

July 12, 2017

Honorable Robert J. Lynn, Chair  
Advisory Committee on Rules  
New Hampshire Supreme Court  
One Charles Doe Drive  
Concord, NH 03301

RE: Supplemental Information Regarding Proposed Amendment to  
Rules of Professional Conduct 8.4

Dear Justice Lynn:

Following the request of the Advisory Committee on Rules (the "ACR") during our discussion regarding the proposed adoption of new Rule of Professional Conduct 8.4(g) on June 16, 2017, I am happy to submit the following supplemental information:

1. Attached is a state-by-state chart comparing each state's version of Rule 8.4 to the ABA Model Rule 8.4, in general, and highlighting those states that have adopted some form of an anti-discrimination or anti-harassment rule (whether in the form of Rule 8.4(g) or otherwise) and those that have not.

2. In response to a question from the ACR, we have received information from the ABA that indicates that South Carolina is the only state that has considered but rejected the proposed amendment outright. I attach a copy of the relevant Order of the Supreme Court of South Carolina. In this regard, I believe that the ACR is already familiar with the positions of the Texas Attorney General and the Montana legislature with respect to the proposed amendment; and

3. Attached is a summary of anti-harassment and anti-discrimination ethics rules applicable to other professions that we have been able to identify to date.

At the end of the discussion of the proposed amendment, it was our understanding that a working group consisting of members of the ACR and the Ethics Committee would review these materials and any ACR questions, and report back to the ACR with further comments or recommendations. We are ready to start that process whenever the ACR wishes to begin.

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Should you need any further information, please feel free to reach out to me,  
and we will be happy to provide whatever you need.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Peter F. Imse', with a long horizontal line extending to the right.

Peter F. Imse

PFI/dss  
Enclosures

Cc: Maureen Smith, Esq.  
James Allmendinger, Esq.  
Rolf Goodwin, Esq.

**State to ABA Comparison for Rule 8.4(g) and Additional Anti-Discrimination Rules**

**Overview:**

- Comparison of Rule 8.4 is listed first, or an indication that the State has not adopted Rule 8.4(g). Below is any other reference to anti-discrimination located in the State’s Rules of Professional Conduct
- States that adopt some version of the ABA model rule on discrimination are highlighted yellow
- State versions of antidiscrimination rules are also highlight in yellow
- Differences between ABA 8.4(g) and State version are *italicized*
- Total states that have adopted anti-discrimination rules similar to Rule 8.4(g): 25

<b>State</b>	<b>Rule 8.4 Comparison</b>
Alabama	(e) Deletes everything after “agency or official;”  adds: (g) engage in any other conduct that adversely reflects on his fitness to practice law.  [3] Does not adopt  <b>Has not adopted Model Rule 8.4 (g)</b>
Alaska	Does not adopt MR (d);  (d) Similar to MR (e), but adds “either” after “an ability”  [3] Does not adopt  <b>Has not adopted Model Rule 8.4 (g)</b>
Arizona	Identical  <b>Has not adopted Model Rule 8.4 (g)</b>
Arkansas	Identical  <b>Has not adopted Model Rule 8.4 (g)</b>
California	Adds: (A) For purposes of this rule:  (1) “law practice” includes sole practices, law partnerships, law corporations, corporate and governmental legal departments, and other entities which employ members to practice law;  (2) “knowingly permit” means a failure to advocate corrective action where the member

knows of a discriminatory policy or practice which results in the unlawful discrimination prohibited in paragraph (B); and

(3) “unlawfully” and “unlawful” shall be determined by reference to applicable state or federal statutes or decisions making unlawful discrimination in employment and in offering goods and services to the public.

(B) In the management or operation of a law practice, a member shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race, national origin, sex, sexual orientation, religion, age or disability in:

(1) hiring, promoting, discharging, or otherwise determining the conditions of employment of any person; or

(2) accepting or terminating representation of any client.

*[Removes: ethnicity, gender/gender identity, marital status, socioeconomic status]*

(C) No disciplinary investigation or proceeding may be initiated by the State Bar against a member under this rule unless and until a tribunal of competent jurisdiction, other than a disciplinary tribunal, shall have first adjudicated a complaint of alleged discrimination and found that unlawful conduct occurred. Upon such adjudication, the tribunal finding or verdict shall then be admissible evidence of the occurrence or non-occurrence of the alleged discrimination in any disciplinary proceeding initiated under this rule. In order for discipline to be imposed under this rule, however, the finding of unlawfulness must be upheld and final after appeal, the time for filing an appeal must have expired, or the appeal must have been dismissed.

