

STATE OF MAINE
SUPREME JUDICIAL COURT
PROPOSED AMENDMENT TO THE
MAINE RULES OF PROFESSIONAL CONDUCT

1. Rule 8.4 of the Maine Rules of Professional Conduct is amended as follows.

MAINTAINING THE INTEGRITY OF THE PROFESSION

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RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate any provision of either the Maine Rules of Professional Conduct or the Maine Bar Rules, or knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal or unlawful 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 Maine Rules of Professional Conduct, the Maine Bar Rules or law; ~~or~~
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or law; or
- (g) engage in conduct or communication related to the practice of law that the lawyer knows or reasonable should know is harassment, or

discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity.

Advisory Committee Note – _____ 2018

Subsection (g) is added and is based on ABA Model Rule of Professional Conduct 8.4(g), with some modifications.

The Committee has omitted the final two sentences of the ABA Model Rule, not out of disagreement with their substance, but because they are unnecessary to the Rule text. Lawyers are free to accept and decline representations as they see fit, in accordance with Rule 1.16, and lawyers do not run afoul of subsection (g) by offering legal advice or advocacy on behalf of clients consistent with the Rules. The Committee endorses the substance of those omitted sentences.

The Committee has omitted from the list of types of prohibited discrimination “marital status” and “socioeconomic status.” The Committee considered the Legislature’s statement of anti-discrimination policy in the Maine’s Human Rights Act, 5 M.R.S. § 4552, as well as application of that Act, in coming to the Committee’s own conclusions on what to include or not include in a rule of attorney discipline.

Comments [3] through [5] to the ABA Model Rule provide much useful guidance in the application of Model Rule 8.4(g). Historically, the Maine Supreme Judicial Court has not adopted Comments when adopting amendments to the Rules of Professional Conduct. The Advisory Committee considers it important to alert practitioners to the following points regarding the application of Maine’s Rule 8.4(g); a number of these points grow out of Comments [3] through [5] to ABA Model Rule 8.4.

“Discrimination” as used in this Rule means conduct or communication that as lawyer intends or reasonable should know manifests an intention: to treat a person as inferior based on one or more of the characteristics listed in the Rule; to disregard relevant considerations of individual characteristics or merit because of one or more of the listed characteristics; or to cause or attempt to cause interference with the fair administration of justice based on one or more of the listed characteristics.

“Harassment” as used in this Rule means derogatory or demeaning conduct or communication and includes unwelcome sexual advances, or other conduct or communication unwelcome due to its implicit or explicit sexual content.

“Related to the practice of law” as used in the Rule means occurring in the course of representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; or operating or managing a law firm or law practice. Declining representation, limiting one’s practice to particular clients or types of clients, and advocacy of policy positions or changes in the law are not regulated by Rule 8.4(g).