bono work, either during or after their time in law school. Starting in fall 2017, Faculty Director Lauren Sudeall Lucas and Assistant Director Darcy Meals will co-teach a course titled *Access to Justice: Law Reform*, as part of the center's access to justice curriculum. The center will also house a student-run pro bono program that connects law students with volunteer opportunities to contribute to access to justice and coordinate alternative spring break trips that allow students to immerse themselves in a subject area while engaging in pro bono service.

For more, visit law.gsu.edu/a2j.

Who We Are



Faculty Director
Lauren Sudeall Lucas



Assistant Director
Darcy M. Meals

Center Faculty



Courtney Anderson



Lisa Radtke Bliss



Jessica Gabel Cino



Clark D. Cunningham



Russell D. Covey



Caren Morrison



Natsu Taylor Saito



Nirej Sekhon



Tanya Washington



Bucky Askew

Judicial Council of Georgia
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(4) Presentation on ABA Rule 8.4 and Georgia Implications

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AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
COMMISSION ON DISABILITY RIGHTS
DIVERSITY & INCLUSION 360 COMMISSION
COMMISSION ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION
COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY
COMMISSION ON WOMEN IN THE PROFESSION

REPORT TO THE HOUSE OF DELEGATES

REVISED RESOLUTION

1 RESOLVED, That the American Bar Association amends Rule 8.4 and Comment of the ABA
2 Model Rules of Professional Conduct as follows (insertions underlined, deletions ~~struck through~~):

3
4 Rule 8.4: Misconduct

5
6 It is professional misconduct for a lawyer to:

7
8 (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or
9 induce another to do so, or do so through the acts of another;

10
11 (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness
12 or fitness as a lawyer in other respects;

13
14 (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

15
16 (d) engage in conduct that is prejudicial to the administration of justice;

17
18 (e) state or imply an ability to influence improperly a government agency or official or to
19 achieve results by means that violate the Rules of Professional Conduct or other law; ~~or~~

20
21 (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable
22 rules of judicial conduct or other law; or

23
24 (g) engage in conduct that the lawyer knows or reasonably should know is harassment or
25 discrimination ~~harass or discriminate~~ on the basis of race, sex, religion, national origin, ethnicity,
26 disability, age, sexual orientation, gender identity, marital status or socioeconomic status in
27 conduct related to the practice of law. This ~~Rule paragraph~~ does not limit the ability of a lawyer
28 to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph
29 does not preclude legitimate advice or advocacy consistent with these Rules.

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30 Comment

31

32 [1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of
33 Professional Conduct, knowingly assist or induce another to do so or do so through the acts of
34 another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a),
35 however, does not prohibit a lawyer from advising a client concerning action the client is legally
36 entitled to take.

37

38 [2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses
39 involving fraud and the offense of willful failure to file an income tax return. However, some kinds
40 of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses
41 involving "moral turpitude." That concept can be construed to include offenses concerning some
42 matters of personal morality, such as adultery and comparable offenses, that have no specific
43 connection to fitness for the practice of law. Although a lawyer is personally answerable to the
44 entire criminal law, a lawyer should be professionally answerable only for offenses that indicate
45 lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty,
46 breach of trust, or serious interference with the administration of justice are in that category. A
47 pattern of repeated offenses, even ones of minor significance when considered separately, can
48 indicate indifference to legal obligation.

49

50 ~~[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct,~~
51 ~~bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation~~
52 ~~or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the~~
53 ~~administration of justice. Legitimate advocacy respecting the foregoing factors does not violate~~
54 ~~paragraph (d). A trial judge's finding that peremptory challenges were exercised on a~~
55 ~~discriminatory basis does not alone establish a violation of this rule.~~

56

57 [3] Discrimination and harassment by lawyers in violation of paragraph (g) undermines confidence
58 in the legal profession and the legal system. Such discrimination includes harmful verbal or
59 physical conduct that manifests bias or prejudice towards others ~~because of their membership or~~
60 ~~perceived membership in one or more of the groups listed in paragraph (g).~~ Harassment includes
61 sexual harassment and derogatory or demeaning verbal or physical conduct ~~towards a person who~~
62 ~~is, or is perceived to be, a member of one of the groups.~~ Sexual harassment includes unwelcome
63 sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a
64 sexual nature. The substantive law of antidiscrimination and anti-harassment statutes and case law
65 may guide application of paragraph (g).

66

67 [4] Conduct related to the practice of law includes representing clients; interacting with witnesses,
68 coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or
69 managing a law firm or law practice; and participating in bar association, business or social
70 activities in connection with the practice of law. ~~Paragraph (g) does not prohibit conduct~~
71 ~~undertaken to promote diversity.~~ Lawyers may engage in conduct undertaken to promote diversity
72 and inclusion without violating this Rule by, for example, implementing initiatives aimed at

The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

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73 [recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student](#)
74 [organizations.](#)

75
76 ~~[5] Paragraph (g) does not prohibit legitimate advocacy that is material and relevant to factual or~~
77 ~~legal issues or arguments in a representation. A trial judge's finding that peremptory challenges~~
78 ~~were exercised on a discriminatory basis does not alone establish a violation of paragraph (g). A~~
79 ~~lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's~~
80 ~~practice or by limiting the lawyer's practice to members of underserved populations in~~
81 ~~accordance with these Rules and other law. A lawyer may charge and collect reasonable fees~~
82 ~~and expenses for a representation. Rule 1.5(a). Lawyers also should be mindful of their~~
83 ~~professional obligations under Rule 6.1 to provide legal services to those who are unable to pay,~~
84 ~~and their obligation under Rule 6.2 not to avoid appointments from a tribunal except for good~~
85 ~~cause. See Rule 6.2(a), (b) and (c). A lawyer's representation of a client does not constitute an~~
86 ~~endorsement by the lawyer of the client's views or activities. See Rule 1.2(b).~~

87
88 [4] [6] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief
89 that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to
90 the validity, scope, meaning or application of the law apply to challenges of legal regulation of the
91 practice of law.

92
93 [5] [7] Lawyers holding public office assume legal responsibilities going beyond those of other
94 citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role
95 of lawyers. The same is true of abuse of positions of private trust such as trustee, executor,
96 administrator, guardian, agent and officer, director or manager of a corporation or other
97 organization.

REPORT

“Lawyers have a unique position in society as professionals responsible for making our society better. Our rules of professional conduct require more than mere compliance with the law. Because of our unique position as licensed professionals and the power that it brings, we are the standard by which all should aspire. Discrimination and harassment . . . is, and unfortunately continues to be, a problem in our profession and in society. Existing steps have not been enough to end such discrimination and harassment.”

ABA President Paulette Brown, February 7, 2016 public hearing on amendments to ABA Model Rule 8.4, San Diego, California.

I. Introduction and Background

The American Bar Association has long recognized its responsibility to represent the legal profession and promote the public’s interest in equal justice for all. Since 1983, when the Model Rules of Professional Conduct (“Model Rules”) were first adopted by the Association, they have been an invaluable tool through which the Association has met these dual responsibilities and led the way toward a more just, diverse and fair legal system. Lawyers, judges, law students and the public across the country and around the world look to the ABA for this leadership.

Since 1983, the Association has also spearheaded other efforts to promote diversity and fairness. In 2008 ABA President Bill Neukum led the Association to reformulate its objectives into four major “Goals” that were adopted by the House of Delegates.¹ Goal III is entitled, “Eliminate Bias and Enhance Diversity.” It includes the following two objectives:

1. Promote full and equal participation in the association, our profession, and the justice system by all persons.
2. Eliminate bias in the legal profession and the justice system.

A year before the adoption of Goal III the Association had already taken steps to address the second Goal III objective. In 2007 the House of Delegates adopted revisions to the Model Code of Judicial Conduct to include Rule 2.3, entitled, “Bias, Prejudice and Harassment.” This rule prohibits judges from speaking or behaving in a way that manifests, “bias or prejudice,” and from engaging in harassment, “based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.” It also calls upon judges to require lawyers to refrain from these activities in proceedings before the court.² This current proposal now before the House will further implement the Association’s Goal III objectives by placing a similar provision into the Model Rules for lawyers.

¹ ABA MISSION AND GOALS, http://www.americanbar.org/about_the_aba/aba-mission-goals.html (last visited May 9, 2016).

² Rule 2.3(C) of the ABA Model Code of Judicial Conduct reads: “A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.”

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When the Model Rules were first adopted in 1983 they did not include any mention of or reference to bias, prejudice, harassment or discrimination. An effort was made in 1994 to correct this omission; the Young Lawyers Division and the Standing Committee on Ethics and Professional Responsibility (SCEPR³) each proposed language to add a new paragraph (g) to Rule 8.4, “Professional Misconduct,” to specifically identify bias and prejudice as professional misconduct. However, in the face of opposition these proposals were withdrawn before being voted on in the House. But many members of the Association realized that something needed to be done to address this omission from the Model Rules. Thus, four years later, in February 1998, the Criminal Justice Section and SCEPR developed separate proposals to add a new antidiscrimination provision into the Model Rules. These proposals were then combined into Comment [3] to Model Rule 8.4, which was adopted by the House at the Association’s Annual Meeting in August 1998. This Comment [3] is discussed in more detail below. Hereinafter this Report refers to current Comment [3] to 8.4 as “the current provision.”

It is important to acknowledge that the current provision was a necessary and significant first step to address the issues of bias, prejudice, discrimination and harassment in the Model Rules. But it should not be the last step for the following reasons. It was adopted before the Association adopted Goal III as Association policy and does not fully implement the Association’s Goal III objectives. It was also adopted before the establishment of the Commission on Sexual Orientation and Gender Identity, one of the co-sponsors of this Resolution, and the record does not disclose the participation of any of the other Goal III Commissions—the Commission on Women in the Profession, Commission on Racial and Ethnic Diversity in the Profession, and the Commission on Disability Rights—that are the catalysts for these current amendments to the Model Rules.

Second, Comments are not Rules; they have no authority as such. Authority is found only in the language of the Rules. “The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.”³

Third, even if the text of the current provision were in a Rule it would be severely limited in scope: It applies (i) only to conduct by a lawyer that occurs in the course of representing a client, and (ii) *only* if such conduct is also determined to be “prejudicial to the administration of justice.” As the Association’s Goal III Commissions noted in their May 2014 letter to SCEPR:

It [the current provision] addresses bias and prejudice only within the scope of legal representation and only when it is prejudicial to the administration of justice. This limitation fails to cover bias or prejudice in other professional capacities (including attorneys as advisors, counselors, and lobbyists) or other professional settings (such as law schools, corporate law departments, and employer-employee relationships within law firms). The comment also does not address harassment at all, even though the judicial rules do so.