Colorado	<p>Adds: (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; or</p> <p><i>[Removes: sex, ethnicity, marital status]</i></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.</p>
Connecticut	<p>Identical</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Delaware	<p>Identical</p> <p>-includes an Interpretive Guideline regarding a lawyer's income taxes</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>
District of Columbia	<p>(d) replaces "that is prejudicial" with "that seriously interferes with"</p> <p>(e) stops after "agency or official"</p> <p>(g) adds: Seek or threaten to seek criminal charges or disciplinary charges solely to obtain an advantage in a civil matter.</p> <p><b>Has not adopted Model Rule 8.4 (g), but see below</b></p> <p><b>Rule 9.1 Discrimination in Employment</b></p> <p>A lawyer shall not discriminate against any individual in conditions of employment because of the individual's race, color, religion, national origin, sex, age, marital status, sexual orientation, family responsibility, or physical handicap.</p> <p><i>[Removes: ethnicity, gender/gender identity, disability, socioeconomic status; Adds: color, family responsibility, physical handicap]</i></p>

Florida

Intro paragraph:

A lawyer shall not (c): adds “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” to end

(d): adds “in connection with the practice of law” after “conduct,” adds “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” to end

*[Removes: sex; Adds: employment, physical characteristics]*

Adds (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:

(1) within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors;

(2) within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors;

(3) within the time stated in any subpoena issued under these Rules Regulating The Florida Bar (without additional time allowed for mailing);

(4) as provided in the Florida Rules of Civil Procedure or order of the referee in matters assigned to a referee; and

(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.

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; Failure to respond to an official inquiry with no good cause

	<p>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>Adds (h): willfully refuse, as determined by a court of competent jurisdiction, to timely pay a child support obligation; or</p> <p>Adds (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. 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. 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>
Hawaii	<p>(a): Deletes “violate or” before “attempt to violate”</p> <p>(d): Deletes MR text and add “reserved”</p> <p>(e): Deletes text after “agency or official”</p> <p>Adds (g): “fail to cooperate during the course of an ethics investigation or disciplinary proceeding.”</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Idaho	<p><b>Has not adopted Model Rule 8.4 (g), but see below</b></p> <p><b>Rule 4.4 Respect for Rights of Third Persons</b></p> <p>(a) In representing a client, a lawyer shall not:</p> <p>(1) use means that have no substantial purpose other than to embarrass, delay, or burden a third person, including conduct intended to appeal to or engender bias against a person on account of that person’s gender, race, religion, national origin, or sexual preference, whether that bias is directed to other counsel, court personnel, witnesses, parties, jurors, judges, judicial officers, or any other participants</p> <p>(2) use methods of obtaining evidence that violate the legal rights of such a person;</p>

	<p>(3) present or participate in presenting criminal charges solely to obtain advantage in a civil matter; or</p> <p>(4) threaten to present criminal charges in order to obtain advantage in a civil matter</p> <p>* (b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender.</p>
<p>Illinois</p>	<p>(f) 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 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>Adds paragraph (g): "present, participate in presenting, or threaten to present criminal or professional disciplinary charges to obtain an advantage in a civil matter;"</p> <p>Adds paragraph (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>Adds paragraph (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>Adds paragraph (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</p>



	<p>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><i>[Removes: ethnicity, gender/gender identity]</i></p> <p>Adds paragraph (k): "if the lawyer holds public office:</p> <p>(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;</p> <p>(2) use that office to influence, or attempt to influence, a tribunal to act in favor of a client; or</p> <p>(3) represent any client, including a municipal corporation or other public 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>
Indiana	<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><i>[Removes: sex, ethnicity, marital status]</i></p>
Iowa	<p>Adds as (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><i>[Does not include specific bases of discrimination]</i></p>
Kansas	<p>(e) Deletes language after "agency or official;"</p> <p>Adds: (g) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>

