

**Possible Amendments to Rule 8.4(g) of the New York Rules of Professional Conduct on  
Discrimination in the Practice of Law**

**A Report of the Commercial and Federal  
Litigation Section of the New York State Bar Association<sup>1</sup>**

December, 2, 2020

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<sup>1</sup> This Report was prepared by the Ethics and Professionalism Committee of the Commercial and Federal Litigation Section of the New York State Bar Association. Its principal author is Anthony Harwood, who is co-chair of the committee with Anne Sekel. Opinions expressed in this Report are those of the Section and do not represent those of the New York State Bar Association unless and until the Report had been adopted by the Association's House of Delegates or Executive Committee.

## **1. Introduction**

The New York State Bar Association's Committee on Standards of Attorney Conduct ("COSAC") is seeking comments by January 15, 2021, from all NYSBA Committees and Sections, on whether New York should amend its existing version of Rule 8.4(g) of the New York Rules of Professional Conduct. In its current form, Rule 8.4(g) prohibits lawyers and law firms from engaging in unlawful discrimination in the practice of law.

COSAC is asking for advice on whether it should recommend amending the rule to incorporate some or all of ABA Model Rule 8.4(g), which also deals with discrimination. COSAC has not proposed a revised rule at this point. It has, however, identified the following issues that an amended rule might address: (1) whether the New York rule should continue to be limited to unlawful discrimination, or be extended to lawful discrimination; (2) whether the New York rule should continue to require that complaints first be brought to tribunals, other than a Departmental Disciplinary Committee, when there is a tribunal with jurisdiction to hear the complaint; (3) whether it should apply to harassment as well as discrimination; and (4) whether the rule should extend to conduct outside the employment context, such as to discrimination or harassment directed at opposing parties, lawyers and others. A copy of COSAC's memorandum requesting comments is annexed as Exhibit 1.

## **2. Summary of Recommendations**

For the reasons we detail below, we recommend that New York amend Rule 8.4(g) as follows:

(a) New York should extend the disciplinary rule to encompass discriminatory and harassing conduct that is lawful, in accordance with the ABA's rule. That would include

conduct outside the employment context, such as discrimination or harassment directed at adversaries, witnesses, court employees and court reporters.

(b) New York should add harassment to the list of prohibited conduct.

(c) New York should eliminate the requirement that a complaint first be filed with a tribunal if there is a tribunal with jurisdiction over the complaint, before making a disciplinary complaint.

(d) New York should add religion in place of creed, and add ethnicity, as protected classifications. New York should not follow the ABA in adding socioeconomic status to the list of protected classifications.

(e) New York should adopt language from ABA's rule which prohibits discrimination "in conduct related to the practice of law."

(f) New York should continue to include language in its rule that makes the rule applicable to both lawyers and law firms.

(g) New York should adopt ABA comments 3, 4 and 5 to Model Rule 8.4(g), except for the provision in comment 5 that says "A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of paragraph (g)." New York should add to comment 5, "A lawyer may decline to represent a client, or withdraw from representing a client, in accordance with Rule 1.16, whose views or activities the lawyer does not endorse."

(h) New York should expressly state in its rule that "Lawyers may engage in conduct undertaken to promote diversity and inclusion without violating this rule, by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations." The ABA has this language in comment 4, but

we believe it should be in the rule itself because of the importance of promoting diversity in the practice of law.

(i) New York should adopt the language from the ABA rule stating, “This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16.”

### **3. The New York and ABA Rules Compared**

#### **a. The New York Rule**

New York’s Rule 8.4(g) provides, “A lawyer or law firm shall not:

(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, sexual orientation, gender identity, or gender expression. 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; . . . .

The NYSBA’s comments on Rule 8.4(g) state:

[5A] Unlawful discrimination in the practice of law on the basis of age, race, creed, color, national origin, sex, disability, marital status, or sexual orientation is governed by paragraph (g).

#### **b. The ABA Model Rule**

ABA Model Rule 8.4(g) provides, “It is professional misconduct for a lawyer to:

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not

limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

The ABA's comments on Rule 8.4(g) state:

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

[4] Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law. Lawyers may engage in conduct undertaken to promote diversity and inclusion without violating this Rule by, for example, implementing initiatives aimed at recruiting hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations.

[5] A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of paragraph (g). A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice to members of underserved populations in accordance with these Rules and other law. A lawyer may charge and collect reasonable fees and expenses for a representation. Rule 1.5(a). Lawyers also should be mindful of their professional obligations under Rule 6.1 to provide legal services to those who are unable to pay, and their obligation under Rule 6.2 not to avoid appointments from a tribunal except for good cause. See Rule 6.2(a), (b) and (c). A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities. See Rule 1.2(b).

#### **4. Major Differences between the ABA and New York Rules**

(a) Unlawful conduct. The New York rule only prohibits unlawful discrimination. The ABA rule does not limit the prohibited conduct to unlawful discrimination. Instead, it prohibits conduct that the lawyer “knows or reasonably should know is harassment or discrimination . . . .” comment 3 to the ABA rule says, “The substantive law of antidiscrimination and anti-harassment statutes and case law may guide application of paragraph (g).” This appears to give the disciplinary authority discretion to find that there is no violation of the rule when the conduct is lawful, but does not mandate that outcome.

(b) Harassment. The New York rule does not explicitly address harassment. The ABA rule prohibits harassment.

(c) Tribunal filing requirement. The New York rule requires that a complaint be first brought in a tribunal if there is a tribunal that has jurisdiction to hear the complaint if timely brought. The ABA does not require that a complaint go to a tribunal first.

(d) Findings of tribunals. The New York provides, “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.”

The ABA rule does not make a finding by a tribunal prima facie evidence of misconduct. Indeed, in the case of a finding of discriminatory use of peremptory challenges, it provides in comment 5, “A trial judge’s finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of paragraph (g).”

(e) Protected classifications. The New York rule protects some classes that the ABA rule does not protect and vice versa. Classifications that New York protects but the ABA does not are: creed, color, and gender expression. Classifications that the ABA protects but New York does not are: religion, ethnicity or socioeconomic status.

(f) Practice of law. The New York rule prohibits discrimination “in the practice of law . . . .” The ABA rule prohibits discrimination “in conduct related to the practice of law.”