In addition, despite the fact that Comments are not Rules, a false perception has developed over the years that the current provision is equivalent to a Rule. In fact, this is the only example in the Model Rules where a Comment is purported to “solve” an ethical issue that otherwise would require resolution through a Rule. Now—thirty-three years after the Model Rules were first

³ MODEL RULES OF PROF’L CONDUCT, Preamble & Scope [21] (2016).

adopted and eighteen years after the first step was taken to address this issue—it is time to address this concern in the black letter of the Rules themselves. In the words of ABA President Paulette Brown: “The fact is that skin color, gender, age, sexual orientation, various forms of ability and religion still have a huge effect on how people are treated.”⁴ As the Recommendation and Report of the Oregon New Lawyers to the Assembly of the Young Lawyers Division at the Annual Meeting 2015 stated: “The current Model Rules of Professional Conduct (the “Model Rules”), however, do not yet reflect the monumental achievements that have been accomplished to protect clients and the public against harassment and intimidation.”⁵ The Association should now correct this omission. It is in the public’s interest. It is in the profession’s interest. It makes it clear that discrimination, harassment, bias and prejudice do not belong in conduct related to the practice of law.

II. Process

Over the past two years, SCEPR has publicly engaged in a transparent investigation to determine, first whether, and then how, the Model Rules should be amended to reflect the changes in law and practice since 1998. The emphasis has been on open discussion and publishing drafts of proposals to solicit feedback, suggestions and comments. SCEPR painstakingly took that feedback into account in subsequent drafts, until a final proposal was prepared.

This process began on May 13, 2014 when SCEPR received a joint letter from the Association’s four Goal III Commissions: the Commission on Women in the Profession, Commission on Racial and Ethnic Diversity in the Profession, Commission on Disability Rights, and the Commission on Sexual Orientation and Gender Identify. The Chairs of these Commissions wrote to the SCEPR asking it to develop a proposal to amend the Model Rules of Professional Conduct to better address issues of harassment and discrimination and to implement Goal III. These Commissions explained that the current provision is insufficient because it “does not facially address bias, discrimination, or harassment and does not thoroughly address the scope of the issue in the legal profession or legal system.”⁶

In the fall of 2014 a Working Group was formed under the auspices of SCEPR and chaired by immediate past SCEPR chair Paula Frederick, chief disciplinary counsel for the State Bar of Georgia. The Working Group members consisted of one representative each from SCEPR, the Association of Professional Responsibility Lawyers (“APRL”), the National Organization of Bar Counsel (“NOBC”) and each of the Goal III Commissions. The Working Group held many teleconference meetings and two in-person meetings. After a year of work Chair Frederick

⁴ Paulette Brown, *Inclusion Not Exclusion: Understanding Implicit Bias is Key to Ensuring An Inclusive Profession*, ABA J. (Jan. 1, 2016, 4:00 AM),

http://www.abajournal.com/magazine/article/inclusion_exclusion_understanding_implicit_bias_is_key_to_ensuring.

⁵ In August 2015, unaware that the Standing Committee on Ethics and Professional Responsibility was researching this issue at the request of the Goal III Commissions, the Oregon State Bar New Lawyers Division drafted a proposal to amend the Model Rules of Professional Conduct to include an anti-harassment provision in the black letter. They submitted their proposal to the Young Lawyers Division Assembly for consideration. The Young Lawyers Division deferred on the Oregon proposal after learning of the work of the Standing Committee on Ethics and Professional Responsibility and the Goal III Commissions.

⁶ Letter to Paula J. Frederick, Chair, ABA Standing Committee on Ethics and Professional Responsibility 2011-2014.

presented a memorandum of the Working Group's deliberations and conclusions to SCEPR in May 2015. In it, the Working Group concluded that there was a need to amend Model Rule 8.4 to provide a comprehensive antidiscrimination provision that was nonetheless limited to the practice of law, in the black letter of the rule itself, and not just in a Comment.

On July 8, 2015, after receipt and consideration of this memorandum, SCEPR prepared, released for comment and posted on its website a Working Discussion Draft of a proposal to amend Model Rule of Professional Conduct 8.4. SCEPR also announced and hosted an open invitation Roundtable discussion on this Draft at the Annual Meeting in Chicago on July 31, 2015.

At the Roundtable and in subsequent written communications SCEPR received numerous comments about the Working Discussion Draft. After studying the comments and input from the Roundtable, SCEPR published in December 2015 a revised draft of a proposal to add Rule 8.4(g), together with proposed new Comments to Rule 8.4. SCEPR also announced to the Association, including on the House of Delegates listserv, that it would host a Public Hearing at the Midyear Meeting in San Diego in February 2016.⁷ Written comments were also invited.⁸ President Brown and past President Laurel Bellows were among those who testified at the hearing in support of adding an antidiscrimination provision to the black letter Rule 8.4.

After further study and consideration SCEPR made substantial and significant changes to its proposal, taking into account the many comments it received on its earlier drafts.

III. Need for this Amendment to the Model Rules

As noted above, in August 1998 the American Bar Association House of Delegates adopted the current provision: Comment [3] to Model Rule of Professional Conduct 8.4, *Misconduct*, which explains that certain conduct may be considered “conduct prejudicial to the administration of justice,” in violation of paragraph (d) to Rule 8.4, including when a lawyer knowingly manifests, by words or conduct, bias or prejudice against certain groups of persons, while in the course of representing a client *but only* when those words or conduct are also “prejudicial to the administration of justice.”

Yet as the Preamble and Scope of the Model Rules makes clear, “Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.”⁹ Thus, the ABA did not squarely and forthrightly address prejudice, bias, discrimination and harassment as would have been the case if this conduct were addressed in the text of a Model Rule. Changing the Comment to a black letter rule makes an important statement to our profession and the public that the profession does not tolerate prejudice, bias, discrimination and harassment. It also clearly puts lawyers on notice that refraining from such conduct is more than an illustration in a comment to a rule about the administration of justice. It is a specific requirement.

⁷ *American Bar Association Public Hearing* (Feb. 7, 2016), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_model_rule%208_4_comments/february_2016_public_hearing_transcript.authcheckdam.pdf.

⁸ MODEL RULE OF PROFESSIONAL CONDUCT 8.4 DEC. 22 DRAFT PROPOSAL COMMENTS RECEIVED, http://www.americanbar.org/groups/professional_responsibility/committees_commissions/ethicsandprofessionalresponsibility/modruleprofconduct8_4.html (last visited May 9, 2016).

⁹ MODEL RULES OF PROF'L CONDUCT, Preamble & Scope [14] & [21] (2016).

Therefore, SCEPR, along with its co-sponsors, proposes amending ABA Model Rule of Professional Conduct 8.4 to further implement Goal III by bringing into the black letter of the Rules an antidiscrimination and anti-harassment provision. This action is consistent with other actions taken by the Association to implement Goal III and to eliminate bias in the legal profession and the justice system.

For example, in February 2015, the ABA House of Delegates adopted revised *ABA Standards for Criminal Justice: Prosecution Function and Defense Function*, which now include anti-bias provisions. These provisions appear in Standards 3-1.6 of the Prosecution Function Standards, and Standard 4.16 of the Defense Function Standards.¹⁰ The Standards explain that prosecutors and defense counsel should not, “manifest or exercise, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity or socioeconomic status.” This statement appears in the black letter of the Standards, not in a comment. And, as noted above, one year before the adoption of Goal III, the Association directly addressed prejudice, bias and harassment in the black letter of Model Rule 2.3 in the 2007 Model Code of Judicial Conduct.

Some opponents to bringing an antidiscrimination and anti-harassment provision into the black letter of the Model Rules have suggested that the amendment is not necessary—that the current provision provides the proper level of guidance to lawyers. Evidence from the ABA and around the country suggests otherwise. For example:

- Twenty-five jurisdictions have not waited for the Association to act. They have already concluded that the current Comment to an ABA Model Rule does not adequately address discriminatory or harassing behavior by lawyers. As a result, they have adopted antidiscrimination and/or anti-harassment provisions into the black letter of their rules of professional conduct.¹¹ By contrast, only thirteen jurisdictions have decided to address this

¹⁰ ABA FOURTH EDITION CRIMINAL JUSTICE STANDARDS FOR THE PROSECUTION FUNCTION, http://www.americanbar.org/groups/criminal_justice/standards.html (last visited May 9, 2016); ABA FOURTH EDITION CRIMINAL JUSTICE STANDARDS FOR THE DEFENSE FUNCTION, http://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition.html (last visited May 9, 2016).

¹¹ See California Rule of Prof'l Conduct 2-400; Colorado Rule of Prof'l Conduct 8.4(g); Florida Rule of Prof'l Conduct 4-8.4(d); Idaho Rule of Prof'l Conduct 4.4 (a); Illinois Rule of Prof'l Conduct 8.4(j); Indiana Rule of Prof'l Conduct 8.4(g); Iowa Rule of Prof'l Conduct 8.4(g); Maryland Lawyers' Rules of Prof'l Conduct 8.4(e); Massachusetts Rule of Prof'l Conduct 3.4(i); Michigan Rule of Prof'l Conduct 6.5; Minnesota Rule of Prof'l Conduct 8.4(h); Missouri Rule of Prof'l Conduct 4-8.4(g); Nebraska Rule of Prof'l Conduct 8.4(d); New Jersey Rule of Prof'l Conduct 8.4(g); New Mexico Rule of Prof'l Conduct 16-300; New York Rule of Prof'l Conduct 8.4(g); North Dakota Rule of Prof'l Conduct 8.4(f); Ohio Rule of Prof'l Conduct 8.4(g); Oregon Rule of Prof'l Conduct 8.4(a)(7); Rhode Island Rule of Prof'l Conduct 8.4(d); Texas Rule of Prof'l Conduct 5.08; Vermont Rule of Prof'l Conduct 8.4(g); Washington Rule of Prof'l Conduct 8.4(g); Wisconsin Rule of Prof'l Conduct 8.4(i); D.C. Rule of Prof'l Conduct 9.1.

issue in a Comment similar to the current Comment in the Model Rules.¹² Fourteen states do not address this issue at all in their Rules of Professional Conduct.¹³

- As noted above, the ABA has already brought antidiscrimination and anti-harassment provisions into the black letter of other conduct codes like the *ABA Standards for Criminal Justice: Prosecution Function and Defense Function* and the 2007 ABA Model Code of Judicial Conduct, Rule 2.3.
- The Florida Bar’s Young Lawyer’s Division reported this year that in a survey of its female members, 43% of respondents reported they had experienced gender bias in their career.¹⁴
- The supreme courts of the jurisdictions that have black letter rules with antidiscrimination and anti-harassment provisions have not seen a surge in complaints based on these provisions. Where appropriate, they are disciplining lawyers for discriminatory and harassing conduct.¹⁵

IV. Summary of Proposed Amendments

A. Prohibited Activity

SCEPR’s proposal adds a new paragraph (g) to Rule 8.4, to prohibit conduct by a lawyer related to the practice of law that harasses or discriminates against members of specified groups. New Comment [3] defines the prohibited behavior.

