

GEORGIA: TO ADOPT OR NOT ADOPT ABA MODEL RULE OF PROFESSIONAL
RESPONSIBILITY 8.4(g)?

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I. INTRODUCTION

In the Summer of 2020, during my Professional Responsibility course, a course that examines the attorney's relationships with society, clients, the courts, and colleagues through a focus on the Model Rules of Professional Conduct and the Georgia variations thereof¹, our Professor assigned us an example from the course book²:

In 2011, the Obama administration, believing the Defense of Marriage Act (which barred the federal government from recognizing the validity of gay marriages) to be unconstitutional, declined to defend the law in court. The House of Representatives then enlisted the respected law firm of King & Spalding to defend the law. After gay rights groups protested, King & Spalding withdrew from handling the matter. One partner who had been working on the matter then resigned from the firm and joined a different firm that would allow him to complete the work. Professor Stephen Gillers criticized the firm's decision to back away from a client because of public pressure, saying that the "firm's timidity here will hurt weak clients, poor clients and despised clients."³

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Master Course List: 2019-2020 Academic Year, ATLANTA'S JOHN MARSHALL LAW SCHOOL, <https://www.johnmarshall.edu/ajmls-students/academic-affairs/course-descriptions/> (last visited Dec. 14, 2020).

² LISA G. LERMAN ET AL., *ETHICAL PROBLEMS IN THE PRACTICE OF LAW* 157 (Rachel E. Barkow et al. eds., 5th ed. 2020).

³ *Id.* See also Michael D. Shear & John Schwartz, *Law Firm Won't Defend Marriage Act*, THE NEW YORK TIMES, (April 25, 2011), <https://www.nytimes.com/2011/04/26/us/politics/26marriage.html>.

After being hired to defend the Defense of Marriage Act, the law firm King and Spalding, of Atlanta, Georgia, “withdrew . . . amid pressure from gay rights groups.”⁴ Mr. Paul D. Clement, the partner referenced in the above example, resigned and left the firm to continue representing “the House in its defense of the law.”⁵

Subsequently, a fellow student asked why the firm of King and Spalding was allowed to accept and then withdraw from handling the matter without penalty under ABA Model Rule of Professional Conduct 8.4 (g)⁶, since they had rejected working on the matter on the basis of sexual orientation? Brief answer: Model Rule 8.4 (g) has not been adopted by every jurisdiction.⁷ Model Rule 8.4 (g) states:

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.⁸

Since 1908, the American Bar Association has aided attorneys by adopting ethical codes in an effort to maintain justice in the profession, beginning with the 1908 Canons of Professional Ethics.⁹ It was the first

⁴ SHEAR & SCHWARTZ, *supra* note 3.

⁵ *Id.*

⁶ MODEL RULES OF PROF'L CONDUCT R. 8.4(g) (Am. Bar Ass'n 2016).

⁷ *Jurisdictional Rules Comparison Charts*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/professional_responsibility/policy/rule_charts/ (last visited July 20, 2024) [hereinafter *Jurisdictional Rules Comparison Charts*] (focusing on “Maintaining the Integrity of the Profession, Model Rule 8.4” which demonstrates the modifications of each jurisdiction in regard to Rule 8.4 of the ABA Model Rules of Professional Conduct). *See also* American Bar Association CPR Policy Implementation Committee, *Variations of the ABA Model Rules of Professional Conduct Rule 8.4: Misconduct*, AMERICAN BAR ASSOCIATION (June 2024), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc-8-4.pdf [hereinafter *Variations of the ABA Model Rule 8.4*] (discussing the variations of Model Rule 8.4 in all fifty states as well as the District of Columbia).

⁸ MODEL RULES OF PROF'L CONDUCT, *supra* note 6.

⁹ *Model Rules of Professional Conduct*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_

attempt by the ABA to codify a uniform body of ethical rules which included contingent fees, candor and fairness, conflicting interests, and many more.¹⁰ There was a lack of any ethical rules that addressed attorney misconduct.¹¹ Thereafter, in 1969, the ABA evolved its ethical codes to the Model Code of Professional Responsibility and formed the eventual ABA Model Rules of Professional Conduct.¹² From this point, in 1977, the ABA commission appointed the Kutak Commission or the Commission on Evaluation of Professional Standards which drafted the Model Rules of Professional Conduct that were later adopted by the ABA.¹³ In 1983, the ABA House of Delegates adopted the Model Rules of Professional Conduct in order to begin setting boundaries for attorneys' professional conduct.¹⁴

There is an abundance of violations of ethical rules spanning over the years from state to state. In December 1996, a Florida attorney called opposing counsel a "stupid idiot" and stated that "she should 'go back to Puerto Rico.'"¹⁵ It was concluded that the Florida attorney engaged in

of_professional_conduct/#:~:text=%20Model%20Rules%20of%20Professional%20Conduct%20%201,the%20Model%20Rules%20of%20Professional%20Conduct...%20More%20 (last visited Jan. 5, 2020) [hereinafter *Model Rules of Professional Conduct*] (explaining the history ABA Model Rules in addition to the most recent changes to the Model Rules). See also Committee on Code of Professional Conduct, *1908 Canons of Professional Ethics*, AMERICAN BAR ASSOCIATION 567, 575 (May 1908), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/1908_code.pdf [hereinafter *1908 Canons of Professional Ethics*].

¹⁰ *1908 Canons of Professional Ethics*, *supra* note 9.

¹¹ *Id.*

¹² *Model Rules of Professional Conduct*, *supra* note 9.

¹³ *Id.* See also *Kutak Commission Drafts*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/professional_responsibility/resources/report_archive/kutakcommissiondrafts/ (last visited Dec. 14, 2020) (noting the preliminary drafts that were discussed and proposed in an effort to produce the Model Rules of Professional Conduct that were eventually adopted by the ABA). The Kutak Commission prepared a discussion draft on January 30, 1980 with a final draft proposed on May 30, 1981. The Commission later gave four reports (Report 101, Report 400, Report 401, and Report 401) to the House of Delegates throughout their 1982 -1983 Midyear and Annual Meetings in order to produce the Model Rules for lawyers.

¹⁴ *Model Rules of Professional Conduct*, *supra* note 9. See also Kristine A. Kubes et. al., *The Evolution of Model Rule 8.4 (g): Working to Eliminate Bias, Discrimination, and Harassment in the Practice of Law*, AMERICAN BAR ASSOCIATION (Mar. 12, 2019), https://www.americanbar.org/groups/construction_industry/publications/under_construction/2019/spring/model-rule-8-4/.

¹⁵ Fla. Bar v. Martocci, 2001 Fla. LEXIS 843, at *1–13, *2 (Fla. Apr. 26, 2001) (noting that Florida has not adopted Model Rule 8.4 (g), but addresses discrimination in 8.4 (d) which states: "It is professional misconduct for a lawyer to: . . . (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

conduct that “consisted of directing demeaning, insulting and intemperate remarks to the opposing . . . counsel.”¹⁶ The attorney was sanctioned with a “two-year probationary period,” a public reprimand, a recommendation to be evaluated by the “Florida Lawyers Assistance for possible anger management or mental health assistance or both,” and costs in the amount of \$5,187.63.¹⁷ In 1998, a South Carolina attorney committed misconduct during two depositions when the attorney made “insulting, threatening, and demeaning comments.”¹⁸ One of the deposition transcripts illustrated the attorney’s conduct towards one of the witnesses when the attorney stated that the witness was “not smart enough” and also asked if the witness understood English.¹⁹ The second deposition demonstrated continual, insulting comments by the South Carolina attorney who stated that the adverse party was a “meanspirited, vicious witch” and that he wanted to be “locked in a room naked” with the adverse party to kill her.²⁰ The Supreme Court of South Carolina summed up his actions by stating that the attorney’s conduct “brings the legal profession into disrepute” and sanctioned him with a public reprimand.²¹ A Maryland attorney, in 2004, went to the Maryland Motor Vehicle Administration to obtain “insurance coverage information” to use in a client’s personal injury action, but he was met with resistance because of privacy complications.²² He proceeded to

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” (quoting *Variations of the ABA Model Rule 8.4*, *supra* note 7); See *infra* Part II.B Chart (condensed chart of jurisdictions that have adopted and not adopted Model Rule 8.4 (g)).

¹⁶ Atty. Griev. Comm’n v. Link, 380 Md. 405, 414–415 (Md. Mar. 19, 2004) (citing Fla. Bar v. Martocci, 2001 Fla. LEXIS 843, at *1–13, *11 (Fla. Apr. 26, 2001)).

¹⁷ Martocci, 2001 Fla. LEXIS 843 at *12–13.

¹⁸ *In re Golden*, 329 S.C. 335, 335 (1998) (noting that South Carolina has not adopted Model Rule 8.4 (g), but addresses similar conduct in Comment 3 of the rule which states: “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 (e) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (e). A trial judge’s finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule” (*Rule 8.4: Misconduct*, SOUTH CAROLINA JUDICIAL BRANCH, <https://www.sccourts.org/courtReg/displayRule.cfm?ruleID=407.0&subRuleID=RULE%208%2E4&ruleType=APP> (last visited Jan. 10, 2021)); See *infra* Part II.B Chart (condensed chart of jurisdictions that have adopted and not adopted Model Rule 8.4 (g)).

¹⁹ *Id.* at 337.

²⁰ *Id.* at 340.

²¹ *Id.* at 344.

