
Subject: RE: Materials for Proposed Rule Change

From: Megan Wade <mwade@sextoncolaw.com>

Sent: Friday, June 5, 2020 11:03 AM

To: Moran, Christopher

Subject: Materials for Proposed Rule Change

Hi Chris –

I have attached some materials for the proposed rule change that I would like to speak about at today's public hearing before the Rules Committee of the Superior Court. I greatly appreciate you passing them along to Justice McDonald.

Please let me know if you have any problems with opening the PDF attached.

Sincerely,
Megan

Megan L. Wade

Associate

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June 5, 2020

Chairperson Justice McDonald and respected members of the Rules Committee of the Superior Court –

I write shortly in advance of today's public hearing to propose an amendment to our Rules of Professional Conduct, specifically Rule 8.4. Although I recognize that I missed the deadline for filing a written comment regarding this change, I appreciate your consideration of this brief packet of materials.

I respectfully request this Committee consider adopting the language of the American Bar Association's Rule of Professional Conduct 8.4, subsection g, which classifies harassing or discriminatory conduct related to the practice of law as attorney misconduct. I understand this is a bit unconventional because the proposal is not on the agenda and appreciate your indulgence in my speaking on this matter. In light of recent, highly publicized racial injustices, it feels as though real, systemic change is attainable. This is a watershed moment, and the time is now to protect the dignity of the profession by discouraging discrimination of any kind among members of the Connecticut Bar.

I recognize that I missed the deadline for filing a written comment regarding this proposed rule change. Recent racial injustices and dialogue with my colleagues have placed this proposal at the forefront of my mind and on my heart. Now, more than ever, we need to encourage civility and tolerance, and discourage discrimination among members of the Bar. I thus urge this Committee to consider adopting the language of ABA Rule 8.4 (g) as expeditiously as possible to protect the integrity of the legal profession, to prompt civility among the Bar, and to protect the rights of the marginalized and underrepresented groups listed. To the extent this Committee has discretion to expedite the consideration of this proposed rule change before the end of this Court year, I respectfully request that this Committee consider exercising such discretion. Indeed, pursuant to Practice Book § 1-8, "The design of these rules being to facilitate business and advance justice, they will be interpreted liberally in any case where it shall be manifest that a strict adherence to them will work surprise or injustice." Expeditious consideration of this rule change would advance justice in this state.

Currently, Connecticut Rule of Professional Conduct 8.4 only classifies as misconduct a lawyer's "knowing manifestation of words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status" when such manifestation occurs in the course of representing a client and is prejudicial to the administration of justice.

In 2016, however, the American Bar Association enacted Rule of Professional Conduct 8.4 (g) which says: "It is professional misconduct for a lawyer to . . . (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation,

gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.”

In the commentary to the Rule, the ABA said that: “Discrimination and harassment by lawyers in violation of paragraph (g) undermine confidence in the legal profession and the legal system. Such discrimination includes harmful verbal or physical conduct that manifests bias or prejudice towards others. Harassment includes sexual harassment and derogatory or demeaning verbal or physical conduct. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature. The substantive law of antidiscrimination and anti-harassment statutes and case law may guide application of paragraph (g).”

The key distinction between Connecticut’s Rule 8.4 and the ABA’s Rule 8.4 (g) is that it classifies as misconduct discriminatory action taken by attorneys not just during the representation of a client but in conduct related to the practice of law which “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. Lawyers may engage in conduct undertaken to promote diversity and inclusion without violating this Rule by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations.”

The ABA passed this unanimously, by voice vote, through the 598-member House of Delegates in 2016. Approximately half the states have adopted a similar rule and/or comment related to the prohibition of discriminatory and harassing conduct by lawyers. Connecticut is not one of those states. It is now 2020, four years after the unanimous passage of this language, during a critical period of change in our country. People are listening, learning, engaging in dialogue, and taking steps to effectuate a change to eliminate systemic and individual racism and discrimination. It is at a moment like this when this Committee should consider adopting the language of the American Bar Association’s Rule of Professional Conduct 8.4 (g).

I have enclosed the following materials:

1. A type-written copy of my statement, which largely resembles content of cover letter but condensed to conform with the time limit for comments 001
2. Connecticut’s current Rule of Professional Conduct 8.4 003
3. The American Bar Association’s Rule of Professional Conduct 8.4 (g) 005
4. *Debra Cassens Weiss*, “Second state adopts ABA model rule barring discrimination and harassment by lawyers”, June 13, 2019, available at:

<https://www.abajournal.com/news/article/second-state-adopts-aba-model-rule-barring-discrimination-by-lawyers>..... 007

5. *Kristine A. Kubes et al.*, “The Evolution of Model Rule 8.4 (g): Working to Eliminate Bias, Discrimination, and Harassment in the Practice of Law”, March 12, 2019, available at: https://www.americanbar.org/groups/construction_industry/publications/under_construction/2019/spring/model-rule-8-4/..... 010
6. *Dennis Rendleman*, “The Crusade against Model Rule 8.4(g)”, October 2018 Ethics in Review, available at: <https://www.americanbar.org/news/abanews/publications/youraba/2018/october-2018/the-crusade-against-model-rule-8-4-g/>..... 018
7. American Bar Association CPR Policy Implementation Committee, “Variations of the ABA Model Rules of Professional Conduct, Rule 8.4: Misconduct”, updated December 11, 2019, available at: https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_8_4.pdf..... 027

Thank you for your consideration of this matter.

Sincerely,



Megan L. Wade, Esq.

Statement of Megan L. Wade, Esq. to the Rules Committee of the Superior Court
June 5, 2020

Chairperson Justice McDonald and respected members of the Rules Committee of the Superior Court –

My name is Megan Wade, and I am an appellate attorney at Sexton & Company in Hartford, CT. I rise to speak before you today on a proposed rule change that unfortunately did not make it on the agenda. Specifically, I respectfully request this Committee consider adopting the language of the American Bar Association’s Rule of Professional Conduct 8.4, subsection g, which classifies harassing or discriminatory conduct related to the practice of law as attorney misconduct. I understand this is a bit unconventional because the proposal is not on the agenda and appreciate your indulgence in my speaking on this matter. In light of recent, highly publicized racial injustices, it feels as though real, systemic change is attainable. This is a watershed moment, and the time is now to protect the dignity of the profession by discouraging discrimination of any kind among members of the Connecticut Bar.

I recognize that I missed the deadline for filing a written comment regarding this proposed rule change. Recent racial injustices and dialogue with my colleagues have placed this proposal at the forefront of my mind and on my heart. Now, more than ever, we need to encourage civility and tolerance, and discourage discrimination among members of the Bar. I thus urge this Committee to consider adopting the language of ABA Rule 8.4 (g) as expeditiously as possible to protect the integrity of the legal profession, to prompt civility among the Bar, and to protect the rights of the marginalized and underrepresented groups listed. To the extent this Committee has discretion to expedite the consideration of this proposed rule change before the end of this Court year, I respectfully request that this Committee consider exercising such discretion. Indeed, pursuant to Practice Book § 1-8, “The design of these rules being to facilitate business and advance justice, they will be interpreted liberally in any case where it shall be manifest that a strict adherence to them will work surprise or injustice.” Expeditious consideration of this rule change would advance justice in this state.

Currently, Connecticut Rule of Professional Conduct 8.4 only classifies as misconduct a lawyer’s “knowing manifestation of words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status” when such manifestation occurs in the course of representing a client and is prejudicial to the administration of justice.

In 2016, however, the ABA enacted Rule of Professional Conduct 8.4 (g) which says: “It is professional misconduct for a lawyer to . . . (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.”

In the commentary to the Rule, the ABA said that: “Discrimination and harassment by lawyers in violation of paragraph (g) undermine confidence in the legal profession and the legal system.

The key distinction between Connecticut’s Rule 8.4 and the ABA’s Rule 8.4 (g) is that it classifies as misconduct discriminatory action taken by attorneys not just during the representation of a client but in conduct related to the practice of law including while representing clients, engaging with others in the practice of law, operating or managing a law firm, and participating in bar association, business, and social activities in connection with the practice of law.

The ABA passed this unanimously, by voice vote, through the 598-member House of Delegates in 2016. Approximately half the states have adopted a similar rule and/or comment related to the prohibition of discriminatory and harassing conduct by lawyers. Connecticut is not one of those states. It is now 2020, four years after the unanimous passage of this language, during a critical period of change in our country. People are listening, learning, engaging in dialogue, and taking steps to effectuate a change to eliminate systemic and individual racism and discrimination. It is at a moment like this when this Committee should consider adopting the language of the ABA’s Rule of Professional Conduct 8.4 (g).

To the extent that committee members are open to written comments on this matter, I am happy to provide my statement today as well as compiled research at any deadline set by the Committee.

Thank you for your time and consideration of this matter.

Connecticut General Statutes Annotated
Rules of Professional Conduct
Maintaining the Integrity of the Profession

Rules of Prof. Conduct, Rule 8.4

Rule 8.4. Misconduct

Effective: January 1, 2019

[Currentness](#)

It is professional misconduct for a lawyer to:

- (1) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (4) Engage in conduct that is prejudicial to the administration of justice;
- (5) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Credits

[Amended June 26, 2006, effective January 1, 2007. Commentary amended June 13, 2014, effective January 1, 2015.]