¹² See Arizona Rule of Prof’l Conduct 8.4, cmt.; Arkansas Rule of Prof’l Conduct 8.4, cmt. [3]; Connecticut Rule of Prof’l Conduct 8.4, Commentary; Delaware Lawyers’ Rule of Prof’l Conduct 8.4, cmt. [3]; Idaho Rule of Prof’l Conduct 8.4, cmt. [3]; Maine Rule of Prof’l Conduct 8.4, cmt. [3]; North Carolina Rule of Prof’l Conduct 8.4, cmt. [5]; South Carolina Rule of Prof’l Conduct 8.4, cmt. [3]; South Dakota Rule of Prof’l Conduct 8.4, cmt. [3]; Tennessee Rule of Prof’l Conduct 8.4, cmt. [3]; Utah Rule of Prof’l Conduct 8.4, cmt. [3]; Wyoming Rule of Prof’l Conduct 8.4, cmt. [3]; West Virginia Rule of Prof’l Conduct 8.4, cmt. [3].

¹³ The states that do not address this issue in their rules include Alabama, Alaska, Georgia, Hawaii, Kansas, Kentucky, Louisiana, Mississippi, Montana, Nevada, New Hampshire, Oklahoma, Pennsylvania, and Virginia.

¹⁴ The Florida Bar, *Results of the 2015 YLD Survey on Women in the Legal Profession* (Dec. 2015), [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/13AC70483401E7C785257F640064CF63/\\$FILE/RESULTS%20OF%202015%20SURVEY.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/13AC70483401E7C785257F640064CF63/$FILE/RESULTS%20OF%202015%20SURVEY.pdf?OpenElement).

¹⁵ In 2015 the Iowa Supreme Court disciplined a lawyer for sexually harassing four female clients and one female employee. *In re Moothart*, 860 N.W.2d 598 (2015). The Wisconsin Supreme Court in 2014 disciplined a district attorney for texting the victim of domestic abuse writing that he wished the victim was not a client because she was “a cool person to know.” On one day, the lawyer sent 19 text messages asking whether the victim was the “kind of girl who likes secret contact with an older married elected DA . . . the riskier the better.” One day later, the lawyer sent the victim 8 text messages telling the victim that she was pretty and beautiful and that he had a \$350,000 home. *In re Kratz*, 851 N.W.2d 219 (2014). The Minnesota Supreme Court in 2013 disciplined a lawyer who, while acting as an adjunct professor and supervising law students in a clinic, made unwelcome comments about the student’s appearance; engaged in unwelcome physical contact of a sexual nature with the student; and attempted to convince the student to recant complaints she had made to authorities about him. *In re Griffith*, 838 N.W.2d 792 (2013). The Washington Supreme Court in 2012 disciplined a lawyer, who was representing his wife and her business in dispute with employee who was Canadian. The lawyer sent two ex parte communications to the trial judge asking questions like: are you going to believe an alien or a U.S. citizen? *In re McGrath*, 280 P.3d 1091 (2012). The Indiana Supreme Court in 2009 disciplined a lawyer who, while representing a father at a child support modification hearing, made repeated disparaging references to the facts that the mother was not a U.S. citizen and was receiving legal services at no charge. *In re Campiti*, 937 N.E.2d 340 (2009). The Indiana Supreme Court in 2005 disciplined a lawyer who represented a husband in an action for dissolution of marriage. Throughout the custody proceedings the lawyer referred to the wife being seen around town in the presence of a “black male” and that such association was placing the children in harm’s way. During a hearing, the lawyer referred to the African-American man as “the black guy” and “the black man.” *In re Thomsen*, 837 N.E.2d 1011 (2005).

Proposed new black letter Rule 8.4(g) does not use the terms “manifests . . . bias or prejudice”¹⁶ that appear in the current provision. Instead, the new rule adopts the terms “harassment and discrimination” that already appear in a large body of substantive law, antidiscrimination and anti-harassment statutes, and case law nationwide and in the Model Judicial Code. For example, in new Comment [3], “harassment” is defined as including “sexual harassment and derogatory or demeaning verbal or physical conduct . . . of a sexual nature.” This definition is based on the language of Rule 2.3(C) of the ABA Model Code of Judicial Conduct and its Comment [4], adopted by the House in 2007 and applicable to lawyers in proceedings before a court.¹⁷

Discrimination is defined in new Comment [3] as “harmful verbal or physical conduct that manifests bias or prejudice towards others.” This is based in part on ABA Model Code of Judicial Conduct, Rule 2.3, Comment [3], which notes that harassment, one form of discrimination, includes “verbal or physical conduct,” and on the current rule, which prohibits lawyers from manifesting bias or prejudice while representing clients.

Proposed new Comment [3] also explains, “The substantive law of antidiscrimination and anti-harassment statutes and case law may guide application of paragraph (g).” This provision makes clear that the substantive law on antidiscrimination and anti-harassment is not necessarily dispositive in the disciplinary context. Thus, conduct that has a discriminatory impact alone, while possibly dispositive elsewhere, would not necessarily result in discipline under new Rule 8.4(g). But, substantive law regarding discrimination and harassment can also guide a lawyer’s conduct. As the Preamble to the Model Rules explains, “A lawyer’s conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer’s business and personal affairs.”¹⁸

B. Knowledge Requirement

SCEPR has received substantial and helpful comment that the absence of a “mens rea” standard in the rule would provide inadequate guidance to lawyers and disciplinary authorities. After consultation with cosponsors, SCEPR concluded that the alternative standards “knows or reasonably should know” should be included in the new rule. Consequently, revised Rule 8.4(g) would make it professional misconduct for a lawyer to “engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination. . . .”

Both “knows” and “reasonably should know” are defined in the Model Rules. Rule 1.0(f) defines “knows” to denote “actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.” The inference to be made in this situation is not what the lawyer should or might have known, but whether one can infer from the circumstances what the lawyer actually knew. Thus, this is a subjective standard; it depends on ascertaining the lawyer’s actual state of mind. The evidence, or “circumstances,” may or may not support an inference about what the lawyer knew about his or her conduct.

¹⁶ The phrase, “manifestations of bias or prejudice” is utilized in proposed new Comment [3].

¹⁷ ABA Model Code of Judicial Conduct Rule 2.3, Comment [4] reads: “Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.”

¹⁸ MODEL RULES OF PROF’L CONDUCT, Preamble & Scope [5] (2016).

Rule 1.0(j) defines “reasonably should know” when used in reference to a lawyer to denote “that a lawyer of reasonable prudence and competence would ascertain the matter in question.” The test here is whether a lawyer of reasonable prudence and competence would have comprehended the facts in question. Thus, this is an objective standard; it does not depend on the particular lawyer’s actual state of mind. Rather, it asks what a lawyer of reasonable prudence and competence would have comprehended from the circumstances presented.

SCEPR believes that any standard for the conduct to be addressed in Rule 8.4(g) must include as alternatives, both the “knowing” and “reasonably should know” standards as defined in Rule 1.0. As noted, one standard is a subjective and the other is objective. Thus, they do not overlap; and one cannot serve as a substitute for the other. Taken together, these two standards provide a safeguard for lawyers against overaggressive prosecutions for conduct they could not have known was harassment or discrimination, as well as a safeguard against evasive defenses of conduct that any reasonable lawyer would have known is harassment or discrimination.

There is also ample precedent for using the “knows or reasonably should know” formulation in proposed Rule 8.4(g). It has been part of the Model Rules since 1983. Currently, it is used in Rule 1.13(f), Rule 2.3(b), Rule 2.4(b), Rule 3.6(a), Rule 4.3 [twice] and Rule 4.4(b).

“Harassment” and “discrimination” are terms that denote actual conduct. As explained in proposed new Comment [3], both “harassment” and “discrimination” are defined to include verbal and physical conduct against others. The proposed rule would not expand on what would be considered harassment and discrimination under federal and state law. Thus, the terms used in the rule—“harassment” and “discrimination”—by their nature incorporate a measure of intentionality while also setting a minimum standard of acceptable conduct. This does not mean that complainants should have to establish their claims in civil courts before bringing disciplinary claims. Rather, it means that the rule intends that these words have the meaning established at law.

The addition of “knows or reasonably should know” as a part of the standard for the lawyer supports the rule’s focus on conduct and resolves concerns of vagueness or uncertainty about what behavior is expected of the lawyer.

C. Scope of the Rule

Proposed Rule 8.4(g) makes it professional misconduct for a lawyer to harass or discriminate while engaged in “conduct related to the practice of law” when the lawyer knew or reasonably should have known the conduct was harassment or discrimination. The proposed rule is constitutionally limited; it does not seek to regulate harassment or discrimination by a lawyer that occurs outside the scope of the lawyer’s practice of law, nor does it limit a lawyer’s representational role in our legal system. It does not limit the scope of the legal advice a lawyer may render to clients, which is addressed in Model Rule 1.2. It permits legitimate advocacy. It does not change the circumstances under which a lawyer may accept, decline or withdraw from a representation. To the contrary, the proposal makes clear that Model Rule 1.16 addresses such conduct. The proposal also does not limit a lawyer’s ability to charge and collect a reasonable fee for legal services, which remains governed by Rule 1.5.