Kentucky	<p>Doesn't adopt MR (d); (d) and (e) are the same as MR (e) and (f).</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Louisiana	<p>adds in (b): "especially one" that reflects adversely....</p> <p>(e), adds before "government agency or official," "judge, judicial officer,"</p> <p>adds (g): Threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Maine	<p>(a) Adds "Maine" before "Rules;"</p> <p>(b) Adds "or unlawful" before "act."</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Maryland	<p>adds as (c): 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><i>[Removes: Ethnicity, gender/gender identity, marital status]</i></p>
Massachusetts	<p>Adds:</p> <p>(g) fail without good cause to cooperate with the Bar Counsel or the Board of Bar Overseers as provided in SJC Rule 4:01, § 3.; or</p> <p>(h) engage in any other conduct that adversely reflects on his or her fitness to practice law.</p> <p><b>Has not adopted Model Rule 8.4 (g), but see below</b></p> <p><b>Rule 3.4 Fairness to Opposing Party and Counsel</b></p> <p>A lawyer shall not:</p> <p>(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 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><i>[Removes ethnicity, gender/gender identity, marital status, socioeconomic status]</i></p>
Michigan	<p>Does not adopt (b)</p> <p>(d) Removes language after “agency or official”</p> <p><b>Has not adopted Model Rule 8.4 (g), but see below</b></p> <p><b>Rule: 6.5 Professional Conduct</b></p> <p>(a) 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>(b) A lawyer serving as an adjudicative officer shall, without regard to a person's race, gender, or other protected personal characteristic, treat every person fairly, with courtesy and respect. To the extent possible, the lawyer shall require staff and others who are subject to the adjudicative officer's direction and control to provide such fair, courteous, and respectful treatment to persons who have contact with the adjudicative tribunal.</p> <p><i>[Removes sex, religion, national origin, ethnicity, disability, age, sexual orientation, marital status or socioeconomic status; Adds other protected personal characteristic]</i></p>
Minnesota	<p>adds as (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><i>[Removes: gender/gender identity, socioeconomic status; Adds: creed, color, status with regard to public assistance]</i></p> <p>adds as (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,</p> <p>(3) whether the act was part of a pattern of prohibited conduct, and</p> <p>(4) whether the act was committed in connection with the lawyer's professional activities; or</p> <p>adds as (i): refuse to honor a final and binding fee arbitration award after agreeing to arbitrate a fee dispute</p>
Mississippi	<p>Identical</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Missouri	<p>Adds:</p> <p>(g) manifest by words or conduct, in representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation. This Rule 4-8.4(g) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, or other similar factors, are issues.</p> <p><i>[Removes: ethnicity, gender/gender identity, marital status, socioeconomic status]</i></p>
Montana	<p>Identical</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Nebraska	<p>(d): adds at the end: 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 socioeconomic status. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding.</p> <p>adds as (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><i>[Removes: sex, ethnicity, marital status]</i></p>
Nevada	<p>Identical</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>

New Hampshire	<p>Does not adopt MR (d);</p> <p>(d) is similar to MR (e) but deletes language after “official;”</p> <p>(e) is the same as MR (f).</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>
New Jersey	<p>adds (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><i>[Removes: ethnicity, disability, gender/gender identity; Adds: color, language, handicap]</i></p>
New Mexico	<p>Changed to Rule 16-804.</p> <p><b>Has not adopted Model Rule 8.4 (g), but see below</b></p> <p>Rule 16-300. Prohibition Against Invidious Discrimination.</p> <p>In the course of any judicial or quasi-judicial proceeding before a tribunal, a lawyer shall refrain from intentionally manifesting, by words or conduct, bias or prejudice based on race, gender, religion, national origin, disability, age, or sexual orientation against the judge, court personnel, parties, witnesses, counsel or others. This rule does not preclude legitimate advocacy when race, gender, religion, national origin, disability, age or sexual orientation is material to the issues in the proceeding.</p> <p><i>[Removes sex, ethnicity, marital status, socioeconomic status]</i></p>
New York	<p>Replaces text in beginning of rule with:</p> <p>“A lawyer or law firm shall not:”</p> <p>(b) Replaces language with: “engage in illegal conduct that adversely reflects on the lawyer’s honesty, trustworthiness or fitness as a lawyer;”</p> <p>(e) Replaces language with: (e) state or imply an ability:</p> <p>(1) to influence improperly or upon irrelevant grounds any tribunal, legislative body or public official; or</p>

	<p>(2) to achieve results using means that violate these Rules or other law;</p> <p>Adds (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><i>[Removes: religion, ethnicity, gender/gender identity, socioeconomic status; Adds: creed, color]</i></p> <p>Adds (h): Engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.</p>
North Carolina	<p>(e): do not include the 2nd half, which was moved here from the 7s in the MR.</p> <p>adds as (g): (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><b>Has not adopted Model Rule 8.4 (g)</b></p>
North Dakota	<p>(c): adds to end "that reflects adversely on the lawyer's fitness as a lawyer"</p> <p>(d): same as MR (f) but replaces "rules" with "canons"</p> <p>(f): same as MR (d) but adds to end "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><i>[Removes: ethnicity, gender/gender identity, marital status, socioeconomic status]</i></p>

	<p>Adds: (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>
Ohio	<p>First paragraph:</p> <p>adds to end "do any of the following"</p> <p>(b): replaces "criminal" with "illegal," ends sentence after "trustworthiness"</p> <p>(f): adds "the Ohio Rules of Professional Conduct" after "violation of"</p> <p>Adds (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><i>[Removes: sex, ethnicity, disability, socioeconomic status; Adds: color]</i></p> <p>Adds (h) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.</p>
Oklahoma	<p>Same as MR</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Oregon	<p>Paragraphs (a)(1) through (5) are similar to Model Rule 8.4(a) through (f) (a)(1) (MR a): does not include "or attempt to violate." (a)(3) (MR c): adds to end "that reflects adversely on the lawyer's fitness to practice law."</p> <p>Adds (a)(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><i>[Removes: ethnicity, socioeconomic status; Adds: color, gender expression]</i></p> <p>Adds (b): Notwithstanding paragraphs (a) and Rule 3.3, 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 disciplinary rules. "Covert activity," as</p>