(g) Lawyer and law firm. The New York rule prohibits discrimination by both lawyers and law firms. The ABA rule prohibits discrimination by lawyers. It makes no mention of law firms.

(h) Declining or withdrawing from representation. The ABA rule states, “This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16.” The New York rule does not have such a provision.

## **5. Rules in other Jurisdictions**

As of this writing, it appears that no state has adopted the ABA rule in its exact form. Vermont, Maine and New Mexico are the closest. Most states have adopted some variation on it, either before or after the ABA adopted the rule. Some states have rejected it or have no rule prohibiting discrimination. A chart summarizing the rules in all fifty states, compiled by the ABA as of November 9, 2020, is attached as Exhibit 2

## **6. The New York City Bar Association’s Proposal**

The New York City Bar has issued a report recommending revisions to the New York Rule to bring it more into conformity with the ABA’s rule. That report is attached as Exhibit 3. It does not appear that any other bar associations in New York have addressed this issue as of

this writing. The New York City Bar Association has proposed: (1) eliminating the tribunal filing requirement, because it “creates an unnecessary barrier for those wishing to pursue claims and likely deters reporting of misconduct,” and (2) eliminating the requirement that the conduct be unlawful. It suggests adopting the ABA rule with only very few modifications, including the comments. The New York City Bar’s report is attached as Exhibit 3 and the proposed new rule with comments and showing changes to the ABA Rule is at 5-6 of its report.

## **7. The Recommendations of the Commercial and Federal Litigation Section**

The Commercial and Federal Litigation Section recommends the following revisions to Rule 8.4(g) of the New York Rules of Professional Conduct.

### **a. Unlawful conduct.**

The Section recommends eliminating the unlawful conduct requirement and adopting the ABA’s language prohibiting conduct that the a lawyer “knows or reasonably should know is harassment or discrimination . . . .” There should be language addressing what the standard is for holding a law firm liable for discrimination by lawyers who work for the firm. Therefore, the Section recommends that the determination of when a law firm knew or should have known it was engaging in discriminatory conduct should be based on existing laws governing imputing scienter to organizations under the doctrine of respondeat superior and vicarious liability of organizations under anti-discrimination law.

We also recommend that New York adopt ABA comment 3, including the statement that, “The substantive law of antidiscrimination and anti-harassment statutes and case law may guide application of paragraph (g).” This appears to give the disciplinary authority discretion to find that there is no violation of the rule when the conduct is lawful, but does not mandate that outcome.



If the unlawful conduct requirement is not removed, certain discriminatory and harassing conduct would not lead to discipline. For example, a lawyer's harassment of or discrimination against a non-employee, such as a witness, an adversary, a court reporter or a court employee, might not violate the law. However, we believe that such conduct should be subject to discipline in an appropriate case. *See In re Teague*, 131 A.D.3d 268 (1<sup>st</sup> Dep't 2015) (suspending an attorney for three months under 8.4(h) [conduct adversely reflecting on lawyer's fitness as a lawyer] for making derogatory racial, ethnic, homophobic and sexist remarks to other attorneys).

We recognize that some conduct that might be described as discriminatory but is unlawful should not be the subject of discipline. For example, efforts to create diversity among employees could be perceived by some as a form of "reverse" discrimination, and there have been lawsuits holding such conduct unlawful in college admissions, at least where they involve quotas. *See, e.g. Regents of the University of California v. Bakke*, 438 U.S. 265 (1978). More recently, similar issues were raised in the case of *Students for Fair Admissions v. Harvard*. The district court in that case found there was no violation of the law although Harvard took race into account in its admissions criteria to promote diversity. That decision is on appeal to the United States Third Circuit Court of Appeals and some commentators expect it to reach the Supreme Court.

Our section has a deep commitment to promoting diversity within law firms and promoting opportunities for lawyers of diverse racial backgrounds. Because of that commitment, we support the adoption of ABA comment 4 which states, "Lawyers may engage in conduct undertaken to promote diversity and inclusion without violating this Rule by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees

or sponsoring diverse law student organizations.” In fact, we recommend incorporating that language from the comment into the rule itself.

There are undoubtedly other examples of lawful discriminatory conduct where imposing discipline may be unwarranted or raise difficult issues. For example, many law firms have mandatory retirement ages for partners. This is discrimination on the basis of age, even though it may not be unlawful when applied to true partners. Such discrimination, however, might be unlawful if the nominal partner is in fact an employee. *See Clackamas Gastroenterology Associates P.C. v. Wells*, 538 U.S. 440 (2003); *Hishon v. King & Spalding*, 467 U.S. 69 (1984); *Weir v. Holland & Knight LLP*, 34 Misc.3d 1207(A), 943 N.Y.S.2d 795 (N.Y. County Sup. Ct. 2011). On balance, we believe that the Disciplinary Committees and the Courts imposing discipline are capable of determining when discipline for lawful conduct is appropriate, even in these complex situations.

We recommend retaining the language in New York’s rule that “A certified copy of a determination by such a tribunal [i.e. a tribunal with jurisdiction], 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 . . . .” This is merely an application of the well-established concepts of issue or claim preclusion. We think this same rule should apply to the discriminatory use of peremptory challenges. *See In re Capoccia*, 727 A.D.2d 838 (3d Dep’t 2000) (applying collateral estoppel in a disciplinary proceeding and citing other cases that do the same). We see no reason why a more relaxed rule of issue or claim preclusion should apply in the criminal context, when the scrutiny of discrimination should be particularly high because personal liberties are at stake. Accordingly, we recommend that New

York not adopt the portion of ABA comment 5 which states, “A judge’s finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of paragraph (g).” Instead, we believe that peremptory challenges should be governed by the existing language in New York’s rule giving prima facie evidentiary value to prior, certified, determinations as to which appeals have been exhausted.

**b. Harassment**

We recommend that the New York rule adopt the ABA’s language prohibiting harassment on the basis of the protected classifications identified below. This makes express what is implicit from the case law holding that harassment is a form of discrimination. *See Meritor State Bank v. Vinson*, 477 U.S. 57 (1986). We recommend that New York adopt ABA comment 3 in full, because it helps to define discrimination and harassment, and provides a rationale for the rule.