Note also that while the provision in current Comment [3] limits the scope of Rule 8.4(d) to situations where the lawyer is representing clients, Rule 8.4(d) itself is not so limited. In fact, lawyers have been disciplined under Rule 8.4(d) for conduct that does not involve the representation of clients.¹⁹

Some commenters expressed concern that the phrase, “conduct related to the practice of law,” is vague. “The definition of the practice of law is established by law and varies from one jurisdiction to another.”²⁰ The phrase “conduct related to” is elucidated in the proposed new Comments and is consistent with other terms and phrases used in the Rules that have been upheld against vagueness challenges.²¹ The proposed scope of Rule 8.4(g) is similar to the scope of existing antidiscrimination provisions in many states.²²

Proposed new Comment [4] explains that conduct related to the practice of law includes, “representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities *in connection with the practice of law.*” (Emphasis added.) The nexus of the conduct regulated by the rule is that it is conduct lawyers are permitted or required to engage in because of their work as a lawyer.

The scope of proposed 8.4(g) is actually narrower and more limited than is the scope of other Model Rules. “[T]here are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity.”²³ For example, paragraph (c) to Rule 8.4 declares that it is professional misconduct for a lawyer to engage in conduct “involving dishonesty, fraud, deceit or misrepresentation.” Such conduct need not be

¹⁹ See, e.g., *Neal v. Clinton*, 2001 WL 34355768 (Ark. Cir. Ct. Jan. 19, 2001).

²⁰ MODEL RULES OF PROF'L CONDUCT R. 5.5 cmt. [2].

²¹ See, e.g., *Grievance Adm'r v. Fieger*, 719 N.E.2d 123 (Mich. 2016) (rejecting a vagueness challenge to rules requiring lawyers to “treat with courtesy and respect all person involved in the legal process” and prohibiting “undignified or discourteous conduct toward [a] tribunal”); *Chief Disciplinary Counsel v. Zelotes*, 98 A.3d 852 (Conn. 2014) (rejecting a vagueness challenge to “conduct prejudicial to the administration of justice”); *Florida Bar v. Von Zamft*, 814 So. 2d 385 (2002); *In re Anonymous Member of South Carolina Bar*, 709 S.E.2d 633 (2011) (rejecting a vagueness challenge to the following required civility clause: “To opposing parties and their counsel, I pledge fairness, integrity, and civility”); *Canatella v. Stovitz*, 365 F.Supp.2d 1064 (N.D. Cal. 2005) (rejecting a vagueness challenge to these terms regulating lawyers in the California Business and Profession Code: “willful,” “moral turpitude,” “dishonesty,” and “corruption”); *Motley v. Virginia State Bar*, 536 S.E.2d 97 (Va. 2000) (rejecting a vagueness challenge to a rule requiring lawyers to keep client’s “reasonably informed about matters in which the lawyer’s services are being rendered”); *In re Disciplinary Proceedings Against Beaver*, 510 N.W.2d 129 (Wis. 1994) (rejecting a vagueness challenge to a rule against “offensive personality”).

²² See Florida Rule of Professional Conduct 4-8.4(d) which addresses conduct “in connection with the practice of law”; Indiana Rule of Prof'l Conduct 8.4(g) which addresses conduct a lawyer undertakes in the lawyer’s “professional capacity”; Iowa Rule of Prof'l Conduct 8.4(g) which addresses conduct “in the practice of law”; Maryland Lawyers’ Rules of Prof'l Conduct 8.4(e) with the scope of “when acting in a professional capacity”; Minnesota Rule of Prof'l Conduct 8.4(h) addressing conduct “in connection with a lawyer’s professional activities”; New Jersey Rule of Prof'l Conduct 8.4(g) addressing when a lawyer’s conduct is performed “in a professional capacity”; New York Rule of Prof'l Conduct 8.4(g) covering conduct “in the practice of law”; Ohio Rule of Prof'l Conduct 8.4(g) addressing when lawyer “engage, in a professional capacity, in conduct”; Washington Rule of Prof'l Conduct 8.4(g) covering “connection with the lawyer’s professional activities”; and Wisconsin Rule of Prof'l Conduct 8.4(i) with a scope of conduct “in connection with the lawyer’s professional activities.”

²³ MODEL RULES OF PROF'L CONDUCT, Preamble [3].

related to the lawyer's practice of law, but may reflect adversely on the lawyer's fitness to practice law or involve moral turpitude.²⁴

However, insofar as proposed Rule 8.4(g) applies to "conduct related to the practice of law," it is broader than the current provision. This change is necessary. The professional roles of lawyers include conduct that goes well beyond the representation of clients before tribunals. Lawyers are also officers of the court, managers of their law practices and public citizens having a special responsibility for the administration justice.²⁵ Lawyers routinely engage in organized bar-related activities to promote access to the legal system and improvements in the law. Lawyers engage in mentoring and social activities related to the practice of law. And, of course, lawyers are licensed by a jurisdiction's highest court with the privilege of practicing law. The ethics rules should make clear that the profession will not tolerate harassment and discrimination in any conduct related to the practice of law.

Therefore, proposed Comment [4] explains that operating or managing a law firm is conduct related to the practice of law. This includes the terms and conditions of employment. Some commentators objected to the inclusion of workplace harassment and discrimination within the scope of the Rule on the ground that it would bring employment law into the Model Rules. This objection is misplaced. First, in at least two jurisdictions that have adopted an antidiscrimination Rule, the provision is focused entirely on employment and the workplace.²⁶ Other jurisdictions have also included workplace harassment and discrimination among the conduct prohibited in their Rules.²⁷ Second, professional misconduct under the Model Rules already applies to substantive areas of the law such as fraud and misrepresentation. Third, that part of the management of a law practice that includes the solicitation of clients and advertising of legal services is already subjects of regulation under the Model Rules.²⁸ And fourth, this would not be the first time the House of Delegates adopted policy on the terms and conditions of lawyer employment. In 2007, the House of Delegates adopted as ABA policy a recommendation that law firms should discontinue mandatory age-based retirement polices,²⁹ and earlier, in 1992, the House recognized that "sexual harassment is a serious problem in all types of workplace settings, including the legal profession, and constitutes a discriminatory and unprofessional practice that must not be tolerated in any work

²⁴ MODEL RULES OF PROF'L CONDUCT R. 8.4 cmt. [2].

²⁵ MODEL RULES OF PROF'L CONDUCT, Preamble [1] & [6].

²⁶ See D.C. Rule of Prof'l Conduct 9.1 & Vermont Rule of Prof'l Conduct 8.4(g). The lawyer population for Washington DC is 52,711 and Vermont is 2,326. Additional lawyer demographic information is available on the American Bar Association website: http://www.americanbar.org/resources_for_lawyers/profession_statistics.html.

²⁷ Other jurisdictions have specifically included workplace harassment and discrimination among the conduct prohibited in their Rules. Some jurisdictions that have included workplace harassment and discrimination as professional misconduct require a prior finding of employment discrimination by another tribunal. See California Rule of Prof'l Conduct 2-400 (lawyer population 167,690); Illinois Rule of Prof'l conduct 8.4(j) (lawyer population 63,060); New Jersey Rule of Prof'l Conduct 8.4(g) (lawyer population 41,569); and New York Rule of Prof'l Conduct 8.4(g) (lawyer population 175,195). Some jurisdictions that have included workplace harassment and discrimination as professional misconduct require that the conduct be unlawful. See, e.g., Iowa Rule of Prof'l Conduct 8.4(g) (lawyer population of 7,560); Ohio Rule of Prof'l Conduct 8.4(g) (lawyer population 38,237); and Minnesota Rule of Prof'l Conduct 8.4(h) (lawyer population 24,952). Maryland has included workplace harassment and discrimination as professional misconduct when the conduct is prejudicial to the administration of justice. Maryland Lawyers' Rules of Prof'l Conduct 8.4(e), cmt. [3] (lawyer population 24,142).

²⁸ See MODEL RULES OF PROFESSIONAL CONDUCT R. 7.1 - 7.6.

²⁹ ABA HOUSE OF DELEGATES RESOLUTION 10A (Aug. 2007).

environment.”³⁰ When such conduct is engaged in by lawyers it is appropriate and necessary to identify it for what it is: professional misconduct.

This Rule, however, is not intended to replace employment discrimination law. The many jurisdictions that already have adopted similar rules have not experienced a mass influx of complaints based on employment discrimination or harassment. There is also no evidence from these jurisdictions that disciplinary counsel became the tribunal of first resort for workplace harassment or discrimination claims against lawyers. This Rule would not prohibit disciplinary counsel from deferring action on complaints, pending other investigations or actions.

Equally important, the ABA should not adopt a rule that would apply to lawyers acting outside of their own law firms or law practices but not to lawyers acting within their offices, toward each other and subordinates. Such a dichotomy is unreasonable and unsupportable.

As also explained in proposed new Comment [4], conduct related to the practice of law includes activities such as law firm dinners and other nominally social events at which lawyers are present solely because of their association with their law firm or in connection with their practice of law. SCEPR was presented with substantial anecdotal information that sexual harassment takes place at such events. “Conduct related to the practice of law” includes these activities.

Finally with respect to the scope of the rule, some commentators suggested that because legal remedies are available for discrimination and harassment in other forums, the bar should not permit an ethics claim to be brought on that basis until the claim has first been presented to a legal tribunal and the tribunal has found the lawyer guilty of or liable for harassment or discrimination.

SCEPR has considered and rejected this approach for a number of reasons. Such a requirement is without precedent in the Model Rules. There is no such limitation in the current provision. Legal ethics rules are not dependent upon or limited by statutory or common law claims. The ABA takes pride in the fact that “the legal profession is largely self-governing.”³¹ As such, “a lawyer’s failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process,” not the civil legal system.³² The two systems run on separate tracks.

The Association has never before required that a party first invoke the civil legal system before filing a grievance through the disciplinary system. In fact, as a self-governing profession we have made it clear that “[v]iolation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached.”³³ Thus, legal remedies are available for conduct, such as fraud, deceit or misrepresentation, which also are prohibited by paragraph (c) to Rule 8.4, but a claimant is not required as a condition of filing a grievance based on fraud, deceit or misrepresentation to have brought and won a civil action against the respondent lawyer, or for the lawyer to have been charged with and convicted

³⁰ ABA HOUSE OF DELEGATES RESOLUTION 117 (Feb. 1992).

³¹ MODEL RULES OF PROFESSIONAL CONDUCT, Preamble & Scope [10].

³² MODEL RULES OF PROFESSIONAL CONDUCT, Preamble & Scope [19].

³³ MODEL RULES OF PROFESSIONAL CONDUCT, Preamble & Scope [20].

of a crime.³⁴ To now impose such a requirement, only for claims based on harassment and discrimination, would set a terrible precedent and send the wrong message to the public.