Editors' Notes

COMMENTARY

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

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of wilful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, which have no specific connection

to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation. Counseling or assisting a client with regard to conduct expressly permitted under Connecticut law is not conduct that reflects adversely on a lawyer's fitness notwithstanding any conflict with federal or other law. Nothing in this commentary shall be construed to provide a defense to a presentment filed pursuant to [Practice Book Section 2-41](#).

A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates subdivision (4) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate subdivision (4).

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

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

[Notes of Decisions \(187\)](#)

Rules of Prof. Conduct, Rule 8.4, CT R RPC Rule 8.4
Current with amendments received through February 1, 2020.

Rule 8.4: Misconduct

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Maintaining The Integrity Of The Profession

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

[Comment](#) | [Table of Contents](#) | [Next Rule](#)

A promotional banner for Dell Small Business. On the left is the Dell logo and the text 'SMALL BUSINESS'. In the center, it says 'MONUMENTAL BUSINESS SAVINGS' with a 'PRESIDENTS DAY UP TO 80% OFF' badge. To the right, it lists 'PLUS, MEMBERS SAVE AN EXTRA 8% HIGH-PERFORMANCE COMPUTERS, TOP-BRAND ELECTRONICS & MORE' next to an image of a laptop. Further right, it shows '\$759 Latitude 5490' and a 'Shop Now' button. On the far right is the Intel Core i5 8th Gen logo and the text 'Intel Core i5'.

 American Bar Association |

/content/aba-cms-dotorg/en/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct

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ETHICS

Second state adopts ABA model rule barring discrimination and harassment by lawyers

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

JUNE 13, 2019, 11:39 AM CDT

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Maine has adopted an ABA model rule that bars discrimination and harassment by lawyers.

Maine is the second state to adopt Rule 8.4(g) of the ABA Model Rules of Professional Conduct, according to Bloomberg Law (<https://biglawbusiness.com/maine-second-state-to-adopt-aba-anti-harassment-ethics-rule>).

Vermont was the first (https://www.abajournal.com/magazine/article/ethics_model_rule_harassing_conduct).

Maine's Supreme Judicial Court adopted the new rule (https://www.courts.maine.gov/rules_adminorders/rules/amendments/2019_mr_05_prof_conduct.pdf), which takes effect June 1. It differs slightly from the ABA model rule, according to Bloomberg Law.

The ABA rule (https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct/) says it is professional misconduct to “engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socio-economic status in conduct related to the practice of law.”

The Maine ethics rule does not bar discrimination based on marital and socio-economic status.

A comment to the ABA rule (https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct/comment_on_rule_8_4/) says conduct related to the practice of law includes participation in bar association, business or social activities in connection with the practice of law.

The Maine rule does not define law practice to include bar, business and social activities.

The ABA House of Delegates adopted the model rule barring discrimination in August 2016 (https://www.abajournal.com/news/article/house_of_delegates_strongly_agrees_to_rule_making_discrimination_and_harass). Critics have argued (https://www.abajournal.com/magazine/article/ethics_model_rule_harassing_conduct) that the rule chills speech and interferes with religious freedom.

About half the states already had (https://www.abajournal.com/magazine/article/ethics_model_rule_harassing_conduct) an anti-discrimination provision in their rules before the ABA adopted its model rule. Many of those state rules were more narrowly drafted, however.

Josh Blackman, a professor of constitutional law at the South Texas College of Law, said in a 2016 law review article that ABA Model Rule 8.4(g) fails to require that the harassment or discrimination be severe or pervasive, a key component of federal and state anti-discrimination laws.

Blackman told Bloomberg Law that the rule “is well-intentioned,” but it could suppress lawyer speech on matters of public concern if it is viewed as demeaning to others.

Stephen Gillers, a legal ethics professor at the New York University School of Law, has another view. “The preposterous claim that the First Amendment entitles lawyers to make racist, sexist and homophobic statements in connection with law practice is an embarrassment,” Gillers told Bloomberg Law in an email.

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March 12, 2019

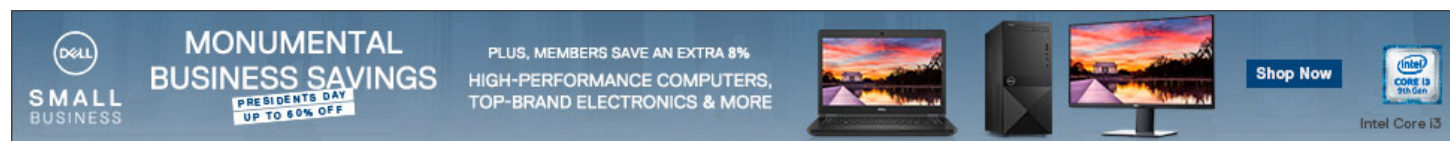
The Evolution of Model Rule 8.4 (g): Working to Eliminate Bias, Discrimination, and Harassment in the Practice of Law

Kristine A. Kubes, Cara D. Davis, and Mary E. Schwind

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News headlines reveal bias, harassment, and discrimination are still alive and well in business, government, and the practice of law. The American Bar Association (“ABA”), in developing the Model Rules of Professional Conduct for lawyers, recently amended the rules and provided comments to cultivate a legal community free of harassment and discrimination, where lawyers are consistently ethical and professional in the practice of law. Here is a closer look at these changes.



Rule 8.4 History

The ABA develops the Model Rules of Professional Conduct (“MRPC”) for lawyers to guide states in promulgating their rules. ① The rules, *per se*, are the authority upon which discipline would be based. ② The comments to each rule provide “guides to interpretation” of the rules. ③

The ABA first adopted the Model Rules on August 2, 1983. In setting the boundaries for lawyers’ professional conduct, Model Rule 8.4, in its initial form, provided:

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

The black letter of the rule has remained consistent until a recent amendment in 2016. Although the original text of Rule 8.4(d) mentions prejudice, it does not define that term. Yet, a comment to that Rule provided the following guidance regarding conduct that would prejudice the administration of justice:

A lawyer who, in the course of representing a client, knowingly manifests, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule. ④

While this comment addresses bias or prejudice against various protected classes, its focus is only in context of 8.4(d), prejudice to the "administration of justice."

The 2016 Amendment: Rule 8.4(g)

The amendment to Rule 8.4, adopted August 8, 2016, maintains sections (a) through (f) from the previous rule and adds paragraph (g), which specifically prohibits harassment and discrimination in a lawyer's conduct "related to the practice of law." The amendment moves much of the language from the prior Comment 3 up into the Rule itself. MRPC R. 8.4(g) states:

It is professional misconduct for a lawyer to:

- (g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules. ⑤

Model Rule 8.4(g) makes three key changes:

- Adds a knowledge component by prohibiting conduct that a lawyer “knows or reasonably should know” is harassment or discrimination. “Know,” “reasonably,” and “reasonably should know” are defined in Model Rule 1.0 (f), (h), (j), respectively.
- Expands the list of protected classes to include ethnicity, gender identity, and marital status.
- Applies broadly to lawyers’ “conduct related to practice of law,” rather than the original Rule’s focus on conduct related to the “administration of justice.”

The comments to the amended Rule answer the question, “What conduct constitutes discrimination and/or harassment?”

Such discrimination includes harmful verbal or physical conduct that manifests bias or prejudice towards others. Harassment includes sexual harassment and derogatory or demeaning verbal or physical conduct. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature. The substantive law of anti-discrimination and anti-harassment statutes and case law may guide application of paragraph (g). ⑥

This same Comment explains the basis for these new limitations on lawyers’ conduct: “Discrimination and harassment by lawyers in violation of paragraph (g) undermine confidence in the legal profession and the legal system.” ⑦

The Comments also explain 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;
- Participating in bar association, business or social activities in connection with the practice of law. ⑧
- Equally as important to understanding what constitutes discriminatory or harassing conduct is a clear understanding of what is *not* discrimination: ⑨
- A trial judge’s finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of paragraph (g).

- A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice to members of underserved populations in accordance with these Rules and other law.
- A lawyer may charge and collect reasonable fees and expenses for a representation. Rule 1.5(a).
- Lawyers also should 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 not to avoid appointments from a tribunal except for good cause. *See* Rule 6.2(a), (b) and (c).
- A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities. *See* Rule 1.2(b).

To be sure, the amended rule does not force a lawyer to comply with 8.4(g)'s restrictions, so long as the lawyer has a good-faith belief that no valid obligation exists and may raise a legal challenge under Rule 1.2(d). ¹⁰

The Latest Milestone in a Long Journey

Lest one dismiss this amendment as the product of a sudden ABA political effort or a pet project by one faction within the ABA, the legislative history and prior state adoption of similar rules demonstrates that anti-bias and anti-discrimination language has a long history in the making.

Within the ABA, the dialogue dates back at least to 1994 based on a widespread concern about the effects of bias, discrimination, and harassment in the practice of law and the justice system. ¹¹ Groups from across the ABA, including the Criminal Justice Section, Young Lawyers Division, and the Standing Committee on Ethics and Professional Responsibility, initiated language to address bias, harassment, and discrimination. ¹² When their efforts to amend the Model Rule itself were not successful, they proposed anti-harassment language that was ultimately adopted as the comment in 1998. ¹³

Moving ahead to 2008, the ABA identified a series of goals to serve its mission as an organization, one of them being Goal III: "Eliminate Bias and Enhance Diversity." ¹⁴ The ABA established Commissions for each of its goals, including these for Goal III: Commission on Racial and Ethnic Diversity, Commission on Women in the Profession, Commission on Sexual Orientation and Gender Identity, and Commission on Disability Rights. ¹⁵ In 2014 those Goal III Commissions asked the Standing Committee on Ethics and Professional Responsibility to develop language addressing discrimination and harassment with the goal of moving the language from the comment into the body of the model rule itself. ¹⁶ These efforts ultimately culminated in the MRPC R. 8.4(g) and its related comments years later.