**c. Tribunal Finding**

We recommend that the New York rule eliminate the requirement that the complaint first be filed with a tribunal if there is a tribunal that has jurisdiction. We believe this creates an unnecessary impediment to bringing valid claims of misconduct that an individual may not have the financial ability to pursue in a tribunal.

**d. Protected classifications**

We recommend that New York it should add religion in place of creed, and add ethnicity, as protected classifications. Religion and ethnicity are in the ABA rule but not the New York rule. Creed can encompass religious beliefs, but there is more to religion than creed. At the same time, creed encompasses non-religious, fundamental beliefs. Not all beliefs, even if

fundamental, deserve protection. We believe all other protected classifications in the New York rule should remain in the rule.

We do not agree with the ABA's decision to add socio-economic status as a protected classification. We believe that would create serious problems for firms that focus their practices on corporations and high net worth individuals, or white-collar crime. The ABA tried to address this with comment 5, quoted above, which allows firms to limit their practice and charge a reasonable rate, but comments do not have the authority of the rule itself. We nonetheless believe that New York should adopt comment 5, because it expressly states that lawyers can limit their practice and charge a reasonable fee, while reminding lawyers of their obligations to provide pro bono service and accept court appointments unless there is good cause to reject them.

**e. Practice of law**

We recommend adopting the language from ABA's rule which prohibits discrimination "in conduct related to the practice of law." This is broader than the New York rule which only applies to "the practice of law." The ABA's rule would encompass discrimination and harassment at firm outings, bar association meetings, CLE programs and other events that might not strictly be considered the practice of law.

**f. Lawyers and law firms**

We recommend that the New York rule retain the language expressly stating that it prohibits discrimination by both lawyers and law firms. It should be crystal clear that law firms can bear responsibility for discrimination and harassment in appropriate circumstances.

**g. Declining or withdrawing from representation**

New York should adopt the language from the ABA rule stating, “This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16.” It should also add to ABA comment 5, “A lawyer may decline to represent a client, or withdraw from representing a client, in accordance with Rule 1.16, whose views or activities the lawyer does not endorse.” For example, a lawyer may be asked to represent a person who declines to do business with married, same-sex couples because of a belief that marriage is a religious sacrament reserved for the bond between man and woman. The lawyer who does not endorse the client’s religious views may decline to represent the client even though that might be viewed as religious discrimination. Conversely, a lawyer may be asked to represent a married same sex couple. If the lawyer does not endorse same sex couples on religious grounds, the lawyer may decline the representation, even though that may be viewed as discrimination.

## **EXHIBIT 1**

**COMMITTEE ON STANDARDS OF ATTORNEY CONDUCT**

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**MEMORANDUM**

**To: NYSBA Committee and Section Chairs**

**From: COSAC 8.4(g) Subcommittee**  
**Ellen Yaroshefsky, Chair**  
**Justin Chu**  
**Brenda Dorsett**  
**David Schraver**

**cc: Roy Simon, Chair of Committee on Standards of Attorney Conduct**

**Date: October 8, 2020**

The Committee on Standards of Attorney Conduct (COSAC) seeks your input on whether New York should amend its existing version of Rule 8.4(g) of the New York Rules of Professional Conduct, which provides, in a nutshell, that a lawyer or law firm shall not “unlawfully discriminate in the practice of law ....” We believe that it is essential to hear the views of a wide segment of the Bar in considering whether COSAC should recommend adopting a version of Rule 8.4(g) that is closer to ABA Model Rule 8.4(g).

In August 2016, the American Bar Association amended the black letter text of the ABA Model Rules of Professional Conduct by adopting Rule 8.4(g), which prohibits discrimination and harassment in conduct related to the practice of law. This capped years of debate, discussion and controversy at the ABA.

**ABA Model Rule 8.4(g) provides:**

It is professional misconduct for a lawyer to ...

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

COSAC has studied the development of ABA Model Rule 8.4(g) and is monitoring scholarly commentary and state-by-state deliberations over whether to adopt Model Rule 8.4(g). COSAC is now considering whether to recommend that New York amend its existing version of Rule 8.4(g) so that it conforms more closely to ABA Model Rule 8.4(g).

#### **Existing New York Rule 8.4(g) provides:**

A lawyer or law firm shall not:

(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, sexual orientation, gender identity, or gender expression. **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. [Emphasis added.]

#### **The Limitations in New York's Rule**

The focus of New York Rule 8.4(g) is discrimination in employment and in most instances requires a complainant to exhaust administrative remedies before filing a grievance. A victim of discrimination may be willing to file a disciplinary complaint, but not willing to go to an administrative agency, a process that can be costly in time and money and may in other ways be against the complainant's interest.

The New York rule requires that the offending conduct be *unlawful*, and therefore does not prohibit biased and harassing conduct that it is not a violation of law.

The New York rule does not address use of sexual and racial epithets or biased conduct and harassment directed at opposing parties, lawyers, and others in the practice of law, which is where the bad behavior is often encountered. While other general provisions of the New York rules govern some of these situations, their scope is unclear.

As a consequence of these limitations, COSAC is considering whether to recommend a version of Rule 8.4(g) that is similar to that adopted by the ABA and some other jurisdictions.

Please consider each of these and other issues and let us know your committee or section's views on whether COSAC should propose a rule closer to ABA Model Rule 8.4(g).



Background information about the ABA's adoption of Model Rule 8.4(g) is available in the attached ABA Formal Ethics Op. 493 (July 15, 2020), which discusses the scope and application of ABA Model Rule 8.4(g). That opinion addressed many of the concerns raised by lawyers around the country.

Thank you for your anticipated cooperation. Please contact us for further information or with any questions. We request that you share this letter with your committee or section and provide us with your feedback by January 15, 2021. We will follow up to see if you have any questions and to determine when your committee or section can consider the Rule.