	<p>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>Adds (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>
Pennsylvania	<p>Identical</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Rhode Island	<p>(d) Adds to end: "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><i>[Removes: sex, ethnicity, marital status]</i></p>
South Carolina	<p>inserts as (c): "commit a criminal act involving moral turpitude;"</p> <p><b>Has rejected Model Rule 8.4 (g) The Supreme Court of South Carolina's June 20, 2017 Order rejecting proposed subsection (g) notes that the State's Commissions on Lawyer and Judicial Conduct "state their respective members are of the opinion that discrimination and lack of diversity within the legal profession are issues that should be addressed in some fashion."</b></p>
South Dakota	<p>Identical</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Tennessee	<p>(e) Replaces language after "ability to influence" with: "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>Adds: (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><b>Has not adopted Model Rule 8.4 (g)</b></p>



Texas

(a) A lawyer shall not:

(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;

(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;

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(4) engage in conduct constituting obstruction of justice;

(5) state or imply an ability to influence improperly a government agency or official;

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

(7) violate any disciplinary or disability order or judgment;

(8) fail to timely furnish to the Chief Disciplinary Councils 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;

(9) engage in conduct that constitutes barratry as defined by the law of this state;

(10) fail to comply with section 13.01 of the Texas Rules of Disciplinary Procedure relating to notification of an attorneys cessation of practice;

(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

(12) violate any other laws of this state relating to the professional conduct of lawyers and to the practice of law.

(b) As used in subsection (a)(2) of this Rule, serious crime means barratry; any felony involving moral turpitude; any misdemeanor

	<p>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><b>Has not adopted Model Rule 8.4 (g), but see below</b></p> <p><b>Rule 5.08. Prohibited Discriminatory Activities</b></p> <p>(a) A lawyer shall not willfully, in connection with an adjudicatory proceeding, except as provided in paragraph (b), manifest, by words or conduct, bias or prejudice based on race, color, national origin, religion, disability, age, sex, or sexual orientation towards any person involved in that proceeding in any capacity.</p> <p>(b) Paragraph (a) does not apply to a lawyer's decision whether to represent a particular person in connection with an adjudicatory proceeding, nor to the process of jury selection, nor to communications protected as "confidential information" under these Rules. See Rule 1.05(a), (b). It also does not preclude advocacy in connection with an adjudicatory proceeding involving any of the 8 factors set out in paragraph (a) if that advocacy:</p> <ul style="list-style-type: none"> <li>(i) is necessary in order to address any substantive or procedural issues raised by the proceeding; and</li> <li>(ii) is conducted in conformity with applicable rulings and orders of a tribunal and applicable rules of practice and procedure.</li> </ul> <p><i>[Removes: ethnicity, gender/gender identity, marital status, socioeconomic status; Adds: color]</i></p>
Utah	<p>Identical</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Vermont	<p>(c) Replaces text of paragraph with: "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>Adds (g): "discriminate against any individual because of his or her race, color, religion, ancestry, national origin, sex, sexual orientation, place of birth or age, or against a qualified handicapped individual, in hiring, promoting or other determining the conditions of employment of that individual."</p>

	<p><i>[Relates to employment* - Removes: ethnicity, disability, gender/gender identity, marital status, socioeconomic status; Adds: color, ancestry, place of birth, against a qualified handicap individual]</i></p>
Virginia	<p>(b): adds “or deliberately wrongful” after “criminal” and replaces “as a lawyer in other respects” with “to practice law”</p> <p>(c): same as former MR Does not have MR (d)</p> <p>(d): same as MR (e) but replaces language after “improperly” with “or upon irrelevant grounds any tribunal, legislative body, or public official; or”</p> <p>(e): same as MR (f)</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Washington	<p>(f)(1): adds “,or” at end Adds (f)(2): assist or induce an LLLT in conduct that is a violation of the applicable rules of professional conduct or other law;</p> <p>Adds:</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><i>[Removes: ethnicity, gender/gender identity, socioeconomic status; Adds: creed, color]</i></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</p>

	<p>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 <u>unfitness to practice law.</u></p>
Washington D.C.	<p>(d): replaces “is prejudicial to” with “seriously interferes with”</p> <p>(e): has former MR</p> <p>Adds (g) Seek or threaten to seek criminal charges or disciplinary charges solely to obtain an advantage in a civil matter.</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>
West Virginia	<p>Identical</p> <p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Wisconsin	<p>Does not have MR (d), (d) and (e): same as MR (e) and (f)</p> <p>Adds (f) violate a statute, supreme court rule, supreme court order or supreme court decision regulating the conduct of lawyers;</p> <p>Adds (g) violate the attorney's oath;</p> <p>Adds (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>Adds (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>