²² Atty. Griev. Comm’n v. Link, 380 Md. 405, 408 (Md. Mar. 19, 2004) (noting that Maryland has not adopted Model Rule 8.4 (g), but addresses the issues of discrimination and harassment in 8.4 (e) which states: “It is professional misconduct for a lawyer to: . . .

call an African American customer service agent “incompetent and lazy”²³ and insulted him further by calling him “Sparky”²⁴ several times which had a racial connotation. The customer service agent “testified that ‘Sparky’ is just another name for the N word for ‘most people of color at my age or older.’”²⁵ Although the Court found the attorney’s conduct to be inappropriate, the attorney was not sanctioned and the “petition for disciplinary action [was] dismissed.”²⁶

Although many states have chosen to adopt this Model Rule into their own Rules of Professional Conduct, there are still many states that have chosen not to adopt the rule.²⁷ Some states that have not adopted 8.4 (g) can still reprimand or sanction the attorney for discrimination or harassment through similar paragraphs found under 8.4 or even the comments of 8.4. However, some of the states that have not adopted the rule allows attorneys to make comments similar to the ones referenced above with only the threat of a public reprimand or no sanction at all.²⁸

This Comment focuses on ABA Model Rule of Professional Conduct 8.4 (g) and the reasons for why Georgia should adopt the Model Rule to the state’s Rules of Professional Conduct. Section II begins with a brief history on Model Rule 8.4 (g) and its evolution into the eventual Model Rule. It continues with a condensed chart found on the American Bar Association’s website and the variations of the rule state by state. The section ends by exploring the absence of Model Rule 8.4 (g) in the Georgia model rules. Section III contains the analysis of this Comment. Part A of Section III focuses on the arguments against the adoption of the Model Rule

(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” (quoting *Variations of the ABA Model Rule 8.4*, *supra* note 7); *See infra* Part II.B Chart (condensed chart of jurisdictions that have adopted and not adopted Model Rule 8.4 (g)).

²³ *Id.* at 409.

²⁴ *Id.* at 410.

²⁵ *Id.* *See also* Emily Davies, *Investigation into fmr. Stevens Point police chief reveals patterns in his conduct and fear of retaliation*, 7 WSAW-TV (Oct. 17, 2020 at 11:36 PM), <https://www.wsaw.com/2020/10/18/investigation-into-fmr-stevens-point-police-chief-reveals-patterns-in-his-conduct-and-fear-of-retaliation/> (indicating that “Sparky” is a racially charged term that has been used in the past, in particular, with an former Police Chief that would use derogatory and profane language towards minority groups and additionally “called department supervisors ‘tampon,’ ‘sparky,’ and ‘WOP’” (emphasis added)).

²⁶ *Link*, 380 Md. at 429 (alteration to the original quotation).

²⁷ *Variations of the ABA Model Rule 8.4*, *supra* note 7.

²⁸ *See In re Golden*, 329 S.C. 335, 344 (1998); *Link*, 380 Md. at 429.

8.4 (g), while Part B of Section III focuses on the arguments in favor for the adoption of the rule. Part IV contains the conclusion with an emphasis on the idea that the best option is for Georgia to adopt Model Rule 8.4 (g) or at least add a comment to 8.4 (g) similar to other states so that lawyers are held accountable for their actions when they act in a discriminatory fashion.

II. ABA MODEL RULE OF PROFESSIONAL CONDUCT 8.4 (G)

A. A Brief History of Rule 8.4 (g)

“While the ABA’s model rules of professional conduct are not binding on individual state bars, they are often looked to as a source of guidance for states considering whether to change their ethics rules.”²⁹ On August 8, 2016, the ABA chose to adopt an amendment to Rule 8.4.³⁰ The amendment added paragraph (g), in addition to maintaining sections (a) through (f).³¹ Rule 8.4 (g) “reaches to all conduct a lawyer knows ‘or reasonably should know’ is ‘harassment or discrimination’ in any ‘conduct related to the practice of law.’”³²

Before the amendment, the Model Rules did contain anti-discrimination language; however, the language was located in Comment 3, which stated:

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,

²⁹ *With Changes to California Ethics Rule Approaching, More States Reject ABA Anti-Bias Rule*, THE RECORDER (Sept. 25, 2018), <https://plus.lexis.com/document/?pdmfid=1530671&crid=52a2c838-3c51-49fb-9a7d-c9da0faf238f&pddocfullpath=%2Fshared%2Fdocument%2Flegalnews%2Furn%3AcontentItem%3A5TBY-TD61-DY35-F054-00000-00&pdworkfolderid=a7974c0c-547e-4430-8ba1-8311b1c3a4d1&ecomp=6pJk&earg=a7974c0c-547e-4430-8ba1-8311b1c3a4d1&prid=cb50ac8e-3f66-4b82-a269-d00604b941a4> (article from LexisNexis).

³⁰ Kubes et. al., *supra* note 14.

³¹ *Id.*

³² Andrew F. Halaby & Brianna L. Long, *New Model Rule of Professional Conduct 8.4 (g): Legislative History, Enforceability Questions, and a Call for Scholarship*, 41 J. LEGAL PROF. 201, 203 (Spring 2017), available at <https://plus.lexis.com/document/?pdmfid=1530671&crid=7b6ea152-2bdb-4972-99f5-a947e0c239d3&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials%2Furn%3AcontentItem%3A5PKK-KXW0-00CV-41TS-00000-00&pdworkfolderid=b1dd12da-ae1f-4f94-8db6-0b915f9bf0ac&ecomp=6pJk&earg=b1dd12da-ae1f-4f94-8db6-0b915f9bf0ac&prid=afaf3180-e921-444d-a2b0-83a56c208f15>. See also MODEL RULES OF PROF’L CONDUCT R. 8.4 CMT. 3 (Am. Bar Ass’n 2015).

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.³³

Prior to the implementation of Comment 3's text into the Model Rules, there had been many unsuccessful efforts to incorporate anti-discrimination language into the rules and comments which led to proposals being withdrawn before they were even considered in the House of Delegates.³⁴ It was not until the annual meeting during August 1998 that a Comment with anti-bias language was adopted.³⁵

Years later, in May 2014, the Standing Committee was asked to "develop a proposal to amend the Model Rules of Professional Conduct to better address issues of harassment and discrimination."³⁶ The Standing Committee formed a Working Group³⁷ that "developed a memorandum . . . which advocated elevating anti-discrimination content from the comment to a rule."³⁸

[T]he new model rule and its corresponding comments were adopted only after substantial modifications to an original July 2015, rule change proposal ("Version 1") the ABA Standing Committee on Ethics and Professional Responsibility (the "Standing Committee") had advanced. The ensuing December 2015 version of the proposal ("Version 2") --the only one presented to the ABA's broader

³³ Halaby & Long, *supra* note 32, at 205.

³⁴ *Id.* at 206–10.

³⁵ *Id.* at 211.

³⁶ *Id.* at 212. The Standing Committee was requested to address the lack of anti-discrimination content in the Model Rules by the Commission on Women in the Profession ("CWP"), the Commission on Racial and Ethnic Diversity in the Profession ("CREDP"), the Commission on Disability Rights ("CDR"), and the Commission on Sexual Orientation and Gender Identity ("CSOGI").

³⁷ *Id.* The Working Group consisted of representatives from the Association of Professional Responsibility Lawyers, the National Organization of Bar Counsel, the Commission on Women in the Profession ("CWP"), the Commission on Racial and Ethnic Diversity in the Profession ("CREDP"), the Commission on Disability Rights ("CDR"), and the Commission on Sexual Orientation and Gender Identity ("CSOGI").

³⁸ *Id.* See also Kubes et. al., *supra* note 14 ("The amendment moves much of the language from the prior Comment 3 up into the Rule itself.").

membership, the bar at large, and the public for input--generated many dozens of comments, the vast majority of which expressed opposition. Led by the Standing Committee, the rule change proponents responded with an April/May 2016 modified proposal embodied in "Resolution 109" ("Version 3") which, due to continuing opposition by substantial constituencies within the ABA, was again modified, with the resulting proposal ("Version 4") circulated on July 25, 2016. Further horse-trading occurred in the ensuing days, resulting in the circulation on August 3, 2016, of a further modified proposal, "Revised 109" ("Version 5"), which the House ultimately adopted on August 8, 2016.³⁹

Model Rule 8.4 (g) made three changes from the time it was a Comment to the time that it was incorporated into the Model Rules.⁴⁰ These changes: "Add[ed] a knowledge component by prohibiting conduct that a lawyer 'knows or reasonably should know' is harassment or discrimination. 'Know,' 'reasonably,' and 'reasonably should know' are defined in Model Rule 1.0 (f), (h), (j), respectively. Expand[ed] the list of protected classes to include ethnicity, gender identity, and marital status. [and] Applie[d] broadly to lawyers' 'conduct related to practice of law,' rather than the original Rule's focus on conduct related to the 'administration of justice.'"⁴¹

B. Variations by State of ABA Model Rule of Professional Conduct 8.4 (g)

Currently, the ABA website has materials showing comparison charts for each jurisdiction for every rule.⁴² Under "Maintaining the Integrity of the Profession,"⁴³ Model Rule 8.4's chart consists of the complete rule along with the variations of the rule from 51 jurisdictions which includes the 50 states plus the District of Columbia.⁴⁴ This section

³⁹ Halaby & Long, *supra* note 32, at 204–05. *See also* Kubes et. al., *supra* note 14 ("At the time MRPC R. 8.4(g) was adopted in August 2016, the ABA Standing Committee on Ethics and Professional Responsibility noted that many jurisdictions across the United States had already adopted similar language to the Rule 8.4 revision. The great majority of the 598 membered House of Delegates approved the amendment, with only a few opposing via voice vote; none spoke in opposition from the floor.").