[End of memo]

## **EXHIBIT 2**

	<p style="text-align: center;"><b>American Bar Association CPR Policy Implementation Committee</b></p> <p style="text-align: center;"><b>Variations of the ABA Model Rules of Professional Conduct</b></p> <p style="text-align: center;"><b>RULE 8.4: MISCONDUCT</b></p> <p><b>Rule 8.4: Misconduct</b></p> <p><b>It is professional misconduct for a lawyer to:</b></p> <ul style="list-style-type: none"><li><b>(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;</b></li><li><b>(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;</b></li><li><b>(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;</b></li><li><b>(d) engage in conduct that is prejudicial to the administration of justice;</b></li><li><b>(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or</b></li><li><b>(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or</b></li><li><b>(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.</b></li></ul> <p>Variations from ABA Model Rule are noted. Comments not included. *Current links to state Rules of Professional conduct can be found on the ABA website: <a href="http://www.abanet.org/cpr/links.html">http://www.abanet.org/cpr/links.html</a>*</p>
ALABAMA	<ul style="list-style-type: none"><li>(a) Same as MR</li><li>(b) Same as MR</li><li>(c) Same as MR</li></ul>

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

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

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

	<p>(f) Same as MR</p> <p>(g) “Seek or threaten to seek criminal charges or disciplinary charges solely to obtain an advantage in a civil matter.”</p> <p>Has not adopted MR (g). DC addresses offensive, abusive, or harassing conduct that seriously interferes with the administration of justice in its Comment.</p> <p>DC rules address discrimination and harassment in DC Rule 9.1.</p> <p>Last accessed on 10/25/19</p>
FLORIDA	<p>(a) Same as MR</p> <p>(b) Same as MR</p> <p>(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule;</p> <p>(d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic;</p> <p>(e) Same as MR</p> <p>(f) Same as MR</p> <p>(g) fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made:</p> <ol style="list-style-type: none"><li>(1) within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors;</li><li>(2) within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors;</li><li>(3) within the time stated in any subpoena issued under these Rules Regulating The Florida Bar (without additional time allowed for mailing);</li></ol>

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



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

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

As of November 9, 2020

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

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

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

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



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

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

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

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

	<p>(h) engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.</p> <p>Last accessed on 11/09/20</p>
<p>NORTH CAROLINA</p>	<p>(a) Same as MR                  (b) Same as MR                  (c) Same as MR                  (d) Same as MR                  (e) Same as MR                  (f) Same as MR</p> <p>(g) intentionally prejudice or damage his or her client during the course of the professional relationship, except as may be required by Rule 3.3.</p> <p>Has not adopted MR (g). Addresses similar conduct in Comment [5] to Rule 8.4</p> <p>Last accessed on 11/01/19</p>
<p>NORTH DAKOTA</p>	<p>(a) Same as MR                  (b) Same as MR</p> <p>(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer</p> <p>(d) knowingly assist a judge or judicial officer in conduct that is a violation of applicable canons of judicial conduct or other law</p> <p>(e) Same as MR</p> <p>(f) engage in conduct that is prejudicial to the administration of justice including to knowingly manifest through words or conduct in the course of representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation, against parties, witnesses, counsel, or others, except when those words or conduct are legitimate advocacy because race, sex, religion, national origin, disability, age, or sexual orientation is an issue in the proceeding; or</p> <p>(g) engage in other conduct that is enumerated in the North Dakota Century Code as a basis for revocation or suspension of a lawyer's certificate of admission.</p> <p>Last accessed on 11/01/19</p>
<p>OHIO</p>	<p>It is professional misconduct for a lawyer to do any of the following:</p>

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

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

	<p>socioeconomic status. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude advice or advocacy consistent with these Rules.</p> <p>Last accessed on 06/10/20</p>
<p>RHODE ISLAND</p>	<p>(a) Same as MR                  (b) Same as MR                  (c) Same as MR</p> <p>(d) engage in conduct that is prejudicial to the administration of justice, including but not limited to, harmful or discriminatory treatment of litigants, jurors, witnesses, lawyers, and others based on race, national origin, gender, religion, disability, age, sexual orientation or socioeconomic status;</p> <p>(e) Same as MR                  (f) Same as MR</p> <p>Has not adopted MR(g). Addresses similar issues in (d).</p> <p>Last accessed 11/01/19</p>
<p>SOUTH CAROLINA</p>	<p>(a) Same as MR                  (b) Same as MR</p> <p>(c) commit a criminal act involving moral turpitude</p> <p>(d) Same as MR (c)                  (e) Same and MR (d)                  (f) Same and MR (e)                  (g) Same as MR (f)</p> <p>Has not adopted MR (g). Addresses similar conduct in Comment [3].</p> <p>Last accessed 11/01/19</p>
<p>SOUTH DAKOTA</p>	<p>(a) Same as MR                  (b) Same as MR                  (c) Same as MR                  (d) Same as MR                  (e) Same as MR                  (f) Same as MR</p> <p>Has not adopted MR (g). Has not adopted Comments.</p> <p>Last accessed on 11/01/19</p>



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

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

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

	<p>reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments;</p> <p>(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding;</p> <p>(j) willfully disobey or violate a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear;</p> <p>(k) violate his or her oath as an attorney;</p> <p>(l) violate a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ELC 1.5;</p> <p>(m) violate the Code of Judicial Conduct; or</p> <p>(n) engage in conduct demonstrating unfitness to practice law.</p> <p>Last accessed on 11/01/19</p>
<p>WEST VIRGINIA</p>	<p>(a) Same as MR                  (b) Same as MR                  (c) Same as MR                  (d) Same as MR                  (e) Same as MR                  (f) Same as MR</p> <p>Has not adopted Model Rule 8.4 (g). West Virginia Comment [3] addresses bias and prejudice.</p> <p>Last accessed 11/01/19</p>
<p>WISCONSIN</p>	<p>(a) Same as MR                  (b) Same as MR                  (c) Same as MR</p> <p>(d) Same as MR(e)                  (e) Same as MR(f)</p>

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

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As of November 9, 2020

**the source of that information to Mary McDermott, (312) 988-5310,  
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## **EXHIBIT 3**

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**REPORT BY PROFESSIONAL RESPONSIBILITY COMMITTEE  
PROPOSING AMENDMENT TO  
NEW YORK RULE OF PROFESSIONAL CONDUCT 8.4(g)**

The New York City Bar Association proposes an amendment to New York Rule of Professional Conduct 8.4(g) to make it more closely conform to the recently enacted ABA Model Rule of Professional Conduct 8.4(g), which was promulgated to more effectively guard against harassment and discrimination in the legal profession.<sup>1</sup> The Professional Responsibility Committee recommends that the text of the NY Rule be modified to closely resemble the ABA Rule on the basis that doing so will strengthen ethics protections for protected classes and advance the goal of eliminating harassment and discrimination in the legal profession.