	<i>[Removes: ethnicity, gender/gender identity, socioeconomic status; Adds: creed, color, sexual preference]</i>
Wyoming	<p>(f): Adds “; or” to end</p> <p>Adds: (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><b>Has not adopted Model Rule 8.4 (g)</b></p>

## **Licensed Professional Organization's Anti-Discrimination Provisions in Codes of Conduct**

### **American Association of University Professors — Statement on Professional Ethics**

- 2. Professors make every reasonable effort to foster honest academic conduct and to ensure that their evaluations of students reflect each student's true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students.
- 3. As colleagues, professors have obligations that derive from common membership in the community of scholars. Professors do not discriminate against or harass colleagues.

### **American Counseling Association — Code of Ethics**

- Section C, Professional Responsibility. Part 5. Nondiscrimination. Counselors do not condone or engage in discrimination against prospective or current clients, students, employees, supervisees, or research participants based on age, culture, disability, ethnicity, race, religion/spirituality, gender, gender identity, sexual orientation, marital/partnership status, language preference, socioeconomic status, immigration status, or any basis proscribed by law.
- Section C, Part 6. Public Responsibility. Part a. Counselors do not engage in or condone sexual harassment. Sexual harassment can consist of a single intense or severe act, or multiple persistent or pervasive acts.

### **American Dental Association — Principles of Ethics and Code of Professional Conduct**

- **Code of Professional Conduct, Section 4.A. Patient Selection.** While dentists, in serving the public, may exercise reasonable discretion in selecting patients for their practices, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient's race, creed, color, sex or national origin. American Institute of Architects — Code of Ethics and Professional Conduct
- **Rule 1.401** Members shall not discriminate in their professional activities on the basis of race, religion, gender, national origin, age, disability, or sexual orientation.

### **American Institute of Certified Public Accountants — Code of Professional Conduct**

- 1.400.010 Discrimination and Harassment in Employment Practices. A *member* would be presumed to have committed an act discreditable to the profession, in violation of the "Acts Discreditable Rule" [1.400.001] if a final determination, no longer subject to appeal, is made by a court or an administrative agency of competent jurisdiction that a *member* has violated any antidiscrimination laws of the United States, a state, or a municipality, including those related to sexual and other forms of harassment.

### **American Medical Association — Principles of Medical Ethics, Principle**

- I. A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.
- III. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.
- V. A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.
- VI. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care.

Interpreted in **Opinion 9.12** to mean physicians who offer their services to the public may not decline to accept patients because of race, color, religion, national origin, sexual orientation, gender identity or any other basis that would constitute invidious discrimination.

Interpreted in **Opinion 10.05** to mean physicians cannot refuse to care for patients based on race, gender, sexual orientation, or any other criteria that would constitute invidious discrimination or refuse to provide a specific treatment sought by an individual that is incompatible with the physician's personal, religious, or moral beliefs.

### **American Nurses Association — Code of Ethics**

- Provision 1. The nurse, in all professional relationships, practices with compassion and respect for the inherent dignity, worth, and uniqueness of every individual, unrestricted by considerations of social or economic status, personal attributes, or the nature of health problems.
- 1.1 Respect for human dignity. A fundamental principle that underlies all nursing practice is respect for the inherent worth, dignity, and human rights of every individual. Nurses take into account the needs and values of all persons in all professional relationships.
- 1.2 Relationships to patients. The need for health care is universal, transcending all individual differences. The nurse establishes relationships and delivers nursing services with respect for human needs and values, and without prejudice. An individual's lifestyle, value system and religious beliefs should be considered in planning health care with and for each patient. Such consideration does not suggest that the nurse necessarily agrees with or condones certain individual choices, but that the nurse respects the patient as a person.

### **American Psychological Association — Ethical Principles of Psychologists and Code of Conduct.**

- **Ethical Standard 1.10 Nondiscrimination.** In their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, socio-economic status, or any basis proscribed by law.
- **Ethical Standard 1.11 Sexual harassment (a)** Psychologists do not engage in sexual harassment.
- **Ethical Standard 1.12 Other harassment.** Psychologists do not knowingly engage in behavior that is harassing or demeaning to persons with whom they interact in their work based on factors such as those persons' age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

#### **National Association of Social Workers — Code of Ethics**

- Ethical Standards 4.02. Social workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, gender identity or expression, age, marital status, political belief, religion, immigration status, or mental or physical disability.