At the time MRPC R. 8.4(g) was adopted in August 2016, the ABA Standing Committee on Ethics and Professional Responsibility noted that many jurisdictions across the United States had already adopted similar language to the Rule 8.4 revision. ¹⁷ The great majority of the 598 member House of Delegates approved the amendment, with only a few opposing via voice vote; none spoke in opposition from the floor. ¹⁸

Response to 8.4(g) by the Numbers

But even more interesting is the adoption of similar rules by other states prior to the formal adoption of MRPC R. 8.4(g). 20 states already had used some or all of the ideas expressed in the Model Rule comments to cultivate similar rules prohibiting discrimination and/or harassment. ¹⁹ These states include California, Colorado, Florida, Illinois, Indiana, Iowa, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Rhode Island, Washington, and Wisconsin. ²⁰ A total of 29 states have adopted comments to their rules regarding discrimination – including 13 states that have not yet promulgated a similar rule, and two states that have declined to adopt the amended Rule (SC and TN). ²¹

In addition, four states/territories have adopted MRPC R. 8.4(g) in its entirety. Vermont's Supreme Court advisory committee met shortly after the ABA's adoption of the new Rule, promulgated the new Rule and its comments in August 2017, and put it in effect in September 2017. ²² Vermont had previously adopted a similar rule in 1986 to address and prohibit similar discriminatory conduct, and it adopted the ABA's version to "promote uniformity and add more detailed language." ²³ The other three jurisdictions (American Samoa, the Northern Mariana Islands, and the US Virgin Islands) followed their policy to adopt *per se* the most recent version of the ABA MRPC. ²⁴

Six states have declined to adopt the amended Rule outright, citing constitutional implications. For instance:

- In Montana, the state legislature passed a joint resolution vehemently condemning the amended Rule, stating that it violates the First Amendment and "seeks to destroy the bedrock foundations and traditions of American independent thought, speech, and action." ²⁵
- In the same vein, the Texas Attorney General opined that Rule 8.4(g) "would severely restrict attorneys' ability to engage in meaningful debate on a range of important social and political issues," including subjecting participants in candid dialogue on topics such as illegal immigration, same-sex marriage, or restrictions on bathroom usage to discipline while suppressing their "thoughtful and complete exchanges about these complex issues." ²⁶

- Louisiana's Attorney General also weighed in and rejected the amended Rule, stating—among other reasons—that the expansive phrase “conduct related to the practice of law” is “unconstitutionally broad as it prohibits and chills a substantial amount of constitutionally protected speech and conduct.” ²⁷ Subsequently, the Louisiana State Bar Association Rules of Professional Conduct Committee voted not to proceed with Rule 8.4(g).

Constitutional Challenges

Critics have also weighed in on the constitutional implications and concerns raised by the amended Rule. For instance, South Texas College of Law professor Josh Blackman claimed that the text of Rule 8.4(g) is not specific enough to exclude the harassment or discrimination it seeks to preclude, and instead could make “[a] single ‘harassing’ comment . . . result in discipline.” ²⁸ UCLA School of Law Professor Eugene Volokh raised similar sentiments, pointing to several hypothetical situations wherein attorneys may be at risk for disciplinary action for engaging in social activities where their “‘verbal . . . conduct’ [may be seen as] ‘manifest[ing] bias or prejudice’ and thus as ‘harmful.’” ²⁹

Adding fuel to the fire of unconstitutionality claims, the United States Supreme Court rendered two decisions regarding free speech after the ABA's adoption of Rule 8.4(g), wherein the court held that certain government restrictions on free speech were unconstitutional: *Matal v. Tam* ³⁰ and *National Institute of Family and Life Advocates v. Becerra*. ³¹

In *Matal*, the Court unanimously held a federal statute unconstitutional on its face, because it allowed the punishment of “disparaging” speech. ³² More specifically, the entire Court agreed that a provision of a longstanding federal law allowing government officials to deny trademarks for terms that may “disparage or bring into contempt or disrepute” living or dead persons was unconstitutional, because “[i]t offends a bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend.” ³³ Additionally Justice Alito, writing for a plurality of the Court, noted that “[s]peech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express ‘the thought that we hate.’” ³⁴

In *NIFLA*, the Supreme Court held that government restrictions on lawyers' professional speech are subject to strict scrutiny, because they are content-based restrictions, and “such laws are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” ³⁵ Further, the Court observed that “[t]his stringent standard reflects the fundamental principle that governments have ‘no power to restrict expression because of its message, its ideas, its subject matter, or its content.’” ³⁶ “This Court has not recognized ‘professional speech’ as a separate category of speech subject to different rules. Speech is not unprotected merely because it is uttered by ‘professionals.’” Although neither California nor the Ninth Circuit had presented a persuasive

reason to treat professional speech differently, the Court did “not foreclose the possibility that some such reason exists.” 37

Conclusion

MRPC R. 8.4(g) does not stand alone in its efforts to raise awareness and curb discriminatory and/or harassing conduct by lawyers. While the amended Rule may have challenges to its application, over half the states in the U.S. have adopted a similar rule and/or a comment related to the prohibition of discriminatory and harassing conduct by lawyers. Rule 8.4(g) and its comments set forth the expectations for lawyers’ professional conduct, whether in court, in the office, at a professional social function, or in a Bar Association or civic meeting. One of the challenges, as the constitutional law professors aptly have raised, is that lawyers may not know what form of conduct could offend another person. But Rule 8.4(g) calls for lawyers to educate themselves about reasonable standards of acceptable conduct; the rule prohibits conduct “the lawyer knows or reasonably should know is harassment or discrimination.” If nothing else, the rule is an invitation for lawyers to consider another person’s viewpoint *before* speaking or acting.

The ABA Forum on Construction Law is keeping attuned to the developments of Rule 8.4(g), so as to help members avoid pitfalls in practice. Even if Rule 8.4(g) itself is not adopted *per se* in every state, its model language has brought into the spotlight the impact of bias, harassment, and discrimination as they may arise in the practice of law. That, alone, is a positive. States may choose to adopt portions of the rule and its comments to guide the profession. Most importantly, lawyers have the opportunity to raise their awareness, seek to understand others, and be considerate of how one’s words and actions may affect others in the practice of law. Those efforts will improve lawyers’ professionalism and the profession as a whole.

ENTITY:

FORUM ON CONSTRUCTION LAW

TOPIC:

DIVERSITY AND INCLUSION, CONSTRUCTION

Authors



Endnotes



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The Crusade against Model Rule 8.4(g)

by Dennis Rendleman

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It has been a little over two years since the ABA House of Delegates adopted [Model Rule 8.4\(g\)](#):

It is professional misconduct for a lawyer to:

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

Vermont is the only state that has adopted the rule; several states have either formally or informally declined to adopt or consider adoption. At the same time, more than 25 jurisdictions already had provisions in their Rules of Professional Conduct making it an ethical violation for a lawyer to discriminate or harass another.

One can discern two general themes in opposition to Rule 8.4(g). First, are the opponents who object on the grounds of “religious liberty.” However, the evidence indicates that the primary philosophy underlying that opposition is objection to legal equality for LGBTQ. Second is the academic/libertarian opposition that appears more oriented from legal scholarship or political philosophy than from religious zealotry.

The notion of a rule prohibiting harassment and discrimination by lawyers when those lawyers are engaged in conduct related to the practice of law has been sucked into the national partisan political morass – what the late Supreme Court Justice Antonin Scalia called a *Kulturkampf*^[i].

All the issues being raised against Rule 8.4(g) were raised during the three-year development process, and were considered by the drafters, and are accommodated in the balance that Rule 8.4(g) presents. It is worth noting that the amendment passed the 598-member the ABA House of Delegates by a unanimous voice vote.

First Amendment, freedom of religion:

Professor Noah Feldman of Harvard Law School began his 2005 book “Divided by God,” telling the story of then-Alabama Chief Justice Roy Moore and 10 days in August 2003 when Moore refused to follow the federal court order to remove from the state Supreme Court the two-and-a-half-ton block of granite inscribed with the Ten Commandments that Moore had erected. Feldman stated that the confrontation between “the evangelicals and the secularists” that occurred over Moore’s rock was a “microcosm [of] the national debate about the right relationship between religion and government

in the United States.”^[ii] Little could Feldman know that his 2005 statement would become equally applicable in 2017.

In an article in the [ABA Journal](#), a representative of a religious organization opposed to Model Rule of Professional Conduct 8.4(g) alleged the Rule was overbroad. That claim by various religious organizations is founded upon two prongs of their religious beliefs: first, that same-sex marriage (or, indeed, any form of same-sex relationship) is morally wrong, and second, that therefore, anyone, including lawyers, may discriminate against and harass homosexuals. The religious advocates proclaim that their “sincerely held religious beliefs”^[iii] are entitled to greater social value and legal recognition than equal treatment for all individuals. This [position](#) has been embraced by the current attorney general and administration in Washington.