During the time this proposal has been under consideration, numerous states have moved forward with similar amendments, additional states are considering amendments, and the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 493 Model Rule 8.4(g): Purpose, Scope, and Application.<sup>2</sup> Review of Formal Opinion 493 is strongly encouraged in connection with consideration of this proposal.

**I. CURRENT LANGUAGE AND COMMENTS OF ABA AND NY RULES<sup>3</sup>**

**a. ABA Model Rule of Professional Conduct 8.4(g)**

Rule 8.4: Misconduct

It is professional misconduct for a lawyer to:

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the

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<sup>1</sup> In 2019, a subcommittee was appointed by the then-Chair of the Professional Responsibility Committee, Wallace L. Larson, to research and report on the differences between the NY and ABA Rule 8.4(g) and implications of conforming the NY Rule. The Committee heard from guest presenters both in favor and against recommending amendments to the NY Rule. After numerous sessions dedicated to robust discussion regarding the issue, the subcommittee delivered its final research report and recommendation—set forth in greater detail below—which was approved by the Professional Responsibility Committee and the Professional Ethics Committee in fall 2020.

<sup>2</sup> ABA Formal Opinion 493 Model Rule 8.4(g): Purpose, Scope, and Application  
[https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/aba-formal-opinion-493.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-493.pdf).

<sup>3</sup> The text of the respective rules also appears in the Appendix A.



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

*Pertinent comments to this section of the rule:*

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

[4] Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law. Lawyers may engage in conduct undertaken to promote diversity and inclusion without violating this Rule by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations.

[5] A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of paragraph (g). A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice to members of underserved populations in accordance with these Rules and other law. A lawyer may charge and collect reasonable fees and expenses for a representation. Rule 1.5(a). Lawyers also should be mindful of their professional obligations under Rule 6.1 to provide legal services to those who are unable to pay, and their obligation under Rule 6.2 not to avoid appointments from a tribunal except for good cause. See Rule 6.2(a), (b) and (c). A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities. See Rule 1.2(b).

#### **b. New York Rule of Professional Conduct 8.4(g)**

##### Misconduct

A lawyer or law firm shall not:

(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.<sup>4</sup> 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;

*Pertinent comments to this section of the rule:*

[5A] Unlawful discrimination in the practice of law on the basis of age, race, creed, color, national origin, sex, disability, marital status, or sexual orientation is governed by paragraph (g).

## **II. BACKGROUND ON THE ABA’S PASSAGE OF MODEL RULE 8.4(g)**

An August 2016 Report to the American Bar Association’s House of Delegates (the “2016 Report”), prepared by the Standing Committee on Ethics and Professional Responsibility (“SCEPR”), working together with a number of other committees, discusses the history leading up to the passage of Model Rule 8.4(g).<sup>5</sup> The 2016 Report begins by noting that twin goals of the ABA – representing the legal profession and promoting the public’s interest in equal justice – have been served by the Model Rules of Professional Conduct, which were first adopted in 1983.<sup>6</sup>

Since 1983, the ABA has embarked on other efforts to promote diversity and justice, including the 2008 adoption by the House of Delegates of four major “Goals.” Goal III, entitled “Eliminate Bias and Enhance Diversity” includes the following two objectives: (1) promote full and equal participation in the association, profession, and the justice system by all persons; and (2) eliminate bias in the legal profession and the justice system.<sup>7</sup>

When the Model Rules were first adopted in 1983, they did not include any mention or reference to bias, prejudice, harassment or discrimination. In 1994, SCEPR and the ABA’s Young Lawyers Division proposed adding a new paragraph (g) to Rule 8.4 to include bias and prejudice as professional misconduct.<sup>8</sup> Because of opposition, these proposals were withdrawn, but four years later, in 1998, SCEPR and the Criminal Justice Section sought to add an antidiscrimination provision into the Model Rules. These efforts led to the adoption of Comment [3] to Model Rule 8.4, which prevents bias or prejudice against identified groups “in the course of representing a client” when such actions “are prejudicial to the administration of justice.” Comment [3] to Rule 8.4.<sup>9</sup>

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<sup>4</sup> We refer to this initial filing requirement as the “Tribunal Filing Requirement”.

<sup>5</sup> ABA 2016 Report to the House of Delegates on Proposed Model Rule 8.4(g), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/final\\_revised\\_resolution\\_and\\_report\\_109.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/final_revised_resolution_and_report_109.pdf) (last visited October 16, 2020).

<sup>6</sup> *Id.*

<sup>7</sup> ABA 2008 Mission and Goals, [https://www.americanbar.org/about\\_the\\_aba/aba-mission-goals/](https://www.americanbar.org/about_the_aba/aba-mission-goals/) (last visited October 16, 2020).

<sup>8</sup> ABA 2016 Report to the House of Delegates on Proposed Model Rule 8.4(g) at 2.

<sup>9</sup> *Id.*

The 2016 Report identifies three reasons for replacing then Comment [3] to 8.4 with Rule 8.4(g): first, Comment [3] predated the passage of Goal III and does not fully implement that goal's objectives (including covering identifiable groups left unprotected by Comment [3] – *i.e.*, “ethnicity”, “gender identity”; and “marital status”); second, comments do not have the authoritative force of rules; and third, Comment [3] is too limited in scope in that it only applies to conduct in the course of representing a client and only when conduct is deemed “prejudicial to the administration of justice.”<sup>10</sup> As the ABA’s Goal III Commissions noted in their joint May 13, 2014 letter to SCEPR:

[Comment [3] to Rule 8.4] addresses bias and prejudice only within the scope of legal representation and only when it is prejudicial to the administration of justice. This limitation fails to cover bias or prejudice in other professional capacities (including attorneys as advisors, counselors, and lobbyists), and employer-employee relationships within law firms). The comment also does not address harassment at all, even though the judicial rules do so.<sup>11</sup>