#### **National Education Association — Code of Ethics**

- Principle 1. The educator strives to help each student realize his or her potential as a worthy and effective member of society. The educator therefore works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals. In fulfillment of the obligation to the student, the educator
  - Shall not on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, family, social or cultural background, or sexual orientation, unfairly; exclude any student from participation in any program; deny benefits to any student; grant any advantage to any student

#### **National Realtors — Code of Ethics and Standards of Practice**

- Article 10. Realtors® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. Realtors® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. Realtors®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.



**Other Professions That Have Adopted or Proposed Rules  
Or Interpretations of Rules With Respect to Harassment and Discrimination**  
June 30, 2017

**EXISTING RULES**

**I. Business**

1. Accounting

**i. American Institute of Certified Public Accountants**

▪ Code of Professional Conduct

- *1.400.001 Acts Discreditable Rule.* A member shall not commit an act discreditable to the profession.
- *1.400.010 Discrimination and Harassment in Employment Practices.* A member would be presumed to have committed an act discreditable to the profession, in violation of the “Acts Discreditable Rule” [1.400.001] if a final determination, no longer subject to appeal, is made by a court or an administrative agency of competent jurisdiction that a member has violated any antidiscrimination laws of the United States, state, or municipality, including those related to sexual and other forms of harassment.
- *Note:* The AICPA Code is divided into three sections: for members in public practice, members in business, and other members. Each section has identical language regarding harassment and discrimination; *see* Sections 1.400.010 (Members in Public Practice); 2.400.010 (Members in Business); and 3.400.010 (Other Members) of the AICPA Code of Professional Conduct.

2. Advertising

**i. American Marketing Association**

▪ Ethical Norms and Values for Marketers

- *Respect.* To acknowledge the basic human dignity of all stakeholders. To this end, we will: Value individual differences and avoid stereotyping customers or depicting demographic groups (e.g., gender, race, sexual orientation) in a negative or dehumanizing way.

3. Architecture

**i. American Institute of Architects**

▪ Code of Ethics and Professional Conduct

- *Rule 1.401.* Members shall not discriminate in their professional activities on the basis of race, religion, gender, national origin, age, disability, or sexual orientation.
- *Ethical Standard 1.4: Human Rights.* Members should uphold human rights in all their professional endeavors.

4. Engineering

**i. American Association of Engineering Societies**



on race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.

## II. Health Care

### 1. Dentistry

#### i. **American Dental Association**

- Principles of Ethics and Code of Professional Conduct
  - *Section 4. Principle: Justice (“fairness”).* The dentist has a duty to treat people fairly. This principle expresses the concept that professionals have a duty to be fair in their dealings with patients, colleagues and society. Under this principle, the dentist’s primary obligations include dealing with people justly and delivering dental care without prejudice. In its broadest sense, this principle expresses the concept that the dental profession should actively seek allies throughout society on specific activities that will help improve access to care for all.
  - *4.A. Patient Selection.* While dentists, in serving the public, may exercise reasonable discretion in selecting patients for their practices, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient’s race, creed, color, sex or national origin.

### 2. Medicine

#### i. **American Hospital Association**

- Professional Standards of Conduct
  - A certificant who is awarded certification by the AHA Certification Center agrees to conduct himself/herself in an ethical and professional manner. This includes demonstrating practice-related behavior that is indicative of professional integrity. By accepting certification, the certificant agrees to avoid discriminating against any individual based on age, gender, race, color, religion, national origin, disability or marital status.

#### ii. **American Medical Association**

- Principles of Medical Ethics
  - *I.* A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.
  - *II.* A physician shall uphold the standards of professionalism, be honest in all professional interactions, and strive to report physicians deficient in character or competence, or engaging in fraud or deception, to appropriate entities.
  - *III.* A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.
  - *VI.* A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care.
- Policies of Medical Ethics

- *E-9.12 Patient-Physician Relationship: Respect for Law and Human Rights.* Physicians who offer their services to the public may not decline to accept patients because of race, color, religion, national origin, sexual orientation, gender identity, or any other basis that would constitute invidious discrimination.
- *E-10.05 Potential Patients.* Physicians cannot refuse to care for patients based on race, gender, sexual orientation, or any other criteria that would constitute invidious discrimination or refuse to provide a specific treatment sought by an individual that is compatible with the physician's personal, religious, or moral beliefs.
- Code of Medical Ethics
  - *1.1.2 Prospective Patients.* As professionals dedicated to protecting the well-being of patients, physicians have an ethical obligation to provide care in cases of medical emergency. Physicians must also uphold ethical responsibilities not to discriminate against a prospective patient on the basis of race, gender, sexual orientation or gender identity, or other personal or social characteristics that are not clinically relevant to the individual's care. Nor may physicians decline a patient based solely on the individual's infectious disease status. Physicians should not decline patients for whom they have accepted a contractual obligation to provide care.

