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Rule 8.4: Misconduct

Maintaining The Integrity Of The Profession

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (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) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (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
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

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Comment on Rule 8.4

Maintaining The Integrity Of The Profession

Rule 8.4 Misconduct - Comment

[1] Lawyers are subject to discipline when they 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, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust

such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

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OF PROFESSIONAL CONDUCT

The
Pennsylvania



Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

- (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) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (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
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Comment:

(1) Lawyers are subject to discipline when they 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, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client of action the client is lawfully entitled to take.

(2) Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

(3) A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a

good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

(4) Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

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	<p style="text-align: center;">American Bar Association CPR Policy Implementation Committee</p> <p style="text-align: center;">Variations of the ABA Model Rules of Professional Conduct</p> <p style="text-align: center;">Rule 8.4 Comment [3]</p> <p>Variations from ABA Model Rule are noted. Based on reports of state committees reviewing recent changes to the Model Rules. For information on individual state committee reports, see http://www.abanet.org/cpr/jclr/home.html.</p> <p>*Current links to state Rules of Professional conduct can be found on the ABA website: http://www.abanet.org/cpr/links.html*</p>
AL Effective 2/19/09	Does not have
AK Effective 4/15/09	<p>First few sentences of AK Comment elaborate on the first sentence of MR. However does not specifically reference discrimination based on disability, age, sexual orientation or socioeconomic status. Has instead: "and other similar factors:"</p> <p><i>[3] Subdivision (d) of this rule proscribes conduct that is prejudicial to the administration of justice. Such proscription includes the prohibition against discriminatory conduct committed by a lawyer while performing duties in connection with the practice of law. The proscription extends to any characteristic or status that is not relevant to the proof of any legal or factual issue in dispute. Such discriminatory conduct, when directed towards litigants, jurors, witnesses, other lawyers, or the court, including race, sex, religion, national origin, or any other similar factors, subverts the administration of justice and undermines the public's confidence in our system of justice, as well as notions of equality.</i></p> <p>Has second and third sentences of MR. Adds to end:</p> <p><i>This subdivision does not prohibit a lawyer from representing a client accused of committing discriminatory conduct.</i></p>
AZ Effective 12/1/03	<p>Second comment same as MR but replaces second sentence with "This does not preclude legitimate advocacy when race, sex, religion, national original, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding."</p>
AR Effective 5/1/05	<p>[3] Subdivision (d) of this rule proscribes conduct that is prejudicial to the administration of justice. Such proscription includes the prohibition against discriminatory conduct committed by a lawyer while performing duties in connection with the practice of law. The proscription extends to any characteristic or status that is not relevant to the proof of any legal or</p>

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Wetter than most

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	<p>factual issue in dispute. Such discriminatory conduct, when directed towards litigants, jurors, witnesses, other lawyers, or the court, including race, sex, religion, national origin, or any other similar factors, subverts the administration of justice and undermines the public's confidence in our system of justice, as well as notions of equality. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule. This subdivision does not prohibit a lawyer from representing a client accused of committing discriminatory conduct.</p>
<p>CA Current Rule</p>	<p>[California's Rules of Professional Conduct are structured differently from the ABA Model Rules. Please see California Rules : http://calbar.ca.gov/calbar/pdfs/rules/Rules_Professional-Conduct.pdf]</p> <p>Does not have; does not have MRs Proposed 8.4 adds (e) knowingly manifest, by words or conduct, bias or prejudice on the basis of race, sex, religion, national origin, disability, age or sexual orientation, if prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not constitute a violation of this Rule. Proposed [6] same as MR [3] but deletes "socioeconomic status"</p>
<p>CO Effective 1/1/08</p>	<p>Replaces "sex" with "gender;" Replaces language after "violates" with: "paragraph (g) and also may violate paragraph (d)" and deletes clause, "when such actions...of justice;" In second sentence replaces "paragraph (d)" with "paragraphs (d) or (g)."</p>
<p>CT Effective 1/1/07</p>	<p>Same as MR but does not have last sentence</p>
<p>DE Effective 7/1/03</p>	<p>Same as MR</p>
<p>District of Columbia Effective 2/1/07</p>	<p><i>[3] A lawyer violates paragraph (d) by offensive, abusive, or harassing conduct that seriously interferes with the administration of justice. Such conduct may include words or actions that manifest bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.</i> Adds Rule 9.1 – Nondiscrimination <i>A lawyer shall not discriminate against any individual in conditions of employment because of the individual's race, color, religion, national origin, sex, age, marital status, sexual orientation, family responsibility, or physical handicap.</i> COMMENT <i>[1] This provision is modeled after the D.C. Human Rights Act, D.C. Code § 2-1402.11 (2001), though in some respects is more limited in scope. There are also provisions of federal law that contain certain prohibitions on discrimination in employment. The Rule is not intended to create ethical</i></p>

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	<p><i>obligations that exceed those imposed on a lawyer by applicable law.</i></p> <p><i>[2] The investigation and adjudication of discrimination claims may involve particular expertise of the kind found within the D.C. Office of Human Rights and the federal Equal Employment Opportunity Commission. Such experience may involve, among other things, methods of analysis of statistical data regarding discrimination claims. These agencies also have, in appropriate circumstances, the power to award remedies to the victims of discrimination,</i></p> <p><i>such as reinstatement or back pay, which extend beyond the remedies that are available through the disciplinary process. Remedies available through the disciplinary process include such sanctions as disbarment, suspension, censure, and admonition, but do not extend to monetary awards or other remedies that could alter the employment status to take into account the impact of prior acts of discrimination.</i></p> <p><i>[3] If proceedings are pending before other organizations, such as the D.C. Office of Human Rights or the Equal Employment Opportunity Commission, the processing of complaints by Bar Counsel may be deferred or abated where there is substantial similarity between the complaint filed with Bar Counsel and material allegations involved in such other proceedings. See §19(d) of Rule XI of the Rules Governing the District of Columbia Bar.</i></p>
<p>FL Effective 5/22/06</p>	<p><i>Adds (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;</i></p> <p><i>Adds fifth Comment: Subdivision (d) of this rule proscribes conduct that is prejudicial to the administration of justice. Such proscription includes the prohibition against discriminatory conduct committed by a lawyer while performing duties in connection with the practice of law. The proscription extends to any characteristic or status that is not relevant to the proof of any legal or factual issue in dispute. Such conduct, when directed towards litigants, jurors, witnesses, court personnel, or other lawyers, whether based on race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, physical characteristic, or any other basis, subverts the administration of justice and undermines the public's confidence in our system of justice, as well as notions of equality. This subdivision does not prohibit a lawyer from representing a client as may be permitted by applicable law, such as, by way of example, representing a client accused of committing discriminatory conduct.</i></p>
<p>GA* Effective 1/1/01</p>	<p><i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i></p>

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	Does not have
HI* Effective 1/1/94	<i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i>
	Does not have
ID Effective 7/1/04	Same as MR <i>OK</i>
IL Effective 1/1/2010	Same as MR <i>OK</i>
IN Effective 1/1/05	Adds (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. Does not have MR [3]
IA Effective 7/1/05	Adds (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. [3] same as MR but adds to end "For another reference to discrimination as professional misconduct, see paragraph (g)."
KS Effective 7/1/07	Does not have Revised rules effective 7/1/07
KY Effective 7/15/09	Does not have
LA Effective 3/1/04	Does not have; did not adopt MR Comments Revised rules effective 3/1/04
ME Effective 8/1/09	Moves third sentence of MR to beginning of Comment and deletes language after "paragraph (d);" Second sentence of ME Comment is first sentence of MR, but adds clause to beginning: "However, by way of example." <i>OK</i>
MD Effective 7/1/05	Adds (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; [3] Sexual misconduct or sexual harassment involving colleagues, clients, or co-workers may violate paragraph (d) or (e). This could occur, for example, where coercion or undue influence is used to obtain sexual favor in exploitation of these relationships. See Attorney Grievance Commission

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	<p>v. Goldsborough, 330 Md. 342 (1993). See also Rule 1.7.</p> <p>[4] Paragraph (e) reflects the premise that a commitment to equal justice under the law lies at the very heart of the legal system. As a result, even when not otherwise unlawful, a lawyer who, while acting in a professional capacity, engages in the conduct described in paragraph (e) and by so doing prejudices the administration of justice commits a particularly egregious type of discrimination. Such conduct manifests a lack of character required of members of the legal profession. A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule. A judge, however, must require lawyers to refrain from the conduct described in paragraph (e). See Md. Rule 16-813, Maryland Code of Judicial Conduct, Canon 3 B (11).</p>
MA Effective 9/1/08	Does not have
MI* Rules effective 10/1/88 New Proposed 11/24/09	<p><i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i></p> <p>Does not have</p> <p>Proposed rule same as MR</p>
MN Effective 10/1/05	<p>Adds</p> <p><i>(g) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status in connection with a lawyer's professional activities;</i></p> <p><i>(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:</i></p> <p><i>(1) the seriousness of the act,</i></p> <p><i>(2) whether the lawyer knew that the act was prohibited by statute or ordinance,</i></p> <p><i>(3) whether the act was part of a pattern of prohibited conduct, and</i></p> <p><i>(4) whether the act was committed in connection with the lawyer's professional activities; or</i></p> <p><i>[4] Paragraph (g) specifies a particularly egregious type of discriminatory act-harassment on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. What constitutes harassment in this context may be determined with reference to antidiscrimination legislation and case law thereunder. This harassment ordinarily involves the active burdening of another, rather than mere passive failure to act properly.</i></p>