While the religious advocates emphasize their argument that lawyers with sincerely held religious beliefs will be discriminated against by the Rule, there is no recognition or sensitivity to the discrimination that occurs against those who are the victims of their “sincerely held religious belief.”^[iv] These opponents to Model Rule 8.4(g) argue that their First Amendment freedom of religion not only allows, but permits, them to discriminate against LGBTQ. The latest spin on this [argument](#) made before the U.S. Supreme Court is that the refusal to bake a cake for a same-sex couple’s wedding celebration is founded upon the baker’s status as a “cake artist” whose speech is being forced by the state because he must use his artistic skills in a manner contrary to his religious beliefs. The baker/cake artist is not discriminating against gay people, the president of the religious organization representing him says. “Creative professionals should be free to create art and other expression consistent with their beliefs.”

But are we not all “creative professionals”? The skilled professional who keeps my 2002 Mazda running is very creative. And, one might argue that there are very few lawyers who are not “creative professionals.” Will such an argument provide a basis for lawyers or auto mechanics to refuse service to the LGBTQ? As noted in the [ABA amicus brief](#) in Masterpiece Cake:

Many business activities—from serving meals to seating patrons to providing legal advice and counseling—can be recast as expressive in nature. Permitting compelled-speech claims to override public accommodations laws therefore would vitiate those laws, leaving individuals vulnerable to the stigma of being refused service based on business owners’ beliefs and hobbling government’s authority to enforce a basic guarantee of equal dignity.

First Amendment, freedom of speech:

The libertarian/academic argues the Rule is unconstitutional because “[l]awyers do not surrender their First Amendment rights for the privilege of practicing law.”^[v] Lawyers do, indeed, agree to limit the exercise of some First Amendment rights for the privilege of practicing law. Recently amended Model Rules 7.1, 7.2 and 7.3 restrict the First Amendment commercial speech of lawyers in ways that non-lawyers are not limited. Model Rule 5.4(b) limits a lawyer’s right of association. Model Rule 3.6 limits the ability of a lawyer to speak publicly about a matter. These are just a few examples of restrictions on a lawyer’s First Amendment “rights” when practicing law.

A significant part of the free speech argument against the Rule is based upon two red herring arguments: First, there is a speculative argument that the Rule would serve to “chill” a lawyer’s speech, particularly when teaching at a CLE or

during conversation at a bar association social event because the lawyer will fear a bar complaint being filed based on statements made during the event.

Drafters of Model Rule 8.4(g) heard from female lawyers who represent other women lawyers in harassment and discrimination complaints against their employers. Time after time, the ABA was told of illegal and inappropriate harassment taking place at firm outings, dinners and bar association events—and this was long before Time magazine named as Person of the Year 2017 “[The Silence Breakers](#),” women (and men) who spoke out about sexual harassment and named names. Therefore, drafters of Rule 8.4(g) included these events as part of the definition of “conduct related to the practice of law.”

Second, contrary to one professor’s [argument](#) in opposition to Rule 8.4(g), there is no legal cause of action for harassment based upon the speech of “one-to-many.” This commenter has speculated that there have been cases in criminal harassment law that have expanded from comments specifically to a person to speech *about* a person. While the professor argues that such an expansion is unconstitutional, he proclaims that Rule 8.4(g) is such an unconstitutional “one-to-many” harassment rule.

Reading Rule 8.4(g) in this way, the scholar argues that a lawyer speaking at a CLE or another lawyer gathering could violate the rule if someone—anyone—in an audience feels discriminated against or harassed by the lawyer’s statement.

The [scholar](#) follows this line of thinking by hypothesizing that a violation of the rule could result from a CLE that debates same-sex marriage laws or immigration from Muslim countries or use of bathrooms determined by gender identity versus biological sex “even when they aren’t said to or about a

particular offended person.” Cherry-picking language from a comment, this scholar claims that such a statement would be “verbal...conduct” that “manifests bias or prejudice,” which is within the scope of Comment [3] elaboration on discrimination.^[vi] But, there are no facts in the hypothesis that the CLE debates were directed to anyone. Rather, the scholar argues, under his own “one-to-many” harassment theory, the word “others” in the Comment means that if someone or several people in the audience view whatever is said as “harmful,” it violates the Rule. But “harmful” is an objective standard as it would apply to whether whatever was said manifests bias or prejudice. Since there is no discussion in the [hypothesis](#) clarifying how the CLE discussions of legal issues to an audience becomes harassment or discrimination against any individual, one is hard pressed to discover how the rule is violated.

Another [scholar](#) has hypothesized that a statement from one lawyer to another in connection with a case such as “I abhor the idle rich. We should raise capital gains taxes” would violate Rule 8.4(g) because it is “manifesting bias based upon socioeconomic status.”

This hypothesis is as creative as it is unreasonable.

First, the [Scope](#) statement to the Rules explains “The Rules of Professional Conduct are rules of reason....The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule...The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.” Such guidance is supported by the interpretive doctrine noted by Antonin Scalia and Bryan A. Garner that it is a “false notion that words should be strictly construed.”^[vii] Rather, one should adhere to the “fair meaning” of the text—not a reading that Learned Hand called “a sterile literalism...[that] loses sight of the forest for the trees.”^[viii]

Second, it is a subjective, qualitative judgment to determine not only whether a statement “manifests bias,” but also whether whatever the statement “manifests” rises to the level of harassment or discrimination and, if it does, whether it is based upon socioeconomic status. This does not even address other elements of the rule, such as whether the lawyer knew or reasonably should have known the statement was harassment or discrimination. Moreover, it is axiomatic that “a statute should be interpreted in a way that avoids placing its constitutionality in doubt.”^[ix]

Conclusion

Given the startling revelations that have continued since the Fall of 2017 regarding revelations of sexual harassment by a number of public figures in entertainment, government and news media, it is hard to fathom that anyone could reasonably object to Rule 8.4(g) prohibiting such conduct in connection with the practice of law. Arguments against the Rule fall upon scrutiny as products of underlying agendas or fantasies of creative commentators. Illustrative of how specifically applicable and narrowly drafted Rule 8.4(g) is can be found by returning to the conduct of the twice former Alabama Supreme Court Chief Justice and Republican Senate candidate Roy Moore that dominated much news reporting during October 2017. It was reported that when he was a county district attorney forty-odd years ago, Moore harassed young women and girls. And that his official status as a county attorney intimidated his victims into silence. However, in many of the instances reported, Moore was not “engaged in conduct related to the practice of law”—his conduct was apparently done outside his practice or his office. This behavior likely falls outside of that regulated by Rule 8.4(g).^[x] However, there is another allegation that he groped a woman who was a client while she was

leaving his private practice law office after an appointment. This would be within the scope of Rule 8.4(g) as it was conduct related to the practice of law.

In sum, the crusade of opposition to Rule 8.4(g) based upon a political agenda has transcended the question of what is appropriate for disciplinary standards for lawyers in the practice of law. As such, this crusade against Rule 8.4(g) appears to have created an overwhelming partisan political barrier to the adoption of the Rule on the its merits.

[i] *Romer v. Evans*, 517 U.S. 620 (1996), Scalia dissent

[ii] Noah Feldman, "Divided by God: America's Church-State Problem—And What We Should Do About it," (New York, 2005: Farrar, Straus and Giroux) pp. 3-4.

[iii] *Burwell v. Hobby Lobby*, 573 U.S. __ (2014)

[iv] Scholarly research is documenting that conservatives/Republicans disregard facts and reasoning. "The tenacity of many of the right's beliefs in the face of evidence, rational arguments, and common sense suggest that these beliefs are not merely alternate interpretations of facts but are instead illusions rooted in unconscious wishes." John Ehrenreich, "[Why Are Conservatives More Susceptible to Believing Lies?](#)", Slate, November 9, 2017,

[v] Marc Randazza, quoted in ABA Journal, October 2017

[vi] Rule 8.4(g) Comment [3] "Such discrimination includes harmful verbal or physical conduct that manifests bias or prejudice towards others."

[vii] Antonin Scalia and Bryan A. Garner, "Reading Law: The Interpretation of Legal Texts," (2012, Thomson/West) p. 355.

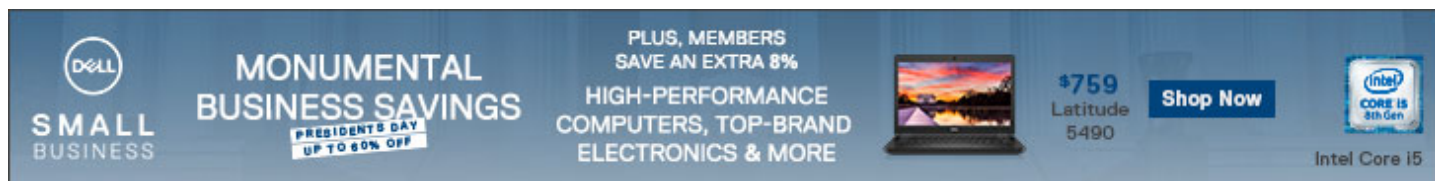
[viii] *Id.* p. 356, citing *New York Trust Co. v. Commissioner*, 68 F.2d 19, 20 (2d Cir. 1933) (per L. Hand J.)

[ix] *Id.*, p. 247

[x] That does not mean that other provisions of Rule 8.4 may not be applicable.