In addition, the Model Rules of Professional Conduct reflect ABA policy. Since 1989, the ABA House of Delegates has adopted policies promoting the equal treatment of all persons regardless of sexual orientation or gender identity.³⁵ Many states, however, have not extended protection in areas like employment to lesbian, gay, or transgender persons.³⁶ A Model Rule should not be limited by such restrictions that do not reflect ABA policy. Of course, states and other jurisdictions may adapt ABA policy to meet their individual and particular circumstances.

D. Protected Groups

New Rule 8.4(g) would retain the groups protected by the current provision.³⁷ In addition, new 8.4(g) would also include “ethnicity,” “gender identity,” and “marital status.” The antidiscrimination provision in the ABA Model Code of Judicial Conduct, revised and adopted by the House of Delegates in 2007, already requires judges to ensure that lawyers in proceedings before the court refrain from manifesting bias or prejudice and from harassing another based on that person’s marital status and ethnicity. The drafters believe that this same prohibition also should be applicable to lawyers in conduct related to the practice of law not merely to lawyers in proceedings before the court.

“Gender identity” is added as a protected group at the request of the ABA’s Goal III Commissions. As used in the Rule this term includes “gender expression”, which is a form of gender identity. These terms encompass persons whose current gender identity and expression are different from their designations at birth.³⁸ The Equal Employment Opportunities Commission interprets Title VII as prohibiting discrimination against employees on the basis of sexual orientation and gender identity.³⁹ In 2015, the ABA House adopted revised Criminal Justice Standards for the Defense Function and the Prosecution Function. Both sets of Standards explains that defense counsel and prosecutors should not manifest bias or prejudice based on another’s gender identity. To ensure notice to lawyers and to make these provisions more parallel, the Goal III Commission on Sexual

³⁴ *E.g.*, *People v. Odom*, 941 P.2d 919 (Colo. 1997) (lawyer disciplined for committing a crime for which he was never charged).

³⁵ A list of ABA policies supporting the expansion of civil rights to and protection of persons based on their sexual orientation and gender identity can be found here:

http://www.americanbar.org/groups/sexual_orientation/policy.html.

³⁶ For a list of states that have not extended protection in areas like employment to LGBT individuals see:

<https://www.aclu.org/map/non-discrimination-laws-state-state-information-map>.

³⁷ Some commenters advised eliminating references to any specific groups from the Rule. SCEPR concluded that this would risk including within the scope of the Rule appropriate distinctions that are properly made in professional life. For example, a law firm or lawyer may display “geographic bias” by interviewing for employment only persons who have expressed a willingness to relocate to a particular state or city. It was thought preferable to specifically identify the groups to be covered under the Rule.

³⁸ The U.S. Office of Personnel Management Diversity & Inclusion Reference Materials defines gender identity as “the individual’s internal sense of being male or female. The way an individual expresses his or her gender identity is frequently called ‘gender expression,’ and may or may not conform to social stereotypes associated with a particular gender.” See *Diversity & Inclusion Reference Materials*, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT, <https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/> (last visited May 9, 2016).

³⁹ https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm

Orientation and Gender Identity recommended that gender identity be added to the black letter of paragraph (g). New Comment [3] notes that applicable law may be used as a guide to interpreting paragraph (g). Under the Americans with Disabilities Act discrimination against persons with disabilities includes the failure to make the reasonable accommodations necessary for such person to function in a work environment.⁴⁰

Some commenters objected to retaining the term “socioeconomic status” in new paragraph (g). This term is included in the current provision and also is in the Model Code of Judicial Conduct. An Indiana disciplinary case, *In re Campiti*, 937 N.E.2d 340 (2009), provides guidance as to the meaning of the term. In that matter, a lawyer was reprimanded for disparaging references he made at trial about a litigant’s socioeconomic status: the litigant was receiving free legal services. SCEPR has found no instance where this term in an ethics rule has been misused or applied indiscriminately in any jurisdiction. SCEPR concluded that the unintended consequences of removing this group would be more detrimental than the consequences of keeping it in.

Discrimination against persons based on their source of income or acceptance of free or low-cost legal services would be examples of discrimination based on socioeconomic status. However, new Comment [5] makes clear that the Rule does not limit a lawyer’s ability to charge and collect a reasonable fee and reimbursement of expenses, nor does it affect a lawyer’s ability to limit the scope of his or her practice.

SCEPR was concerned, however, that this Rule not be read as undermining a lawyer’s pro bono obligations or duty to accept court-appointed clients. Therefore, proposed Comment [5] does encourage lawyers to be mindful of their professional obligations under Rule 6.1 to provide legal services to those who are unable to pay, and their obligation under Rule 6.2 to not avoid appointments from a tribunal except for “good cause.”

E. Promoting Diversity

Proposed new Comment [4] to Rule 8.4 makes clear that paragraph (g) does not prohibit conduct undertaken by lawyers to promote diversity. As stated in the first Goal III Objective, the Association is committed to promoting full and equal participation in the Association, our profession and the justice system by all persons. According to the ABA Lawyer Demographics for 2016, the legal profession is 64% male and 36% female.⁴¹ The most recent figures for racial demographics are from the 2010 census showing 88% White, 5% Black, 4% Hispanic, and 3% Asian Pacific American, with all other ethnicities less than one percent.⁴² Goal III guides the ABA toward greater diversity in our profession and the justice system, and Rule 8.4(g) seeks to further that goal.

⁴⁰A reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things usually are done that enables a qualified individual with a disability to enjoy an equal employment opportunity. Examples of reasonable accommodations include making existing facilities accessible; job restructuring; part-time or modified work schedules; acquiring or modifying equipment; changing tests, training materials, or policies; providing qualified readers or interpreters; and reassignment to a vacant position.

⁴¹ American Bar Association, *Lawyer Demographics Year 2016* (2016), http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2016.authcheckdam.pdf.

⁴² *Id.*

F. How New Rule 8.4(g) Affects Other Model Rules of Professional Conduct

When SCEPR released a draft proposal in December 2015 to amend Model Rule 8.4, some commenters expressed concern about how proposed new Rule 8.4(g) would affect other Rules of Professional Conduct. As a result, SCEPR's proposal to create new Rule 8.4(g) now includes a discussion of its effect on certain other Model Rules.

For example, commenters questioned how new Rule 8.4(g) would affect a lawyer's ability to accept, refuse or withdraw from a representation. To make it clear that proposed new Rule 8.4(g) is not intended to change the ethics rules affecting those decisions, the drafters included in paragraph (g) a sentence from Washington State's Rule 8.4(g), which reads: "This Rule does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 1.16." Rule 1.16 defines when a lawyer shall and when a lawyer may decline or withdraw from a representation. Rule 1.16(a) explains that a lawyer shall not represent a client or must withdraw from representing a client if: "(1) the representation will result in violation of the rules of professional conduct or other law." Examples of a representation that would violate the Rules of Professional Conduct are representing a client when the lawyer does not have the legal competence to do so (*See* Rule 1.1) and representing a client with whom the lawyer has a conflict of interest (*See* Rules 1.7, 1.9, 1.10, 1.11, and 1.12).

To address concerns that this proposal would cause lawyers to reject clients with unpopular views or controversial positions, SCEPR included in proposed new Comment [5] a statement reminding lawyers that a lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities, with a citation to Model Rule 1.2(b). That Rule reads: "A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities."

Also, with respect to this rule as with respect to all the ethics Rules, Rule 5.1 provides that a managing or supervisory lawyer shall make reasonable efforts to insure that the lawyer's firm or practice has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct. Such efforts will build upon efforts already being made to give reasonable assurance that lawyers in a firm conform to current Rule 8.4(d) and Comment [3] and are not manifesting bias or prejudice in the course of representing a client that is prejudicial to the administration of justice.

SCEPR has also agreed to develop a formal Ethics Opinion discussing Model Rule 5.3 and its relationship to the other ethics rules, including this new Rule.

G. Legitimate Advocacy

Paragraph (g) includes the following sentence: "This paragraph does not preclude legitimate advice or advocacy consistent with these Rules." The sentence recognizes the balance in the Rules that exists presently in current Comment [3] to Rule 8.4. It also expands the current sentence in the existing comment by adding the word "advice," as the scope of new Rule 8.4(g) is now not limited to "the course of representing a client" but includes "conduct related to the practice of law."

H. Peremptory Challenges

The following sentence appears in the current provision: “A trial judge’s finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.” SCEPR and the other cosponsors agreed to retain the sentence in the comments.

V. CONCLUSION

As noted at the beginning of this Report the Association has a responsibility to lead the profession in promoting equal justice under law. This includes working to eliminate bias in the legal profession. In 2007 the Model Judicial Code was amended to do just that. Twenty-five jurisdictions have also acted to amend their rules of professional conduct to address this issue directly. It is time to follow suit and amend the Model Rules. The Association needs to address such an important and substantive issue in a Rule itself, not just in a Comment.

Proposed new paragraph (g) to Rule 8.4 is a reasonable, limited and necessary addition to the Model Rules of Professional Conduct. It will make it clear that it is professional misconduct to engage in conduct that the lawyer knows or reasonably should know constitutes harassment or discrimination while engaged in conduct related to the practice of law. And as has already been shown in the jurisdictions that have such a rule, it will not impose an undue burden on lawyers.

As the premier association of attorneys in the world, the ABA should lead antidiscrimination, anti-harassment, and diversity efforts not just in the courtroom, but wherever it occurs in conduct by lawyers related to the practice of law. The public expects no less of us. Adopting the Resolution will advance this most important goal.

Respectfully submitted,

Myles V. Lynk, Chair
Standing Committee on Ethics and Professional Responsibility
August 2016

Judicial Council of Georgia
Access, Fairness, and Public Trust and Confidence Committee
November 9, 2016

(5) Information Technology and Access and Fairness Issues

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Subject: Access, Fairness Committee and IT issues

From: SCraft@columbusga.org

Date: Thu, Jul 14, 2016 10:50 am

To: <jorge.basto@georgiacourts.gov>, <lashawn.murphy@georgiacourts.gov>, <karlise.grier@georgiacourts.gov>

One of our local city court judges shared two memos with us. One regarding Technology Initiative's and the other regarding best practices. I don't know if these groups plan to reach out to or involve other elements of the system. From the IT prospective the Georgia Public Defenders Council has a state maintained data base that all the circuit offices are required to use to track and account for all of our clients and services. Clerk's systems often vary by county and the majority of DA offices use Tracker. In Columbus we have a very outdated mainframe clerk data system. In a couple of circuits there have been integration programs bringing the clerk, the jail, the sheriff/police department, the DA and public defender together to share certain types of information to help ensure timely and accurate court notices, arrest notifications, and sentencing information. All geared to improve the overall management of cases. Case that are actually people. People who are often times in jail waiting for some form of action on their case.

