

#2016-009

Sullo way  
& Hollis P.L.L.C.  
COUNSELORS AT LAW

PETER F. IMSE, ESQ.  
O 603-224-2341  
F 603-223-2991  
E pimse@sullo way.com

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www.sullo way.com | 9 Capitol Street, Concord, New Hampshire 03301

November 13, 2017

**VIA EMAIL**

Mr. David L. Hudson, Jr.  
Vanderbilt University  
2301 Vanderbilt Place  
Nashville, TN 37235

RE: October 2017 ABA Journal Article – ABA Model Rule 8.4(g) on  
Discrimination and Harassment

Dear Mr. Hudson:

I am writing on behalf of the Rule 8.4(g) Subcommittee of the Ethics Committee of the New Hampshire Bar Association to provide you with a different perspective on the issues addressed in your recent article published in the October 2017 issue of the American Bar Association (ABA) Journal ("Article"). We are concerned that the Article created a misimpression of the legal landscape and status of states' adoption of ABA Model Rule 8.4(g) substantive requirements and trust that you or the ABA Journal Editor will address our concerns in some way.

By way of background, the Ethics Committee is not a disciplinary body, but, rather, serves as a resource to attorneys in the State with respect to ethical questions. Among other things, our Committee issues advisory opinions, publishes articles on ethical issues, and drafts and comments on proposed changes to the New Hampshire Rules of Professional Conduct.

In connection with our Committee's work, we analyzed ABA Model Rule 8.4(g) and carefully considered whether it should be adopted by the New Hampshire Supreme Court. At the end of our review, the Committee and our Bar Association Board of Governors endorsed a slightly revised version of the proposed Model Rule, which is currently under consideration by our Supreme Court.

In the course of our review and investigation of the Rule, we studied the status of other states' adoption of Model Rule 8.4(g) and similar rules that implicate conduct involving discrimination and harassment by attorneys. We also researched and documented the adoption of similar rules by other professions.

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With all of that research as background, we were surprised by the tone and substance of your Article. We were most struck by the fact that the title, the opening sentence and discussion of the Rule throughout the Article clearly imply that there is a significant split among the states with respect to the adoption of professional conduct rules relating to discrimination and harassment by attorneys, when our research showed that the contrary was true.

During our investigation, we noted that prior to the introduction of proposed Model Rule 8.4(g), over thirty states had already adopted Model Rule 8.4 (d) which, when read together with ABA Comment [3], was intended to prohibit "bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status" in the context of attorney conduct related to the "administration of justice".

Our research also confirmed the comment made by one source referenced in your Article that twenty-five States already have some sort of additional or alternate rule on the books regulating discrimination and harassment by attorneys beyond the limited scope of Model Rule 8.4(d). These rules are in the form of either Model Rule 8.4(g), the codification of ABA Comment [3], or revisions to other sections of those states' versions of the Model Rules. Despite these facts, the opening paragraph of your Article merely says that "the Vermont Supreme Court has adopted the rule", and that the Utah and Nevada Courts are considering it. While these statements are not untrue on their face, they lack the context of pre-existing state rules on the same topic and mislead the reader into assuming that only three states are seriously considering adoption of anti-discrimination and anti-harassment rules for lawyers. Our research shows otherwise.

In addition, while we understand that South Carolina is the only state that has expressly rejected Model Rule 8.4(g), it is unfortunate that, your Article does not mention the real import of the South Carolina Supreme Court's order, which expressly referenced the State's Commissions on Lawyer and Judicial Conduct statement that "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," and that "they request the opportunity to present the Court with alternatives to the adoption of the ABA's proposed amendments to Rule 8.4." Similarly, your Article mentions the negative treatment of Model Rule 8.4(g) in Montana and Texas without providing proper context. Montana has already adopted Model Rule 8.4(d), and the action by the legislature urging the Supreme Court not to adopt Model Rule 8.4(g) is merely symbolic because only the Court has the power to adopt professional conduct rules, and the Court has not yet acted. In Texas, the Attorney General wrote an opinion stating that Model Rule 8.4(g) would violate various constitutional rights, when, in fact,

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Texas has already adopted rules against discrimination and harassment by lawyers in connection with adjudicatory proceedings. In light of this overwhelming data in support of the adoption of Model Rule 8.4(g) or similar rules against discrimination and harassment, we feel that it was very misleading for your Article to lead the readership to believe that there is a true "split" on the issue.

We are also concerned that the Article did not provide a balanced assessment of Model Rule 8.4(g) by providing a disproportionate amount of space to opponents' objections to the Model Rule. Given the facts that two-thirds of the States have had Model Rule 8.4(d) on the books for 30 years, that half the States have adopted additional rules against discrimination and harassment in the form of Model Rule 8.4(g) or otherwise, that a significant number of other professional organizations already have rules against discrimination and harassment in their professional conduct codes, and that these rules have survived without any constitutional problems or challenges, your presentation of the arguments against the application of such rules to attorneys appears to focus on theoretical concerns not borne out in reality.