⁴⁰ Kubes et. al., *supra* note 14.

⁴¹ *Id.* (alterations to the original quotation).

⁴² *Jurisdictional Rules Comparison Charts*, *supra* note 7.

⁴³ *Id.* (noting that Rule 8.4 is under the section of Maintaining the Integrity of the Profession).

⁴⁴ *Variations of the ABA Model Rule 8.4*, *supra* note 7.

will include a chart that condenses the chart on the ABA website and focuses on paragraph (g) for all fifty-one (51) jurisdictions.

There are thirty-six (36) jurisdictions⁴⁵ that have not adopted Model Rule 8.4 (g). Of the thirty-six jurisdictions, twenty (20) states⁴⁶ do not address discrimination or harassment in the overall rule, the comments, or another section. Sixteen (16)⁴⁷ of the thirty-six jurisdictions have adopted similar rules that address discrimination or harassment in either another paragraph within the overall rule, a comment, or another section.

Additionally, there are fifteen (15) states⁴⁸ that have chosen to adopt Model Rule 8.4 (g) or a variation of the rule that protects against discrimination or harassment. It is these fifteen states plus the sixteen jurisdictions referenced above that provide some provision, either through the adoption of Model Rule 8.4 (g) or a similar provision making it an “ethical violation for a lawyer to discriminate or harass another.”⁴⁹

⁴⁵ *Id.* The thirty-six jurisdictions include Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, North Carolina, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.

⁴⁶ *Id.* The twenty states include Alabama, Arizona, Arkansas, Delaware, Georgia, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Montana, Nevada, Oklahoma, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming.

⁴⁷ *Id.* The sixteen jurisdictions include Alaska, California, Colorado, Connecticut, District of Columbia, Florida, Illinois, Maryland, Massachusetts, Michigan, Nebraska, North Carolina, Rhode Island, South Carolina, Texas, and Wisconsin.

⁴⁸ *Id.* The fifteen states include Indiana, Iowa, Maine, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Vermont, and Washington.

⁴⁹ Dennis Rendleman, *The Crusade against Model Rule 8.4(g)*, AMERICAN BAR ASSOCIATION (Oct. 2018), <https://www.americanbar.org/news/abanews/publications/youraba/2018/october-2018/the-crusade-against-model-rule-8-4-g/>.

State	8.4 (g) Non-Adoption	8.4 (g) Adoption/Variation	Similar Rules	Does not address
Alabama	“Has not adopted MR (g).” ⁵⁰			
Alaska	“Has not adopted MR (g).” ⁵¹		“It is professional misconduct for a lawyer to: . . . (f) engage in conduct that the lawyer knows is harassment or invidious discrimination during the lawyer’s professional relations with (1) officers or employees of a tribunal; (2) lawyers, paralegals, and others working for other law firms; (3) parties, regardless of whether they are represented by counsel; (4) witnesses; or (5) seated jurors. In addition, it is professional misconduct for a lawyer to knowingly engage in harassment or invidious discrimination in the lawyer’s dealings with the lawyers, paralegals, and others working for that lawyer or for that lawyer’s law firm, if the lawyer’s conduct results in a final agency or judicial determination of employment misconduct or discrimination. This rule does not prohibit a lawyer from engaging in legitimate counseling or advocacy	

⁵⁰ *Variations of the ABA Model Rule 8.4, supra note 7. See also Rule 8.4. Misconduct, ALABAMA JUDICIAL SYSTEM, https://judicial.alabama.gov/docs/library/rules/cond8_4.pdf (last visited Mar. 30, 2021).*

⁵¹ *Variations of the ABA Model Rule 8.4, supra note 7. See also Rule 8.4. Misconduct, ALASKA RULES OF COURT, <https://courts.alaska.gov/rules/docs/prof.pdf> (last visited July 20, 2024).*

			when a person's membership in a protected class is material. This rule does not limit the ability of a lawyer to accept or decline representation in any matter. Nor does it limit the ability of a lawyer to withdraw from a representation in accordance with Rule 1.16.”⁵²	
Arizona	“Has not adopted MR (g).” ⁵³			
Arkansas	“Has not adopted MR (g).” ⁵⁴			

⁵² *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4. Misconduct*, ALASKA RULES OF COURT, <https://courts.alaska.gov/rules/docs/prof.pdf> (last visited July 20, 2024).

⁵³ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4: Misconduct*, STATE BAR OF ARIZONA, [https://casetext.com/rule/arizona-court-rules/arizona-rules-of-professional-conduct/maintaining-the-integrity-of-the-profession/rule-84-misconduct#:~:text=\(a\)%20violate%20or%20attempt%20to,c\)%20engage%20in%20conduct%20involving](https://casetext.com/rule/arizona-court-rules/arizona-rules-of-professional-conduct/maintaining-the-integrity-of-the-profession/rule-84-misconduct#:~:text=(a)%20violate%20or%20attempt%20to,c)%20engage%20in%20conduct%20involving) (last visited Feb. 15, 2025).

⁵⁴ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4. Misconduct*, ARKANSAS JUDICIARY, https://rules.arcourts.gov/w/ark/current-arkansas-rules-of-professional-conduct#!fragment/zoupio-_Toc25229417/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoAvbRABwEtsBaAfX2zgCYBWDjgTgAsARgDsASgA0ybKUIQAiokK4AntADk6iREJhcCRcrWbtu-SADKeUgCE1AJQCiAGUcA1AIIA5AMKOJpGAARtCk7GJiQA (last visited Mar. 30, 2021).

California	“Has not adopted MR (g).” ⁵⁵		“California addresses lawyer harassment and discrimination on Rule 8.4.1.” ⁵⁶	
Colorado	“Has not adopted MR (g).” ⁵⁷		“Colorado addresses discrimination and harassment in their (g), (h) and (i).” ⁵⁸ ; “It is professional misconduct for a lawyer to: . . . (g) engage in conduct, in the representation of a client, that exhibits or is intended to appeal to or	

⁵⁵ *Variations of the ABA Model Rule 8.4*, *supra* note 7. See also *Rule 8.4 Misconduct*, THE STATE BAR OF CALIFORNIA, https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_8.4-Exec_Summary-Redline.pdf (last visited Feb. 15, 2025).

⁵⁶ *Variations of the ABA Model Rule 8.4*, *supra* note 7. See also *Rule 8.4.1 Prohibited Discrimination, Harassment, and Retaliation*, THE STATE BAR OF CALIFORNIA 1–2, http://www.calbar.ca.gov/Portals/0/documents/rules/Rule_8.4.1-Exec_Summary-Redline.pdf (last visited Mar. 30, 2021). Rule 8.4.1 stating: “(a) In representing a client, or in terminating or refusing to accept the representation of any client, a lawyer shall not: (1) unlawfully harass or unlawfully discriminate against persons* on the basis of any protected characteristic; or (2) unlawfully retaliate against persons.* (b) In relation to a law firm’s operations, a lawyer shall not: (1) on the basis of any protected characteristic, (i) unlawfully discriminate or knowingly* permit unlawful discrimination; (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 (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; or (2) unlawfully retaliate against persons.* (c) For purposes of this rule: (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; (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); (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 (4) ‘retaliate’ means to take adverse action against a 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. (d) A lawyer who is the subject of a State Bar investigation or State Bar Court proceeding alleging a violation of this rule shall promptly notify the State Bar of any criminal, civil, or administrative action premised, whether in whole or part, on the same conduct that is the subject of the State Bar investigation or State Bar Court proceeding. (e) Upon being issued a notice of a disciplinary charge under this rule, a lawyer shall: (1) if the notice is of a disciplinary charge under paragraph (a) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Department of Justice, Coordination and Review Section; or (2) if the notice is of a disciplinary charge under paragraph (b) of this rule, provide a copy of the notice to the California Department of Fair Employment and Housing and the United States Equal Employment Opportunity Commission. (f) This rule shall not preclude a lawyer from: (1) representing a client alleged to have engaged in unlawful discrimination, harassment, or retaliation; (2) declining or withdrawing from a representation as required or permitted by rule 1.16; or (3) providing advice and engaging in advocacy as otherwise required or permitted by these rules and the State Bar Act.”

⁵⁷ *Variations of the ABA Model Rule 8.4*, *supra* note 7. See also *Rule 8.4. Misconduct*, COLORADO BAR ASSOCIATION, <https://www.cobar.org/For-Members/Opinions-Rules-Statutes/Rules-of-Professional-Conduct/Rule-84-Misconduct> (last visited Mar. 30, 2021).

⁵⁸ See *Variations of the ABA Model Rule 8.4*, *supra* note 7.

			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; (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 (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.” ⁵⁹	
Connecticut	Has not adopted MR (g). ⁶⁰		“It is professional misconduct for a lawyer to: . . . (7) Engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, color, ancestry, sex, pregnancy, religion, national origin, ethnicity, disability, status as a veteran, age, sexual orientation, gender identity, gender expression or marital status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation, or to provide advice, assistance or advocacy consistent with these Rules.” ⁶¹	

⁵⁹ *Variations of the ABA Model Rule 8.4*, *supra* note 7. See also *Rule 8.4. Misconduct*, COLORADO BAR ASSOCIATION, <https://www.cobar.org/For-Members/Opinions-Rules-Statutes/Rules-of-Professional-Conduct/Rule-84-Misconduct> (last visited Mar. 30, 2021).