### 3. Mental Health

#### i. **American Counseling Association**

- Code of Ethics
  - *C.5. Nondiscrimination.* Counselors do not condone or engage in discrimination against prospective or current clients, students, employees, supervisees, or research participants based on age, culture, disability, ethnicity, race, religion/spirituality, gender, gender identity, sexual orientation, marital/partnership status, language preference, socioeconomic status, immigration status, or any basis proscribed by law.
  - *C.6.a. Sexual Harassment.* Counselors do not engage in or condone sexual harassment. Sexual harassment can consist of a single intense or severe act, or multiple persistent or pervasive acts.

#### ii. **American Psychiatric Association**

- The Principles of Medical Ethics
  - *Section 1.* A physician shall be dedicated to providing competent medical care with compassion and respect for human dignity and rights.
  - *Section 1, Principle 2.* A psychiatrist should not be a party to any type of policy that excludes, segregates, or demeans the dignity of any patient because of ethnic origin, race, sex, creed, age, socioeconomic status, or sexual orientation.

#### iii. **American Psychological Association**

- Ethical Principles of Psychologists and Code of Conduct

- *3.01 Unfair Discrimination.* In their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, socioeconomic status, or any basis proscribed by law.
- *3.02 Sexual Harassment.* Psychologists do not engage in sexual harassment. Sexual harassment is sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, that occurs in connection with the psychologist's activities or roles as a psychologist, and that either (1) is unwelcome, is offensive, or creates a hostile workplace or educational environment, and the psychologist knows or is told this or (2) is sufficiently severe or intense to be abusive to a reasonable person in the context. Sexual harassment can consist of a single intense or severe act or of multiple persistent or pervasive acts.
- *3.03 Other Harassment.* Psychologists do not knowingly engage in behavior that is harassing or demeaning to persons with whom they interact in their work based on factors such as those persons' age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

#### 4. Nursing

##### i. American Nurses' Association

###### ▪ Code of Ethics

- *Provision 1.* The nurse practices with compassion and respect for the inherent dignity, worth, and unique attributes of every person.
- *1.1 Respect for Human Dignity.* A fundamental principle that underlies all nursing practice is respect for the inherent dignity, worth, unique attributes, and human rights of all individuals. The need for and right to health care is universal, transcending all individual differences. Nurses consider the needs and respect the values of each person in every professional relationship and setting; they provide leadership in the development and implementation of changes in public health policies that support this duty.
- *1.2 Relationships with Patients.* Nurses establish relationships of trust and provide nursing services according to need, setting aside any bias or prejudice. Factors such as culture, value systems, religious or spiritual beliefs, lifestyle, social support system, sexual orientation or gender expression, and primary language are to be considered when planning individual, family and population-centered care. Such considerations must promote health and wellness, and address problems, and respect patients' or clients' decisions. Respect for patient decisions does not require that the nurse agree with or support all patient choices. When patient choices are risky or self-destructive, nurses have an obligation to address the behavior and to offer opportunities and resources to modify the behavior or to eradicate the risk.

## 5. Social Work

### i. National Association of Social Workers

#### ▪ Code of Ethics

- *4.02 Discrimination.* Social workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, or mental or physical disability.

### ii. Clinical Social Work Association

#### ▪ Code of Ethics

- *VI. Clinical Social Workers' Responsibilities to the Community.* Clinical social workers do not, in any of their capacities, practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, religion, color, national origin, gender, sexual orientation, gender identity, gender expression, age, socioeconomic status, or physical or emotional disability.

## III. Education

### 1. Higher Education

#### i. American Association of University Professors

#### ▪ Statement on Professional Ethics

- 2. As teachers, professors encourage the free pursuit of learning in their students. They hold before them the best scholarly and ethical standards of their discipline. Professors demonstrate respect for students as individuals and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to ensure that their evaluations of students reflect each student's true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students.
- 3. As colleagues, professors have obligations that derive from common membership in the community of scholars. Professors do not discriminate against or harass colleagues. They respect and defend the free inquiry of associates, even when it leads to findings and conclusions that differ from their own. Professors acknowledge academic debt and strive to be objective in their professional judgment of colleagues.

### 2. Primary & Secondary Education

#### i. National Education Association

#### ▪ Code of Ethics

- *Principle I. 6.* [The educator] [s]hall not on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, family, social or cultural background, or sexual orientation, unfairly
  - a. Exclude any student from participation in any program;
  - b. Deny benefits to any student;
  - c. Grant any advantage to any student.