We hope that you are able to acknowledge the information in this correspondence in future publications. To assist you with your further research and writing on this issue, we attach two documents to this letter. The first is a state-by-state summary of state rules against discrimination and harassment by attorneys that our Subcommittee has prepared. This summary was developed from and is an amplification of a summary that the ABA has been maintaining regarding Model Rule 8.4, but we have eliminated non-germane notations and expanded the summary to encompass other relevant State Rules. See Attachment A. The second attachment is a summary of rules against discrimination and harassment that we found in the codes of conduct applicable to numerous other professional organizations across the country, which shows that our profession is out of step with what other professions have already accomplished. See Attachment B.

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We also encourage the ABA Journal Editor to publish this letter as a comment on the Article and we would not object to any response that you may wish to include. Should you have any questions or comments, I and other members of our Subcommittee would be more than happy to discuss them with you.

Very truly yours,

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

Peter F. Imse

PFI:dss

Cc: Editor: *American Bar Association Journal*  
Elizabeth LaRochelle, Chair, NHBA Ethics Committee  
NHBA Ethics Committee Subcommittee on Rule 8.4(g): Maureen Smith, Esq.,  
Rolf Goodwin, Esq., James Allmendinger, Esq.

**ATTACHMENT A**

**New Hampshire Bar Association**  
**Ethics Committee**  
**Subcommittee on Model Rule 8.4(g)**  
**State-by-State Summary of the Adoption of ABA Model Rule 8.4(g)**  
**or Other Rules Against Discrimination and Harassment by Attorneys**

States that have adopted some version of the ABA Model Rule 8.4(g) or included concepts from Model Rule 8.4(g) in Rule 8.4 or other ABA Model Rules as in effect in the jurisdiction are highlighted yellow.

- State attorney conduct rules against discrimination and harassment that were not codified in the form of the ABA Model Rules appear in green.
- Negative state actions appears in red.
- Total states that have adopted a version of Rule 8.4(g) or another rule against discrimination or harassment: 25
- Thank you to ABA upon whose tracking sheet this document is based.

<b>State</b>	<b>Status of Adoption of Rule 8.4(g) or other Similar Rules</b>
Alabama	Has not adopted Model Rule 8.4 (g)
Alaska	Has not adopted Model Rule 8.4 (g)
Arizona	Has not adopted Model Rule 8.4 (g)
Arkansas	Has not adopted Model Rule 8.4 (g)
California	<p>Has not adopted Model Rule 8.4(g), but has adopted a similar rule as follows:</p> <p><b>Rule 2-400 – Prohibited Discriminatory Conduct in a Law Practice</b></p> <p>(A) For purposes of this rule:</p> <p>(1) “law practice” includes sole practices, law partnerships, law corporations, corporate and governmental legal departments, and other entities which employ members to practice law;</p> <p>(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</p>

	<p>prohibited in paragraph (B); and</p> <p>(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.</p> <p>(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:</p> <p>(1) hiring, promoting, discharging, or otherwise determining the conditions of employment of any person; or</p> <p>(2) accepting or terminating representation of any client.</p> <p>(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.</p>
Colorado	<p><b>Has adopted the following modified version of Rule 8.4(g):</b></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; or</p>

Connecticut	<b>Has not adopted Model Rule 8.4 (g)</b>
Delaware	<b>Has not adopted Model Rule 8.4 (g)</b>
District of Columbia	<p><b>Has not adopted Model Rule 8.4(g), but has adopted a similar rule as follows:</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>
Florida	<p><b>Has adopted concepts from Rule 8.4(g) as part of Rule 8.4(d) as follows:</b></p> <p>In subsection (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</p>
Hawaii	<b>Has not adopted Model Rule 8.4 (g)</b>
Idaho	<p><b>Has not adopted Model Rule 8.4(g), but has adopted concepts from Rule 8.4(g) as part of Rule 4.4, as follows:</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>



Illinois	<p><b>Has adopted the following modified version of Rule 8.4(g) in the form of Rule 8.4(j):</b></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>
Indiana	<p><b>Has adopted the following modified version of Rule 8.4(g):</b></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>
Iowa	<p><b>Has adopted the following modified version of Rule 8.4(g):</b></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>
Kansas	<p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Kentucky	<p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Louisiana	<p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Maine	<p><b>Has not adopted Model Rule 8.4 (g)</b></p>

Maryland	<p><b>Has adopted the following modified version of Rule 8.4(g) in the form of Rule 8.4(e):</b></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>
Massachusetts	<p><b>Has not adopted Model Rule 8.4(g), but has adopted concepts from Rule 8.4(g) as part of Rule 3.4 as follows:</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>
Michigan	<p><b>Has not adopted Model Rule 8.4(g), but has adopted concepts from Rule 8.4 as part of Rule 6.5 as follows:</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>

