

#2016-009

# Orr&Reno

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September 6, 2018

***By Email Only***

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Advisory Committee on Rules  
New Hampshire Supreme Court  
One Charles Doe Drive  
Concord, NH 03301

**Re: Feltes-Herrick Subcommittee Proposed Rule 8.4(g) (#2016-009)**

Dear Chief Justice Lynn and the members of the Advisory Committee on Rules:

I am writing on behalf of the Rule 8.4(g) Subcommittee of the New Hampshire Bar Association Standing Committee on Ethics, which includes Peter Imse, Rolf Goodwin, Jim Allmendinger and myself.

The Subcommittee does not oppose the September 5, 2018 Feltes-Herrick Subcommittee Proposed Rule 8.4(g), nor does it oppose the ACLU-NH modification dated September 6, 2018. We believe that either version of the proposed rule would provide adequate guidance on the scope of prohibited conduct for disciplinary purposes. We have already indicated that adoption of the ACLU-NH version to add a definitional qualifier, "under state or federal law," modifying the terms harassment and discrimination would expressly incorporate the definitions developed under substantive law, thereby fully addressing any potential objections on grounds of vagueness. We respectfully request that this Committee recommend adoption of the ACLU-NH version of Rule 8.4(g).

We want to thank Senator Feltes and Attorney Herrick for leading the effort to develop compromise language on the Ethics Committee's original proposal to this Committee. We also appreciate the active participation by interested organizations and their representatives. As set forth in our recent emails to the Feltes-Herrick Subcommittee, we believe that the effort has resulted in successful development of rule language that differs markedly from the ABA version of Rule 8.4(g) and can provide a model for other states, while reflecting the core values of our profession.

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Thank you for your attention.

Sincerely,

A handwritten signature in black ink that reads "Maureen D. Smith". The signature is written in a cursive style with a large, looped initial "M".

Maureen D. Smith

MDS:eac

Cc: (via email):

Elizabeth LaRochelle, Chair, NHBA Standing Committee on Ethics  
Subcommittee on Proposed Rule 8.4(g)

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