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	<p><i>[5] Harassment on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status may violate either paragraph (g) or paragraph (h). The harassment violates paragraph (g) if the lawyer committed it in connection with the lawyer's professional activities. Harassment, even if not committed in connection with the lawyer's professional activities, violates paragraph (h) if the harassment (1) is prohibited by antidiscrimination legislation and (2) reflects adversely on the lawyer's fitness as a lawyer, determined as specified in paragraph (h).</i></p> <p><i>[6] Paragraph (h) reflects the premise that the concept of human equality lies at the very heart of our legal system. A lawyer whose behavior demonstrates hostility toward or indifference to the policy of equal justice under the law may thereby manifest a lack of character required of members of the legal profession. Therefore, a lawyer's discriminatory act prohibited by statute or ordinance may reflect adversely on his or her fitness as a lawyer even if the unlawful discriminatory act was not committed in connection with the lawyer's professional activities.</i></p> <p><i>[7] Whether an unlawful discriminatory act reflects adversely on fitness as a lawyer is determined after consideration of all relevant circumstances, including the four factors listed in paragraph (h). It is not required that the listed factors be considered equally, nor is the list intended to be exclusive. For example, it would also be relevant that the lawyer reasonably believed that his or her conduct was protected under the state or federal constitution or that the lawyer was acting in a capacity for which the law provides an exemption from civil liability. See, e.g., Minn. Stat. Section 317A.257 (unpaid director or officer of nonprofit organization acting in good faith and not willfully or recklessly).</i></p>
MS Effective 11/3/05	<p>Does not have</p> <p>Revised rules effective 11/3/05</p>
MO Effective 7/1/07	<p>Adds</p> <p><i>(g) manifest by words or conduct, in representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation. This Rule 4-8.4(g) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, or other similar factors, are issues.</i></p> <p><i>[3] Rule 4-8.4(g) identifies the special importance of a lawyer's words or conduct, in representing a client, that manifest bias or prejudice against others based upon race, sex, religion, national origin, disability, age, or sexual orientation. Rule 4-8.4(g) excludes those instances in which a lawyer engages in legitimate advocacy with respect to these factors. A lawyer acts as an officer of the court and is licensed to practice by the state. The manifestation of bias or prejudice by a lawyer, in representing a client, fosters discrimination in the provision of services in the state judicial system, creates a substantial likelihood of material prejudice by impairing the integrity and fairness of the judicial system, and undermines</i></p>

	<p><i>public confidence in the fair and impartial administration of justice. Whether a lawyer's conduct constitutes professional misconduct in violation of Rule 4-8.4(g) can be determined only by a review of all of the circumstances; e.g., the gravity of the acts and whether the acts are part of a pattern of prohibited conduct. For the purpose of Rule 4-8.4(g), "manifest ... bias or prejudice" is defined as words or conduct that the lawyer knew or should have known discriminate against, threaten, harass, intimidate, or denigrate any individual or group. Prohibited conduct includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (a) submission to that conduct is made, either explicitly or implicitly, a term or condition of an individual's employment; (b) submission to or rejection of such conduct by an individual is used as a factor in decisions affecting such individual; or (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile or offensive environment.</i></p>
MT Effective 4/1/04	<p>Does not have; did not adopt MR Comments Revised rules effective 4/1/04</p>
NE Effective 9/1/05	<p>(d): adds to end "Once a lawyer is employed in a professional capacity, the lawyer shall not, in the course of such employment, engage in adverse discriminatory treatment of litigants, witnesses, lawyers, judges, judicial officers or court personnel on the basis of the person's race, national origin, gender, religion, disability, age, sexual orientation or socioeconomic status. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding." [3] same as MR</p>
NV Effective 5/1/06	<p>Does not have; did not adopt MR Comments Revised rules effective 5/1/06</p>
NH Effective 1/1/08	<p>Same as MR</p>
NJ Effective 1/1/04	<p><i>Adds (g) engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.</i> <i>Official Comment by Supreme Court (May 3, 1994)</i> <i>This rule amendment (the addition of paragraph g) is intended to make discriminatory conduct unethical when engaged in by lawyers in their professional capacity. It would, for example, cover activities in the court house, such as a lawyer's treatment of court support staff, as well as conduct more directly related to litigation; activities related to practice</i></p>

outside of the court house, whether or not related to litigation, such as treatment of other attorneys and their staff; bar association and similar activities; and activities in the lawyer's office and firm. Except to the extent that they are closely related to the foregoing, purely private activities are not intended to be covered by this rule amendment, although they may possibly constitute a violation of some other ethical rule. Nor is employment discrimination in hiring, firing, promotion, or partnership status intended to be covered unless it has resulted in either an agency or judicial determination of discriminatory conduct. The Supreme Court believes that existing agencies and courts are better able to deal with such matters, that the disciplinary resources required to investigate and prosecute discrimination in the employment area would be disproportionate to the benefits to the system given remedies available elsewhere, and that limiting ethics proceedings in this area to cases where there has been an adjudication represents a practical resolution of conflicting needs.

"Discrimination" is intended to be construed broadly. It includes sexual harassment, derogatory or demeaning language, and, generally, any conduct towards the named groups that is both harmful and discriminatory.

Case law has already suggested both the area covered by this amendment and the possible direction of future cases. In *re Vincenti*, 114 N.J. 275 (554 A.2d 470) (1989). The Court believes the administration of justice would be better served, however, by the adoption of this general rule than by a case by case development of the scope of the professional obligation. While the origin of this rule was a recommendation of the Supreme Court's Task Force on Women in the Courts, the Court concluded that the protection, limited to women and minorities in that recommendation, should be expanded. The groups covered in the initial proposed amendment to the rule are the same as those named in Canon 3A(4) of the Code of Judicial Conduct.

Following the initial publication of this proposed subsection (g) and receipt of various comments and suggestions, the Court revised the proposed amendment by making explicit its intent to limit the rule to conduct by attorneys in a professional capacity, to exclude employment discrimination unless adjudicated, to restrict the scope to conduct intended or likely to cause harm, and to include discrimination because of sexual orientation or socioeconomic status, these categories having been proposed by the ABA's Standing Committee on Ethics and Professional Responsibility as additions to the groups now covered in Canon 3A(4) of the New Jersey Code of Judicial Conduct. That Committee has also proposed that judges require attorneys, in proceedings before a judge, refrain from manifesting by words or conduct any bias or prejudice based on any of these categories. See proposed Canon 3A(6). This revision to the RPC further reflects the Court's intent to cover all discrimination where the attorney intends to cause harm such as inflicting emotional distress or


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	<i>obtaining a tactical advantage and not to cover instances when no harm is intended unless its occurrence is likely regardless of intent, e.g., where discriminatory comments or behavior is repetitive. While obviously the language of the rule cannot explicitly cover every instance of possible discriminatory conduct, the Court believes that, along with existing case law, it sufficiently narrows the breadth of the rule to avoid any suggestion that it is overly broad. See, e.g., In re Vincenti, 114 N.J. 275 (554 A.2d 470) (1989).</i>
NM Effective 11/2/09	Does not have
NY Effective 4/1/09	<p>8.4(g) same as DR 1-102A6:</p> <p><i>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.</i></p> <p><i>[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 (b) of this Rule.</i></p>
NC Effective 3/1/03	Does not have
ND Effective 3/1/03	<p>Adds (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>[3] same as MR but replaces references to “paragraph (d)” with “paragraph (f)”</p>
OH Effective 2/1/07	<p>Adds (g) engage, in a professional capacity, in conduct involving discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability;</p> <p>[4] A lawyer may refuse to comply with an obligation imposed by law</p>

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	upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.
OK Effective 1/1/08	Does not have
OR Effective 12/1/06	Does not have; did not adopt MR Comments
PA Effective 7/1/06	Does not have
RI Effective 4/15/07	(d): adds to end "including but not limited to, harmful or discriminatory treatment of litigants, jurors, witnesses, lawyers, and others based on race, national origin, gender, religion, disability, age, sexual orientation or socioeconomic status;" [3] same as MR
SC Effective 10/1/05	Same as MR
SD Effective 1/1/04	Same as MR
TN Effective 1/1/2011	Same as MR but deletes last sentence
TX* Effective 3/1/05	<p><i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i></p> <p><i>Rule 5.08 Prohibited Discriminatory Activities</i></p> <p><i>(a) A lawyer shall not willfully, in connection with an adjudicatory proceeding, except as provided in paragraph (b), manifest, by words or conduct, bias or prejudice based on race, color, national origin, religion, disability, age, sex, or sexual orientation towards any person involved in that proceeding in any capacity.</i></p> <p><i>(b) Paragraph (a) does not apply to a lawyer's decision whether to represent a particular person in connection with an adjudicatory proceeding, nor to the process of jury selection, nor to communications protected as confidential information under these Rules. See Rule 1.05(a),(b). It also does not preclude advocacy in connection with an adjudicatory proceeding involving any of the factors set out in paragraph (a) if that advocacy:</i></p> <p><i>(i) is necessary in order to address any substantive or procedural issues raised by the proceeding; and</i></p> <p><i>(ii) is conducted in conformity with applicable rulings and orders of a</i></p>

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	<p><i>tribunal and applicable rules of practice and procedure.</i></p> <p><i>Comment:</i></p> <p><i>1. Subject to certain exemptions, paragraph (a) of this Rule prohibits willful expressions of bias or prejudice in connection with adjudicatory proceedings that are directed towards any persons involved with those proceedings in any capacity. Because the prohibited conduct only must occur "in connection with" an adjudicatory proceeding, it applies to misconduct transpiring outside of as well as in the presence of the tribunal's presiding adjudicatory official. Moreover, the broad definition given to the term "adjudicatory proceeding" under these Rules means that paragraph (a)'s prohibition applies to many settings besides conventional litigation in federal or state courts. See Preamble: Terminology (definitions of "Adjudicatory Proceeding" and "Tribunal").</i></p> <p><i>2. The Rule, however, contains several important limitations and exemptions. The first, found in paragraph (a), is that a lawyer's allegedly improper words or conduct must be shown to have been "willful" before the lawyer may be subjected to discipline.</i></p> <p><i>3. In addition, paragraph (b) sets out four exemptions from the prohibition of paragraph (a). The first is a lawyer's decision whether to represent a client. The second is any communication made by the lawyer that is "confidential" under Rule 1.05(a) and (b). The third is a lawyer's communication that is necessary to represent a client properly and that complies with applicable rulings and orders of the tribunal as well as with applicable rules of practice or procedure.</i></p> <p><i>4. The fourth exemption in paragraph (b) relates to the lawyer's words or conduct in selecting a jury. This exemption ensures that a lawyer will be free to thoroughly probe the venire in an effort to identify potential jurors having a bias or prejudice towards the lawyer's client, or in favor of the client's opponent, based on, among other things, the factors enumerated in paragraph (a). A lawyer should remember, however, that the use of peremptory challenges to remove persons from juries based solely on some of the factors listed in paragraph (a) raises separate constitutional issues.</i></p>
<p>UT Effective 11/1/05</p>	<p>Same as MR</p> 
<p>VT Effective 9/1/09</p>	<p>Adds (g) discriminate against any individual because of his or her race, color, religion, ancestry, national origin, sex, sexual orientation, place of birth or age, or against a qualified handicapped individual, in hiring, promoting or otherwise determining the conditions of employment of that individual; or</p> <p>Does not have MR [3]</p> <p>Proposed rule retains current VT 8.4(g)</p> <p>[3] same as MR but replaces references to "paragraph (d)" with "paragraph (g)"</p>
<p>VA Effective</p>	<p>Does not have</p> <p>Revised rules effective 1/1/04</p>

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1/1/04	
WA Effective 9/1/06	<p>Adds (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, other parties and/or their counsel, witnesses and/or their counsel, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments.</p> <p>[3] Legitimate advocacy respecting the factors set forth in paragraph (h) does not violate paragraphs (d) or (h). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.</p>
WV* Effective 1/1/89	<p><i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i></p> <p>Does not have</p>
WI Effective 7/1/07	<p>Adds (i) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with the lawyer's professional activities. Legitimate advocacy respecting the foregoing factors does not violate par. (i).</p> <p>Wisconsin Committee Comment</p> <p>Paragraphs (f) through (i) do not have counterparts in the Model Rule. What constitutes harassment under paragraph (i) may be determined with reference to anti-discrimination legislation and interpretive case law. Because of differences in content and numbering, care should be used when consulting the ABA Comment.</p> <p>[3] same as MR</p>
WY Effective 7/1/06	Does not have

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each. A jurisdiction may have amended its rules or proposals since the time its chart was created. If you are aware of any inaccuracies in the charts, please send your corrections or additions and the source of that information to John Holtaway, (312) 988-5298, jholtaway@staff.abanet.org.