The involvement of GPDC offices with Municipal/City courts varies by circuit and county but all of the Superior Courts deal with the aftermath of the initial municipal/city court process. I suspect that in many circuits like ours, where Columbus is the largest, jail population is a significant factor. In counties with State Courts, City Courts and Superior Courts you will see a wide discrepancy in the way a misdemeanor or traffic offense is handled. While Columbus is somewhat unique in that we have a city recorders court, a municipal court, a state court and a superior court, (and although not part of our system, both a Federal Magistrate and Federal District court) one need only walk from one to the other to get the feeling you are not even in the same state, much less system, in the way these cases are handled.

In a time of public dissatisfaction with government in general and particular the criminal justice system, how we operate our courts is a major concern. Judge's conduct has become a major concern in this State. Even the most minor of cases can become a national story overnight in part because of the internet and the 24 hour news cycle. As a public defender I know how a single issue, even if it is without merit, can be reflected back on the entire program. With tight budgets, a lack of public trust and an overgrowing criminalization of minor infractions I think it is important to include all the stakeholders, including local IT, city mangers, city/county attorneys, prosecutors, public defender's, sheriffs, police, and clerks of all levels, in the process to ensure the openness, fairness and efficiency of court system.

Thank you,

Steve

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Judicial Council of Georgia
Access, Fairness, and Public Trust and Confidence Committee
November 9, 2016

(6) Georgia Reflections on Ferguson – The Role of the Courts

**Georgia Reflections on Ferguson – The Role of the Courts
Draft Agenda**

December 15, 2016,

President’s Dining Room, University Center, Mercer University

Target Attendance -- 270 attendees – open to the general public
President’s Dining Room, University Center, Mercer University

Open registration by September 15

Master of Ceremonies – To Be Determined

Questions will be received from the audience on index cards, reviewed and read to the panel by the moderator

9 am to 9:50 am	Registration	
9:50 am to 9:55 am	Program Overview and Housekeeping	Master of Ceremonies
9:55 am to 9:55 am	Introduction of the CJ	K. David Cooke, Jr., District Attorney, Macon-Bibb County (confirmed)
10 am to 10:05 am	Welcome	Chief Justice Hugh Thompson (confirmed)
10:05 am to 10:10 am	CMCJ President Remarks	Judge Gary Jackson, Atlanta Municipal Court (confirmed)
10:10 am to 11 am	<p>Video in Courts/Open Courtrooms</p> <p>While it is true that many appeals courts at the State level agree that video should be recorded of court proceedings in appeals courts, most seem to agree that trial courts create different concerns.</p> <p>Does the use of video by citizens in court have any open courtrooms dimensions? If it does, what are those dimensions?</p> <p>And, if video is to be allowed, how much should we allow citizens to record what is going on in court?</p> <p>In the not too distant past, few people had access to video cameras, and such cameras were cumbersome. Today, virtually everyone has a smart phone with video capability. Should courts control this use, or is the use of video in court by citizens something we should get comfortable with?</p> <p>The Access and Fairness Committee of the Supreme Court, of course, has looked at this issue, as have some of the Court Councils.</p> <p>In the past, the various court rules have limited video access to the press, but in this day and age of bloggers, tweeters, facebook posters, and snapchat and periscope users, should courts continue to curtail the use of video by private citizens in court?</p>	<p>Jane Hansen – Supreme Court Public Information Officer • Moderator – (confirmed)</p> <p>Chief Justice Leah Ward Sears (Ret.), Partner, Smith Gambrell & Russell, LLP – (confirmed)</p> <p>Hon. Verda Colvin, Judge, Macon Circuit Superior Court (confirmed)</p> <p>Hon. Ashley Wright, District Attorney, Richmond County (tentative yes, pending trial calendar)</p> <p>Cynthia L. Counts, Partner, Duane Morris, LLP, Board Member, Georgia First Amendment Foundation (confirmed)</p>

	<p>If so, what guiding principles should courts review to determine if video use should be allowed?</p> <p>And, if not, are there any concerns raised by allowing anyone to video at anytime?</p> <p>It might be nice to have a panel including an appellate court judge, a superior court judge, a municipal court judge, a member of the press, a prosecutor and a public defender to talk about these issues. Maybe answer 5 questions on point during an hour session on this issue.</p>	
11 am to 11:10 am	Break	
11:10 am to 12 Noon	<p>Presentation on Georgia Criminal Justice Reform Council</p> <p>Bench card for Misdemeanor Offenses bit.ly/benchcard</p>	Judge Michael Boggs, Georgia Court of Appeals (Confirmed)
12:00 Noon to 12:55 pm	Lunch	
12:55 pm to 1:15 pm	Presentation on Department of Justice Ferguson Report and Court Reform	Judge Leslie Spornberger Jones, Municipal Court of Athens-Clarke County – (confirmed)
1:15 pm to 1:20 pm	Stretch Break	
<p>1:20 pm to 3:05 pm</p> <p>1 hour 45 minutes with 15 minutes for audience questions</p>	<p>The Process is the Punishment – A different process in lower level courts</p> <p>https://www.russellsage.org/publications/process-punishment</p> <p>https://www.jstor.org/stable/20108780?seq=1#page_scan_tab_contents</p> <p>https://www.russellsage.org/publications/process-punishment</p>	<p>Judge Leslie Spornberger Jones - Moderator</p> <p>Rusi Patel, Assistant General Counsels, Georgia Municipal Association (invited)</p> <p>Honorable Rebecca Grist – Solicitor General, Macon-Bibb County and Immediate Past President, Georgia Association of Solicitor Generals (confirmed)</p> <p>Troy P. Hendrick, Esq. (Confirmed)</p> <p>Judge Harold McLendon of Dublin (invited)</p> <p>Attorney and Minister Francys Johnson, President Georgia NAACP (confirmed)</p> <p>Sarah Geraghty,</p>

		Managing Attorney, Impact Litigation Southern Center for Human Rights (confirmed)
3:05 pm to 3:20 pm	Break	
3:20 pm to 4:10 pm	The role of the legislative branch, the executive branch (like DOJ), the role of the community, and the role of judges in creating change	TBD – Moderator Senator John Flanders Kennedy, Jr. (invited) Judge Meng Lim, Tallapoosa Circuit, Seventh Judicial District (confirmed) Marissa McCall Dodson, Public Policy Director, Southern Center for Human Rights (confirmed)
4:10 pm to 4:20 pm	Break	
4:20 pm to 4:50 pm	Next Steps and Action Items - Audience Discussion: What will each group or individual do and how do I fit in?	Judge Latisha Dear Jackson (confirmed)
4:50 pm to 5:00 pm	AFPTC Co-Chair Remarks	Justice Robert Benham (invited) Justice Carol W. Hunstein (invited)
5 pm	Adjourn to Reception at Harriett Tubman Museum	

Reception, Harriett Tubman Museum (Wine and Cheese Reception)

Co-Chairs, Reception Host Committee

- Ira Foster, Managing Attorney, Georgia Legal Services Program and Past President, Macon Bar Association
- Rebecca Grist, Solicitor General, Macon-Bibb County

Judicial Council of Georgia
Access, Fairness, and Public Trust and Confidence Committee
November 9, 2016

(7) Human Trafficking and the Courts Summit on October 6, 2016

HUMAN TRAFFICKING AND THE COURTS SUMMIT

Sponsored by:

- *Judicial Council of Georgia's Access, Fairness, Public Trust and Confidence Committee and the Administrative Office of the Courts*

with the

- *Office of the Attorney General of Georgia*
- *Institute for Continuing Judicial Education – University of Georgia*

and

- *Emory University – School of Law*

Partners:

- *Criminal Justice Coordinating Council*
- *Department of Family and Children Services*
- *DeKalb County District Attorney's Office*
- *Georgia Asylum and Immigration Network*
- *Office of the Child Advocate*
- *Wellspring Living*
- *youthSpark*

Credit Hours Information:

- *7.5 MCJE credit hours, for Superior Court and State Court Judges; others check with the ICJE.*
- *6 CLE credit hours with 3 trial credit hours.*

Registration Fee:

A registration fee of \$30 is required for meals and beverages.

Agenda:

	Title	Presenter/Panel
8:00	Registration and Continental Breakfast	
8:50	<p>Welcome by Robert B. Ahdieh, Vice Dean Emory University School of Law</p> <p>Melissa D. Carter, Executive Director of Emory University School of Law Barton Child Law and Policy Center</p> <p>Presiding Justice P. Harris Hines, Supreme Court of Georgia</p>	<p>Robert B. Ahdieh,</p> <p>Melissa D. Carter</p> <p>Presiding Justice Hines</p>
9:00	<p>Overview of Human Trafficking – What is it?</p> <ul style="list-style-type: none"> • <i>Definition (International (Palermo Protocol), Trafficking Victims Protection Act, State (OCGA 16-5-46))</i> • <i>Labor Trafficking</i> • <i>Sex Trafficking (adults and children)</i> • <i>Difference between adult prostitution and Human Trafficking</i> • <i>Is this a problem in Georgia?</i> • <i>Efforts to Combat Human Trafficking in Georgia</i> • <i>Georgia laws that have been enacted over the past several years (HB 200 – 2011, Safe Harbor, Trafficking Notice, OCGA 16-5-47)</i> • <i>Demand for Human Trafficking Victims</i> 	<p>Attorney General Sam Olens, Georgia Attorney General’s Office</p> <p>Camila Wright Zolfaghar Human Trafficking Prosecutor Assistant Attorney General, Georgia Attorney General’s Office</p>
9:30	Break - Stretch	
9:35	<p>Recognizing Justice-Involved Victims and Understanding Their Needs</p> <ul style="list-style-type: none"> • <i>How can justice system stakeholders work to identify victims and respond to their needs?</i> • <i>What types of cases may involve trafficking victims?</i> • <i>In family/juvenile courts, what does this process look like and how does it differ from criminal court?</i> • <i>What does it mean to be “trauma-informed” and how</i> 	<p>Moderator: Honorable Sara Doyle, Chief Judge, Georgia Court of Appeals</p> <p>Ambassador Susan Coppedge, Ambassador-at-Large to Monitor and Combat Trafficking in Persons and Senior Advisor to the Secretary of State</p>