## **IV. Law**

### **1. Dispute Resolution**

#### **i. American Arbitration Association**

##### **▪ AAA Statement of Ethical Principles**

- *Commitment to Diversity.* The American Arbitration Association is the global leader in conflict management with core values of integrity and service. Our integrity demands impartial and fair treatment of all people with whom we come in contact, regardless of gender, race, ethnicity, age, religion, sexual orientation, or other characterization. Our conflict management services put into practice our goal for the resolution of disputes between parties with different perspectives, experiences, and backgrounds.

### **2. Law Practice**

#### **i. National District Attorneys Association**

##### **▪ National Prosecution Standards**

- *3-1.2 Fairness in Investigations.* A criminal investigation should not begin or be continued if it is motivated in whole or part by the victim or perpetrator's race, ethnicity, religion, sexual orientation, or political affiliation unless these factors are an element of a crime or relevant to the perpetrator's motive. Nor should an investigation be motivated, in whole or significant part, by partisan political pressure or professional ambition or improper personal considerations.
- *5-1.4 Uniform Plea Opportunities.* Similarly situated defendants should be afforded substantially equal plea agreement opportunities. In considering whether to offer a plea agreement to a defendant, the prosecutor should not take into account the defendant's race, religion, sex, sexual orientation, national origin, or political association or belief, unless legally relevant to the criminal conduct charged.

## **PROPOSED RULES**

## **V. Engineering**

#### **i. American Society of Civil Engineers**

##### **▪ Code of Ethics**

- The ASCE Code of Ethics currently has no professional rule that speaks to harassment and discrimination; at its July 2017 meeting, however, the ASCE Board of Direction will consider amending the ASCE Code of Ethics to include an eighth fundamental canon. The proposed canon reads as follows:
  - *Canon 8.* Engineers shall, in all matters related to their profession, treat all persons fairly and encourage equitable participation without regard to gender or gender identity, race, national origin, ethnicity, religion, age, sexual orientation, disability, political affiliation, or family, marital, or economic status.

- a. Engineers shall conduct themselves in a manner in which all persons are treated with dignity, respect, and fairness.
- b. Engineers shall not engage in discrimination or harassment in connection with their professional activities.
- c. Engineers shall consider the diversity of the community, and shall endeavor in good faith to include diverse perspectives, in the planning and performance of their professional services.



## Court News

2017-06-20-01

## The Supreme Court of South Carolina

Re: Proposed Amendments to Rule 8.4 of the Rules of Professional Conduct

Appellate Case No. 2017-000498

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### ORDER

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In September 2016, the American Bar Association (ABA) submitted a letter to the Court concerning Rule 8.4 of the Rules of Professional Conduct (RPC), which is contained in Rule 407 of the South Carolina Appellate Court Rules. The ABA had recently amended its Model Rule 8.4 to add new paragraph (g), which contains language prohibiting harassment and discrimination in the practice of law. The ABA requested that the Court consider incorporating the provisions of the ABA Model Rule amendments within Rule 8.4, RPC.

At the January 2017 South Carolina Bar Convention, the House of Delegates reviewed a proposal submitted by the Bar's Professional Responsibility Committee recommending the Court decline to incorporate the ABA Model Rule amendments within Rule 8.4, RPC. The House of Delegates adopted a substituted resolution "to not approve [Model] Rule 8.4(g) as written and to have a public hearing and public comment."

On March 7, 2017, the Court issued a request for written comments from the public concerning the ABA's submission and the recommendation of the South Carolina Bar. Twenty-nine written comments were submitted by individual attorneys, and three comments were submitted on behalf of various groups.

Following the conclusion of the comment period, the Commissions on Lawyer and Judicial Conduct, whose members would initially be tasked with investigating alleged violations of any amended rule, informed the Court the Commissions share the same reservations expressed by the South Carolina Bar and others. The Commissions state that, as a result, they do not recommend the Court incorporate the Model Rule provisions submitted by the ABA. However, the Commissions state their respective members are of the opinion that discrimination and lack of diversity within the legal profession are issues that should be addressed in some fashion. The Commissions state they are currently engaging in additional study of those issues, and they request the opportunity to present the Court with alternatives to the adoption of the ABA's proposed amendments to Rule 8.4.

The Court has carefully reviewed the ABA Model Rule, the materials considered by the House of Delegates, the public comments, and the submission of the Commissions on Lawyer and Judicial Conduct. The public comments and the Commissions' letter are available for **review** on the Judicial Department website.

Following review, this Court declines to incorporate the ABA Model Rule within Rule 8.4, RPC, as requested by the ABA. Should the Commissions on Lawyer and Judicial Conduct elect to submit proposed amendments to address problems identified in their letter to the Court, the Court will consider any proposal on its merits.

s/Donald W. Beatty C.J.

s/John W. Kittredge J.

s/Kaye G. Hearn J.

s/John Cannon Few J.

s/George C. James, Jr. J.

Columbia, South Carolina  
June 20, 2017