	<p style="text-align: center;">American Bar Association CPR Policy Implementation Committee</p> <p style="text-align: center;">Variations of the ABA Model Rules of Professional Conduct</p> <p style="text-align: center;">Rule 8.4: Misconduct</p> <p style="text-align: right;">RULES</p> <p>It is professional misconduct for a lawyer to:</p> <ul style="list-style-type: none"> (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) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice; (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 (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law. <p>Variations from ABA Model Rule are noted. Based on reports of state committees reviewing recent changes to the model rules. For information on individual state committee reports, see http://www.abanet.org/cpr/jclr/home.html.</p> <p>Comments not included.</p> <p>*Current links to state Rules of Professional conduct can be found on the ABA website: http://www.abanet.org/cpr/links.html*</p>
AL Effective 2/19/09	<p>(e) Deletes everything after “agency or official;” adds: <i>(g) engage in any other conduct that adversely reflects on his fitness to practice law.</i></p> <p>[3] Does not adopt</p>
AK Effective 4/15/09	<p>Does not adopt MR (d);</p> <p>(d) is similar to MR (e) but changes “to influence improperly” to “either to influence;”</p> <p>(e) is the same as MR (f).</p>
AZ Effective	<p>Same as MR</p>

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12/1/03	
AR Effective 5/1/05	Same as MR
CA Current Rule	[California's Rules of Professional Conduct are structured differently from the ABA Model Rules. Please see California Rules : http://calbar.ca.gov/calbar/pdfs/rules/Rules_Professional-Conduct.pdf]
CO Effective 1/1/08	Adds: <i>(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</i> <i>(h) engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law.</i>
CT Effective 1/1/07	Same as MR
DE Effective 7/1/03	include an Interpretive Guideline regarding a lawyer's income taxes
District of Columbia Effective 2/1/07	(d): replaces "is prejudicial to" with "seriously interferes with" (e): has former MR Adds (g) Seek or threaten to seek criminal charges or disciplinary charges solely to obtain an advantage in a civil matter.
FL Effective 5/22/06	Intro paragraph: A lawyer shall not (c): adds "except that it shall not be professional misconduct for a lawyer for a criminal law enforcement agency or regulatory agency to advise others about or to supervise another in an undercover investigation, unless prohibited by law or rule, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency or regulatory agency to participate in an undercover investigation, unless prohibited by law or rule" to end (d): adds "in connection with the practice of law" after "conduct," adds "including to knowingly, or through callous indifference, disparage, humiliate, or <u>discriminate</u> against litigants, jurors, witnesses, court personnel, or other lawyers <u>on any basis</u> , including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic" to end Adds (g): fail to respond, in writing, to any official inquiry by bar counsel or a disciplinary agency, as defined elsewhere in these rules, when bar counsel or the agency is conducting an investigation into the lawyer's conduct. A written response shall be made: (1) within 15 days of the date of the initial written investigative inquiry by bar counsel, grievance committee, or board of governors;

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	<p>(2) within 10 days of the date of any follow-up written investigative inquiries by bar counsel, grievance committee, or board of governors;</p> <p>(3) within the time stated in any subpoena issued under these Rules Regulating The Florida Bar (without additional time allowed for mailing);</p> <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>Adds (h): willfully refuse, as determined by a court of competent jurisdiction, to timely pay a child support obligation; or</p> <p>Adds (i): engage in sexual conduct with a client or a representative of a client that exploits or adversely affects the interests of the client or the lawyer-client relationship. If the sexual conduct commenced after the lawyer-client relationship was formed it shall be presumed that the sexual conduct exploits or adversely affects the interests of the client or the lawyer-client relationship. A lawyer may rebut this presumption by proving by a preponderance of the evidence that the sexual conduct did not exploit or adversely affect the interests of the client or the lawyer-client relationship. The prohibition and presumption stated in this rule do not apply to a lawyer in the same firm as another lawyer representing the client if the lawyer involved in the sexual conduct does not personally provide legal services to the client and is screened from access to the file concerning the legal representation.</p>
GA* Effective 1/1/01	<p><i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i></p> <p><i>(a) It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to:</i></p> <p><i>(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;</i></p> <p><i>(2) be convicted of a felony;</i></p> <p><i>(3) be convicted of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer's fitness to practice law;</i></p> <p><i>(4) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;</i></p> <p><i>(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 (10) days after the time appointed in the order or judgment. In such cases the record of the judgment is conclusive evidence unless obtained without valid service of process.</i></p> <p><i>(b) (1) For purposes of this Rule, conviction shall include:</i></p>

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	<p>(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 Part Six of the Georgia Rules of Professional Conduct.</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 Rule 8.4(c) is disbarment.</p>
HI Effective 1/1/14	<p>(a): Adds “violate” before “attempt to violate” (d): Deletes MR text and add “reserved” (e): Deletes text after “agency or official” Adds (g): “fail to cooperate during the course of an ethics investigation or disciplinary proceeding.”</p>
ID Effective 7/1/04	Same as MR
IL Effective 1/1/2010	<p>(f) Adds, at end of paragraph: “Nor shall a lawyer give or lend anything of value to a judge, official, or employee of a tribunal, except those gifts or loans that a judge or a member of the judge’s family may receive under Rule 65(C)(4) of the Illinois Code of Judicial Conduct. Permissible campaign contributions to a judge or candidate for judicial office may be made only by check, draft, or other instrument payable to or to the order of an entity that the lawyer reasonably believes to be a political committee supporting such judge or candidate. Provision of volunteer services by a lawyer to a political committee shall not be deemed to violate this paragraph.”</p> <p>Adds paragraph (g): “present, participate in presenting, or threaten to present criminal or professional disciplinary charges to obtain an advantage in a civil matter;”</p> <p>Adds paragraph (h): “enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or pursue any complaint before the Illinois Attorney Registration and Disciplinary Commission;”</p> <p>Adds paragraph (i): “avoid in bad faith the repayment of an education loan guaranteed by the Illinois Student Assistance Commission or other governmental entity. The lawful discharge of an education loan in a bankruptcy proceeding shall not</p>

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	<p>constitute bad faith under this paragraph, but the discharge shall not preclude a review of the lawyer's conduct to determine if it constitutes bad faith;"</p> <p>Adds paragraph (j): "violate a federal, state or local statute or ordinance that prohibits discrimination based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status by conduct that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including: the seriousness of the act; whether the lawyer knew that the act was 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>Adds paragraph (k): "if the lawyer holds public office:</p> <ul style="list-style-type: none">(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;(2) use that office to influence, or attempt to influence, a tribunal to act in favor of a client; or(3) represent any client, including a municipal corporation or other public body, in the promotion or defeat of legislative or other proposals pending before the public body of which such lawyer is a member or by which such lawyer is employed."
IN Effective 1/1/05	<p>Adds:</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>
IA Effective 7/1/05	<p>Adds as (g): "engage in sexual harassment or other unlawful discrimination in the practice of law or knowingly permit staff or agents subject to the lawyer's direction and control to do so."</p>
KS Effective 7/1/07	<p>(e) Deletes language after "agency or official;"</p> <p>Adds:</p> <p><i>(g) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.</i></p>
KY Effective 7/15/09	<p>Doesn't adopt MR (d);</p> <p>(d) and (e) are the same as MR (e) and (f).</p>

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LA Effective 3/1/04	adds in (b): "especially one" that reflects adversely.... (e), adds before "government agency or official," "judge, judicial officer, " adds (g): Threaten to present criminal or disciplinary_charges solely to obtain an advantage in a civil matter.
ME Effective 8/1/09	(a) Adds "Maine" before "Rules;" (b) Adds "or unlawful" before "act."
MD Effective 7/1/05	adds as (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;
MA Rules effective 9/1/08	(e) Deletes language after "official;" Adds: <i>(g) fail without good cause to cooperate with the Bar Counsel or the Board of Bar Overseers as provided in Supreme Judicial Court Rule 4:01, § 3, last sentence; or</i> <i>(h) engage in any other conduct that adversely reflects on his or her fitness to practice law.</i>
MI* Rules effective 10/1/88	<i>*Made only partial amendments effective 1/1/2011 since the most recent amendments to the ABA Model Rules (amended Rules 3.1, 3.3, 3.4, 3.5, 3.6, 5.5, and 8.5 and adopted new Rules 2.4, 5.7, and 6.6.</i> Does not have MR (b); (b) is similar to MR (c) but adds to end, "or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer;" (d) is similar to MR (e) but deletes language after "official; or."
MN Effective 10/1/05	adds as (g): harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status in connection with a lawyer's professional activities; adds as (h): commit a discriminatory act prohibited by federal, state, or local statute or ordinance that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including: (1) the seriousness of the act, (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 adds as (i): refuse to honor a final and binding fee arbitration award after agreeing to arbitrate a fee dispute.
MS Effective 11/3/05	Same as MR
MO	Adds:

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Effective 7/1/07	<i>(g) manifest by words or conduct, in representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation. This Rule 4-8.4(g) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, or other similar factors, are issues.</i>
MT Effective 4/1/04	Same as MR
NE Effective 9/1/05	(d): adds at the end: Once a lawyer is employed in a professional capacity, the lawyer shall not, in the course of such employment, engage in adverse discriminatory treatment of litigants, witnesses, lawyers, judges, judicial officers or court personnel on the basis of the person's race, national origin, gender, religion, disability, age, sexual orientation or socio-economic status. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding. adds as (g): willfully refuse, as determined by a court of competent jurisdiction, to timely pay a support order, as such order is defined by Nebraska law.
NV Effective 5/1/06	Same as MR
NH Effective 1/1/08	Does not adopt MR (d); (d) is similar to MR (e) but deletes language after "official;" (e) is the same as MR (f).
NJ Effective 1/1/04	adds (g): "engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm."
NM Effective 11/2/09	Changed to Rule 16-804.
NY Effective 4/1/09	Replaces text in beginning of rule with: "A lawyer or law firm shall not:" (b) Replaces language with: "engage in illegal conduct that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer;" (e) Replaces language with: <i>(e) state or imply an ability:</i> <i>(1) to influence improperly or upon irrelevant grounds any tribunal, legislative body or public official; or</i> <i>(2) to achieve results using means that violate these Rules or other law;</i> Adds (g): <i>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</i>