⁶⁰ See *Variations of the ABA Model Rule 8.4*, *supra* note 7.

⁶¹ *Variations of the ABA Model Rule 8.4*, *supra* note 7. See also *Rule 8.4. Misconduct*, STATE OF CONNECTICUT JUDICIAL BRANCH 63–64, <https://www.jud.ct.gov/Publications/PracticeBook/PB.pdf> (last visited July 20, 2024).

Delaware	“Has not adopted MR (g).” ⁶²			
District of Columbia	“Has not adopted MR (g).” ⁶³		“DC addresses offensive, abusive, or harassing conduct that seriously interferes with the administration of justice in its Comment. DC rules address discrimination and harassment in DC Rule 9.1.” ⁶⁴	
Florida	“Has not adopted MR (g).” ⁶⁵		“Addresses discrimination in Florida (d).” ⁶⁶ ; “It is professional misconduct for a lawyer to: . . . (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	

⁶² *Variations of the ABA Model Rule 8.4*, *supra* note 7. See also *Rule 8.4. Misconduct*, THE DELAWARE JUDICIARY, <https://courts.delaware.gov/rules/pdf/2020DelawareLawyersRulesProfessionalConduct.pdf> (last visited Mar. 30, 2021).

⁶³ *Variations of the ABA Model Rule 8.4*, *supra* note 7. See also *Rule 8.4: Misconduct*, THE DISTRICT OF COLUMBIA BAR, <https://www.dcbbar.org/For-Lawyers/Legal-Ethics/Rules-of-Professional-Conduct/Maintaining-the-Integrity-of-the-Profession/Misconduct> (last visited Mar. 30, 2021).

⁶⁴ *Variations of the ABA Model Rule 8.4*, *supra* note 7. See also *Rule 9.1: Discrimination in Employment*, THE DISTRICT OF COLUMBIA BAR, <https://www.dcbbar.org/For-Lawyers/Legal-Ethics/Rules-of-Professional-Conduct/Nondiscrimination-by-Members-of-the-Bar/Discrimination-in-Employment> (last visited Mar. 30, 2021). Rule 9.1 states: “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.”

⁶⁵ *Variations of the ABA Model Rule 8.4*, *supra* note 7. See also *Rule 4-8.4 Misconduct*, THE FLORIDA BAR, https://www-media.floridabar.org/uploads/2021/04/Ch-4-2021_06-DEC-RRTFB-Arial-14-12-4-2020-1.pdf (last visited Mar. 30, 2021).

⁶⁶ See *Variations of the ABA Model Rule 8.4*, *supra* note 7.

			status, employment, or physical characteristic.” ⁶⁷	
Georgia	“Has not adopted MR (g).” ⁶⁸			“[D]oes not address discrimination or harassment in the Comments.” ⁶⁹
Hawaii	Has not adopted MR (g). ⁷⁰			Does not have a Comment addressing discrimination or harassment. ⁷¹
Idaho	“Has not adopted MR (g).” ⁷²			
Illinois	“Has not adopted MR (g).” ⁷³		“Address [sic] discrimination in (j).” ⁷⁴ ; “It is professional misconduct for a lawyer to: . . . (j) engage in conduct in the practice of law that the lawyer knows or reasonably should know is	

⁶⁷ *Variations of the ABA Model Rule 8.4, supra note 7. See also Rule 4-8.4 Misconduct, THE FLORIDA BAR, https://www-media.floridabar.org/uploads/2021/04/Ch-4-2021_06-DEC-RRTFB-Arial-14-12-4-2020-1.pdf (last visited Mar. 30, 2021).*

⁶⁸ *Variations of the ABA Model Rule 8.4, supra note 7. See also Rule 8.4 Misconduct, STATE BAR OF GEORGIA, <https://www.gabar.org/Handbook/index.cfm#handbook/rule160> (last visited Mar. 30, 2021).*

⁶⁹ *See Variations of the ABA Model Rule 8.4, supra note 7.*

⁷⁰ *Id.*

⁷¹ *See Variations of the ABA Model Rule 8.4, supra note 7. See also Rule 8.4. Misconduct, HAWAII RULES OF PROFESSIONAL CONDUCT, https://www.courts.state.hi.us/docs/court_rules/rules/hrpcond.htm#Rule%208.4 (last visited July 20, 2024).*

⁷² *Variations of the ABA Model Rule 8.4, supra note 7. See also *Rule 8.4 Misconduct, IDAHO SUPREME COURT 66, <https://isb.idaho.gov/wp-content/uploads/irpc.pdf> (last visited Mar. 30, 2021).*

⁷³ *Variations of the ABA Model Rule 8.4, supra note 7. See also Rule 8.4: Misconduct, STATE OF ILLINOIS, <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/930b5341-8cf9-4b21-9650-5db4fa645c5a/RULE%208.4.pdf> (last visited July 20, 2024).*

⁷⁴ *See Variations of the ABA Model Rule 8.4, supra note 7.*

			harassment or discrimination on the basis of race, color, ancestry, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, gender expression, marital status, military or veteran status, pregnancy, or socioeconomic status. This paragraph does not limit the ability of a lawyer to accept, decline, or, in accordance with Rule 1.16, withdraw from a representation. This paragraph does not preclude or limit the giving of advice, assistance, or advocacy consistent with these Rules.” ⁷⁵	
Indiana		“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.” ⁷⁶		
Iowa		“It is professional misconduct for a lawyer to: . . . (g) engage in sexual harassment or other unlawful discrimination in the practice of law		

⁷⁵ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4: Misconduct*, STATE OF ILLINOIS, <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/930b5341-8cf9-4b21-9650-5db4fa645c5a/RULE%208.4.pdf> (last visited July 20, 2024).

⁷⁶ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4. Misconduct*, INDIANA RULES OF COURT, https://www.in.gov/courts/rules/prof_conduct/#_Toc59012665 (last visited Mar. 30, 2021).

		or knowingly permit staff or agents subject to the lawyer's direction and control to do so." ⁷⁷		
Kansas	"Has not adopted MR (g)." ⁷⁸			
Kentucky	"Has not adopted . . . MR (g)." ⁷⁹			
Louisiana	"Has not adopted MR (g)." ⁸⁰			
Maine		"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		

⁷⁷ *Variations of the ABA Model Rule 8.4, supra note 7. See also Rule 32:8.4: Misconduct, IOWA RULES OF PROFESSIONAL CONDUCT, <https://www.legis.iowa.gov/docs/ACO/CourtRulesChapter/09-27-2013.32.pdf> (last visited Mar. 30, 2021).*

⁷⁸ *Variations of the ABA Model Rule 8.4, supra note 7. See also Rule 8.4 Misconduct, KANSAS JUDICIAL BRANCH 1, <https://www.kscourts.org/KSCourts/media/KsCourts/Rules/Rule-8-4.pdf?ext=.pdf> (last visited Mar. 30, 2021).*

⁷⁹ *Variations of the ABA Model Rule 8.4, supra note 7. See also SCR 3.130(8.4) Misconduct, KENTUCKY BAR ASSOCIATION, [https://govt.westlaw.com/kyrules/Document/N57218050A91D11DA8F5EE32367A250AE?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/kyrules/Document/N57218050A91D11DA8F5EE32367A250AE?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)) (last visited Mar. 30, 2021).*

⁸⁰ *Variations of the ABA Model Rule 8.4, supra note 7. See also Rule 8.4. Misconduct, THE LOUISIANA ATTORNEY DISCIPLINARY BOARD 55–56, <https://www.ladb.org/Material/Publication/ROPC/ROPC.pdf> (last visited Mar. 30, 2021).*

		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).”⁸¹		
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⁸¹ *Variations of the ABA Model Rule 8.4*, *supra* note 7. See also *Rule 8.4 Misconduct*, BOARD OF OVERSEERS OF THE BAR STATE OF MAINE, https://mebaroverseers.org/regulation/bar_rules.html?id=88291 (last visited Mar. 30, 2021).

Maryland	“Has not adopted MR (g).” ⁸²		“Addresses [discrimination] issues in (e) and Comments [3] and [4].” ⁸³ ; “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 section.” ⁸⁴	
Massachusetts	“Has not adopted MR (g).” ⁸⁵		“[H]owever, Mass Rule 4.4(a) reads: (a) In representing a client, a lawyer shall not: (1) use means that have no substantial purpose other than to embarrass, harass, delay, or burden a third person, (2) use methods of obtaining evidence that violate the legal rights of such a	

⁸² *Variations of the ABA Model Rule 8.4, supra* note 7. See also *RULE 19-308.4. MISCONDUCT (8.4)*, MARYLAND JUDICIARY, [https://govt.westlaw.com/mdc/Document/N37E367703C0211E69147B51246646F09?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Document/N37E367703C0211E69147B51246646F09?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)) (last visited Mar. 30, 2021).

⁸³ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *RULE 19-308.4. MISCONDUCT (8.4)*, MARYLAND JUDICIARY, [https://govt.westlaw.com/mdc/Document/N37E367703C0211E69147B51246646F09?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Document/N37E367703C0211E69147B51246646F09?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)) (last visited Mar. 30, 2021). Comment 3 stating: “[3] Sexual misconduct or sexual harassment involving colleagues, clients, or co-workers may violate section (d) or (e) of this Rule. 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 v. Goldsborough*, 330 Md. 342 (1993). See also Rule 19-301.7 (1.7).” Comment 4 stating: “[4] Section (e) of this Rule 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, an attorney who, while acting in a professional capacity, engages in the conduct described in section (e) of this Rule 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 attorneys to refrain from the conduct described in section (e) of this Rule. See Md. Rule 18-102.3.”