	<p><i>does this apply to the justice system?</i></p> <ul style="list-style-type: none"> • <i>How does sex trafficking intersect with domestic violence and sexual assault?</i> • <i>What are some indicators of trafficking?</i> 	<p>Honorable Willie Lovett, Judge, Fulton County Juvenile Court</p> <p>Honorable Fernando Camacho, Judge, Suffolk County Court, 10th Judicial District, Court of Claims Judge and Acting Supreme Court Justice, <i>originator of the first human trafficking court i New York</i></p> <p>Camila Wright Zolfaghar Human Trafficking Prosecutor, Assistant Attorney General, Georgia Attorne General’s Office</p>
10:25	Break	
10:35	<p>How courts can respond to the issues of Human Trafficking</p> <ul style="list-style-type: none"> • <i>What can judges do to address human trafficking? (e.g. leadership, convening stakeholders, etc.)</i> • <i>How did your court model get started? When did you realize that the court needed to do things differently?</i> • <i>What sort of cases do you handle? How are cases identified and processed? How is this different than traditional cases case processing?</i> • <i>How is the program funded and staffed?</i> • <i>How do you define success? What are your outcomes? (statistics and stories)</i> 	<p>Danielle Malangone, Director, National Anti- Trafficking Strategies, Center for Court Innovation</p> <p>Honorable Paul M. Herbert, Judge, Franklin County Municipal Court, Columbus, OH (Ohio CATCH Court)</p>
10:55	Break	

11:05	<p>Children in Foster Care and Human Trafficking</p> <ul style="list-style-type: none"> • <i>The impact & requirements for children in foster care of</i> <ol style="list-style-type: none"> 1) <i>Preventing Sex Trafficking and Strengthening Families Act and</i> 2) <i>Trafficking Victims Protection Act;</i> • <i>Multi-disciplinary protocol for the investigation and prosecution of child abuse and sexual exploitation;</i> • <i>The Safe Harbor Bill Service Plan</i> 	<p>Moderator: Honorable Peggy Walker, Judge, Douglas County Juvenile Court</p> <p>Ashley Willcott, Director Georgia Office of the Child Advocate</p> <p>Jodi Spiegel, Deputy Director, Georgia Office of the Child Advocate</p> <p>Beth Locker, Federal Grants Manager, Georgia Division of Family and Children Services</p>
11:55	<p>Lunch (included in registration fee) - Please pick up your lunch and return to the auditorium as quickly as possible</p> <p style="text-align: center;">25 minutes</p>	
12:20	Spoken Word Presentation	<ul style="list-style-type: none"> • Dr. Sheryl “Beloved” Dillard • Carlus Houston • Alesha Howliet • Poetry written by speakers, coordinated and directed by Cryst: L. Williams (www.crystallwilliams.com)
12:35	Break – Stretch	
12:40	<p>A View from the Bar: What Attorneys Want Judges to Know About the Prosecution of HT Cases</p> <ul style="list-style-type: none"> • <i>Information on the training that prosecutors are receiving around the state to have the ability to prosecute an HT case in state court.</i> • <i>Case study of HT case involving the trafficking of a boy tried by Judge David Emerson.</i> 	<p>Moderator: Dalia Racine, Assistant District Attorney, DeKalb County</p> <p>Judge David Emerson, Douglas County Superior Court Judge</p>

	<ul style="list-style-type: none"> • <i>How prosecutor offices are handling the arrests of adult women or men for “prostitution.”</i> • <i>Do Georgia Courts need a paradigm shift in our adult courts on issues of adult prostitution vs. human trafficking?</i> 	<p>Jennifer Hendee, Assistant District Attorney, Gwinnett County</p> <p>Esther Panitch, Defense Attorney, The Panitch Law Group, P.C.</p> <p>Honorable Sherry Boston Solicitor General and District Attorney Elect, DeKalb County, Georgia</p>
1:20	Break – Stretch	
1:25	<p>Nuts and Bolts: Jurisdiction and Evidence Issues in HT Cases</p> <ul style="list-style-type: none"> • <i>What is the exclusive and the concurrent jurisdiction of federal and state courts in HT cases?</i> • <i>What are the jurisdictional considerations if a crime occurs in more than one county or state?</i> • <i>How do you determine where a crime occurred for purposes of venue?</i> • <i>When is it appropriate to use close circuit testimony in cases for victims under 17 years of age based on O.C.G.A. § 17-8-55, and for victims 17 years of age or older?</i> 	<p>Moderator: Katherine Hoffer, Assistant United States Attorney, Norther District of Georgia</p> <p>Honorable Leslie Abram. Judge, United States District Court, Middle District of Georgia</p> <p>Dalia Racine or Destiny Harris, Assistant District Attorney, DeKalb County District Attorney’s Office</p> <p>Nathan Whiteman, Agen Federal Bureau of Investigation</p> <p>Jeff Ertel, Senior Litigation Attorney at Federal Defender Program, Inc. (invited)</p>
2:05	Break – stretch	
2:10	<p>What Services Victims Need and What Resources are Available?</p> <ul style="list-style-type: none"> • <i>What specific services are available for both child and</i> 	<p>Moderator: Honorable Cassandra Kirk, Chief Judge Magistrate Court o Fulton County</p>

	<p><i>adult victims?</i></p> <ul style="list-style-type: none"> • <i>What questions do I need to ask of attorneys and advocates to make the best decisions about the most appropriate resources?</i> • <i>Based on the underlying needs of trafficking victims, what are the most effective interventions? (trauma-informed, DV/sexual assault provider, etc.)</i> • <i>How do I access the resources?</i> • <i>How can service providers partner with the courts to help identify victims and connect them to services?</i> • <i>Who do I contact to get more info?</i> 	<p>Jamila Furtch, Independent Living Program- Program Coordinator , Wellspring Living</p> <p>Heather Stockdale, Executive Director & Co-Founder, Georgia Cares</p> <p>Melba Robinson, Program Director, Haven ATL, Salvation Army</p> <p>Jeff Shaw, Director, Out of Darkness</p>
3:00	Break	
3:10	<p>International Aspects of Human Trafficking in Georgia</p> <ul style="list-style-type: none"> • <i>Legal basis for state court jurisdiction in labor trafficking cases - what is the legal authority.</i> • <i>Substantive state law on labor trafficking - what are the elements of the offense and what are possible defenses?</i> • <i>Brief description of labor trafficking case that was prosecuted (either in state or federal court)</i> • <i>What the law states regarding certification - what is the legal authority that allows a state court judge to sign a certification based on the Violence Against Women’s Act and Trafficking Victim Protection Act.</i> • <i>What factors (for and against) should a state court judge consider in deciding to sign the certification.</i> • <i>Resources specifically for foreign-born victims.</i> 	<p>Moderator: Ambassador Susan Coppedge, Ambassador-at-Large to Monitor and Combat Trafficking in Persons and Senior Advisor to the Secretary of State (invited)</p> <p>Alia El-Sawi, Victim Assistance Specialist, Immigration and Customs Enforcement, Homeland Security Investigations</p> <p>Katherine Hoffer, Assistant United States Attorney, Northern District of Georgia</p> <p>Shinji Morokuma, Program Director, Office of Court Professionals,</p>

		<p>Administrative Office of the Courts</p> <p>Daniel Werner, Senior Supervising Attorney, Southern Poverty Law Center</p>
3:50	Break	
4:00	Judicial Ethics Discussion	<p>Moderator: Rich Reaves, Executive Director, Institute of Continuing Judicial Education</p> <p>Honorable Cassandra Kirk, Chief Judge Magistrate Court of Fulton County</p> <p>Honorable Bonnie Chessher Oliver Northeastern Circuit Superior Court</p> <p>Honorable Robert V. Rodatus Presiding Judge, Gwinne Circuit Juvenile Court</p>
4:30	Break - Stretch	
4:35	Final Thoughts from our Out-of State Guests	<p>Moderator: Attorney General Sam Olens</p> <p>Honorable Fernando Camacho, Judge, Suffolk County Court, 10th Judicial District, Court of Claims Judge and Acting Supreme Court Justice, <i>originator of the first human trafficking court in New York</i></p> <p>Ambassador Susan</p>

		<p>Coppedge, Ambassador-at-Large to Monitor and Combat Trafficking in Persons and Senior Advisor to the Secretary of State</p> <p>Danielle Malangone, Director, National Anti-Trafficking Strategies, Center for Court Innovation.</p>
4:55	Closing Remarks	Attorney General Sam Olens
5:00	CJE Portion of the Program will Adjourn	
5:00	Reception with Light Refreshments and Beer & Wine (included in registration fee)	

Judicial Council of Georgia
Access, Fairness, and Public Trust and Confidence Committee
November 9, 2016

(8) GLSP Eliminating Barriers CLE on October 20, 2016

****SAVE THE DATE****

***Eliminating Barriers to Justice III:
Language Access, the Americans with Disabilities Act and
Georgia's Criminal and Civil Justice Systems***

- Who:** *(Title Sponsors)* Georgia Legal Services Program
A.B. Olmos & Associates, P.C.
Chief Justice's Commission on Professionalism
- (Financial Sponsors)* Southern Center for Human Rights
- (Supporting Sponsors)* Supreme Court of Georgia Commission on Interpreters, Supreme Court of Georgia Access, Fairness, Public Trust and Confidence Committee, State Bar of Georgia Pro Bono Resource Center, State Bar of Georgia Access to Justice Committee, Judicial Council of Georgia/Administrative Office of the Courts
- Hosted By:* Georgia State University Center for Access to Justice

What: A comprehensive ***FREE*** 3.5 hour CLE where access to justice stakeholders, including attorneys and judges, will attend sessions discussing *Access to Georgia's Civil and Criminal Justice Systems for Persons with Disabilities under the American with Disabilities Act* and *Access to Justice for Limited English Proficient (LEP) and Deaf/Hard of Hearing (DHH) Criminal Court Participants: Ethical Considerations for Lawyers and Judges*. The CLE will also include a session on innovative practices by key stakeholders that effectively address access to justice issues in Georgia in addition to a judicial roundtable featuring **Justice Keith Blackwell** (Supreme Court of Georgia/ Chair, Georgia Commission on Interpreters), **Justice Harold Melton** (Supreme Court of Georgia/ Immediate Past Chair, Georgia Commission on Interpreters), **Chief Judge Sara Doyle** (Georgia Court of Appeals / Member, Supreme Court of Georgia Access, Fairness, Public Trust and Confidence Committee), **Judge Horace Johnson** (Superior Court of Newton County / President, Council of Superior Court Judges) and **Chief Magistrate Judge Kristina Hammer Blum** (Magistrate Court of Gwinnett County / President, Council of Magistrate Court Judges).