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	<p><i>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</i></p> <p>Adds (h): <i>Engage in any other conduct that adversely reflects on the lawyer's fitness as a lawyer.</i></p>
NC Effective 3/1/03	<p>(e): do not include the 2nd half, which was moved here from the 7s in the MR. adds as (g): (g) intentionally prejudice or damage his or her client during the course of the professional relationship, except as may be required by Rule 3.3.</p>
ND Effective 8/1/06	<p>(c): adds to end "that reflects adversely on the lawyer's fitness as a lawyer" (d): same as MR (f) but replaces "rules" with "canons" (f): same as MR (d) but adds to end "including to knowingly manifest through words or conduct in the course of representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation, against parties, witnesses, counsel, or others, except when those words or conduct are legitimate advocacy because race, sex, religion, national origin, disability, age, or sexual orientation is an issue in the proceeding; or" Adds: (g) engage in other conduct that is enumerated in the North Dakota Century Code as a basis for revocation or suspension of a lawyer's certificate of admission.</p>
OH Effective 2/1/07	<p>First paragraph: adds to end "do any of the following" (b): replaces "criminal" with "illegal," ends sentence after "trustworthiness" (f): adds "the Ohio Rules of Professional Conduct" after "violation of" Adds (g) engage, in a professional capacity, in conduct involving discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability; Adds (h) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.</p>
OK Effective 1/1/08	<p>Same as MR</p>
OR Effective 12/1/06	<p>Paragraphs (a)(1) through (5) are similar to Model Rule 8.4(a) through (f) (a)(1) (MR a): does not include "or attempt to violate." (a)(3) (MR c): adds to end "that reflects adversely on the lawyer's fitness to practice law." adds (b) Notwithstanding paragraphs (a) and Rule 3.3, it shall not be professional misconduct for a lawyer to advise clients or others about or to supervise lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these disciplinary rules. "Covert activity," as 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>

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PA Effective 7/1/06	Same as MR
RI Effective 4/15/07	(d) Adds to end: "including but not limited to, harmful or discriminatory treatment of litigants, jurors, witnesses, lawyers, and others based on race, national origin, gender, religion, disability, age, sexual orientation or socioeconomic status."
SC Effective 10/1/05	inserts as (c): "commit a criminal act involving moral turpitude;"
SD Effective 1/1/04	Same as MR
TN Effective 1/1/2011	(e) Replaces language after "ability to influence" with: "a tribunal or a governmental agency or official on grounds unrelated to the merits of, or the procedures governing, the matter under consideration;" Adds: <i>(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.</i>
TX* Effective 3/1/05	<i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i> (a) A lawyer shall not: <i>(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;</i> <i>(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;</i> <i>(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;</i> <i>(4) engage in conduct constituting obstruction of justice;</i> <i>(5) state or imply an ability to influence improperly a government agency or official;</i> <i>(6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;</i> <i>(7) violate any disciplinary or disability order or judgment;</i> <i>(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;</i> <i>(9) engage in conduct that constitutes barratry as defined by the law of this state;</i> <i>(10) fail to comply with section 13.01 of the Texas Rules of Disciplinary Procedure relating to notification of an attorneys cessation of practice;</i> <i>(11) engage in the practice of law when the lawyer is on inactive status or</i>

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	<p><i>when the lawyers right to practice has been suspended or terminated, including but not limited to situations where a lawyers right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Mandatory Continuing Legal Education; or</i></p> <p><i>(12) violate any other laws of this state relating to the professional conduct of lawyers and to the practice of law.</i></p> <p><i>(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.</i></p>
UT Effective 11/1/05	Same as MR
VT Effective 9/1/09	<p>(c) Replaces text of paragraph with: “engage in a “serious crime,” defined as illegal conduct involving any felony or involving any lesser crime a necessary element of which involves interference with the administration of justice, false swearing, intentional misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a “serious crime;””</p> <p>Adds (g): “discriminate against any individual because of his or her race, color, religion, ancestry, national origin, sex, sexual orientation, place of birth or age, or against a qualified handicapped individual, in hiring, promoting or other determining the conditions of employment of that individual.”</p>
VA Effective 1/1/04	<p>(b): adds “or deliberately wrongful” after “criminal” and replaces “as a lawyer in other respects” with “to practice law”</p> <p>(c): same as former MR</p> <p>Does not have MR (d)</p> <p>(d): same as MR (e) but replaces language after “improperly” with “or upon irrelevant grounds any tribunal, legislative body, or public official; or”</p> <p>(e): same as MR (f)</p>
WA Effective 9/1/06	<p>Adds: (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, other parties and/or their counsel, witnesses and/or their counsel, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material</p>

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	<p>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>
WV* Effective 1/1/89	<p><i>*Has not amended Rule since the most recent amendments to the ABA Model Rules</i></p> <p>(e) Deletes language after "official; or;"</p> <p><i>(g) have sexual relations with a client whom the lawyer personally represents during the legal representation unless a consensual sexual relationship existed between them at the commencement of the lawyer/client relationship. For purposes of this rule, "sexual relations" means sexual intercourse or any touching of the sexual or other intimate parts of a client or causing such client to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party or as a means of abuse.</i></p>
WI Effective 7/1/07	<p>Does not have MR (d)</p> <p>(d) and (e): same as MR (e) and (f)</p> <p>Adds (f) violate a statute, supreme court rule, supreme court order or supreme court decision regulating the conduct of lawyers;</p> <p>Adds (g) violate the attorney's oath;</p> <p>Adds (h) fail to cooperate in the investigation of a grievance filed with the office of lawyer regulation as required by SCR 21.15(4), SCR 22.001(9)(b), SCR 22.03(2), SCR 22.03(6), or SCR 22.04(1); or</p> <p>Adds (i) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with the lawyer's professional activities. Legitimate advocacy respecting the foregoing factors does not violate par. (i).</p>
WY Effective 7/1/06	<p>Adds: (g) knowingly employ or continue to employ or contract with any person in the practice of law who has been disbarred or is under suspension from the practice of law by any jurisdiction, or is on 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 11(a) of the Rules of the Supreme Court of Wyoming Providing for the</p>

As of August 16, 2013

	Organization and Government of the Bar Association and Attorneys at Law of the State of Wyoming, whether or not compensation is paid.
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MODEL CODES OF PROFESSIONAL CONDUCT

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The Committee concluded, based upon the findings of its study of Perceptions and Occurrences of Racial, Ethnic, and Gender Bias in the Courtroom, that the codes of professional conduct governing the behavior of judges, attorneys, and court personnel should be modified to specifically address biased behavior by those members of the legal community. In December 2000, the Supreme Court of Pennsylvania adopted the Code of Civility, designed to "assist judges and lawyers in how to conduct themselves in a manner that preserves the dignity and honor of the judiciary and the legal profession." While the Committee applauds the effort of the Court to encourage civility among members of the legal community, given the data collected by the Committee, it recommends that new sections be added to the existing Code of Judicial Conduct and to the Code of Professional Responsibility specifically prohibiting the judiciary and attorneys from manifesting bias in the performance of their duties. The Committee also recommends that a code for court employees be adopted in Pennsylvania prohibiting discriminatory conduct based on race, ethnicity, and gender, among other factors.

JUDICIARY

Toward that end, the Committee reviewed codes of judicial conduct enacted by other states and the model code recommended by the ABA. After much deliberation, the Committee decided to recommend that the model code drafted by the ABA be incorporated into the existing Pennsylvania Code of Judicial Conduct. The pertinent sections are set forth below:

CANON 3 A JUDGE SHALL PERFORM THE DUTIES
OF JUDICIAL OFFICE IMPARTIALLY AND
DILIGENTLY.

CANON 3B(5) A judge shall perform judicial duties without
bias or prejudice. A judge shall not, in the
performance of judicial duties, by words or
conduct manifest bias or prejudice, including
but not limited to bias or prejudice based upon
race, sex, religion, national origin, disability,
age, sexual orientation or socioeconomic
status, and shall not permit staff, court
officials and others subject to the judge's
direction and control to do so.²⁶⁸

CANON 3B(6) A judge shall require lawyers in proceedings
before the judge to refrain from manifesting,
by words or conduct, bias or prejudice based
upon race, sex, religion, national origin,
disability, age, sexual orientation or
socioeconomic status, against parties,
witnesses, counsel or others. This Section
3B(6) does not preclude legitimate advocacy
when race, sex, religion, national origin,
disability, age, sexual orientation or
socioeconomic status, or other similar factors
are issues in the proceedings.²⁶⁹

ATTORNEYS

Similarly, the Committee reviewed codes of conduct for practicing attorneys in other states, as well as the model rules of professional conduct recommended by the ABA. Pennsylvania's Code of Professional Responsibility incorporates the model rule of professional conduct recommended by the ABA set forth below:

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

- (d) Engage in conduct that is prejudicial to the administration of justice.

Based upon its review, the Committee recommends that the Code of Professional Responsibility governing the behavior of attorneys licensed to practice in Pennsylvania be amended to include the following additional provision:

A lawyer violates the prohibition against conduct that is prejudicial to the administration of justice when, in the course of representing a client, manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status.

COURT PERSONNEL

Codes of professional conduct for court employees are a recent development built on similar codes for judges and lawyers. New Jersey adopted the first state code for court personnel.²⁷⁰ There is also a national code promulgated by the National Association for Court Management.²⁷¹ Additionally, the states of California and Vermont have adopted a code of conduct governing the behavior of judicial branch personnel.²⁷² Based upon its review of the various conduct codes for court personnel, the Committee recommends that Pennsylvania adopt the following code for employees of the court to follow:

Employees of the court shall not, in conduct of service to the court and public, discriminate on the basis of, nor manifest by verbal or written comment or conduct, a bias or prejudice based upon race, color, sex, religion, national origin, ancestry, age, disability, marital status, sexual orientation or socioeconomic status that adversely affects the person's ability to use the facilities or services provided by the Judiciary. Discriminatory behavior also includes any actions, either implicit or explicit, which adversely affect an employee's work assignment, work environment, salary, career or promotional opportunities due to a bias or prejudice based upon race, color, sex, religion national origin, ancestry, age, disability, marital status, sexual orientation or socioeconomic status.