The process of adopting 8.4(g) began with SCEPR’s receipt of the above-referenced May 2014 letter from the Goal III Commissions.<sup>12</sup> This letter asked SCEPR to develop a proposal to amend the Model Rules to better address issues of harassment and discrimination and to implement Goal III. In the fall of 2014, a SCEPR Working Group began holding meetings. After a year of work, the Working Group presented a memorandum to SCEPR, arguing that there was a need to amend Rule 8.4 to provide a comprehensive anti-discrimination provision. On July 8, 2015, SCEPR prepared, released for comment and posted a draft of a proposal to amend Rule 8.4. SCEPR then hosted a roundtable discussion on this draft at the ABA annual meeting on July 31, 2015. In December 2015, SCEPR published a revised draft of its proposal to add Rule 8.4(g) and then, after a public hearing in February 2016, it made further substantial changes to its proposal. In justifying the adoption of 8.4(g), the SCEPR proposal noted that 25 jurisdictions had adopted black letter anti-discrimination and/or anti-harassment provisions in their rules. The amendment to 8.4 passed the 598-member ABA House of Delegates by unanimous voice vote in 2016.

### **III. CURRENT DIFFERENCES BETWEEN ABA MODEL RULE 8.4(g) AND NY RULE 8.4(g)**

New York Rule 8.4(g) differs from the ABA Model Rule analog in four respects.

First, the New York Rule limits prohibited discrimination to “unlawful” discrimination and it does not include “harassment.” Under the ABA Rule, misconduct is “conduct that the lawyer knows or reasonably should know is harassment or discrimination...related to the practice of law.” The ABA Rule does not require discrimination or harassment to be unlawful. The New York Rule is more limited in application. In New York, misconduct occurs when a lawyer “unlawfully discriminate[s] in the practice of law.” The Rule also makes no mention of harassment.

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 3-4.

Second, the New York Rule contains the Tribunal Filing Requirement mandating that a complaint first be brought before a tribunal if available. The Model Rule has no such requirement.

Third, the Model Rule applies to four protected categories not mentioned in the New York Rule: ethnicity, gender identity, socioeconomic status and religion.

Fourth, the New York Rule is limited to discrimination “in the practice of law, including in hiring promoting or otherwise determining conditions of employment” whereas the Model Rule applies to “conduct related to the practice of law.”

#### **IV. OTHER STATE APPROACHES TO RULE 8.4(g)**

A number of states have either adopted ABA Model Rule 8.4(g) in full (e.g., Vermont, New Mexico, and Maine) or have a pre-existing analogous rule. Those states are charted in Appendix B.<sup>13</sup> A number of other states are actively considering adoption of ABA Rule 8.4(g). A handful of states have considered and rejected adoption of ABA Rule 8.4(g) (e.g., Arizona, Idaho, Illinois, Louisiana, Minnesota, Montana, South Carolina, Tennessee).

#### **V. EVALUATING WHETHER OR HOW TO CONFORM NEW YORK RULE 8.4(g) TO THE ABA VERSION**

After due deliberation, we propose that New York Rule 8.4(g) be amended so as to (1) eliminate the Tribunal Filing Requirement, which creates an unnecessary barrier for those wishing to pursue claims and likely deters reporting of misconduct, and (2) eliminate the requirement that the conduct be “unlawful”. With these changes, New York Rule 8.4(g) would largely resemble the ABA Rule. We also propose a few edits to the comments.

#### **VI. COMPARISON BETWEEN PROPOSED NEW NY RULE 8.4(g) AND ABA MODEL RULE 8.4(g)**

Deleted language of the ABA Rule is shown between brackets. Proposed new language is underlined and in bold face font.

##### **Rule 8.4 Misconduct [ABA Model Rule of Professional Conduct 8.4(g)]**

**[It is professional misconduct for a]**

**A lawyer [to] or law firm<sup>14</sup> shall not:**

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<sup>13</sup> The ABA has also issued a chart organizing the status of jurisdictional adoption of Rule 8.4(g) of the Model Rules. The chart is current as of October 18, 2019. While not entirely up to date, it is informative. *See* [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/chart\\_adapt\\_8\\_4\\_g.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/chart_adapt_8_4_g.pdf) (last visited September 30, 2020).

<sup>14</sup> “Law firm” is in the current NY Rule 8.4(g).

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

*[Pertinent comments to this section of the rule]*

**Comment**

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[3] Discrimination and harassment by lawyers in violation of paragraph (g) undermine confidence in the legal profession and the legal system. **[Such discrimination] Harassment** includes harmful, **derogatory, or demeaning** verbal or physical conduct that manifests bias or prejudice towards **others and includes conduct that creates an environment that a reasonable person would consider intimidating, hostile, or abusive. Typically, a single incident involving a petty slight, unless intended to cause harm, would not rise to the level of harassment under this paragraph.** Harassment **also** includes sexual harassment **[and derogatory or demeaning verbal or physical conduct. Sexual harassment includes], which involves** unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature. **[The substantive law of antidiscrimination and anti-harassment statutes and case law may guide application of paragraph (g).]**<sup>15</sup>

[4] Conduct related to the practice of law includes representing clients**[:];** interacting with witnesses, co-workers, court personnel, lawyers, and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law. **[Lawyers may engage in] Paragraph(g) does not prohibit** conduct undertaken to promote diversity and inclusion **[without violating this Rule]** by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations.

[5] A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of paragraph (g). A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice to members of underserved populations **[in accordance with these Rules and other law. A lawyer may charge and collect reasonable fees and expenses for a representation. Rule 1.5(a). Lawyers also should be mindful of their professional obligations under Rule 6.1 to provide legal services to those who are unable to pay, and their obligation under Rule 6.2 not to avoid appointments from**

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<sup>15</sup> Here, we have imported some definitional language from Title VII to provide further guidance on the meaning of harassment and to protect the rule from possible constitutional challenge.

a tribunal except for good cause. See Rule 6.2(a), (b) and (c)].<sup>16</sup> A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities. See Rule 1.2(b).

## **VII. PROPOSED NEW LANGUAGE OF NEW YORK RULE 8.4(g)**

### Rule 8.4 Misconduct

A lawyer or law firm shall not:

(g) engage in conduct related to the practice of law that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity or expression, marital status or socioeconomic status. This paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.<sup>17</sup>

### Comment

[3] Discrimination and harassment by lawyers in violation of paragraph(g) undermine confidence in the legal profession and the legal system. Harassment includes harmful, derogatory, or demeaning verbal or physical conduct that manifests bias or prejudice towards others and includes conduct that creates an environment that a reasonable person would consider intimidating, hostile, or abusive. Typically, a single incident involving a petty slight, unless intended to cause harm, would not rise to the level of harassment under this paragraph. Harassment also includes sexual harassment, which involves unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature.

