

CONTACT

POLICY DEPARTMENT

MARIA CILENTI

212.382.6655 | mcilenti@nycbar.org

ELIZABETH KOCIENDA

212.382.4788 | ekocienda@nycbar.org

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

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

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

I. CURRENT LANGUAGE AND COMMENTS OF ABA AND NY RULES³

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

Rule 8.4: Misconduct

It is professional misconduct for a lawyer to:

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

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

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

³ The text of the respective rules also appears in the Appendix A.

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

Pertinent comments to this section of the rule:

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

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

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

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

Misconduct

A lawyer or law firm shall not:

(g) unlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment on the basis of age, race, creed, color, national origin, sex, disability, marital status or sexual orientation. Where there is a tribunal with jurisdiction to hear a complaint, if timely brought, other than a Departmental Disciplinary Committee, a complaint based on unlawful discrimination shall be brought before such tribunal in

the first instance.⁴ A certified copy of a determination by such a tribunal, which has become final and enforceable and as to which the right to judicial or appellate review has been exhausted, finding that the lawyer has engaged in an unlawful discriminatory practice shall constitute prima facie evidence of professional misconduct in a disciplinary proceeding;

Pertinent comments to this section of the rule:

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

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

An August 2016 Report to the American Bar Association’s House of Delegates (the “2016 Report”), prepared by the Standing Committee on Ethics and Professional Responsibility (“SCEPR”), working together with a number of other committees, discusses the history leading up to the passage of Model Rule 8.4(g).⁵ The 2016 Report begins by noting that twin goals of the ABA – representing the legal profession and promoting the public’s interest in equal justice – have been served by the Model Rules of Professional Conduct, which were first adopted in 1983.⁶

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

When the Model Rules were first adopted in 1983, they did not include any mention or reference to bias, prejudice, harassment or discrimination. In 1994, SCEPR and the ABA’s Young Lawyers Division proposed adding a new paragraph (g) to Rule 8.4 to include bias and prejudice as professional misconduct.⁸ Because of opposition, these proposals were withdrawn, but four years later, in 1998, SCEPR and the Criminal Justice Section sought to add an antidiscrimination provision into the Model Rules. These efforts led to the adoption of Comment [3] to Model Rule 8.4, which prevents bias or prejudice against identified groups “in the course of representing a client” when such actions “are prejudicial to the administration of justice.” Comment [3] to Rule 8.4.⁹

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

⁵ ABA 2016 Report to the House of Delegates on Proposed Model Rule 8.4(g), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/final_revised_resolution_and_report_109.pdf (last visited October 16, 2020).

⁶ *Id.*

⁷ ABA 2008 Mission and Goals, https://www.americanbar.org/about_the_aba/aba-mission-goals/ (last visited October 16, 2020).

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

⁹ *Id.*

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

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

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

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

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

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

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 3-4.

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

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

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

IV. OTHER STATE APPROACHES TO RULE 8.4(g)

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

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

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

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

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

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

[It is professional misconduct for a]

A lawyer [to] or law firm¹⁴ shall not:

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

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

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

[Pertinent comments to this section of the rule]

Comment

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

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

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

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

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

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

Rule 8.4 Misconduct

A lawyer or law firm shall not:

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

Comment

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

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

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

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

¹⁷ As indicated above, the Tribunal Filing Requirement has been eliminated.

VIII. CONCLUSION

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

Professional Responsibility Committee
Aegis Frumento, Chair

October 2020

APPENDIX A

Current ABA Rule 8.4(g)

It is professional misconduct for a lawyer to:

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

Pertinent comments to this section of the rule

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

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

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

Current NY Rule 8.4(g)

A lawyer or law firm shall not:

(g) unlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment on the basis of age, race, creed, color, national origin, sex, disability, marital status or sexual orientation. Where there is a tribunal with jurisdiction to hear a complaint, if timely brought, other than a Departmental Disciplinary Committee, a complaint based on unlawful discrimination shall be brought before such tribunal in the first instance. A certified copy of a determination by such a tribunal, which has become final and enforceable and as to which the right to judicial or appellate review has been exhausted, finding that the lawyer has engaged in an unlawful discriminatory practice shall constitute prima facie evidence of professional misconduct in a disciplinary proceeding;

Pertinent comments to this section of the rule

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

Proposed New NY Rule 8.4(g)

A lawyer or law firm shall not:

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

Comment

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

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

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

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

APPENDIX B

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

State	Misconduct Rule - Relevant Excerpt(s)
CO, Rule 8.4	<p>It is professional misconduct for a lawyer to:</p> <p>(g) engage in conduct, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person's race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, whether that conduct is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process; or</p> <p>(h) engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law; or</p> <p>(i) engage in conduct the lawyer knows or reasonably should know constitutes sexual harassment where the conduct occurs in connection with the lawyer's professional activities.</p>
FL, Rule 4-8.4	<p>A lawyer shall not:</p> <p>(d) engage in conduct in connection with the practice of law that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, jurors, witnesses, court personnel, or other lawyers on any basis, including, but not limited to, on account of race, ethnicity, gender, religion, national origin, disability, marital status, sexual orientation, age, socioeconomic status, employment, or physical characteristic;</p>
IL, Rule 8.4	<p>It is professional misconduct for a lawyer to:</p> <p>(j) violate a federal, state or local statute or ordinance that prohibits discrimination based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status by conduct that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including: the seriousness of the act; whether the lawyer knew that the act was prohibited by statute or ordinance; whether the act was part of a pattern of prohibited conduct; and whether the act was committed in connection with the lawyer's professional activities. No charge of professional misconduct may be brought pursuant to this paragraph until a court or administrative agency of competent jurisdiction has found that the lawyer has engaged in an unlawful discriminatory act, and the finding of the court or administrative agency has become final and enforceable and any right of judicial review has been exhausted.</p>
IN, Rule 8.4	<p>It is professional misconduct for a lawyer to:</p> <p>(g) engage in conduct, in a professional capacity, manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, sexual orientation, age, socioeconomic status, or similar factors. Legitimate advocacy respecting the foregoing factors does not violate this subsection. A trial judge's finding that preemptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.</p>
IA, Rule 32:8.4	<p>It is professional misconduct for a lawyer to:</p>

State	Misconduct Rule - Relevant Excerpt(s)
	(g) engage in sexual harassment or other unlawful discrimination in the practice of law or knowingly permit staff or agents subject to the lawyer's direction and control to do so.
MD, Rule 19-308.4	It is professional misconduct for an attorney to: (e) knowingly manifest by words or conduct when acting in a professional capacity bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status when such action is prejudicial to the administration of justice, provided, however, that legitimate advocacy is not a violation of this section;
MA, Rule 8.4	It is professional misconduct for a lawyer to: (h) engage in any other conduct that adversely reflects on his or her fitness to practice law.
ME, Rule 8.4	It is professional misconduct for a lawyer to: (g) engage in conduct or communication related to the practice of law that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity. (1) "Discrimination" on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity as used in this section means conduct or communication that a lawyer knows or reasonably should know manifests an intention: to treat a person as inferior based on one or more of the characteristics listed in this paragraph; to disregard relevant considerations of individual characteristics or merit because of one or more of the listed characteristics; or to cause or attempt to cause interference with the fair administration of justice based on one or more of the listed characteristics. (2) "Harassment" on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity as used in this section means derogatory or demeaning conduct or communication and includes, but is not limited to, unwelcome sexual advances, or other conduct or communication unwelcome due to its implicit or explicit sexual content. (3) "Related to the practice of law" as used in the section means occurring in the course of representing clients; interacting with witnesses, coworkers, court personnel, lawyers, and others while engaged in the practice of law; or operating or managing a law firm or law practice. (4) Declining representation, limiting one's practice to particular clients or types of clients, and advocacy of policy positions or changes in the law are not regulated by Rule 8.4(g).
MN, Rule 8.4	It is professional misconduct for a lawyer to: (g) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, status with regard to public assistance, ethnicity, or marital status in connection with a lawyer's professional activities; (h) commit a discriminatory act, prohibited by federal, state, or local statute or ordinance that reflects adversely on the lawyer's fitness as a lawyer.

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

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

State	Misconduct Rule - Relevant Excerpt(s)
	<p>defined in applicable federal, state or local statutes or ordinances, including but not limited to bias, prejudice, harassment or discrimination based upon race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude advice or advocacy consistent with these Rules.</p>
RI, Rule 8.4	<p>It is professional misconduct for a lawyer to:</p> <p>(d) engage in conduct that is prejudicial to the administration of justice, including but not limited to, harmful or discriminatory treatment of litigants, jurors, witnesses, lawyers, and others based on race, national origin, gender, religion, disability, age, sexual orientation or socioeconomic status;</p>
WA, Rule 8.4	<p>It is professional misconduct for a lawyer to:</p> <p>(g) commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, honorably discharged veteran or military status, or marital status, where the act of discrimination is committed in connection with the lawyer's professional activities. In addition, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this Rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, honorably discharged veteran or military status or marital status. This Rule shall not limit the ability of a lawyer to accept, decline, or withdraw from the representation of a client in accordance with Rule 1.16;</p> <p>(h) in representing a client, engage in conduct that is prejudicial to the administration of justice toward judges, lawyers, or LLLTs, other parties, witnesses, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, honorably discharged veteran or military status, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments.</p>
WI, SCR 20:8.4	<p>It is professional misconduct for a lawyer to:</p> <p>(i) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual preference or marital status in connection with the lawyer's professional activities. Legitimate advocacy respecting the foregoing factors does not violate par. (i).</p>