⁸⁴ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *RULE 19-308.4. MISCONDUCT (8.4)*, MARYLAND JUDICIARY, [https://govt.westlaw.com/mdc/Document/N37E367703C0211E69147B51246646F09?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Document/N37E367703C0211E69147B51246646F09?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)) (last visited Mar. 30, 2021).

⁸⁵ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 4.4*, MASSACHUSETTS SUPREME JUDICIAL COURT, <https://www.mass.gov/supreme-judicial-court-rules/rules-of-professional-conduct-rule-44-respect-for-rights-of-third-persons> (last visited July 20, 2024).

			person, or (3) engage in conduct that manifests bias or prejudice against such a person based on race, sex, marital status, religion, national origin, disability, age, sexual orientation, or gender identity. This clause (3) does not preclude legitimate advice or advocacy otherwise consistent with these Rules.” ⁸⁶	
Michigan	“Has not adopted MR (g).” ⁸⁷		“Addresses this behavior in Michigan Rule 6.5(a) which reads: A lawyer shall treat with courtesy and respect all persons involved in the legal process. A lawyer shall take particular care to avoid treating such a person discourteously or disrespectfully because of the person’s race, gender, or other protected personal characteristic. To the extent possible, a lawyer shall require subordinate lawyers and nonlawyer assistants to provide such courteous and respectful treatment.” ⁸⁸	
Minnesota		“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		

⁸⁶ *Variations of the ABA Model Rule 8.4*, *supra* note 7. See also Rule 4.4, MASSACHUSETTS SUPREME JUDICIAL COURT, <https://www.mass.gov/supreme-judicial-court-rules/rules-of-professional-conduct-rule-44-respect-for-rights-of-third-persons> (last visited July 20, 2024).

⁸⁷ *Variations of the ABA Model Rule 8.4*, *supra* note 7. See also Rule: 8.4 Misconduct, MICHIGAN RULES OF PROFESSIONAL CONDUCT, <https://courts.michigan.gov/courts/michigansupremecourt/rules/documents/michigan%20rules%20of%20professional%20conduct.pdf> (last visited Mar. 30, 2021).

⁸⁸ *Variations of the ABA Model Rule 8.4*, *supra* note 7. See also Rule: 6.5 Professional Conduct, MICHIGAN RULES OF PROFESSIONAL CONDUCT, <https://courts.michigan.gov/courts/michigansupremecourt/rules/documents/michigan%20rules%20of%20professional%20conduct.pdf> (last visited Mar. 30, 2021).

		in connection with a lawyer's professional activities.” ⁸⁹		
Mississippi	“Has not adopted MR (g).” ⁹⁰			
Missouri		“It is professional misconduct for a lawyer to: . . . (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.” ⁹¹		
Montana	“Has not adopted			

⁸⁹ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4: Misconduct*, MINNESOTA LAWYERS PROFESSIONAL RESPONSIBILITY BOARD, <http://lprb.mncourts.gov/rules/Documents/MN%20Rules%20of%20Professional%20Conduct.pdf> (last visited Mar. 30, 2021).

⁹⁰ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4 Misconduct*, MISSISSIPPI RULES OF PROFESSIONAL CONDUCT 131, https://courts.ms.gov/research/rules/msrulesofcourt/rules_of_professional_conduct.pdf (last visited Mar. 30, 2021).

⁹¹ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 4-8.4: Misconduct*, MISSOURI COURTS JUDICIAL BRANCH OF GOVERNMENT, <https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/a51eedab3cdc362b86256ca6005211ec?OpenDocument> (last visited Mar. 30, 2021).

	Model Rule 8.4 (g). ⁹²			
Nebraska	“Has not adopted MR (g).” ⁹³		“Addresses the [discrimination] issue in (d), and Comment [3].” ⁹⁴ ; “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 socio-economic status. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding.” ⁹⁵	
Nevada	“Has not adopted			

⁹² *Variations of the ABA Model Rule 8.4, supra note 7. See also Rule 8.4 - Misconduct, STATE BAR OF MONTANA 275, https://cdn.ymaws.com/www.montanabar.org/resource/resmgr/attorney_rules_and_regulations/rules_of_prof_conduct.pdf (last visited Mar. 30, 2021).*

⁹³ *Variations of the ABA Model Rule 8.4, supra note 7. See also § 3-508.4. Misconduct, STATE OF NEBRASKA JUDICIAL BRANCH, <https://supremecourt.nebraska.gov/supreme-court-rules/chapter-3-attorneys-practice-law/article-5-nebraska-rules-professional-conduct/§§-3-5081-3-5085-maintaining-integrity-profession/§-3-5084-misconduct> (last visited Mar. 30, 2021).*

⁹⁴ *Variations of the ABA Model Rule 8.4, supra note 7. See also § 3-508.4. Misconduct, STATE OF NEBRASKA JUDICIAL BRANCH, <https://supremecourt.nebraska.gov/supreme-court-rules/chapter-3-attorneys-practice-law/article-5-nebraska-rules-professional-conduct/§§-3-5081-3-5085-maintaining-integrity-profession/§-3-5084-misconduct> (last visited Mar. 30, 2021). Comment 3 states: “[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.”*

⁹⁵ *Variations of the ABA Model Rule 8.4, supra note 7. See also § 3-508.4. Misconduct, STATE OF NEBRASKA JUDICIAL BRANCH, <https://supremecourt.nebraska.gov/supreme-court-rules/chapter-3-attorneys-practice-law/article-5-nebraska-rules-professional-conduct/§§-3-5081-3-5085-maintaining-integrity-profession/§-3-5084-misconduct> (last visited Mar. 30, 2021).*

	Model Rule 8.4 (g). ⁹⁶			
New Hampshire		“It is professional misconduct for a lawyer to: . . . (g) take any action, while acting as a lawyer in any context, if the lawyer knows or it is obvious that the action has the primary purpose to embarrass, harass or burden another person, including conduct motivated by animus against the other person based upon the other person’s race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation, marital status or gender identity. This paragraph shall not limit the ability of the lawyer to accept, decline, or withdraw from representation consistent with other Rules of Professional Conduct, nor does it preclude a lawyer from engaging in conduct or speech or from maintaining associations that are constitutionally protected, including advocacy on matters of public policy, the exercise of religion, or a lawyer’s right to advocate for a client.”⁹⁷		
New Jersey		“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,		

⁹⁶ *Variations of the ABA Model Rule 8.4, supra note 7. See also Rule 8.4. Misconduct, SUPREME COURT OF NEVADA, <https://www.leg.state.nv.us/courtrules/RPC.html> (last visited Mar. 30, 2021).*

⁹⁷ *Variations of the ABA Model Rule 8.4, supra note 7. See also Rule 8.4. Misconduct, NEW HAMPSHIRE RULES OF PROFESSIONAL CONDUCT, https://www.courts.state.nh.us/rules/pcon/pcon-8_4.htm (last visited Mar. 30, 2021).*

		marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.” ⁹⁸		
New Mexico		“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, or marital status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 16–116 NMRA. This paragraph does not preclude legitimate advice or advocacy consistent with these rules.” ⁹⁹		
New York		“A lawyer or law firm shall not: . . . (g) engage in conduct in the practice of law that the lawyer or law firm knows or reasonably should know constitutes: (1) unlawful discrimination, or (2) harassment. whether or not unlawful, on the basis of one or more of the following protected categories: race, color, sex, pregnancy, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, gender expression, marital status, status as a member of the military, or status as		

⁹⁸ *Variations of the ABA Model Rule 8.4*, *supra* note 7. See also *Rule 8.4 Misconduct*, NEW JERSEY RULES OF PROFESSIONAL CONDUCT 50–52, <https://www.njcourts.gov/attorneys/assets/rules/rpc.pdf> (last visited Mar. 30, 2021).

⁹⁹ *Variations of the ABA Model Rule 8.4*, *supra* note 7. See also 16-804. *Misconduct*, NEW MEXICO COMPILATION COMMISSION, <https://nmonesource.com/nmos/nmra/en/item/5699/index.do#!fragment/zoupio-Toc32399078/BQCwhgziBcwMYgK4DsDWszIQewE4BUBTADwBdoAvbRA BwEtsBaAfX2zgGYAmDgTl4AMAdgAcASgA0ybKUIQAIokK4AntADk6iREJhcCRcrWbtu-SADKeUgCE1AJQCiAGUcA1AIIA5AMKOJpGAARtCk7GJiQA> (last visited Mar. 30, 2021).

		a military veteran. (3) ‘Harassment’ for purposes of this Rule. means physical contact, verbal conduct, and/or nonverbal conduct such as gestures or facial expressions that is: (a) directed at an individual or specific individuals; and (b) derogatory or demeaning. Conduct that a reasonable person would consider as petty slights or trivial inconveniences does not rise to the level of harassment under this Rule. (4) This Rule does not limit the ability of a lawyer or law firm to, consistent with these Rules: (a) accept, decline, or withdraw from a representation; (b) express views on matters of public concern in the context of teaching, public speeches, continuing legal education programs, or other forms of public advocacy or education, or in any other form of written or oral speech protected by the United States Constitution or the New York State Constitution; or (c) provide advice, assistance, or advocacy to clients. (5) ‘Conduct in the practice of law’ includes: (a) representing clients; (b) interacting with witnesses, coworkers, court personnel, lawyers, and others while engaging in the practice of law; and (c) operating or managing a law firm or law practice.”¹⁰⁰		
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¹⁰⁰ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4: Misconduct*, NEW YORK STATE BAR ASSOCIATION 196–98, <https://nysba.org/wp-content/uploads/2025/03/NYSBA-NY-Rules-of-Professional-Conduct-2025-web-1.pdf> (last visited June 25, 2025).