McCormick, Lisette

From: Patrick Carroll <puma6374@gmail.com>
Sent: Tuesday, August 26, 2014 11:35 AM
To: McCormick, Lisette

http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct/comment_on_rule_8_4.html

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

ABA Model Comment



Supreme Court of Pennsylvania
Unified Judicial System of Pennsylvania

Policy on Non-Discrimination and Equal Employment Opportunity

The Supreme Court of Pennsylvania declares that it is the policy of the Unified Judicial System of Pennsylvania (UJS) to ensure that all individuals having business with the UJS are treated in a dignified, civil, respectful, and non-discriminatory manner.

This policy prohibits all forms of discrimination and harassment in a Court Facility (defined as "Any building or office serving as the workplace for Personnel of the System, Supreme Court Boards and Committees, and/or Related Staff; and any UJS-related building or office in which Court Users conduct business with the UJS"), and applies to the following:

Personnel of the System – defined in 42 Pa.C.S.A. § 102 as "Judicial officers, personal staff, administrative staff, and central staff."

Supreme Court Boards and Committees – includes all staff and appointed members of boards, committees and court-related panels appointed by the Supreme Court of Pennsylvania, including, but not limited to, the following - Board of Law Examiners, Continuing Legal Education Board, Disciplinary Board, Interest on Lawyers Trust Account Board, Minor Judiciary Education Board, Pennsylvania Lawyers Fund for Client Security Board, Interbranch Commission for Gender, Racial and Ethnic Fairness, Investment Advisory Board, Appellate Court Procedural Rules Committee, Civil Procedural Rules Committee, Committee on Rules of Evidence, Criminal Procedural Rules Committee, Domestic Relations Procedural Rules Committee, Juvenile Court Procedural Rules Committee, Minor Court Rules Committee, Orphans' Court Procedural Rules Committee.

Related Staff – defined in 42 Pa.C.S.A. § 102 as "All individuals employed at public expense who serve the UJS, but the term does not include Personnel of the System". Those who serve the UJS include district attorneys, public defenders, sheriffs and other officers serving process or enforcing orders, registers of wills, prothonotaries, clerks of courts, clerks of the orphan's court division, coroners, jury commissioners, probation officials, and personnel of all of the foregoing.

Court Users – includes, but is not limited to, attorneys, applicants for employment, litigants, witnesses, jurors, and court volunteers.

The Supreme Court of Pennsylvania is committed to the principles of equal employment opportunity to ensure legal and appropriate hiring and employment practices, and to promote public confidence in the fairness and integrity of the judicial system and the judicial process. It is, therefore, the policy of the Supreme Court that there shall be no discrimination because

of race, color, sex, sexual orientation, national origin, age, disability, or religion by any Personnel of the System, Supreme Court Boards and Committees, or Related Staff in any employment-related action (e.g., hiring, promotion, terms or privileges of employment, etc.), or by any Personnel of the System, Supreme Court Boards and Committees, Related Staff or attorney in any court-related action.

Accordingly, all judicial officers, managerial and supervisory Personnel of the System, and Supreme Court Boards and Committees shall ensure adherence to and compliance with this Policy and the procedures intended to facilitate its implementation and administration.

Prohibition Against Discrimination and Harassment

Discrimination and harassment because of race, color, sex, sexual orientation, national origin, age, disability, or religion are prohibited. Such discrimination and harassment constitute an abuse of authority that will not be tolerated by the UJS. Further, such discrimination and harassment constitute misconduct, warranting appropriate disciplinary action. All judicial officers, managerial and supervisory Personnel of the System, and Supreme Court Boards and Committees shall ensure adherence to, and compliance with, this Policy.

1. Prohibition Against Discrimination

Under this Policy, discrimination includes actions by an individual or organization that cause an individual or a group of individuals to be denigrated or treated less favorably than another person or group because of one's race, color, sex, sexual orientation, national origin, age, disability, or religion. Such discriminatory conduct may include, but is not limited to, actions relating to the following:

1. Recruitment and hiring by Personnel of the System, Supreme Court Boards and Committees, or Related Staff; or
2. Provision of salary, benefits, or other terms or conditions of employment by Personnel of the System, Supreme Court Boards and Committees, or Related Staff; or
3. Provision of training and other education opportunities by Personnel of the System, Supreme Court Boards and Committees, or Related Staff; or
4. Promotions, transfers, discharge or other employment actions by Personnel of the System, Supreme Court Boards and Committees, or Related Staff; or
5. Any matter relating to the judicial process by Personnel of the System, Supreme Court Boards and Committees, Related Staff or attorneys.

2. Prohibition Against Harassment

a. Sexual Harassment

Sexual harassment is sex discrimination. Equal Employment Opportunity Commission (EEOC) guidelines define sexual harassment as unwelcome sexual attention, sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature where:

1. The submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
2. The submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Sexual harassment does not refer to socially acceptable behavior or occasional compliments of a socially acceptable nature. It refers to behavior that a reasonable person could and does consider unwelcome or personally offensive. Sexual harassment involves improper behavior or requests that establish improper *quid pro quo* workplace requirements of a sexual nature, or which otherwise create a hostile work environment for a reasonable person of that gender. Types of sexual harassment include:

1. "*Quid Pro Quo*" Harassment – Is when an individual in a position of authority demands sexual consideration in exchange for the promise of a job, certain job benefits such as raises or promotions, or the promise of continued employment.
2. "Hostile Work Environment" Harassment – Is when unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature create an atmosphere which unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment for any individual.

Sexual harassment may take different forms including, but not limited to, the following examples.

1. *Verbal*: Sexually explicit language, sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions or threats.
2. *Non-Verbal*: Display of sexually suggestive objects or pictures, commentaries, suggestive or insulting sounds, leering, whistling, or obscene gestures.
3. *Physical*: Unwanted physical contact, or the threat of unwanted physical contact, including offensive touching, un-welcomed sexual intercourse, sexual assault and other forms of physical contact of a sexual nature.

b. Racial and Other Harassment

Under this Policy, racial and other harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of that individual's race, color, sexual orientation, national origin, age, disability, or religion. Harassing conduct may include, but is not limited to, the following:

1. *Verbal*: Epithets, slurs, stereotyping, or denigrating jokes.
2. *Non-Verbal*: Display of written or graphic materials that denigrate or show hostility or aversion toward an individual or group in such a manner as to be readily viewed by others.
3. *Physical*: Threatening, intimidating, or hostile acts.

Prohibition Against Retaliation

Retaliation in any form against any person who complains about harassment or discrimination, who files a harassment or discrimination complaint, or who cooperates with, or assists in, the investigation of such complaints is prohibited under this Policy. Retaliation constitutes an abuse of authority, and will not be tolerated. Retaliation by any Personnel of the System, Supreme Court Boards and Committees, or Related Staff will be considered misconduct warranting disciplinary action. All judicial officers, managerial and supervisory Personnel of the System, and Supreme Court Boards and Committees shall ensure adherence to and compliance with this Policy.

Charges of retaliation will be viewed as separate and distinct from the original complaint or action which precipitated the alleged retaliation and may form the basis for a new complaint. Retaliation may result in disciplinary action even though the original harassment or discrimination complaint was determined to be unfounded and dismissed.

Compliance and Reporting Responsibilities

All Personnel of the System, Supreme Court Boards and Committees, and Related Staff are expected to comply with this Policy, and all judicial officers, managerial and supervisory Personnel of the System, and Supreme Court Boards and Committees are obligated to take appropriate measures to ensure that prohibited conduct does not occur, or is properly reported, if observed.

Personnel of the System and Supreme Court Boards and Committees who engage in any form of prohibited discrimination or harassment within a Court Facility may be subject to disciplinary action.

Related Staff who serve the UJS and who engage in any form of prohibited discrimination or harassment within a Court Facility will be reported to the chief official in their Related Staff offices for appropriate review and action. With respect to violations of this UJS Policy by Related Staff, the Supreme Court expects each Related Staff office to take discrimination and

harassment complaints very seriously and to properly investigate and adjudicate such complaints.

Any Personnel of the System, Supreme Court Boards and Committees, Related Staff, or Court Users who feel they have been subjected to, or have observed, any form of discrimination or harassment in any judicial process or Court Facility are urged to report such discrimination or harassment in accordance with the published UJS Non-Discrimination and Equal Employment Opportunity Complaint Procedures which are posted as a companion document to this Policy.

Any Personnel of the System, Supreme Court Boards and Committees, Related Staff or Court Users who do not have access to these complaint procedures may obtain a copy of these procedures from their local personnel office, the AOPC Office of Human Resources at 717-231-3309, or the UJS Website at www.pacourts.us.

Judicial officers, managerial and supervisory Personnel of the System, and Supreme Court Boards and Committees who observe, or have reason to believe that discrimination or harassment has occurred in a Court Facility, must (1) take immediate action to terminate any ongoing harassment/discrimination if they are reasonably able to do so; or (2) immediately report such harassment/discrimination, if possible, as described in the UJS Non-Discrimination and Equal Employment Opportunity Complaint Procedures referenced above.

Filing Complaints under This Policy

The UJS Non-Discrimination and Equal Employment Opportunity Complaint Procedures accompanying this Policy offer guidance as to how to file complaints of alleged harassment or discrimination as described in this Policy. Specific procedures have been created for Personnel of the System, Supreme Court Boards and Committees, and Related Staff based on their organizational entity. Separate procedures have been created for Court Users doing business with the UJS in a Court Facility. Complaints should be filed with the office designated in each procedure document either by phone, by email, or by using the Non-Discrimination Plan Complaint Form available on the UJS website at www.pacourts.us.

If the appropriate procedures are not immediately available, complainants may obtain a copy of these procedures from their local personnel office, the AOPC Office of Human Resources at 717-231-3309, or the UJS Website at www.pacourts.us.

Investigation and Adjudication of Complaints

All complaints alleging harassment or discrimination will be fully investigated and adjudicated by duly designated authorities of the UJS. Such authorities are identified in the complaint procedures which are posted as a companion document to this Policy.

Disciplinary or Remedial Actions

Violations of this Policy may result in disciplinary action as prescribed by the appropriate policies, which govern the behavior and performance of Personnel of the System, Supreme Court Boards and Committees, and Related Staff. In addition to such discipline, appropriate remedial actions will be taken by the employing authority to (1) remedy the instant complaint, and (2) prevent future violations.