TOPIC:

DIVERSITY AND INCLUSION



Dell Small Business advertisement for Presidents Day sale. The ad features the Dell logo and 'SMALL BUSINESS' text on the left. The main headline reads 'MONUMENTAL BUSINESS SAVINGS' with a sub-headline 'PRESIDENTS DAY UP TO 80% OFF'. To the right, it says 'PLUS, MEMBERS SAVE AN EXTRA 8%' and 'HIGH-PERFORMANCE COMPUTERS, TOP-BRAND ELECTRONICS & MORE'. A laptop is shown with the price '\$759 Latitude 5490' and a 'Shop Now' button. The Intel Core i5 8th Gen logo is in the bottom right corner.

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[/content/aba-cms-dotorg/en/news/abanews/publications/youraba/2018/october-2018/the-crusade-against-model-rule-8-4-g-](https://www.americanbar.org/news/abanews/publications/youraba/2018/october-2018/the-crusade-against-model-rule-8-4-g-/)

	<p style="text-align: center;">American Bar Association CPR Policy Implementation Committee</p> <p style="text-align: center;">Variations of the ABA Model Rules of Professional Conduct</p> <p style="text-align: center;">RULE 8.4: MISCONDUCT</p> <p>Rule 8.4: Misconduct</p> <p>It is professional misconduct for a lawyer to:</p> <p>(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;</p> <p>(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;</p> <p>(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;</p> <p>(d) engage in conduct that is prejudicial to the administration of justice;</p> <p>(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or</p> <p>(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or</p> <p>(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.</p> <p>Variations from ABA Model Rule are noted. Comments not included. *Current links to state Rules of Professional conduct can be found on the ABA website: http://www.abanet.org/cpr/links.html*</p>
ALABAMA	<p>(a) Same as MR</p> <p>(b) Same as MR</p> <p>(c) Same as MR</p>

	<p>(d) Same as MR.</p> <p>(e) Deletes everything after “agency or official”</p> <p>(f) Language change to note Code of Judicial Conduct</p> <p>(g) “engage in any other conduct that adversely reflects on his fitness to practice law.”</p> <p>Has not adopted MR (g). Comments do not address manifesting bias or prejudice.</p> <p>Last accessed on 10/25/19</p>
ALASKA	<p>(a) Same as MR</p> <p>(b) Same as MR</p> <p>(c) Same as MR</p> <p>Has not adopted MR (d).</p> <p>(d) Alaska’s (d) similar to MR (e) but changes “to influence improperly” to “either to influence;”</p> <p>(e) Same as MR (f).</p> <p>Has not adopted MR (g). Comments do not address manifesting bias or prejudice.</p> <p>Last accessed on 10/25/19</p>
ARIZONA	<p>(a) Same as MR</p> <p>(b) Same as MR</p> <p>(c) Same as MR</p> <p>(d) Same as MR.</p> <p>(e) Same as MR</p> <p>(f) Language change to note Code of Judicial Conduct</p> <p>(g) “file a notice of change of judge under Rule 10.2, Arizona Rules of Criminal Procedure, for an improper purpose, such as obtaining a trial delay or other circumstances enumerated in Rule 10.2(b).”</p> <p>Has not adopted MR (g). Arizona’s Comment [3] addresses manifesting bias or prejudice.</p> <p>Last accessed on 10/25/19</p>
ARKANSAS	<p>(a) Same as MR</p> <p>(b) Same as MR</p>

	<p>(c) Same as MR (d) Same as MR. (e) Same as MR</p> <p>(f) Language change to note Code of Judicial Conduct</p> <p>Has not adopted MR (g). Arkansas Comment [3] addresses bias and prejudice.</p> <p>Last accessed on 10/25/19</p>
<p>CALIFORNIA</p>	<p>(a) violate these rules or the State Bar Act, knowingly assist, solicit, or induce another to do so, or do so through the acts of another;</p> <p>(b) Same as MR</p> <p>(c) adds “intentional” before “misrepresentation”</p> <p>(d) Same as MR</p> <p>(e) adds “the State Bar Act”</p> <p>(f) knowingly assist, solicit, or induce a judge or judicial officer in conduct that is a violation of an applicable code of judicial ethics or code of judicial conduct, or other law. For purposes of this rule, “judge” and “judicial officer” have the same meaning as in rule 3.5(c).</p> <p>Has not adopted MR (g). California addresses lawyer harassment and discrimination on Rule 8.4.1.</p> <p>Last accessed 10/25/19</p>
<p>COLORADO</p>	<p>(a) Same as MR (b) Same as MR</p> <p>(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation, except that a lawyer may advise, direct, or supervise others, including clients, law enforcement officers, and investigators, who participate in lawful investigative activities</p> <p>(d) Same as MR. Colorado Comment [3] manifesting bias or prejudice. (e) Same as MR.</p> <p>(f) Same as MR</p> <p>Has not adopted MR (g). Colorado addresses discrimination and harassment in their (g), (h) and (i)</p>

	<p>(g) engage in conduct, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person's race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, whether that conduct is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process;</p> <p>(h) engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law; or</p> <p>(i) engage in conduct the lawyer knows or reasonably should know constitutes sexual harassment where the conduct occurs in connection with the lawyer's professional activities.</p> <p>Last accessed on 10/25/19</p>
CONNECTICUT	<p>(1) Same as MR (a) (2) Same as MR (b) (3) Same as MR (c) (4) Same as MR (d) (5) Same as MR (e) (6) Same as MR (f)</p> <p>Has not adopted MR (g). Connecticut addresses bias and prejudice in its Comment.</p> <p>Last accessed on 10/25/19</p>
DELAWARE	<p>(a) Same as MR (b) Same as MR (c) Same as MR (d) Same as MR. (e) Same as MR (f) Same as MR</p> <p>Has not adopted MR (g). Delaware addresses bias and prejudice in its Comment [3].</p> <p>Last accessed on 10/25/19</p>
DISTRICT OF COLUMBIA	<p>(a) Same as MR (b) Same as MR (c) Same as MR</p> <p>(d) replaces "is prejudicial to" with "seriously interferes with".</p> <p>(e) "State or imply an ability to influence improperly a government agency or official"</p>

	<p>(f) Same as MR</p> <p>(g) “Seek or threaten to seek criminal charges or disciplinary charges solely to obtain an advantage in a civil matter.”</p> <p>Has not adopted MR (g). DC addresses offensive, abusive, or harassing conduct that seriously interferes with the administration of justice in its Comment.</p> <p>DC rules address discrimination and harassment in DC Rule 9.1.</p> <p>Last accessed on 10/25/19</p>
FLORIDA	<p>(a) Same as MR</p> <p>(b) Same as MR</p> <p>(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule;</p> <p>(d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic;</p> <p>(e) Same as MR</p> <p>(f) Same as MR</p> <p>(g) fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made:</p> <p>(1) within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors;</p> <p>(2) within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors;</p> <p>(3) within the time stated in any subpoena issued under these Rules Regulating The Florida Bar (without additional time allowed for mailing);</p>

	<p>(4) as provided in the Florida Rules of Civil Procedure or order of the referee in matters assigned to a referee; and</p> <p>(5) as provided in the Florida Rules of Appellate Procedure or order of the Supreme Court of Florida for matters pending action by that court.</p> <p>Except as stated otherwise herein or in the applicable rules, all times for response shall be calculated as provided elsewhere in these Rules Regulating The Florida Bar and may be extended or shortened by the bar counsel or the disciplinary agency making the official inquiry upon good cause shown;</p> <p>Failure to respond to an official inquiry with no good cause shown may be a matter of contempt and processed in accordance with rule 3-7.11(f) of these Rules Regulating The Florida Bar.</p> <p>(h) willfully refuse, as determined by a court of competent jurisdiction, to timely pay a child support obligation; or</p> <p>(i) engage in sexual conduct with a client or a representative of a client that exploits or adversely affects the interests of the client or the lawyer-client relationship.</p> <p>If the sexual conduct commenced after the lawyer-client relationship was formed it shall be presumed that the sexual conduct exploits or adversely affects the interests of the client or the lawyer-client relationship. A lawyer may rebut this presumption by proving by a preponderance of the evidence that the sexual conduct did not exploit or adversely affect the interests of the client or the lawyer-client relationship.</p> <p>The prohibition and presumption stated in this rule do not apply to a lawyer in the same firm as another lawyer representing the client if the lawyer involved in the sexual conduct does not personally provide legal services to the client and is screened from access to the file concerning the legal representation.</p> <p>Has not adopted MR (g) addresses discrimination in Florida (d).</p> <p>Last accessed on 10/25/19</p>
GEORGIA	<p>(a) It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to:</p> <p>(1) violate or attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;</p> <p>(2) be convicted of a felony;</p> <p>(3) be convicted of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer's fitness to practice law;</p>