North Carolina	“Has not adopted MR (g).” ¹⁰¹		“Addresses similar conduct in Comment [5] to Rule 8.4.” ¹⁰²	
North Dakota		“It is professional misconduct for a lawyer to: . . . (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.” ¹⁰³		
Ohio		“It is professional misconduct for a lawyer to: . . . (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.” ¹⁰⁴		
Oklahoma	“Has not adopted MR (g).” ¹⁰⁵			
Oregon		“It is professional misconduct for a lawyer to: . . . (7) in the course of representing a client,		

¹⁰¹ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4 Misconduct*, NORTH CAROLINA STATE BAR, <https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-84-misconduct/> (last visited Mar. 30, 2021).

¹⁰² *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4 Misconduct*, NORTH CAROLINA STATE BAR, <https://www.ncbar.gov/for-lawyers/ethics/rules-of-professional-conduct/rule-84-misconduct/> (last visited Mar. 30, 2021). Comment 5 states: “[5] Threats, bullying, harassment, and other conduct serving no substantial purpose other than to intimidate, humiliate, or embarrass anyone associated with the judicial process including judges, opposing counsel, litigants, witnesses, or court personnel violate the prohibition on conduct prejudicial to the administration of justice. When directed to opposing counsel, such conduct tends to impede opposing counsel’s ability to represent his or her client effectively. Comments ‘by one lawyer tending to disparage the personality or performance of another...tend to reduce public trust and confidence in our courts and, in more extreme cases, directly interfere with the truth-finding function by distracting judges and juries from the serious business at hand.’ State v. Rivera, 350 N.C. 285, 291, 514 S.E.2d 720, 723 (1999). See Rule 3.5, cmt. [10] and Rule 4.4, cmt. [2].”

¹⁰³ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4 Misconduct*, STATE OF NORTH DAKOTA COURTS, <https://www.ndcourts.gov/legal-resources/rules/ndrprofconduct/8-4> (last visited Mar. 30, 2021).

¹⁰⁴ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4: Misconduct*, OHIO RULES OF PROFESSIONAL CONDUCT 185–86, <http://www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf> (last visited Mar. 30, 2021).

¹⁰⁵ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4 Misconduct*, OKLAHOMA STATE COURTS NETWORK, <https://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=449013> (last visited Mar. 30, 2021).

		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.” ¹⁰⁶		
Pennsylvania		“It is professional misconduct for a lawyer to: . . . (g) in the practice of law, by words or conduct, knowingly manifest bias or prejudice, or engage in harassment or discrimination, as those terms are defined in applicable federal, state or local statutes or ordinances, including but not limited to bias, prejudice, harassment or discrimination based upon race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or 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.” ¹⁰⁷		
Rhode Island	“Has not adopted MR (g).” ¹⁰⁸		“Addresses similar issues in (d).” ¹⁰⁹ ; “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	

¹⁰⁶ *Variations of the ABA Model Rule 8.4, supra note 7. See also Rule 8.4 Misconduct, OREGON RULES OF PROFESSIONAL CONDUCT 30, http://www.osbar.org/_docs/rulesregs/orpc.pdf (last visited Mar. 30, 2021).*

¹⁰⁷ *Variations of the ABA Model Rule 8.4, supra note 7. See also Rule 8.4. Misconduct, PENNSYLVANIA CODE, <http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/204/chapter81/s8.4.html&searchunitkeywords=8.4&origQuery=8.4&operator=OR&title=null> (last visited Mar. 30, 2021).*

¹⁰⁸ *Variations of the ABA Model Rule 8.4, supra note 7. See also Rule 8.4. Misconduct, RHODE ISLAND RULES OF PROFESSIONAL CONDUCT, <https://www.courts.ri.gov/PublicResources/disciplinaryboard/PDF/Article5.pdf> (last visited Mar. 30, 2021).*

¹⁰⁹ *See Variations of the ABA Model Rule 8.4, supra note 7.*

			of litigants, jurors, witnesses, lawyers, and others based on race, national origin, gender, religion, disability, age, sexual orientation or socioeconomic status.” ¹¹⁰	
South Carolina	“Has not adopted MR (g).” ¹¹¹		“Addresses similar conduct in Comment [3].” ¹¹²	
South Dakota	“Has not adopted MR (g).” ¹¹³			
Tennessee	“Has not adopted MR (g).” ¹¹⁴			

¹¹⁰ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4. Misconduct*, RHODE ISLAND RULES OF PROFESSIONAL CONDUCT, <https://www.courts.ri.gov/PublicResources/disciplinaryboard/PDF/Article5.pdf> (last visited Mar. 30, 2021).

¹¹¹ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4: Misconduct*, SOUTH CAROLINA JUDICIAL BRANCH, <https://www.sccourts.org/courtReg/displayRule.cfm?ruleID=407.0&subRuleID=RULE%208%2E4&ruleType=APP> (last visited Jan. 10, 2021).

¹¹² *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4: Misconduct*, SOUTH CAROLINA JUDICIAL BRANCH, <https://www.sccourts.org/courtReg/displayRule.cfm?ruleID=407.0&subRuleID=RULE%208%2E4&ruleType=APP> (last visited Jan. 10, 2021). Comment 3 states: “[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 (e) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (e). A trial judge’s finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.”

¹¹³ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4. Misconduct*, SOUTH DAKOTA LEGISLATURE LEGISLATIVE RESEARCH COUNCIL, https://sdlegislature.gov/Statutes/Codified_Laws/2044876 (last visited Mar. 30, 2021).

¹¹⁴ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4: Misconduct*, TENNESSEE STATE COURTS, <https://www.tncourts.gov/rules/supreme-court/8#top> (last visited Mar. 30, 2021).

Texas	“Has not adopted MR (g).” ¹¹⁵		“[A]ddresses similar behavior in Texas Rule 5.08.” ¹¹⁶	
Utah	“Has not adopted MR (g).” ¹¹⁷			
Vermont		“It is professional misconduct for a lawyer to: . . . (g) engage in conduct related to the practice of law that the lawyer knows or should know is harassment or discrimination on the basis of race, color, sex, religion, national origin, ethnicity, ancestry, place of birth, disability, age, sexual orientation, gender identity marital status or socioeconomic status, or other grounds that are illegal or prohibited under federal or state law. This paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 1.16. This paragraph		

¹¹⁵ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *8.04 Misconduct*, TEXAS CENTER FOR LEGAL ETHICS, <https://www.legalethictexas.com/Ethics-Resources/Rules/Texas-Disciplinary-Rules-of-Professional-Conduct/VIII--MAINTAINING-THE-INTEGRITY-OF-THE-PROFESSION/8-04-Misconduct> (last visited Mar. 30, 2021).

¹¹⁶ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *5.08 Prohibited Discriminatory Activities*, TEXAS CENTER FOR LEGAL ETHICS, <https://www.legalethictexas.com/resources/rules/texas-disciplinary-rules-of-professional-conduct/prohibited-discriminatory-activities/> (last visited Feb. 15, 2025). Rule 5.08 states: “(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. (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) is necessary in order to address any substantive or procedural issues raised by the proceeding; and (ii) is conducted in conformity with applicable rulings and orders of a tribunal and applicable rules of practice and procedure.”

¹¹⁷ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4. Misconduct*, JUDICIAL COUNCIL CODE OF JUDICIAL ADMINISTRATION – UTAH COURTS, <https://legacy.utcourts.gov/rules/view.php?type=ucja&rule=13-8.4> (last visited Feb. 15, 2025).

		does not preclude legitimate advice or advocacy consistent with these rules.” ¹¹⁸		
Virginia	“Has not adopted R. 8.4(g).” ¹¹⁹			
Washington		“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.” ¹²⁰		
West Virginia	“Has not adopted Model Rule 8.4 (g).” ¹²¹			

¹¹⁸ *Variations of the ABA Model Rule 8.4, supra* note 7.

¹¹⁹ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4 Misconduct*, VIRGINIA STATE BAR, <https://casetext.com/rule/virginia-court-rules/virginia-rules-of-supreme-court/part-six-integration-of-the-state-bar/section-ii-virginia-rules-of-professional-conduct/maintaining-the-integrity-of-the-profession/rule-84-misconduct> (last visited Feb. 15, 2025).

¹²⁰ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4 Misconduct*, WASHINGTON STATE ADMINISTRATIVE OFFICE OF THE COURTS, https://www.courts.wa.gov/court_rules/pdf/RPC/GA_RPC_08_04_00.pdf (last visited Mar. 30, 2021).

¹²¹ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4 Misconduct*, WEST VIRGINIA JUDICIARY, <http://www.courtswv.gov/legal-community/court-rules/professional-conduct/rule8.html#rule8.4> (last visited Mar. 30, 2021).

Wisconsin	“Has not adopted . . . MR(g).” ¹²²		“Addresses similar conduct in (i).” ¹²³ ; “It is professional misconduct for a lawyer to: . . . (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).” ¹²⁴	
Wyoming	“Has not adopted MR (g).” ¹²⁵			

¹²² *Variations of the ABA Model Rule 8.4, supra* note 7. See also *SCR 20:8.4 Misconduct*, WISCONSIN COURTS RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS 208–10, <https://www.wicourts.gov/sc/rules/chap20b.pdf> (last visited Mar. 30, 2021).