Responsibility to Monitor the Implementation and Enforcement of this Policy

For UJS offices employing Personnel of the System and Supreme Court Boards and Committees, the AOPC shall undertake those measures necessary to properly monitor compliance with this Policy through the following actions:

1. Develop and promote policies and procedures designed to ensure equal employment opportunity and fair and non-discriminatory treatment of the protected classes listed in this Policy.
2. Develop the administrative policies and procedures needed to ensure that alleged violations of this Policy can be appropriately investigated on a timely basis.
3. Collect data related to the hiring and employment practices of each UJS office employing Personnel of the System and Supreme Court Boards and Committees and conduct related audits of equal employment opportunity and non-discrimination practices.
4. Collect and maintain data/statistics relating to the number, nature, and disposition of complaints filed under this Policy.
5. Work with each UJS office employing Personnel of the System and Supreme Court Boards and Committees to oversee the development of education and training opportunities and materials designed to promote and ensure proper adherence to these policy guidelines.

For those offices employing Related Staff, the Supreme Court expects each office to take appropriate steps to monitor and enforce this Policy through 1) the development of administrative policies and procedures, 2) the collection of data and statistics, and 3) the development of education and training opportunities and materials.

Penalties for Misconduct

Any Personnel of the System or Supreme Court Boards and Committees who have been found to have violated this Policy, impeded the investigation of any complaint filed under this Policy, or retaliated against individuals who have provided evidence or have otherwise cooperated with any investigation of a complaint filed under this Policy, may be subject to appropriate remedial or disciplinary action up to and including discharge, as provided by the policies governing their employment with the UJS.

Any Related Staff serving the UJS who have been reported to officials in their respective offices for appropriate review and action and have been found to have violated this Policy, impeded the investigation of any complaint filed under this Policy, or retaliated against individuals who have provided evidence or have otherwise cooperated with any investigation of a complaint filed under this Policy, may be subject to appropriate remedial or disciplinary actions, as provided by the policies of their respective offices.

The Supreme Court expects each Related Staff office serving the UJS to take such violations very seriously and to apply appropriate remedial or disciplinary actions.

Any judicial officer or attorney who - after proper investigation by the appropriate authority - has been found to have violated this Policy, impeded the investigation of any complaint filed under this Policy, or retaliated against individuals who have provided evidence or have otherwise cooperated with any investigation of a complaint filed under this Policy, may be subject to appropriate remedial or disciplinary action by the Disciplinary Board (in the case of attorneys) or the Court of Judicial Discipline (in the case of judicial officers.)

Exclusion of Judicial Proceedings and the Judicial Decision-Making Process

This Policy does not apply to a judicial officer's or attorney's consideration of, or reference to, a protected class as referenced above, when such consideration or reference is appropriate under the law and is relevant to an issue in a judicial proceeding, to the judicial decision-making process or to the proper administration of justice.

Distribution of Policy and Procedures

Personnel of the System - A copy of this Policy and accompanying complaint procedures will be provided initially to all current employees and will be posted prominently in visible locations within Court Facilities. Thereafter, a copy of this Policy, with accompanying complaint procedures, will be distributed to all new Personnel of the System upon their entry into judiciary service.

Supreme Court Boards and Committees – Copies of this Policy and accompanying complaint procedures will be provided initially to the administrator of each Supreme Court Board and Committee for distribution to all current employees and appointed members and for posting prominently in visible locations within Court Facilities. Thereafter, the administrator of each Supreme Court Board and Committee will distribute a copy of this Policy, with accompanying complaint procedures, to all new staff and appointed members upon their entry into judiciary service or appointment to a board/committee.

Related Staff – A copy of this Policy and accompanying complaint procedures will be provided to the chief official in each Related Staff office for duplication and distribution to all current employees and new Related Staff upon their entry into service.

Court Users – A copy of this Policy and accompanying complaint procedures will be prominently posted in a location visible to all Court Users within each Court Facility.

as of 2007

LISTING OF STATE DISCIPLINARY CODES WITH **"ANTI-DISCRIMINATION" RULES**

I. Listing of Applicable Sections of Disciplinary Rules

ARIZONA

Rules of Professional Conduct, ER 8.4

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice.

Comment

[3] A lawyer who in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. This does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, gender identity or socioeconomic status, or other similar factors, are issues in the proceeding. A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

ARKANSAS

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice.

Comment

[3] Subdivision (d) of this rule proscribes conduct that is prejudicial to the administration of justice. Such proscription includes the prohibition against discriminatory conduct committed by a lawyer while performing duties in connection with the practice of law. The proscription extends to any characteristic or status that is not relevant to the proof of any legal or factual issue in dispute. Such discriminatory conduct, when directed towards litigants, jurors, witnesses, other lawyers, or the court, including race, sex, religion, national origin, or any other similar factors, subverts the administration of justice and undermines the public's confidence in our system of justice, as well as notions of equality. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule. This subdivision does not prohibit a lawyer from representing a client accused of committing discriminatory conduct.

CALIFORNIA

Rule 2-400 Prohibited Discriminatory Conduct in a Law Practice.

(A) For the purposes of this rule:

(1) "law practice" includes sole practices, law partnerships, law corporations, corporate and governmental legal departments, and other entities which employ members to practice law;

- (2) “knowingly permit” means a failure to advocate corrective action where the member knows of a discriminatory policy or practice which results in the unlawful discrimination prohibited in paragraph (B); and
(3) “unlawfully” and “unlawful” shall be determined by reference to applicable state or federal statutes or decisions making unlawful discrimination in employment and in offering goods and services to the public.

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

- (1) hiring, promoting, discharging, or otherwise determining the conditions of employment of any person; or
(2) accepting or terminating representation of any client.

Discussion:

In order for discriminatory conduct to be actionable under this rule, it must first be found to be unlawful by an appropriate civil administrative or judicial tribunal under applicable state or federal law. Until there is a finding of civil unlawfulness, there is no basis for disciplinary action under this rule.

A complaint of misconduct based on this rule may be filed with the State Bar following a finding of unlawfulness in the first instance even though that finding is thereafter appealed.

CONNECTICUT

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

- (4) Engage in conduct that is prejudicial to the administration of justice.

Comment

A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates subdivision (4) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate subdivision (4).

DELAWARE

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (d) engage in conduct that is prejudicial to the administration of justice.

Comment

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate

paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

DISTRICT OF COLUMBIA

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(d) Engage in conduct that seriously interferes with the administration of justice.

Comment

[3] A lawyer violates paragraph (d) by offensive, abusive, or harassing conduct that seriously interferes with the administration of justice. Such conduct may include words or actions that manifest bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

FLORIDA

Rule 4.8.4 Misconduct

Subdivision (d) of this rule proscribes conduct that is prejudicial to the administration of justice. Such proscription includes the prohibition against discriminatory conduct committed by a lawyer while performing duties in connection with the practice of law. The proscription extends to any characteristic or status that is not relevant to the proof of any legal or factual issue in dispute. Such conduct, when directed towards litigants, jurors, witnesses, court personnel, or other lawyers, whether based on race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, physical characteristic, or any other basis, subverts the administration of justice and undermines the public's confidence in our system of justice, as well as notions of equality. This subdivision does not prohibit a lawyer from representing a client as may be permitted by applicable law, such as, by way of example, representing a client accused of committing discriminatory conduct.

IDAHO

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice.

Comment

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

ILLINOIS

Rule 8.4 Misconduct

(a) A lawyer shall not:

(5) engage in conduct that is prejudicial to the administration of justice. In relation thereto, a lawyer shall not engage in adverse discriminatory treatment of litigants, jurors, witnesses, lawyers, and others, based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. This subsection does not preclude legitimate advocacy when these or similar factors are issues in the proceeding.

INDIANA

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(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.

IOWA

Rule 32:8.4: Misconduct

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice.

Comment

[3] A lawyer who, in the course of representing a client, knowingly manifests, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

MARYLAND

Rule 8.4. Misconduct

It is professional misconduct for a lawyer 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 paragraph.

Comment

[4] Paragraph (e) reflects the premise that a commitment to equal justice under the law lies at the very heart of the legal system. As a result, even when not otherwise unlawful, a lawyer who, while acting in a professional capacity, engages in the conduct described in paragraph (e) and by so doing prejudices

the administration of justice commits a particularly egregious type of discrimination. Such conduct manifests a lack of character required of members of the legal profession. A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule. A judge, however, must require lawyers to refrain from the conduct described in paragraph (e).

MINNESOTA

Rule 8.4: Misconduct

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, 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. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including:

- (1) the seriousness of the act,
- (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;

Comment

[4] Paragraph (g) specifies a particularly egregious type of discriminatory act-harassment on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. What constitutes harassment in this context may be determined with reference to antidiscrimination legislation and case law thereunder. This harassment ordinarily involves the active burdening of another, rather than mere passive failure to act properly.

[5] Harassment on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status may violate either paragraph (g) or paragraph (h). The harassment violates paragraph (g) if the lawyer committed it in connection with the lawyer's professional activities. Harassment, even if not committed in connection with the lawyer's professional activities, violates paragraph (h) if the harassment (1) is prohibited by antidiscrimination legislation and (2) reflects adversely on the lawyer's fitness as a lawyer, determined as specified in paragraph (h).

MISSOURI

Rule 4-8.4: Misconduct

It is professional misconduct for a lawyer to:

(g) manifest by words or conduct, in representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation. This Rule 4-8.4(g) does not preclude legitimate advocacy when race,

sex, religion, national origin, disability, age, sexual orientation or other similar factors, are issues.

Comment

[3] Rule 4-8.4 (g) identifies the special importance of a lawyer's words or conduct, in representing a client, that manifest bias or prejudice against others based upon race, sex, religion, national origin, disability, age, or sexual orientation. Rule 4-8.4(g) excludes those instances in which a lawyer engages in legitimate advocacy with respect to these factors. A lawyer acts as an officer of the court and is licensed to practice by the state. The manifestation of bias or prejudice by a lawyer, in representing a client, fosters discrimination in the provision of services in the state judicial system, creates a substantial likelihood of material prejudice by impairing the integrity and fairness of the judicial system, and undermines public confidence in the fair and impartial administration of justice.

Whether a lawyer's conduct constitutes professional misconduct in violation of Rule 4-8.4(g) can be determined only by a review of all of the circumstances; e.g., the gravity of the acts and whether the acts are part of a pattern of prohibited conduct. For the purpose of Rule 4-8.4(g), "manifest...bias or prejudice" is defined as words or conduct that the lawyer knew or should have known discriminate against, threaten, harass, intimidate, or denigrate any individual or group. Prohibited conduct includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (a) submission to that conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;
- (b) submission to or rejection of such conduct by an individual is used as a factor in decisions affecting such individual; or
- (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile or offensive environment.

NEBRASKA

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(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 socioeconomic status. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding.