	<p>(4) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;</p> <p>(5) fail to pay any final judgment or rule absolute rendered against such lawyer for money collected by him or her as a lawyer within ten days after the time appointed in the order or judgment;</p> <p>(6) (i) state an ability to influence improperly a government agency or official by means that violate the Georgia Rules of Professional Conduct or other law; (ii) state an ability to achieve results by means that violate the Georgia Rules of Professional Conduct or other law; (iii) achieve results by means that violate the Georgia Rules of Professional Conduct or other law;</p> <p>(7) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or</p> <p>(8) commit a criminal act that relates to the lawyer's fitness to practice law or reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, where the lawyer has admitted in judicio, the commission of such act.</p> <p>(b) (1) For purposes of this Rule, conviction shall include any of the following accepted by a court, whether or not a sentence has been imposed: (i) a guilty plea; (ii) a plea of nolo contendere; (iii) a verdict of guilty; or (iv) a verdict of guilty but mentally ill.</p> <p>(2) The record of a conviction or disposition in any jurisdiction based upon a guilty plea, a plea of nolo contendere, a verdict of guilty or a verdict of guilty but mentally ill, or upon the imposition of first offender probation shall be conclusive evidence of such conviction or disposition and shall be admissible in proceedings under these disciplinary rules.</p> <p>(c) This Rule shall not be construed to cause any infringement of the existing inherent right of Georgia Superior Courts to suspend and disbar lawyers from practice based upon a conviction of a crime as specified in paragraphs (a) (1), (a) (2) and (a) (3) above.</p> <p>(d) Rule 8.4 (a) (1) does not apply to any of the Georgia Rules of Professional Conduct for which there is no disciplinary penalty.</p> <p>The maximum penalty for a violation of Rule 8.4 (a) (1) is the maximum penalty for the specific Rule violated. The maximum penalty for a violation of Rule 8.4 (a) (2) through (c) is disbarment.</p> <p>Has not adopted MR(d), does not address discrimination or harassment in the Comments.</p> <p>Has not adopted MR (g).</p> <p>Last accessed on 10/25/19</p>
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<p>HAWAII</p>	<p>(a) attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;</p> <p>(b) Same as MR (c) Same as MR</p> <p>(d) Reserved.</p> <p>(e) “state or imply an ability to influence improperly a government agency or official”</p> <p>(f) Same as MR</p> <p>(g) “fail to cooperate during the course of an ethics investigation or disciplinary proceeding.”</p> <p>Has not adopted MR (g). Has not adopted MR 8.4(d). Does not have a Comment addressing discrimination or harassment.</p> <p>Last accessed on 10/25/19</p>
<p>IDAHO</p>	<p>(a) Same as MR (b) Same as MR (c) Same as MR (d) Same as MR. (e) Same as MR (f) Same as MR</p> <p>Has not adopted MR (g). Has adopted Comment [3] addressing bias or prejudice.</p> <p>Idaho Rule 4.4(a)(1) addresses conduct intended to appeal to or engender bias against a person.</p> <p>Last accessed on 10/25/19</p>
<p>ILLINOIS</p>	<p>(a) Same as MR (b) Same as MR (c) Same as MR (d) Same as MR (e) Same as MR</p> <p>(f) Same as MR and adds, at end of paragraph: “Nor shall a lawyer give or lend anything of value to a judge, official, or employee of a tribunal, except those gifts or loans that a judge or a member of the judge’s family may receive under Rule 65(C)(4) of the Illinois Code of Judicial Conduct. Permissible campaign contributions to a judge or candidate for judicial office may be made only by check, draft, or other instrument payable to or</p>

	<p>to the order of an entity that the lawyer reasonably believes to be a political committee supporting such judge or candidate. Provision of volunteer services by a lawyer to a political committee shall not be deemed to violate this paragraph.”</p> <p>(g) “present, participate in presenting, or threaten to present criminal or professional disciplinary charges to obtain an advantage in a civil matter;”</p> <p>(h) “enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or pursue any complaint before the Illinois Attorney Registration and Disciplinary Commission;”</p> <p>(i) “avoid in bad faith the repayment of an education loan guaranteed by the Illinois Student Assistance Commission or other governmental entity. The lawful discharge of an education loan in a bankruptcy proceeding shall not constitute bad faith under this paragraph, but the discharge shall not preclude a review of the lawyer’s conduct to determine if it constitutes bad faith;”</p> <p>(j) “violate a federal, state or local statute or ordinance that prohibits discrimination based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status by conduct that reflects adversely on the lawyer’s fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer’s fitness as a lawyer shall be determined after consideration of all the circumstances, including: the seriousness of the act; whether the lawyer knew that the act was prohibited by statute or ordinance; whether the act was part of a pattern of prohibited conduct; and whether the act was committed in connection with the lawyer’s professional activities. No charge of professional misconduct may be brought pursuant to this paragraph until a court or administrative agency of competent jurisdiction has found that the lawyer has engaged in an unlawful discriminatory act, and the finding of the court or administrative agency has become final and enforceable and any right of judicial review has been exhausted.</p> <p>(k): “if the lawyer holds public office:</p> <ul style="list-style-type: none">(1) use that office to obtain, or attempt to obtain, a special advantage in a legislative matter for a client under circumstances where the lawyer knows or reasonably should know that such action is not in the public interest;(2) use that office to influence, or attempt to influence, a tribunal to act in favor of a client; or(3) represent any client, including a municipal corporation or other public
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	<p>body, in the promotion or defeat of legislative or other proposals pending before the public body of which such lawyer is a member or by which such lawyer is employed.”</p> <p>Has not adopted MR (g). Address discrimination in (j). Has adopted Comment [3] addressing manifesting bias and prejudice.</p> <p>Last accessed 11/01/19</p>
INDIANA	<p>(a) Same as MR (b) Same as MR (c) Same as MR (d) Same as MR (e) Same as MR (f) Same as MR</p> <p>(g) engage in conduct, in a professional capacity, manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, sexual orientation, age, socioeconomic status, or similar factors. Legitimate advocacy respecting the foregoing factors does not violate this subsection. A trial judge’s finding that preemptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.</p> <p>Last accessed 11/01/19</p>
IOWA	<p>(a) violate or attempt to violate the Iowa Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;</p> <p>(b) Same as MR (c) Same as MR (d) Same as MR</p> <p>(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Iowa Rules of Professional Conduct or other law</p> <p>(f) Same as MR</p> <p>(g) “engage in sexual harassment or other unlawful discrimination in the practice of law or knowingly permit staff or agents subject to the lawyer’s direction and control to do so.”</p> <p>Last accessed 10/25/19</p>
KANSAS	<p>(a) Same as MR (b) Same as MR</p>

	<p>(c) Same as MR (d) Same as MR</p> <p>(e) state or imply an ability to influence improperly a government agency or official;</p> <p>(f) Same as MR</p> <p>(g) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.</p> <p>Has not adopted MR (g). Has not adopted a Comment address bias or prejudice.</p> <p>Last accessed 10/25/19</p>
<p>KENTUCKY</p>	<p>(a) Same as MR (b) Same as MR (c) Same as MR</p> <p>(d) Same as MR (e)</p> <p>(e) Same as MR (f)</p> <p>Has not adopted MR (d) or MR (g). Does not have a Comment addressing bias or prejudice.</p> <p>Last accessed on 10/25/19</p>
<p>LOUISIANA</p>	<p>(a) Same as MR</p> <p>(b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;</p> <p>(c) Same as MR</p> <p>(d) Same as MR</p> <p>(e) State or imply an ability to influence improperly a judge, judicial officer, governmental agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;</p> <p>(f) Same as MR</p> <p>(g) Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.</p> <p>Has not adopted MR (g). Does not have Comments.</p>

	Last accessed 10/25/19
MAINE	<p>(a) violate or attempt to violate any provision of either the Maine Rules of Professional Conduct or the Maine Bar Rules, or knowingly assist or induce another to do so, or do so through the acts of another;</p> <p>(b) commit a criminal or unlawful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;</p> <p>(c) Same as MR</p> <p>(d) Same as MR</p> <p>(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Maine Rules of Professional Conduct, the Maine Bar Rules or law;</p> <p>(f) Same as MR</p> <p>(g) engage in conduct or communication related to the practice of law that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity.</p> <p>(1) "Discrimination" on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity as used in this section means conduct or communication that a lawyer knows or reasonably should know manifests an intention: to treat a person as inferior based on one or more of the characteristics listed in this paragraph; to disregard relevant considerations of individual characteristics or merit because of one or more of the listed characteristics; or to cause or attempt to cause interference with the fair administration of justice based on one or more of the listed characteristics.</p> <p>(2) "Harassment" on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity as used in this section means derogatory or demeaning conduct or communication and includes, but is not limited to, unwelcome sexual advances, or other conduct or communication unwelcome due to its implicit or explicit sexual content.</p> <p>(3) "Related to the practice of law" as used in the section means occurring in the course of representing clients; interacting with witnesses, coworkers, court personnel, lawyers, and others while engaged in the practice of law; or operating or managing a law firm or law practice.</p> <p>(4) Declining representation, limiting one's practice to particular clients or types of clients, and advocacy of policy positions or changes in the law are not regulated by Rule 8.4(g).</p>

	<p>Last accessed 10/25/19</p>
MARYLAND	<p>(a) violate or attempt to violate the Maryland Attorneys' Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;</p> <p>(b) Same as MR (c) Same as MR (d) Same as MR</p> <p>(e) knowingly manifest by words or conduct when acting in a professional capacity bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status when such action is prejudicial to the administration of justice, provided, however, that legitimate advocacy is not a violation of this paragraph;</p> <p>(f) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Maryland Attorneys' Rules of Professional Conduct or other law;</p> <p>(g) Same as MR (f)</p> <p>Has not adopted MR (g). Addresses these issues in (e) and Comments [3] and [4].</p> <p>Last accessed 11/01/19</p>
MASSACHUSETTS	<p>(a) Same as MR (b) Same as MR (c) Same as MR (d) Same as MR (e) Same as MR (f) Same as MR</p> <p>(g) fail without good cause to cooperate with the Bar Council or the Board of Bar Overseers as provided in SJC Rule 4:01, § 3, last sentence; or</p> <p>(h) engage in any other conduct that adversely reflects on his or her fitness to practice law.</p> <p>Has not adopted MR (g). Has not adopted a Comment on manifesting bias or prejudice. Addresses similar behavior in Mass. Rule 3.4(i) which reads: A lawyer shall not: (i) in appearing in a professional capacity before a tribunal, engage in conduct manifesting bias or prejudice based on race, sex, religion, national origin, disability, age, or sexual orientation against a party, witness, counsel, or other person. This paragraph does not</p>

