

#2016-009



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Chicago, IL

September 29, 2016

Honorable Linda Stewart Dalianis  
Chief Justice  
Supreme Court of New Hampshire  
One Charles Doe Drive  
Concord, NH 03301

**Re: Recent Amendment to Rule 8.4 of the ABA Model Rules of Professional Conduct**

Dear Chief Justice Dalianis:

We take this occasion to report to you the recent amendment of Rule 8.4 of the ABA Model Rules of Professional Conduct with the hope that your Court will undertake a review of the changes and consider integrating them into your state's rules of professional conduct. These revisions and additions were the culmination of two years of work by the ABA Standing Committee on Ethics and Professional Responsibility ("Ethics Committee").

[http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/rule\\_8\\_4\\_misconduct.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct.html)

Amended Model Rule 8.4 contains new paragraph (g) that establishes a black letter rule prohibiting harassment and discrimination in the practice of law. It also contains three new Comments related to paragraph (g).

New paragraph (g) to Model Rule 8.4 is a reasonable, limited, and necessary addition to the Model Rules of Professional Conduct. It makes it clear that it is professional misconduct to engage in conduct that a lawyer knows or reasonably should know constitutes harassment or discrimination while engaged in conduct related to the practice of law. And as has already been shown in the jurisdictions that have such a rule, it will not impose an undue burden on lawyers. 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 and managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law. Amended Model Rule 8.4 (g) does not prohibit speech, thought, association, or religious practice. The rule does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with current rules of professional conduct.

Twenty-five jurisdictions have adopted anti-discrimination or anti-harassment provisions in the black letter of their ethics rules. To properly address this issue, the ABA adopted an anti-discrimination and anti-harassment provision in the black letter of the Model Rules. Studies on the perception of the public about the justice system and

**Center for Professional Responsibility  
Policy Implementation Committee**  
321 N. Clark Street  
Chicago, IL 60610  
Phone: (312) 988-5298  
Fax: (312) 988-5491  
[John.Holtzaway@americanbar.org](mailto:John.Holtzaway@americanbar.org)

lawyers support the need for the amendment to Model Rule 8.4.

Adopted Revised Resolution 109 and its accompanying Report can be found at: [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/final\\_revised\\_resolution\\_and\\_report\\_109.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/final_revised_resolution_and_report_109.authcheckdam.pdf)

The Center for Professional Responsibility Policy Implementation Committee has created a Power Point Presentation to assist courts, rules committees, the legal profession, and the public to understand the amendments to Model Rule 8.4.

[https://www.dropbox.com/s/6seu8x1i0m41116/Model%20Rules%208.4%20Presentation\\_Final.wmv?dl=0](https://www.dropbox.com/s/6seu8x1i0m41116/Model%20Rules%208.4%20Presentation_Final.wmv?dl=0)

We can provide you with electronic copies of Revised Resolution 109 with Report and discussion points if you or the Chair of your state review committee contact John Holtaway, Policy Implementation Counsel, [john.holtaway@americanbar.org](mailto:john.holtaway@americanbar.org), (312) 988-5298. We have sent copies of this letter to your State Bar Association President, State Bar Association Executive Director, State Bar Admissions Director, and Chief Disciplinary Counsel, and ABA State Delegate.

The Center for Professional Responsibility Policy Implementation Committee is available to assist states with the review process. Members of the Committee, including members of the Ethics Committee, are available to meet in person or telephonically with review committees.

The work product of the Ethics Committee reflects the ABA's continued leadership in professional responsibility law. The ABA looks forward to assisting you on this important project.

Respectfully,



John S. Gleason, Chair  
Center for Professional Responsibility Policy Implementation Committee