Comment

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national

origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d) when such actions are prejudicial to the administration of justice. A trial judge's finding that peremptory challenges were exercised on discriminatory basis does not alone establish a violation of this rule.

NEW JERSEY

RPC 8.4 Misconduct

It is professional misconduct for a lawyer to:

(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.

Comment

This rule amendment (the addition of paragraph g) is intended to make discriminatory conduct unethical when engaged in by lawyers in their professional capacity. It would, for example, cover activities in the court house, such as a lawyer's treatment of court support staff, as well as conduct more directly related to litigation; activities related to practice outside of the court house, whether or not related to litigation, such as treatment of other attorneys and their staff; bar association and similar activities; and activities in the lawyer's office and firm. Except to the extent that they are closely related to the foregoing, purely private activities are not intended to be covered by this rule amendment, although they may possibly constitute a violation of some other ethical rule. Nor is employment discrimination in hiring, firing, promotion, or partnership status intended to be covered unless it has resulted in either an agency or judicial determination of discriminatory conduct. The Supreme Court believes that existing agencies and courts are better able to deal with such matters, that the disciplinary resources required to investigate and prosecute discrimination in the employment area would be disproportionate to the benefits to the court system given remedies available elsewhere, and that limiting ethics proceedings in this area to cases where there has been an adjudication represents a practical resolution of conflicting needs.

"Discrimination" is intended to be construed broadly. It includes sexual harassment, derogatory or demeaning language, and generally, any conduct towards the named groups that is both harmful and discriminatory.

Case law has already suggested both the area covered by this amendment and the possible direction of future cases. *In re Vincenti*, 114 N.J. 275 (554 A.2d 470) (1989). The Court believes the administration of justice would be better served, however, by the adoption of this general rule than by a case by case development of the scope of the professional obligation.

While the origin of this rule was a recommendation of the Supreme Court's Task Force on Women in the Courts, the Court concluded that the protection, limited to women and minorities in that recommendation, should be expanded. The groups covered in the initial proposed amendment to the rule are the same as those named in Canon 3A(4) of the Code of Judicial Conduct.

Following the initial publication of this proposed subsection (g) and receipt of various comments and suggestions, the Court revised the proposed amendment by making explicit its intent to limit the rule to conduct by attorneys in a professional capacity, to exclude employment discrimination unless adjudicated, to restrict the scope to conduct intended or likely to cause harm, and to include discrimination because of sexual orientation or socioeconomic status, these categories having been proposed by the ABA's Standing Committee on Ethics and Professional Responsibility as additions to the new groups now covered in Canon 3A(4) of the New Jersey Code of Judicial Conduct. That Committee has also proposed that judges require [that] attorneys, in proceedings before a judge, refrain from manifesting by words or conduct any bias or prejudice based on any of these categories. See proposed Canon 3A(6). This revision to the RPC further reflects the Court's intent to cover all discrimination where the attorney intends to cause harm such as inflicting emotional distress or obtaining a tactical advantage and not to cover instances when no harm is intended unless its occurrence is likely regardless of intent, e.g., where discriminatory comments or behavior is repetitive. While obviously the language of the rule cannot explicitly cover every instance of possible discriminatory conduct, the Court believes that, along with existing case law, it sufficiently narrows the breadth of the rule to avoid any suggestion that it is overly broad. See, e.g., *In re Vincenti*, 114 N.J. 275 (554 A.2d 470) (1989).

NEW YORK

DR 1-102 [1200.3] Misconduct

A. A lawyer or law firm shall not:

6. 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.

NORTH DAKOTA

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(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.

Comment

[3] A lawyer who, in the course of representing a client knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation violates paragraph (f) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (f). For example, a trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

OHIO

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to do any of the following:

(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.

Comment

[3] Division (g) does not apply to a lawyer's confidential communication to a client or preclude legitimate advocacy where race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability is relevant to the proceeding where the advocacy is made.

RHODE ISLAND

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(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.

Comment

A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A judicial finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

SOUTH DAKOTA

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice.

Comment

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

TENNESSEE

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice.

Comment

[2] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socio-economic status, may violate paragraph (d) if such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d).

UTAH

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(d) engage in conduct that is prejudicial to the administration of justice;

Comment

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

WASHINGTON

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(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.

WEST VIRGINIA

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

(g) have sexual relations with a client whom the lawyer personally represents during the legal representation unless a consensual sexual relationship existed between them at the commencement of the lawyer/client relationship. For purposes of this rule, "sexual relations" means sexual intercourse or any touching of the sexual or other intimate parts of a client or causing such client to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party or as a means of abuse.

WISCONSIN

SCR 20:8.4. Misconduct

It is professional misconduct for a lawyer to:

(i) harass a person on the basis of sex, race, 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).

Comment

[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

II. Listing of States That Temper "Anti-Discrimination" Disciplinary Rule with Limited Exception for Conduct Involved in Batson Challenges

- 1) Arkansas
- 2) Delaware
- 3) Idaho
- 4) Indiana
- 5) Iowa
- 6) Nebraska
- 7) North Dakota
- 8) Utah

III. Listing of States That Require “Willful” Conduct in “Anti-Discrimination” Disciplinary Rule

- 1) ABA Model Code
- 2) California
- 3) Connecticut
- 4) Delaware
- 5) Idaho
- 6) Iowa
- 7) Maryland
- 8) Missouri (“knew or should have known”)
- 9) Nebraska
- 10) North Dakota
- 11) Tennessee
- 12) Utah

IV. Listing of States That Restrict Application of “Anti-Discrimination” Disciplinary Rule to “In the Course of Representing a Client”

- 1) Arkansas
- 2) Connecticut
- 3) Delaware
- 4) Florida
- 5) Idaho
- 6) Indiana
- 7) Iowa
- 8) Minnesota
- 9) Missouri
- 10) Nebraska
- 11) New Jersey
- 12) North Dakota
- 13) Ohio
- 14) Tennessee
- 15) Utah
- 16) Washington

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STATUS OF STATE REVIEW OF PROFESSIONAL CONDUCT RULES

Forty-six (46) jurisdictions, including the District of Columbia, have adopted revised rules (AL, AK, AZ, AR, CO, CT, DE, DC, FL, IL, ID, IN, IA, KS, KY, LA, MA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, UT, VT, VA, WA, WI, WY).

One (1) state has circulated proposed rules (WV).

Two (2) states have committees that have not yet issued a report (GA and HI).

Two (2) state did not adopt Model Rules (CA (has its own rules) and TX).

State	Committee Reviewing Rules	Committee Issued Report	Supreme Court Approved Rule Amend- ments	Notes
Alabama			X	<p>Revised rules effective 6/23/08 http://www.alabar.org/ogc/PDF/Amendments-to-theAlabama_RPC.pdf</p> <p>Proposed advertising rules changes submitted to Supreme Court http://www.alabar.org/ogc/PDF/Petition_A_filed_Supreme_Court%20Oct12_2007.pdf</p> <p>Revised 5.5 effective 9/1/06. http://www.alabar.org/rulechanges/Rule%205.5_Rules%20of%20Professional%20Code_Unauthorized%20Practice%20of%20Law_Supreme%20Court%20order.pdf</p>
Alaska			X	<p>Revised rules effective 4/15/09 http://www.state.ak.us/courts/sco/sco1680.pdf</p>
Arizona			X	<p>Revised rules effective 12/1/03. http://www.supreme.state.az.us/media/pdf/test%20ulc%2042%20%2043.pdf</p>

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Arkansas			X	Revised rules effective 5/1/05. http://courts.state.ar.us/opinions/2005a/20050303/arp_c2005.html
California			X	Revised rules effective 9/1/2009. http://rules.calbar.ca.gov/Rules/RulesofProfessionalConduct.aspx
Colorado			X	Revised rules effective 1/1/08. http://www.cobar.org/group/index.cfm?category=3156&EntityID=CETH
Connecticut			X	Revised rules effective 1/1/07. http://www.jud.ct.gov/pb.htm Committee on Lawyer Advertising Report recommends changes to Rules 7.1 – 7.3 and 8.5. http://www.jud.state.ct.us/external/news/LAC.pdf
Delaware			X	Revised rules effective 7/1/03. http://courts.state.de.us/Rules/?FinalDLRPCclean.pdf Rule 5.5(c) revised effective 10/16/07. http://courts.delaware.gov/Rules/?supreme_rule5-5c.pdf Rule 5.5(d) revised effective 1/7/08. http://courts.state.de.us/Rules/?DLRPC010708.pdf Rule 5.5 Comment [14] revised effective 5/14/08 http://courts.delaware.gov/Rules/?DLRPC_051408.pdf

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D.C.			X	<p>Revised rules effective 2/1/07. http://www.dcbbar.org/new_rules/rules.cfm</p> <p>Revision to Rule 1.15 effective 8/1/2010 http://www.abanet.org/cpr/pic/dc.pdf</p> <p>Deleted Rule 1.19 effective 8/1/2010.</p>
Florida			X	<p>Revised rules effective 5/22/06. http://www.floridasupremecourt.org/decisions/2006/sc04-2246.pdf</p> <p>1.5(f)(4)(B)(iii) allowing clients to waive medical malpractice practice fee limits effective 9/28/06. http://www.floridasupremecourt.org/decisions/2006/sc05-1150.pdf</p> <p>Revisions to Rules 7.1 – 7.5 and 7.7 – 7.10 effective 1/1/07. http://www.floridasupremecourt.org/decisions/2006/sc05-2194-Rules.pdf</p> <p>Revision to Rule 7.6 regarding websites pending before Supreme Court http://www.floridabar.org/tfb/TFBComm.nsf/basic+view/7BF644887DDEF1E18525705100734B73?OpenDocument</p> <p>Revisions to Rules 7.1 – 7.10 effective 2/1/08 http://www.floridasupremecourt.org/decisions/2007/sc05-2194.pdf</p> <p>Revisions to Rules 1.5 and 6.5 effective 3/1/08 http://www.floridasupremecourt.org/decisions/2007/sc06-736.pdf</p>
Georgia	X			Committee conducting review.