	<p>preclude legitimate advocacy when race, sex, religion, national origin, disability, age, or sexual orientation, or another similar factor is an issue in the proceeding.</p> <p>Last accessed on: 11/01/19</p>
<p>MICHIGAN</p>	<p>(a) Same as MR</p> <p>(b) engage in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer</p> <p>(c) Same as MR (d)</p> <p>(d) state or imply an ability to influence improperly a government agency or official</p> <p>(e) Same as MR(f)</p> <p>Has not adopted MR (g). Addresses this behavior in Michigan Rule 6.5(a) which reads: A lawyer shall treat with courtesy and respect all persons involved in the legal process. A lawyer shall take particular care to avoid treating such a person discourteously or disrespectfully because of the person's race, gender, or other protected personal characteristic. To the extent possible, a lawyer shall require subordinate lawyers and nonlawyer assistants to provide such courteous and respectful treatment.</p> <p>Last accessed 11/01/19</p>
<p>MINNESOTA</p>	<p>(a) Same as MR</p> <p>(b) Same as MR</p> <p>(c) Same as MR</p> <p>(d) Same as MR</p> <p>(e) Same as MR</p> <p>(f) Same as MR</p> <p>(g) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, status with regard to public assistance, ethnicity, or marital status in connection with a lawyer's professional activities;</p> <p>(h) commit a discriminatory act prohibited by federal, state, or local statute or ordinance that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including:</p> <p>(1) the seriousness of the act,</p>

	<p>(2) whether the lawyer knew that the act was prohibited by statute or ordinance, (3) whether the act was part of a pattern of prohibited conduct, and (4) whether the act was committed in connection with the lawyer’s professional activities; or</p> <p>(i): refuse to honor a final and binding fee arbitration award after agreeing to arbitrate a fee dispute.</p> <p>Last accessed on 11/01/19</p>
<p>MISSISSIPPI</p>	<p>(a) Same as MR (b) Same as MR (c) Same as MR (d) Same as MR (e) Same as MR (f) Same as MR</p> <p>Has not adopted MR (g). Does not address bias or prejudice in a Comment.</p> <p>Last accessed on 11/01/19</p>
<p>MISSOURI</p>	<p>(a) Same as MR (b) Same as MR</p> <p>(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. It shall not be professional misconduct for a lawyer for a criminal law enforcement agency, regulatory agency, or state attorney general to advise others about or to supervise another in an undercover investigation if the entity is authorized by law to conduct undercover investigations, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency, regulatory agency, or state attorney general to participate in an undercover investigation, if the entity is authorized by law to conduct undercover investigations;</p> <p>(d) Same as MR (e) Same as MR (f) Same as MR</p> <p>(g) manifest by words or conduct, in representing a client, bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status. This Rule 4-8.4(g) does not preclude legitimate advocacy when race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or other similar factors, are issues. This</p>

	<p>paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 4-1.16.</p> <p>Last accessed on 11/01/19</p>
MONTANA	<p>(a) Same as MR (b) Same as MR (c) Same as MR (d) Same as MR (e) Same as MR (f) Same as MR</p> <p>Has not adopted Model Rule 8.4 (g). Has not adopted Comments.</p> <p>Last accessed on 11/01/19</p>
NEBRASKA	<p>(a) Same as MR (b) Same as MR (c) Same as MR</p> <p>(d) engage in conduct that is prejudicial to the administration of justice. Once a lawyer is employed in a professional capacity, the lawyer shall not, in the course of such employment, engage in adverse discriminatory treatment of litigants, witnesses, lawyers, judges, judicial officers or court personnel on the basis of the person's race, national origin, gender, religion, disability, age, sexual orientation or socio-economic status. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding.</p> <p>(e) Same as MR (f) Same as MR</p> <p>(g) willfully refuse, as determined by a court of competent jurisdiction, to timely pay a support order, as such order is defined by Nebraska law.</p> <p>Has not adopted MR (g). Addresses the issue in (d), and Comment [3].</p> <p>Last accessed on 11/01/19</p>
NEVADA	<p>(a) Same as MR (b) Same as MR (c) Same as MR (d) Same as MR (e) Same as MR (f) Same as MR</p> <p>Has not adopted Model Rule 8.4 (g). Has not adopted Comments.</p> <p>Last accessed on 11/01/19</p>

NEW HAMPSHIRE	<p>(a) Same as MR (b) Same as MR (c) Same as MR</p> <p>(d) state or imply an ability to influence improperly a government agency or official;</p> <p>(e) state or imply an ability to achieve results by means that violate the Rules of Professional Conduct or other law; or</p> <p>(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or</p> <p>(g) take any action, while acting as a lawyer in any context, if the lawyer knows or it is obvious that the action has the primary purpose to embarrass, harass or burden another person, including conduct motivated by animus against the other person based upon the other person’s race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation, marital status or gender identity. This paragraph shall not limit the ability of the lawyer to accept, decline, or withdraw from representation consistent with other Rules of Professional Conduct, nor does it preclude a lawyer from engaging in conduct or speech or from maintaining associations that are constitutionally protected, including advocacy on matters of public policy, the exercise of religion, or a lawyer’s right to advocate for a client.</p> <p>Last accessed 11/01/19</p>
NEW JERSEY	<p>(a) Same as MR (b) Same as MR (c) Same as MR (d) Same as MR (e) Same as MR (f) Same as MR</p> <p>(g) engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.</p> <p>Has an official, Court-adopted Comment to this Rule.</p> <p>Last accessed 11/01/19</p>
NEW MEXICO	<p>(a) Same as MR (b) Same as MR (c) Same as MR</p>

	<p>(d) Same as MR (e) Same as MR (f) Same as MR</p> <p>(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, or marital status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 16–116 NMRA. This paragraph does not preclude legitimate advice or advocacy consistent with these rules.</p> <p>Last accessed on 11/01/19</p>
<p>NEW YORK</p>	<p>A lawyer or law firm shall not:</p> <p>(a) Same as MR</p> <p>(b) engage in illegal conduct that adversely reflects on the lawyer’s honesty, trustworthiness or fitness as a lawyer;</p> <p>(c) Same as MR (d) Same as MR</p> <p>(e) state or imply an ability: (1) to influence improperly or upon irrelevant grounds any tribunal, legislative body or public official; or (2) to achieve results using means that violate these Rules or other law;</p> <p>(f) Same as MR</p> <p>(g) unlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment on the basis of age, race, creed, color, national origin, sex, disability, marital status or sexual orientation. Where there is a tribunal with jurisdiction to hear a complaint, if timely brought, other than a Departmental Disciplinary Committee, a complaint based on unlawful discrimination shall be brought before such tribunal in the first instance. A certified copy of a determination by such a tribunal, which has become final and enforceable and as to which the right to judicial or appellate review has been exhausted, finding that the lawyer has engaged in an unlawful discriminatory practice shall constitute prima facie evidence of professional misconduct in a disciplinary proceeding; or</p>

	<p>(h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.</p> <p>Last accessed on 11/01/19</p>
NORTH CAROLINA	<p>(a) Same as MR (b) Same as MR (c) Same as MR (d) Same as MR (e) Same as MR (f) Same as MR</p> <p>(g) intentionally prejudice or damage his or her client during the course of the professional relationship, except as may be required by Rule 3.3.</p> <p>Has not adopted MR (g). Addresses similar conduct in Comment [5] to Rule 8.4</p> <p>Last accessed on 11/01/19</p>
NORTH DAKOTA	<p>(a) Same as MR (b) Same as MR</p> <p>(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer</p> <p>(d) knowingly assist a judge or judicial officer in conduct that is a violation of applicable canons of judicial conduct or other law</p> <p>(e) Same as MR</p> <p>(f) engage in conduct that is prejudicial to the administration of justice including to knowingly manifest through words or conduct in the course of representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation, against parties, witnesses, counsel, or others, except when those words or conduct are legitimate advocacy because race, sex, religion, national origin, disability, age, or sexual orientation is an issue in the proceeding; or</p> <p>(g) engage in other conduct that is enumerated in the North Dakota Century Code as a basis for revocation or suspension of a lawyer's certificate of admission.</p> <p>Last accessed on 11/01/19</p>
OHIO	<p>It is professional misconduct for a lawyer to do any of the following:</p>

	<p>(a) violate or attempt to violate the Ohio Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;</p> <p>(b) commit an illegal act that reflects adversely on the lawyer’s honesty or trustworthiness;</p> <p>(c) Same as MR</p> <p>(d) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Ohio Rules of Professional Conduct or other law;</p> <p>(f) knowingly assist a judge or judicial officer in conduct that is a violation of the Ohio Rules of Professional Conduct, the applicable rules of judicial conduct, or other law;</p> <p>(g) engage, in a professional capacity, in conduct involving discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability;</p> <p>(h) engage in any other conduct that adversely reflects on the lawyer’s fitness to practice law.</p> <p>Last accessed 11/01/19</p>
OKLAHOMA	<p>(a) Same as MR</p> <p>(b) Same as MR</p> <p>(c) Same as MR</p> <p>(d) Same as MR</p> <p>(e) Same as MR</p> <p>(f) Same as MR</p> <p>Has not adopted MR (g). Does not address bias and prejudice in a Comment to Rule 8.4.</p> <p>Last accessed on 11/01/19</p>
OREGON	<p>(a) It is professional misconduct for a lawyer to:</p> <p>(1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;</p> <p>(2) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;</p> <p>(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice</p>