Minnesota	<p><b>Has adopted the following modified version of Rule 8.4(g) in the form of 8.4(g) and 8.4(h) as follows:</b></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,</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><b>Has not adopted Model Rule 8.4 (g)</b></p>
Missouri	<p><b>Has adopted the following modified version of Rule 8.4(g):</b></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>
Montana	<p><b>Has not adopted Model Rule 8.4 (g) [Note: State legislature has adopted a non-binding resolution opposing the Montana Supreme Court's notice of proposed adoption of Rule 8.4(g), but the Montana Supreme Court has not acted.]</b></p>

Nebraska	<p><b>Has adopted concepts from Rule 8.4(g) as part of Rule 8.4(d) as follows:</b></p> <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 socio-economic status. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding.</p>
Nevada	<p><b>Has not adopted Model Rule 8.4 (g)</b></p>
New Hampshire	<p><b>Has not adopted Model Rule 8.4 (g)</b></p>
New Jersey	<p><b>Has adopted the following modified version of Rule 8.4(g):</b></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>
New Mexico	<p><b>Has not adopted Model Rule 8.4(g), but has adopted a similar rule as follows:</b></p> <p><b>Rule 16-300. Prohibition Against Invidious Discrimination.</b></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>
New York	<p><b>Has adopted the following modified version of Rule 8.4(g):</b></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</p>

	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
North Carolina	<b>Has not adopted Model Rule 8.4 (g)</b>
North Dakota	<b>Has adopted the following modified version of Rule 8.4(g) in the form of Rule 8.4(f):</b>  (f): same as Model Rule (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"
Ohio	<b>Has adopted the following modified version of Rule 8.4(g):</b>  (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,
Oklahoma	<b>Has not adopted Model Rule 8.4 (g)</b>
Oregon	<b>Has adopted the following modified version of Rule 8.4(g) in the form of Rule 8.4(a)(7) and Rule 8.4(c):</b>  (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.  (c): Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from engaging in legitimate advocacy with respect to the bases set forth therein.
Pennsylvania	<b>Has not adopted Model Rule 8.4 (g)</b>

Rhode Island	<p><b>Same as Model Rule 8.4(d), but has adopted concepts from Rule 8.4(g) as part of Rule 8.4(d) as follows:</b></p> <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>
South Carolina	<p><b>The Supreme Court of South Carolina has rejected Model Rule 8.4 (g), but in its order of June 20, 2017, it notes that the State's Commissions on Lawyer and Judicial Conduct "state that 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><b>Has not adopted Model Rule 8.4 (g)</b></p>
Tennessee	<p><b>Has not adopted Model Rule 8.4 (g)</b></p>
Texas	<p><b>Has not adopted Model Rule 8.4(g), but has adopted a similar rule as follows:</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>[The Texas Attorney General has opined that Rule 8.4(g) is unconstitutional, but the Texas Supreme Court has taken no action.]</p>
Utah	<p><b>Has not adopted Model Rule 8.4 (g)</b></p>

Vermont	<p><b>Has adopted the following modified version of Rule 8.4(g):</b></p> <p>(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>
Virginia	<b>Has not adopted Model Rule 8.4 (g)</b>
Washington	<p><b>Has adopted the following modified version of Rule 8.4(g) as Rule 8.4(g) and Rule 8.4(h):</b></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>
Washington D.C.	<b>Has not adopted Model Rule 8.4 (g)</b>
West Virginia	<b>Has not adopted Model Rule 8.4 (g)</b>
Wisconsin	<p><b>Has adopted the following modified version of Rule 8.4(g) in the form of Rule 8.4(i):</b></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>

Wyoming	Has not adopted Model Rule 8.4 (g)
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**ATTACHMENT B**

**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**

- Diversity & Inclusion Policy Statement
    - In principle and in practice, AAES and its Member Societies acknowledge and respect the value of a diverse and inclusive community that promotes active participation by all; that all members are treated as dignified human beings and afforded respect; and that all are provided equality of opportunity. A diverse and inclusive community is one that not only embraces but leverages membership regardless of any visible or non-visible differences.
5. Human Resource Management
- i. **American Society for Public Administration**
    - Code of Ethics
      - *4. Strengthen social equity.* Treat all persons with fairness, justice, and equality and respect individual differences, rights, and freedoms. Promote affirmative action and other initiatives to reduce unfairness, injustice, and inequality in society.
6. Insurance
- i. **American Society of Financial Service Professionals**
    - Code of Professional Responsibility
      - *CANON 1 - Fairness.* A member shall perform services in a manner that respects the interests of all those he/she serves, including clients, principals, partners, employees, and employers. A member shall disclose conflicts of interests in providing such services. Fairness requires that a professional treat others as he/she would wish to be treated if in the other's position.
7. Real Estate
- i. **National Association of Realtors**
    - Code of Ethics and Standards of Practice
      - *Preamble.* Realtors® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, [must] bring such matters to the attention of the appropriate Board or Association of Realtors®.
      - *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.
      - *Standard of Practice 10-3.* Realtors® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based

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.