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Hawaii	X			Disciplinary Board of Supreme Court Ethics 2000 Committee conducting review.
Idaho			X	Revised rules effective 7/1/04. http://www.isc.idaho.gov/irpc0304_cov.htm
Illinois			X	Supreme Court Rules Committee considering draft rules http://www.state.il.us/court/SupremeCourt/Public_Hearings/2007/Rules_Comm/091407.asp Supreme Court approved adoption of Rule 1.17 and changes to Rules 5.4, 5.6 and 7.2 effective 5/23/05. http://www.iardc.org/rulesprofconduct.html Supreme Court approved changes to Rule 1.6 effective 5/24/06. http://www.iardc.org/rulesprofconduct.html Supreme Court approved changes to Rule 1.15 effective 6/1/07. http://www.iardc.org/rulesprofconduct.html Supreme Court adopts new Rules of Professional Conduct, effective January 1, 2010 http://www.state.il.us/court/SupremeCourt/Rules/Art_VIII/default_NEW.asp
Indiana			X	Revised rules effective 1/1/05. http://www.in.gov/judiciary/orders/rule-amendments/2004/0904-prof-conduct.pdf Revised advertising rules circulated for comment http://www.inbar.org/content/pdf/REPORT.pdf

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Iowa			X	<p>Revised rules effective 7/1/05. http://www.judicial.state.ia.us/Professional_Regulation/Rules_of_Professional_Conduct/</p> <p>Rules 1.2, 4.2 and 7.4 revised effective 3/12/07 http://www.judicial.state.ia.us/Court_Rules_and_Forms/Recent_Amendments_New_Rules/index.asp</p> <p>Revised Rule 5.5 Comment effective 5/14/07. http://www.judicial.state.ia.us/Court_Rules_and_Forms/Recent_Amendments_New_Rules/index.asp</p> <p>Rules 7.2 and 7.4 revised effective 11/19/07 http://www.judicial.state.ia.us/Court_Rules_and_Forms/Recent_Amendments_New_Rules/index.asp</p>
Kansas			X	<p>Revised rules effective 7/1/07. http://www.kscourts.org/rules/Rule-List.asp?rl=Rules+Relating+to+Discipline+of+Attorneys</p>
Kentucky			X	<p>Revised rules effective 7/15/09 http://courts.ky.gov/NR/rdonlyres/AA868FA5-6B4B-4C20-A06C-D5C4FC0D1596/0/RevisedSCRuleseffective7152009.pdf</p>

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Louisiana			X	<p>Revised rules effective 3/1/04. http://www.lsba.org/Rpc2004.pdf</p> <p>Rules 1.4, 1.5 and 1.8 were amended effective 4/1/06 to change the regulations regarding financial assistance to clients http://www.lasc.org/press_room/press_releases/2006/2006-01.asp</p> <p>Revised advertising rules effective 10/1/09 http://www.lsba.org/2007MemberServices/lawyeradvertising.asp</p> <p>State Bar seeking comments to Rule 3.8 amendments http://www.lsba.org/2007NewsResources/newsresources.asp?NewsID=347</p>
Maine			X	<p>Revised rules effective 8/1/09 http://www.maine.gov/tools/whatsnew/index.php?topic=Court_News&id=68628&v=article</p>
Maryland			X	<p>Revised rules effective 7/1/05. http://www.courts.state.md.us/rules/ruleschanges.html#153ro_select</p>

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Massachusetts			X	Revised rules effective 9/1/2008 http://www.mass.gov/obcbbbo/RPC.pdf With amendments through 07/01/09 http://www.mass.gov/obcbbbo/rpcnet.htm
Michigan			X	Amended Rules 3.1, 3.3, 3.4, 3.5, 3.6, 5.5, and 8.5 and adopted Rules 2.4, 5.7, and 6.6. Revised Rules effective 1/1/2011. http://courts.michigan.gov/supremecourt/Resources/Administrative/2009-06-102610.pdf
Minnesota			X	Revised rules effective 10/1/05. http://www.courts.state.mn.us/rules/professionalConduct/MRPC.DOC
Mississippi			X	Supreme Court approved changes to Rules 7.1, 7.2 and 8.5, effective 9/1/03. http://www.mscc.state.ms.us/news/sn104819.pdf Revised rules effective 11/3/05. http://www.mscc.state.ms.us/rules/RuleContents.asp?IDNum=7

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Missouri			X	<p>Revised rules effective 7/1/07. http://www.courts.mo.gov/sup/index.nsf/d45a7635d4bfdb8f8625662000632638/8061fd0e2a1b44228625729200135424?OpenDocument</p> <p>New advertising rules adopted, effective 1/1/06. http://www.courts.mo.gov/sup/index.nsf/d45a7635d4bfdb8f8625662000632638/49c8664ddcac74d78625708200534d23?OpenDocument</p> <p>Revised Rule 1.5 and new Rule 6.6 effective 1/1/08 http://www.mobar.org/data/esq07/oct19/corrected-order.pdf</p> <p>Revised Rules 7.1 through 7.3, effective 7/1/10 http://www.courts.mo.gov/sup/index.nsf/d45a7635d4bfdb8f8625662000632638/108f3be5e22024ba8625767f00690c15?OpenDocument</p>
Montana			X	<p>Revised rules effective 4/1/04 http://www.montanaodc.org/LinkClick.aspx?link=http%3a%2f%2fwww.montanaodc.org%2fPortals%2fODC%2fdocs%2frules_of_professional_conduct.pdf&tabid=1209&mid=2011</p>
Nebraska			X	<p>Revised rules effective 9/1/05. http://court.nol.org/rules/</p> <p>April 2010: The Ethics Committee of the Nebraska Bar recently recommended AGAINST adopting 1.10 revisions and FOR adopting 3.8 revisions.</p>
Nevada			X	<p>Revised rules effective 5/1/06. http://www.nvbar.org/ethics/e2k.htm</p> <p>Revised advertising rules effective 9/1/07. http://www.nvbar.org/SCLA/ORDER%20ADKT%20380.pdf</p>

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New Hampshire			X	<p>Revised rules effective 1/1/08. http://www.courts.state.nh.us/supreme/orders/20072507.pdf</p> <p>Revised 5.5 effective 3/1/07. http://www.courts.state.nh.us/supreme/orders/ord20070118.pdf</p>
New Jersey			X	<p>Revised rules effective 1/1/04. http://www.judiciary.state.nj.us/rules/apprpc.htm</p> <p>Revisions to Rule 5.5 proposed. http://www.judiciary.state.nj.us/notices/2007/n070308a.pdf</p> <p>Revisions to Rules 1.8, 1.11 and 5.5 proposed http://www.judiciary.state.nj.us/reports2008/prrc.pdf</p>
New Mexico			X	<p>Revised rules effective 11/2/08 http://nmsupremecourt.nmcourts.gov/rules/app.php?rule_no=16</p>
New York			X	<p>Revised rules effective 4/1/09 http://www.nycourts.gov/rules/jointappellate/NY%20Rules%20of%20Prof%20Conduct.pdf</p>
North Carolina			X	<p>Revised rules effective 3/1/03. http://www.ncbar.com/rules/rpcsearch.asp</p>
North Dakota			X	<p>Revised rules effective 8/1/06. http://www.ndcourts.com/court/notices/20050353/adopted/contents.htm</p>
Ohio			X	<p>Revised rules effective 2/1/07. http://www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf.</p>
Oklahoma			X	<p>Revised rules effective 1/1/08. http://www.okbar.org/ethics/ORPC.htm</p>
Oregon			X	<p>Revised rules effective 1/1/05. http://www.osbar.org/barnews/hodsubmit.html</p>

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Pennsylvania			X	<p>Revised rules effective 1/1/05. http://www.padisciplinaryboard.org/documents/Pa%20RPC.pdf</p> <p>State Bar Task Force on lawyer Advertising issued report. http://www.abanet.org/cpr/professionalism/050807_3082633-v3-PHILADELPHIA-PBA.pdf</p> <p>May 15, 2010: The Disciplinary Board of the Supreme Court of Pennsylvania is considering recommending to the Pennsylvania Supreme Court that it adopt the amendments to Model Rule of Professional Conduct 3.8: http://www.pabulletin.com/secure/data/vol40/40-20/861.html</p>
Rhode Island			X	<p>Revised rules effective 4/15/07. http://www.courts.ri.gov/supreme/pdf-files/Rules_Of_Professional_Conduct.pdf</p>
South Carolina			X	<p>Revised rules effective 10/1/05. http://www.judicial.state.sc.us/courtReg/newrules/NewRules.cfm</p>
South Dakota			X	<p>Revised rules effective 1/1/04. http://24.230.151.131/members/ethics/rules/default.htm</p>
Tennessee			X	<p>Revised rules effective 1/1/2011 http://www.tba.org/ethics/rpc_order_092910.pdf</p>
Texas		X		<p>TX Bar membership voted the proposed rules down. http://texaslawyer.typepad.com/texas_lawyer_blog/2011/02/state-bar-of-texas-members-vote-down-proposed-amendments-to-disciplinary-rules-of-professional-condu.html</p>

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Utah			X	<p>Revised rules effective 11/1/05. http://www.utcourts.gov/resources/rules/ucja/index.htm#Chapter%2013</p>
Vermont			X	<p>Proposed revisions circulated for comment in 2005. http://www.vermontjudiciary.org/Library/PDF/resources/VRPC-030205.pdf</p> <p>Changes to 2005 revisions circulated in 2006. http://www.vermontjudiciary.org/rules1/VRPCprop2-2007.pdf</p> <p>Amendments, effective September 1st, promulgated June 2009. http://www.vermontjudiciary.org/LC/Statutes%20and%20Rules/PROMULGATED-JUN1709-VRPC.pdf</p>
Virginia			X	<p>Revised rules effective 1/1/04. http://www.vsb.org/site/regulation/guidelines/</p> <p>Proposed revised 1.9, 1.11, 1.17, 7.4 and 8.4 http://www.vsb.org/site/regulation/proposed-rule-changes/</p> <p>Change to 4.2 Comment effective 5/11/07. http://www.vsb.org/docs/SCV4_2-Order_041307.pdf</p>
Washington			X	<p>Revised rules effective 9/1/06. http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=RPC</p> <p>Rule 1.8(e) amended effective 4/24/07. http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=RPC</p>

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West Virginia		X		<p>Proposed rules submitted to supreme court Dec. 2008 http://www.state.wv.us/WVSCA/rules/ABA.pdf;</p> <p>Proposed rules withdrawn Feb 2010: http://www.state.wv.us/wvsca/rules/ABAModel.htm</p>
Wisconsin			X	<p>Revised rules effective 7/1/07. http://www.wisbar.org/AM/Template.cfm?Section=Lawyer_Regulation_and_Discipline&template=/CM/ContentDisplay.cfm&contentid=62724</p> <p>Revised Rule 1.15 effective 7/1/07 http://www.wicourts.gov/sc/rulhear/DisplayDocument.html?content=html&seqNo=28907</p> <p>Revisions proposed to Rule 3.8 http://www.wicourts.gov/sc/rulhear/DisplayDocument.html?content=html&seqNo=34486</p>
Wyoming			X	<p>Revised rules effective 7/1/06. http://courts.state.wy.us/CourtRules_Entities.aspx?RulesPage=AttorneysConduct.xml</p>