[4] Conduct related to the practice of law includes representing clients, interacting with witnesses, co-workers, court personnel, lawyers, and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law. Paragraph (g) does not prohibit conduct undertaken to promote diversity and inclusion by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations.

[5] A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of paragraph (g). A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice to members of underserved populations. A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities. See Rule 1.2(b).

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<sup>16</sup> We do not believe that this additional language is necessary since the new rule does not suggest otherwise.

<sup>17</sup> As indicated above, the Tribunal Filing Requirement has been eliminated.

## **VIII. CONCLUSION**

Following discussion and debate, both the Professional Responsibility Committee and the Professional Ethics Committee voted in favor of adopting the proposed language above. In our research, we have not uncovered any reports of excessive disciplinary complaints, or purported abuse of ABA Rule 8.4(g) or similar versions of the rule in other states. We believe that broadening the language of the NY Rule 8.4(g) will strengthen ethics protections for protected classes and advance the goal of eliminating harassment and discrimination in the legal profession.

Professional Responsibility Committee  
Aegis Frumento, Chair

October 2020

## APPENDIX A

### Current ABA Rule 8.4(g)

It is professional misconduct for a lawyer to:

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

#### *Pertinent comments to this section of the rule*

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

[4] Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law. Lawyers may engage in conduct undertaken to promote diversity and inclusion without violating this Rule by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations.

[5] A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of paragraph (g). A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice to members of underserved populations in accordance with these Rules and other law. A lawyer may charge and collect reasonable fees and expenses for a representation. Rule 1.5(a). Lawyers also should be mindful of their professional obligations under Rule 6.1 to provide legal services to those who are unable to pay, and their obligation under Rule 6.2 not to avoid appointments from a tribunal except for good cause. See Rule 6.2(a), (b) and (c). A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities. See Rule 1.2(b).



### **Current NY Rule 8.4(g)**

A lawyer or law firm shall not:

(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;

*Pertinent comments to this section of the rule*

[5A] Unlawful discrimination in the practice of law on the basis of age, race, creed, color, national origin, sex, disability, marital status, or sexual orientation is governed by paragraph (g).

### **Proposed New NY Rule 8.4(g)**

A lawyer or law firm shall not:

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

Comment

[3] Discrimination and harassment by lawyers in violation of paragraph(g) undermine confidence in the legal profession and the legal system. Harassment includes harmful, derogatory, or demeaning verbal or physical conduct that manifests bias or prejudice towards others and includes conduct that creates an environment that a reasonable person would consider intimidating, hostile, or abusive. Typically, a single incident involving a petty slight, unless intended to cause harm, would not rise to the level of harassment under this paragraph. Harassment also includes sexual harassment, which involves unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature.

[4] Conduct related to the practice of law includes representing clients, interacting with witnesses, co-workers, court personnel, lawyers, and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law. Paragraph (g) does not prohibit conduct undertaken to promote diversity and inclusion by, for example, implementing initiatives aimed at

recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations.

[5] A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of paragraph (g). A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's practice or by limiting the lawyer's practice to members of underserved populations. A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities. See Rule 1.2(b).

## APPENDIX B

<b>State</b>	<b>Misconduct Rule - Relevant Excerpt(s)</b>
<b>ABA, Rule 8.4</b>	<p>It is professional misconduct for a lawyer to:</p> <p>(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.</p>
<b>CA, Rule 8.4.1</b>	<p>(a) In representing a client, or in terminating or refusing to accept the representation of any client, a lawyer shall not:</p> <p>(1) unlawfully harass or unlawfully discriminate against persons* on the basis of any protected characteristic; or</p> <p>(2) unlawfully retaliate against persons.*</p> <p>(b) In relation to a law firm’s operations, a lawyer shall not:</p> <p>(1) on the basis of any protected characteristic,</p> <p>(i) unlawfully discriminate or knowingly* permit unlawful discrimination;</p> <p>(ii) unlawfully harass or knowingly* permit the unlawful harassment of an employee, an applicant, an unpaid intern or volunteer, or a person* providing services pursuant to a contract; or</p> <p>(iii) unlawfully refuse to hire or employ a person*, or refuse to select a person* for a training program leading to employment, or bar or discharge a person* from employment or from a training program leading to employment, or discriminate against a person* in compensation or in terms, conditions, or privileges of employment;</p> <p>or</p> <p>(2) unlawfully retaliate against persons.*</p> <p>(c) For purposes of this rule:</p> <p>(1) “protected characteristic” means race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, military and veteran status, or other category of discrimination prohibited by applicable law, whether the category is actual or perceived;</p> <p>(2) “knowingly permit” means to fail to advocate corrective action where the lawyer knows* of a discriminatory policy or practice that results in the unlawful discrimination or harassment prohibited by paragraph (b);</p> <p>(3) “unlawfully” and “unlawful” shall be determined by reference to applicable state and federal statutes and decisions making unlawful discrimination or harassment in employment and in offering goods and services to the public; and</p> <p>(4) “retaliate” means to take adverse action against a person* because that person* has (i) opposed, or (ii) pursued, participated in, or assisted any action alleging, any conduct prohibited by paragraphs (a)(1) or (b)(1) of this rule.</p>

State	Misconduct Rule - Relevant Excerpt(s)
<b>CO, Rule 8.4</b>	<p>It is professional misconduct for a lawyer to:</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> <p>(h) engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law; or</p> <p>(i) engage in conduct the lawyer knows or reasonably should know constitutes sexual harassment where the conduct occurs in connection with the lawyer's professional activities.</p>
<b>FL, Rule 4-8.4</b>	<p>A lawyer shall not:</p> <p>(d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic;</p>
<b>IL, Rule 8.4</b>	<p>It is professional misconduct for a lawyer to:</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>
<b>IN, Rule 8.4</b>	<p>It is professional misconduct for a lawyer to:</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>
<b>IA, Rule 32:8.4</b>	<p>It is professional misconduct for a lawyer to:</p>