	<p>law;</p> <p>(4) engage in conduct that is prejudicial to the administration of justice; or</p> <p>(5) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law, or</p> <p>(6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.</p> <p>(7) in the course of representing a client, knowingly intimidate or harass a person because of that person’s race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability.</p> <p>(b) Notwithstanding paragraphs (a)(1), (3) and (4) and Rule 3.3(a)(1), it shall not be professional misconduct for a lawyer to advise clients or others about or to supervise lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these Rules of Professional Conduct. "Covert activity," as used in this rule, means an effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. "Covert activity" may be commenced by a lawyer or involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.</p> <p>(c) Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from engaging in legitimate advocacy with respect to the bases set forth therein.</p> <p>Last accessed on 11/01/19</p>
<p>PENNSYLVANIA</p>	<p>(a) Same as MR</p> <p>(b) Same as MR</p> <p>(c) Same as MR</p> <p>(d) Same as MR</p> <p>(e) Same as MR</p> <p>(f) Same as MR</p> <p>Has not adopted Model Rule 8.4 (g). Does not address bias or prejudice in a Comment.</p> <p>Last accessed on 11/01/19</p>
<p>RHODE ISLAND</p>	

	<p>(a) Same as MR (b) Same as MR (c) Same as MR</p> <p>(d) engage in conduct that is prejudicial to the administration of justice, including but not limited to, harmful or discriminatory treatment of litigants, jurors, witnesses, lawyers, and others based on race, national origin, gender, religion, disability, age, sexual orientation or socioeconomic status;</p> <p>(e) Same as MR (f) Same as MR</p> <p>Has not adopted MR(g). Addresses similar issues in (d).</p> <p>Last accessed 11/01/19</p>
<p>SOUTH CAROLINA</p>	<p>(a) Same as MR (b) Same as MR</p> <p>(c) commit a criminal act involving moral turpitude</p> <p>(d) Same as MR (c) (e) Same and MR (d) (f) Same and MR (e) (g) Same as MR (f)</p> <p>Has not adopted MR (g). Addresses similar conduct in Comment [3].</p> <p>Last accessed 11/01/19</p>
<p>SOUTH DAKOTA</p>	<p>(a) Same as MR (b) Same as MR (c) Same as MR (d) Same as MR (e) Same as MR (f) Same as MR</p> <p>Has not adopted MR (g). Has not adopted Comments.</p> <p>Last accessed on 11/01/19</p>
<p>TENNESSEE</p>	<p>(a) Same as MR (b) Same as MR (c) Same as MR (d) Same as MR</p>

	<p>(e) state or imply an ability to influence a tribunal or a governmental agency or official on grounds unrelated to the merits of, or the procedures governing, the matter under consideration;</p> <p>(f) Same as MR</p> <p>(g) knowingly fail to comply with a final court order entered in a proceeding in which the lawyer is a party, unless the lawyer is unable to comply with the order or is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.</p> <p>Has not adopted MR(g). Has adopted Comment on bias and prejudice.</p> <p>Last accessed 11/01/19</p>
<p>TEXAS</p>	<p>(a) A lawyer shall not:</p> <p>(1) violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;</p> <p>(2) commit a serious crime or commit any other criminal act that reflects adversely on the lawyers honesty, trustworthiness or fitness as a lawyer in other respects;</p> <p>(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;</p> <p>(4) engage in conduct constituting obstruction of justice;</p> <p>(5) state or imply an ability to influence improperly a government agency or official;</p> <p>(6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;</p> <p>(7) violate any disciplinary or disability order or judgment;</p> <p>(8) fail to timely furnish to the Chief Disciplinary Counsels office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for failure to do so;</p> <p>(9) engage in conduct that constitutes barratry as defined by the law of this state;</p> <p>(10) fail to comply with section 13.01 of the Texas Rules of Disciplinary Procedure relating to notification of an attorneys cessation of practice;</p> <p>(11) engage in the practice of law when the lawyer is on inactive status or when the lawyers right to practice has been suspended or terminated, including but not limited to situations where a lawyers right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Mandatory Continuing Legal Education; or</p> <p>(12) violate any other laws of this state relating to the professional conduct of lawyers and to the practice of law.</p>

	<p>(b) As used in subsection (a)(2) of this Rule, serious crime means barratry; any felony involving moral turpitude; any misdemeanor involving theft, embezzlement, or fraudulent or reckless misappropriation of money or other property; or any attempt, conspiracy, or solicitation of another to commit any of the foregoing crimes.</p> <p>Has not adopted MR (g) but addresses similar behavior in Texas Rule 5.08.</p> <p>Last accessed 11/01/19</p>
UTAH	<p>(a) Same as MR (b) Same as MR (c) Same as MR (d) Same as MR (e) Same as MR (f) Same as MR</p> <p>Has not adopted MR (g). Utah Comment [3] addresses bias and prejudice.</p> <p>Last accessed 11/01/19</p>
VERMONT	<p>(a) Same as MR</p> <p>(b) engage in a “serious crime,” defined as illegal conduct involving any felony or involving any lesser crime a necessary element of which involves interference with the administration of justice, false swearing, intentional misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a “serious crime”</p> <p>(c) Same as MR (d) Same as MR (e) Same as MR (f) Same as MR</p> <p>(g) engage in conduct related to the practice of law that the lawyer knows or should know is harassment or discrimination on the basis of race, color, sex, religion, national origin, ethnicity, ancestry, place of birth, disability, age, sexual orientation, gender identity marital status or socioeconomic status, or other grounds that are illegal or prohibited under federal or state law. This paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these rules.</p> <p>Last accessed 11/01/19</p>
VIRGINIA	<p>(a) Same as MR</p>

	<p>(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;</p> <p>(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;</p> <p>(d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official</p> <p>(e) Same as MR (f)</p> <p>Has not adopted MR(d) or MR(g). Does not address bias or prejudice in its Comments.</p> <p>Last accessed 11/01/19</p>
WASHINGTON	<p>(a) Same as MR</p> <p>(b) Same as MR</p> <p>(c) Same as MR</p> <p>(d) Same as MR</p> <p>(e) Same as MR</p> <p>(f) knowingly (1) assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law, or (2) assist or induce an LLLT in conduct that is a violation of the applicable rules of professional conduct or other law;</p> <p>(g) commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities. In addition, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this Rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability or marital status. This Rule shall not limit the ability of a lawyer to accept, decline, or withdraw from the representation of a client in accordance with Rule 1.16;</p> <p>(h) in representing a client, engage in conduct that is prejudicial to the administration of justice toward judges, lawyers, or LLLTs, other parties, witnesses and/or their counsel, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments;</p>

	<p>(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding;</p> <p>(j) willfully disobey or violate a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear;</p> <p>(k) violate his or her oath as an attorney;</p> <p>(l) violate a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ELC 1.5;</p> <p>(m) violate the Code of Judicial Conduct; or</p> <p>(n) engage in conduct demonstrating unfitness to practice law.</p> <p>Last accessed on 11/01/19</p>
<p>WEST VIRGINIA</p>	<p>(a) Same as MR (b) Same as MR (c) Same as MR (d) Same as MR (e) Same as MR (f) Same as MR</p> <p>Has not adopted Model Rule 8.4 (g). West Virginia Comment [3] addresses bias and prejudice.</p> <p>Last accessed 11/01/19</p>
<p>WISCONSIN</p>	<p>(a) Same as MR (b) Same as MR (c) Same as MR</p> <p>(d) Same as MR(e) (e) Same as MR(f)</p> <p>(f) violate a statute, supreme court rule, supreme court order or supreme court decision regulating the conduct of lawyers;</p> <p>(g) violate the attorney's oath;</p>

	<p>(h) fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by SCR 21.15(4), SCR 22.001(9)(b), SCR 22.03(2), SCR 22.03(6), or SCR 22.04(1); or</p> <p>(i) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with the lawyer's professional activities. Legitimate advocacy respecting the foregoing factors does not violate par. (i).</p> <p>Has not adopted MR(d) or (g). Addresses similar conduct in (i).</p> <p>Last accessed 11/01/19</p>
<p>WYOMING</p>	<p>(a) Same as MR (b) Same as MR (c) Same as MR (d) Same as MR (e) Same as MR (f) Same as MR</p> <p>(g) knowingly employ or continue to employ or contract with any person in the practice of law who has been disbarred or is under suspension from the practice of law by any jurisdiction, or is on incapacitated status or disability inactive status by any jurisdiction. The prohibition of this rule extends to the employment of or contracting for the services of such disbarred or suspended person in any position or capacity (including but not limited to as an employee, independent contractor, paralegal, secretary, investigator or consultant) which is directly or indirectly related to the practice of law as defined by Rule 7(b), Rules Governing the Wyoming State Bar and the Authorized Practice of Law, whether or not compensation is paid.</p> <p>Has not adopted MR(g). Bias and prejudice addressed in Comment [3].</p> <p>Last accessed 11/01/19</p>

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