¹²³ See *Variations of the ABA Model Rule 8.4, supra* note 7.

¹²⁴ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *SCR 20:8.4 Misconduct*, WISCONSIN COURTS RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS 208–10, <https://www.wicourts.gov/sc/rules/chap20b.pdf> (last visited Mar. 30, 2021).

¹²⁵ *Variations of the ABA Model Rule 8.4, supra* note 7. See also *Rule 8.4. Misconduct*, WYOMING RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS AT LAW 113, https://www.courts.state.wy.us/wp-content/uploads/2017/05/RULES_OF_PROFESSIONAL_CONDUCT_FOR_ATTORNEYS_AT_LAW.pdf (last visited Mar. 30, 2021).

C. Georgia's Absence of Model Rule 8.4 (g)

“The ABA develops the Model Rules of Professional Conduct . . . for lawyers to guide states in promulgating their rules.”¹²⁶ As stated in the website for the State Bar of Georgia, “[t]he Georgia Rules of Professional Conduct help define a lawyer’s obligations to clients, to the judicial system, and to the public.”¹²⁷ The Georgia Supreme Court maintains ultimate authority “to regulate the legal profession, [however] the State Bar of Georgia’s Office of the General Counsel serves as the Court’s arm to investigate and prosecute claims that a lawyer has violated the ethics rules.”¹²⁸

In Georgia, the jurisdiction “[h]as not adopted MR (g).”¹²⁹ Neither does Georgia’s Rule 8.4 address discrimination and/or harassment misconduct in the rules or its comments.¹³⁰

By not addressing these issues, the Georgia Supreme Court and the State Bar of Georgia’s Office of the General Counsel make it challenging to sanction attorneys for behavior that could be viewed as discrimination or harassment.

III. ANALYSIS

A. Arguments Against the Adoption of Model Rule 8.4 (g)

Before the implementation of Rule 8.4 (g), issues were raised by opponents who objected to the adoption of Rule 8.4 (g) on the grounds that the rule both interfered with attorneys’ freedom of religion¹³¹ and its adoption would “threaten[] to chill lawyers’ freedom to express their viewpoints on political, social, religious, and cultural issues.”¹³²

¹²⁶ Kubes et. al., *supra* note 14.

¹²⁷ *Ethics & Professionalism*, STATE BAR OF GEORGIA, <https://www.gabar.org/barrules/ethicsandprofessionalism/index.cfm> (last visited Dec. 20, 2020).

¹²⁸ *Id.* (alteration to the original quotation).

¹²⁹ *Variations of the ABA Model Rule 8.4*, *supra* note 7.

¹³⁰ *Id.*

¹³¹ Rendleman, *supra* note 49.

¹³² Kim Colby, *The Alaska Bar Association Considers ABA Model Rule 8.4(g): Comments Received Until August 15, 2019*, THE FEDERALIST SOCIETY (Jul. 29, 2019), <https://fedsoc.org/commentary/fedsoc-blog/the-alaska-bar-association-considers-aba-model-rule-8-4-g-comments-received-until-august-15-2019>.

1. Freedom of Religion

One contention is that Rule 8.4 (g) is unconstitutional because the rule infringes upon the First Amendment's free exercise of religion.¹³³ Religious advocates emphasize the idea that their freedom of religion allows them to discriminate against homosexuals and members of the LGBTQ community because their “sincerely held religious beliefs” are entitled to greater social value and legal recognition than equal treatment for all individuals.¹³⁴ These sincerely held religious beliefs include a belief that “same-sex marriage . . . is morally wrong.”¹³⁵ These advocates believe that the victims of their beliefs should not be able to show any “recognition or sensitivity” to the discrimination or harassment they face because their beliefs allow them to discriminate against these individuals.¹³⁶

2. Freedom of Speech

Advocates further suggest that the rule infringes upon their freedom of speech.¹³⁷ They argue that Rule 8.4 (g) chills speech.¹³⁸ Constitutional law expert, Eugene Volokh, warns that the rule would punish speech especially at events such as continuing legal education (CLE) classes or even in regular law school classes.¹³⁹ Attorneys will not want to speak their mind because of the fear that a bar complaint would be filed based on any statement made with language thought to be discriminatory during the event.¹⁴⁰ In a 2017 video, Volokh stated: “[The speech code] explicitly made

¹³³ David L. Hudson Jr., *States split on new ABA Model Rule limiting harassing or discriminatory conduct*, ABA JOURNAL (Oct. 1, 2017, 2:30 AM), https://www.abajournal.com/magazine/article/ethics_model_rule_harassing_conduct. See also U.S. CONST. amend. I. (“Congress shall make no law respecting an *establishment of religion*, or *prohibiting the free exercise thereof*; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances” (emphasis added)).

¹³⁴ Rendleman, *supra* note 49.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ U.S. CONST. amend. I. (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or *abridging the freedom of speech*, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances” (emphasis added)).

¹³⁸ Rendleman, *supra* note 49. See also Eugene Volokh, *Professor Stephen Gillers (NYU) Unwittingly Demonstrates Why ABA Model Rule 8.4(g) Chills Protected Speech*, THE VOLOKH CONSPIRACY (June 17, 2019, 8:01 AM), <https://reason.com/volokh/2019/06/17/professor-stephen-gillers-nyu-unwittingly-demonstrates-why-aba-model-rule-8-4g-chills-protected-speech/>.

¹³⁹ Hudson Jr., *supra* note 133.

¹⁴⁰ Rendleman, *supra* note 49.

clear that the speech code would apply not just [to] operations in [a] courtroom or in depositions, or in interactions with clients or opposing counsel, but also in professional activities including Bar Association activities and social activities related to the practice of law.”¹⁴¹ He further states that if attorneys express an opinion that the Bar views as derogatory or discriminatory then the attorney could be subject to discipline by the Bar for engaging in harassment in a professional setting or in a social activity.¹⁴² Volokh argues that “[t]he rule prohibits far more innocuous expressions that may simply be ‘demeaning’ to others.”¹⁴³ He believes that:

The American Bar Association is trying to restrict the speech of America’s lawyers and it’s trying to get . . . state bars and state supreme courts to essentially ban certain kinds of speech on pain of possibly losing one’s Bar license or at the very least . . . being . . . publicly reprimanded or even suspended.¹⁴⁴

This type of chilling effect on speech would be detrimental for lawyers expressing their controversial opinions, putting lawyers at risk “of losing their ability to make a living.”¹⁴⁵ Another opponent of the rule, Marc Randazza, argues that the rule “will do nothing but ensure that there is always a speech trap for any lawyer who sticks his or her neck out on issues that might be considered controversial.”¹⁴⁶

Opponents contend that Rule 8.4 (g) is unconstitutional because of two recent decisions from the Supreme Court of the United States. In

¹⁴¹ Hudson Jr., *supra* note 133. See also The Federalist Society, *Eugene Volokh: A Nationwide Speech Code for Lawyers?*, YOUTUBE (May 2, 2017) (beginning at 00:14), available at <https://www.youtube.com/watch?v=AfpdWmlOXbA> [hereinafter *A Nationwide Speech Code*].

¹⁴² *A Nationwide Speech Code*, *supra* note 141 (beginning at 00:47).

¹⁴³ Volokh, *supra* note 138.

¹⁴⁴ *A Nationwide Speech Code*, *supra* note 141 (beginning at 01:32).

¹⁴⁵ *Id.* (beginning at 01:55). See also Matthew Perlman, *Mont. Lawmakers Say ABA Anti-Bias Rule Is Unconstitutional*, LAW360 (Apr. 14, 2017), available at <https://plus.lexis.com/document/?pdmfid=1530671&crid=850b5075-4ff3-4cb8-a28f-274e7a0bebd&pddocfullpath=%2Fshared%2Fdocument%2Flegalnews%2Furn%3AcontentItem%3A5N9T-7WF1-JJ1H-X2XD-00000-00&pdworkfolderid=ebb17183-0690-4a1f-aa02-7d21fca30955&ecomp=6pJk&earg=ebb17183-0690-4a1f-aa02-7d21fca30955&prid=cb50ac8e-3f66-4b82-a269-d00604b941a4> (article from LexisNexis) (“The [rule] argues that this will have a chilling effect on attorneys, because it makes it professional misconduct to say or do anything that “could be construed by any person or activist group as discriminatory.” (alteration to the original quotation)).

¹⁴⁶ Hudson Jr., *supra* note 133.

National Institute of Family and Life Advocates (NIFLA) v. Becerra, the Court held¹⁴⁷ “that government restrictions on professionals’ speech -- including lawyers’ professional speech -- are generally subject to strict scrutiny because they are content-based speech restrictions and, therefore, presumptively unconstitutional.”¹⁴⁸ Moreover, the Court in *Matal v. Tam* held¹⁴⁹ that the federal statute that allowed “government officials to penalize ‘disparaging’ speech . . . was viewpoint discriminatory”¹⁵⁰ and violated the First Amendment’s Free Speech Clause.¹⁵¹ The Court believed viewpoint discrimination offended a “bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend.”¹⁵² Opponents to Rule 8.4 (g) argue that the rule would “regulate nearly everything a lawyer says or does.”¹⁵³ By regulating members’ speech, the Bar is acting in an unconstitutional fashion to restrict attorneys’ ability to make controversial opinions on divisive issues.