State	Misconduct Rule - Relevant Excerpt(s)
	(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.
<b>MD, Rule 19-308.4</b>	It is professional misconduct for an attorney to: (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 section;
<b>MA, Rule 8.4</b>	It is professional misconduct for a lawyer to: (h) engage in any other conduct that adversely reflects on his or her fitness to practice law.
<b>ME, Rule 8.4</b>	It is professional misconduct for a lawyer to: (g) engage in conduct or communication related to the practice of law that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity. (1) "Discrimination" on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity as used in this section means conduct or communication that a lawyer knows or reasonably should know manifests an intention: to treat a person as inferior based on one or more of the characteristics listed in this paragraph; to disregard relevant considerations of individual characteristics or merit because of one or more of the listed characteristics; or to cause or attempt to cause interference with the fair administration of justice based on one or more of the listed characteristics. (2) "Harassment" on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity as used in this section means derogatory or demeaning conduct or communication and includes, but is not limited to, unwelcome sexual advances, or other conduct or communication unwelcome due to its implicit or explicit sexual content. (3) "Related to the practice of law" as used in the section means occurring in the course of representing clients; interacting with witnesses, coworkers, court personnel, lawyers, and others while engaged in the practice of law; or operating or managing a law firm or law practice. (4) Declining representation, limiting one's practice to particular clients or types of clients, and advocacy of policy positions or changes in the law are not regulated by Rule 8.4(g).
<b>MN, Rule 8.4</b>	It is professional misconduct for a lawyer to: (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; (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.

State	Misconduct Rule - Relevant Excerpt(s)
	<p>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> <ul style="list-style-type: none"> <li>(1) the seriousness of the act;</li> <li>(2) whether the lawyer knew that the act was prohibited by statute or ordinance;</li> <li>(3) whether the act was part of a pattern of prohibited conduct; and</li> <li>(4) whether the act was committed in connection with the lawyer's professional activities;</li> </ul>
<b>MO, Rule 4-8.4</b>	<p>It is professional misconduct for a lawyer to:</p> <p>(g) manifest by words or conduct, in representing a client, bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status. This Rule 4-8.4(g) does not preclude legitimate advocacy when race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or other similar factors, are issues. This paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 4-1.16.</p>
<b>ND, Rule 8.4</b>	<p>It is professional misconduct for a lawyer to:</p> <p>(d) engage in conduct that is prejudicial to the administration of justice, including to knowingly manifest through words or conduct in the course of representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation, against parties, witnesses, counsel, or others, except when those words or conduct are legitimate advocacy because race, sex, religion, national origin, disability, age, or sexual orientation is an issue in the proceeding;</p>
<b>NE, § 3-508.4</b>	<p>It is professional misconduct for a lawyer to:</p> <p>(d) engage in conduct that is prejudicial to the administration of justice. Once a lawyer is employed in a professional capacity, the lawyer shall not, in the course of such employment, engage in adverse discriminatory treatment of litigants, witnesses, lawyers, judges, judicial officers or court personnel on the basis of the person's race, national origin, gender, religion, disability, age, sexual orientation or socio-economic status. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding.</p>
<b>NH, Rule 8.4</b>	<p>It is professional misconduct for a lawyer to:</p> <p>(g) take any action, while acting as a lawyer in any context, if the lawyer knows or it is obvious that the action has the primary purpose to embarrass, harass or burden another person, including conduct motivated by animus against the other person based upon the other person's race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation, marital status or gender identity. This paragraph shall not limit the ability of the lawyer to accept, decline, or withdraw from representation</p>

State	Misconduct Rule - Relevant Excerpt(s)
	<p>consistent with other Rules of Professional Conduct, nor does it preclude a lawyer from engaging in conduct or speech or from maintaining associations that are constitutionally protected, including advocacy on matters of public policy, the exercise of religion, or a lawyer’s right to advocate for a client.</p>
<b>NJ, Rule 8.4</b>	<p>It is professional misconduct for a lawyer to:</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>
<b>NM, Rule 16-804</b>	<p>It is professional misconduct for a lawyer to:</p> <p>(g) engage in conduct that the lawyer knows or reasonably should know 16 is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, 17 disability, age, sexual orientation, gender identity, or marital status in conduct related to 18 the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline, 19 or withdraw from a representation in accordance with Rule 16-116 NMRA. This paragraph 20 does not preclude legitimate advice or advocacy consistent with these rules.</p>
<b>OH, Rule 8.4</b>	<p>It is professional misconduct for a lawyer to do any of the following:</p> <p>(g) engage, in a professional capacity, in conduct involving discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability;</p> <p>(h) engage in any other conduct that adversely reflects on the lawyer’s fitness to practice law.</p>
<b>OR, Rule 8.4</b>	<p>(a) It is professional misconduct for a lawyer to:</p> <p>(7) in the course of representing a client, knowingly intimidate or harass a person because of that person’s race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability.</p> <p>(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>
<b>PA, Rule 8.4(g) (to go into effect Dec 2020)</b>	<p>It is professional misconduct for a lawyer to:</p> <p>(g) in the practice of law, by words or conduct, knowingly manifest bias or prejudice, or engage in harassment or discrimination, as those terms are</p>

State	Misconduct Rule - Relevant Excerpt(s)
	<p>defined in applicable federal, state or local statutes or ordinances, including but not limited to bias, prejudice, harassment or discrimination based upon race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude advice or advocacy consistent with these Rules.</p>
<b>RI, Rule 8.4</b>	<p>It is professional misconduct for a lawyer to:</p> <p>(d) engage in conduct that is prejudicial to the administration of justice, including but not limited to, harmful or discriminatory treatment of litigants, jurors, witnesses, lawyers, and others based on race, national origin, gender, religion, disability, age, sexual orientation or socioeconomic status;</p>
<b>WA, Rule 8.4</b>	<p>It is professional misconduct for a lawyer to:</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, honorably discharged veteran or military status, 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, honorably discharged veteran or military status 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, 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, honorably discharged veteran or military status, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments.</p>
<b>WI, SCR 20:8.4</b>	<p>It is professional misconduct for a lawyer to:</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>