When: Thursday, October 20, 2016
10:00 am – 4:00 pm

Where: Georgia State University College of Law
85 Park Place, NE, Atlanta, GA 30303

** No cost to attend. Lunch will be provided. General, Professionalism and Ethics continuing education credits for attorneys and judges will be applied for. Attendees will be responsible for self-reporting desired CLE credit hours. Additional details, including how to register, will be available October 1, 2016. Questions? Please contact Jana J. Edmondson-Cooper, Eliminating Barriers to Justice III CLE Co-Chair, at jedmondson-cooper@glsp.org .*

Judicial Council of Georgia
Access, Fairness, and Public Trust and Confidence Committee
November 9, 2016

(11) ADA Handbook & ADA Mental Health and
Developmental Disabilities Supplement

Courts must ensure equal access to and full participation in court and court programs by people with disabilities, including attorneys, litigants, defendants, probationers, witnesses, victims, potential jurors, applicants, employees and public observers of court proceedings.

1. Qualified people with disabilities shall not, by reason of their disability, be discriminated against, or be excluded from participation in or denied the benefits of services and programs conducted by the courts.
2. A person with a disability is defined as an individual who has a physical or mental impairment that substantially limits one or more of the major life activities, has a record of such impairment or is regarded as having such impairment.
3. Upon notification by a person with a disability of the need for accommodation, the court shall, at no charge, provide reasonable accommodation that will enable the person to access and/or effectively participate in or enjoy the benefits of any court or court program.
4. The local administrative authority, with the assistance of the local ADA coordinator, shall determine what reasonable accommodation will be made. Consultation shall occur with the individual to explore his or her limitations and the options available for accommodating the disability. Primary consideration shall be given to the requested accommodation; however, alternative accommodation may be offered if equally effective. The court is not required to make modifications that would fundamentally alter the service or program or cause undue financial or administrative burden.
5. Local courts shall provide and pay the reasonable costs of any necessary auxiliary aids or services, excluding devices of a personal nature, for the duration of the time period for which accommodation is needed. Examples of auxiliary aids or services of a personal nature not covered by this directive include prescription eyeglasses, hearing aids, wheelchairs, and/or personal medical or attendant care.
6. If accommodation is needed for an individual to serve on jury duty and a time constraint exists related to the availability of an accommodation, the court, at its discretion, may continue an individual's jury summons to allow the court time to provide the accommodation. Any accommodation shall be made for the duration of any jury trial on which the person needing the accommodation serves.

Judicial Council of Georgia
Access, Fairness, and Public Trust and Confidence Committee
November 9, 2016

(12) Policy of the Judicial Council-Head Coverings

Meeting of the Judicial Council of Georgia

July 22, 2009

Chief Justice Carol W. Hunstein, presiding

B. Accommodation of Religious Attire in Courts

Chief Justice Hunstein presented information on a recent incident involving a municipal court hearing where a woman was refused entry into the courthouse because she was wearing a head covering for religious reasons. She stated that the American Civil Liberties Union had written to the AOC expressing concern over the matter. The AOC also received a formal complaint from the US Department of Justice. After discussion, the following policy was unanimously adopted by the Judicial Council of Georgia on a motion made by Judge Lane and seconded by Presiding Justice Carley:

Head coverings are prohibited from the courtroom except in cases where the covering is worn for medical or religious reasons. To the extent security requires a search of a person wearing a head covering for medical or religious reasons, the individual has the option of having the inspection performed by a same-sex officer in a private area. The individual is allowed to put his or her own head covering back on after the inspection is complete.

UNOFFICIAL DRAFT EXCERPT

NOT OFFICIAL MINUTES UNTIL ADOPTED BY JUDICIAL COUNCIL



SUPREME COURT OF GEORGIA

Atlanta December 8, 2011

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

It is ordered that the Georgia Uniform Municipal Court Rules be hereby amended to add the following Rule 28 concerning courtroom attire:

Rule 28. Courtroom Attire

Head coverings are prohibited in the courtroom except in cases where the covering is worn for medical or religious reasons. To the extent security requires a search of a person wearing a permitted head covering, the individual has the option of having the inspection performed by a same-sex officer in private. The individual is allowed to replace his or her own head covering after the inspection is complete.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from
the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
affixed the day and year last above written.

Thiase A. Banne, Clerk

Judicial Council of Georgia
Access, Fairness, and Public Trust and Confidence Committee
November 9, 2016

(12_2) NAWJ Resolution on Diversity



SUPREME COURT OF GEORGIA

Atlanta November 12, 1996

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

On December 13, 1995 the Supreme Court of Georgia established the Supreme Court Commission on Equality ("the Commission") to continue the implementation phase of the work of the Supreme Court Committee for Gender Equality and the Supreme Court Commission on Racial and Ethnic Bias in the Courts. The initial term of this Commission will expire on December 13, 1996. We hereby extend the period of existence of the Commission from December 13, 1996 until December 13, 1998. The general objective of the Commission shall continue be to address concerns related to bias or prejudice in Georgia's court system.

The specific objectives of the Commission shall be to:

- 1) submit an annual written report to the Georgia Supreme Court of the discharge of its duties;
- 2) formulate and propose guidelines, standards and procedures to implement the Commission's recommendations;
- 3) develop appropriate mandatory judicial and legal education course material and/or programs on equality, including appropriate instruction to be included in Georgia's new judge and new lawyer orientation programs;
- 4) develop and participate in programs about equality for professional and lay audiences;
- 5) serve as a resource to the media;
- 6) advise the legislature on legislation needed to further the aims of the Commission;
- 7) facilitate a plan to educate the public about the dynamics of the cycle of domestic violence, resources for victims and protection available under Georgia law;

8) develop a mechanism for the processing of complaints received about judges' and lawyers' biased behaviors:

9) work with the Judicial Nominating Committee to encourage more racial and ethnic minorities, women and men to apply for appointments as judges:

10) act as a resource to Georgia law schools in revising teaching and curricula to promote the elimination of biased conduct on the part of attorneys.

It is the hope that the Commission will build on the foundation which has been begun and work to further promote equality in the Georgia court system. The Commission's task is a challenging one, and it needs active and energetic members. After consideration, we have decided to further insure continuity of the Commission's work we will stagger appointments by appointing half of the Commission for one-year terms and half for two-year terms. Accordingly, we make the following appointments for the terms indicated to the Commission:

(Term to begin December 14, 1996 and end December 13, 1998)

Hon. Kathlene F. Gosselin, Co-Chair, for one year
Carl A. Bryant, Esquire
Jesus A. Nerio, Esquire
Professor Marjorie Girth
Linda A. Klein, Esquire
Hon. Spencer Lawton
Dr. Helen Ridley

(Term to begin December 14, 1996 and end December 13, 1997)

Hon. John H. Ruffin, Jr., Co-Chair
Hon. John Allen
Ruth F. Claiborne, Esquire
Hon. Cheryl Custer
Hon. Barbara Harris
Ms. Carol Jackson
John Mayoue, Esquire

SUPREME COURT OF THE STATE OF GEORGIA,
Clerk's Office, Atlanta



I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Shirley M. Kuleh

, Clerk

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Subject: RE: Diversity Sub-committee
From: "Sara Doyle" <DoyleS@gaappeals.us>
Date: Tue, Oct 04, 2016 11:16 am
To: "kygrier@grierlawofficepc.com" <kygrier@grierlawofficepc.com>
Cc: "Karlise Grier" <Karlise.Grier@georgiacourts.gov>
Attach: IMAGE.gif
IMAGE.jpeg

NAWJ Leads Affiliate Organizations with Resolution to Diversify Trial Court Appoints

The NAWJ Executive and Resolutions Committees has approved the following resolution, which shall be presented for a vote at the Annual Business Meeting on October 8, 2016 in Seattle. In the wake of the Board drafting and approving this language, the following national voluntary bar and judicial organizations have approved our resolution within their respective organizations: The American Association for Justice, The Defense Research Institute, The Federation of Defense and Corporate Counsel, the Association of Defense Trial Attorneys, the Hispanic National Bar Association, the Conference of Chief Justices. The following organizations are considering this resolution within their organizations: The National Bar Association, The American Board of Trial Advocates, and the American Bar Association, Judicial Division.

RESOLUTION ON DIVERSITY IN TRIAL COURT APPOINTMENTS

Whereas, in exercising discretionary judicial authority to appoint lawyers to various positions (e.g., lead counsel for plaintiff classes; special masters; receivers; trustees; hearing officers; referees; mediators and arbitrators; guardians; and counsel for indigent defendants), trial courts have not appointed women lawyers, minority lawyers and lawyers in small law firms to such positions in numbers commensurate with their representation in the legal profession;

Whereas, there are ample numbers of such diverse lawyers who are experienced and highly qualified for appointments by trial courts;

Whereas, the justice system as a whole has become increasingly diverse, including diverse judges, juries and litigants;

Whereas, research establishes that diversity enhances creativity and innovation, and leads to better decision-making and problem solving;

Whereas, a fundamental underlying goal of the justice system is to provide equal treatment and opportunity for everyone; and

Whereas, litigants and the justice system as a whole benefit from greater diversity in trial court appointments;

Now, therefore, be it resolved that, in exercising their appointment powers, our trial courts, both federal and state, should be mindful of the importance of diversity and should make appointments that are consistent with the diversity of our society and the justice syst

>>> "kygrier@grierlawofficepc.com" <kygrier@grierlawofficepc.com> 10/4/2016 11:01 AM >>>

The e-mail comes up blank in both this e-mail and the Georgia Courts e-mail. Is there an attachment? Thank you!

Karlise Y. Grier

Karlise Y. Grier, Esq.

Certified by the National Association of Counsel for Children as a
Child Welfare Law Specialist



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----- Original Message -----

Subject: Diversity Sub-committee

From: Sara Doyle <DoyleS@gaappeals.us>

Date: Tue, October 04, 2016 9:58 am

To: "karlise.grier@georgiacourts.gov" <karlise.grier@georgiacourts.gov>

I saw this and thought it might be useful for the sub-committee.

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