B. Arguments in Favor of the Adoption of Model Rule 8.4 (g)

In July 2020, the American Bar Association’s Standing Committee on Ethics and Professional Responsibility published Formal Opinion 493 which offered guidance on the “purpose, scope, and application of Model Rule 8.4(g).”¹⁵⁴

1. Deterrent to Sexual Harassment and Discrimination

Time and time again, attorneys and clients have faced wrongs such as sexual harassment and discrimination at the hands of other members of the law association “taking place at firm outings, dinners and bar

¹⁴⁷ Nat’l Inst. of Family & Life Advocates v. Becerra, 138 S. Ct. 2361, 2378 (2018).

¹⁴⁸ Colby, *supra* note 132.

¹⁴⁹ *Matal v. Tam*, 137 S. Ct. 1744, 1751 (2017).

¹⁵⁰ Colby, *supra* note 132.

¹⁵¹ *Matal*, 137 S. Ct. at 1751. *See also* U.S. CONST. amend. I. (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances” (emphasis added)).

¹⁵² *Matal*, 137 S. Ct. at 1751.

¹⁵³ Colby, *supra* note 132.

¹⁵⁴ Standing Committee on Ethics and Professional Responsibility, *Formal Opinion 493 – Model Rule 8.4(g): Purpose, Scope, and Application*, AMERICAN BAR ASSOCIATION 1 (July 15, 2020), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba-formal-opinion-493.pdf [hereinafter *Formal Opinion 493*].

association events.”¹⁵⁵ Model Rule 8.4 (g) reinforces the idea that these actions will not be tolerated.¹⁵⁶ These types of actions, which include conduct and speech, are “inconsistent with an attorney’s ethical obligations.”¹⁵⁷

Recently, culture has highlighted the discrimination and harassment of women.¹⁵⁸ Many times, “[t]his discrimination and marginalization of women finds its way into law firms, courtrooms, and the corporate arena generally, and impacts not only the female attorneys and judges themselves, but also the clients and litigants that these women are serving.”¹⁵⁹

¹⁵⁵ Rendleman, *supra* note 49. See also Hailey Konnath, *ABA Defends Ban on Atty Bias from Free Speech Claims*, LAW360 (July 15, 2020), available at <https://plus.lexis.com/document/?pdmfid=1530671&crd=136816cc-a9dc-441d-a64d-f50303e50030&pddocfullpath=%2Fshared%2Fdocument%2Flegalnews%2Furn%3AcontentItem%3A60C8-2VC1-F65M-6241-00000-00&pdworkfolderid=bf3a3392-3a80-4310-8600-5a8e46a183bf&ecomp=6pJk&earg=bf3a3392-3a80-4310-8600-5a8e46a183bf&prid=0edd40a1-7f20-4916-ac7b-028bb7006e27> (article from LexisNexis) (“Many of the rule’s early proponents, who included the National Association of Women Lawyers, have argued that the profession needed a deterrent in the Model Rules to sexual harassment and racial bias, including in social settings connected to a lawyer’s practice as well as formal legal settings.”).

¹⁵⁶ *Key Considerations in Addressing Harassment and Discrimination in Law Firms*, THE RECORDER (Jan. 2, 2019), <https://plus.lexis.com/document/?pdmfid=1530671&crd=39186184-a828-499d-90b9-d19fc993644c&pddocfullpath=%2Fshared%2Fdocument%2Flegalnews%2Furn%3AcontentItem%3A5V3X-KB81-JBM3-R4YT-00000-00&pdworkfolderid=abc6d1af-88cf-4b4e-a932-ffd0283e40f5&ecomp=6pJk&earg=abc6d1af-88cf-4b4e-a932-ffd0283e40f5&prid=d76dc927-97ff-4fa0-a54f-8990c43d35d0> (article from LexisNexis).

¹⁵⁷ *Id.*

¹⁵⁸ Kristy D’Angelo-Corker, *Don’t Call Me Sweetheart! Why the ABA’s New Rule Addressing Harassment and Discrimination is so Important for Women Working in the Legal Profession Today*, 23 LEWIS & CLARK L. REV. 263, 265 (2019), available at <https://plus.lexis.com/document/?pdmfid=1530671&crd=6aa5b727-fa08-4659-af6a-484338cb294a&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials%2Furn%3AcontentItem%3A5W71-NJK0-00CW-518W-00000-00&pdworkfolderid=2be9625c-a552-41a2-ab84-603fcfb41218&ecomp=6pJk&earg=2be9625c-a552-41a2-ab84-603fcfb41218&prid=d76dc927-97ff-4fa0-a54f-8990c43d35d0> (highlighting the importance of adopting Model Rule 8.4 (g) to combat discriminatory behavior on a national level).

¹⁵⁹ *Id.* See also Stephen Gillers, *A Rule to Forbid Bias and Harassment in Law Practice: A Guide for State Courts Considering Model Rule 8.4(g)*, 30 GEO. J. LEGAL ETHICS 195, 199 (Spring 2017), available at <https://plus.lexis.com/document/searchwithindocument/?pdmfid=1530671&crd=1fe18063-edc8-4156-ad42-114a5a204594&pdsearchwithinterm=predominantly&pdworkfolderid=8edf1196-96ae-4b7b-bace-16dea152f913&ecomp=83tdk&prid=3b0dc01e-442d-416d-8bc1-d03dcb644916> (noting that the targets of discriminatory and harassing conduct are predominantly women).

In addition to the discrimination and harassment women face, there is a continuation of systematic racism entrenched in our society that impacts African-American communities.¹⁶⁰ It is through the Bar and its members' commitment to legal reforms that the law community can eventually eliminate the systematic racism that haunts attorneys and clients.¹⁶¹ Model Rule 8.4 (g) might not immediately eliminate racism, but it is a step in the right direction. The legal community cannot remain silent, but "must take action to combat the imbalances within the legal profession."¹⁶²

2. Does Not Limit an Attorney's Speech

As stated in the July 2020 Formal Opinion 493, the rule covers conduct "that violates paragraph (g) [and] will often be intentional and typically targeted at a particular individual or group of individuals, such as directing a racist or sexist epithet towards others or engaging in unwelcome, nonconsensual physical conduct of a sexual nature."¹⁶³ The opinion explained:

The Rule does not prevent a lawyer from freely expressing opinions and ideas on matters of public concern, nor does it limit a lawyer's speech or conduct in settings unrelated to the practice of law. The fact that others may personally disagree with or be offended by a lawyer's expression does not establish a violation. The Model Rules are rules of reason, and whether conduct violates Rule 8.4(g) must necessarily be judged, in context, from an objectively reasonable perspective.¹⁶⁴

The rule is not meant to limit speech, but to "maintain[] the public's confidence in the impartiality of the legal system and its trust in the legal profession as a whole."¹⁶⁵

¹⁶⁰ Suhuyini Abudulai et. al., *Anti-Racist Speech and Action: Where Does the Legal Profession and Model Rule 8.4(g) Go from Here?*, AMERICAN BAR ASSOCIATION (Oct. 8, 2020), https://www.americanbar.org/groups/business_law/publications/blt/2020/10/anti-racist-speech/.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Formal Opinion 493*, *supra* note 154, at 14.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

IV. CONCLUSION

Currently, Georgia stands as a state that does not address the issues of discrimination or harassment in its Model Rules of Professional Conduct.¹⁶⁶

Opponents' argument that their constitutional rights are violated because they cannot freely discriminate against individuals or groups who contradict the opponents' religious beliefs is an ideology that should be eliminated. The goal should be to eradicate harassment and discrimination from the legal profession rather than cause more discrimination and harassment at the hands of those that should be protecting their clients and fellow colleagues from inappropriate behavior. Moreover, the rule does not limit an attorney's speech. Rather, "Rule 8.4(g) calls for lawyers to educate themselves about reasonable standards of acceptable conduct; the rule prohibits conduct 'the lawyer knows or reasonably should know is harassment or discrimination.' If nothing else, the rule is an invitation for lawyers to consider another person's viewpoint before speaking or acting."¹⁶⁷ The rule is an effective device to respond to attorney misconduct and "to protect people from attorneys' harassing and discriminatory behavior and to demonstrate its commitment to equality, civility, and professionalism."¹⁶⁸

Recently, there has been a development in which the Council of the Section of Legal Education and Admissions to the Bar proposed revisions to the ABA Standards and Rules of Procedure for Approval of Law Schools to provide training and education in bias for ABA approved law schools.¹⁶⁹ Specifically, the Council proposed a change to Standard 303 which included a requirement that "students receive broad anti-bias education and training

¹⁶⁶ *Variations of the ABA Model Rule 8.4*, *supra* note 7. See also *Rule 8.4 Misconduct*, STATE BAR OF GEORGIA, <https://www.gabar.org/Handbook/index.cfm#handbook/rule160> (last visited Mar. 30, 2021).

¹⁶⁷ Kubes et. al., *supra* note 14.

¹⁶⁸ Wendy N. Hess, *Promoting Civility by Addressing Discrimination and Harassment: The Case for Rule 8.4(g) in South Dakota*, 65 S.D. L. REV. 233, 278 (2020), available at <https://plus.lexis.com/document/?pdmfid=1530671&crid=3a89a9a0-66aa-4d93-ba6e-7cd19176e86d&pddocfullpath=%2Fshared%2Fdocument%2Fanalytical-materials%2Furn%3AcontentItem%3A60K2-S901-JX8W-M35H-00000-00&pdworkfolderid=da8741d4-7bd0-4878-8185-7f7584058d45&ecom=6pJk&earg=da8741d4-7bd0-4878-8185-7f7584058d45&priid=dae42539-18b9-4e32-bcc9-864c45243d33>.

¹⁶⁹ *Anti-bias, professionalism standards teed up for law schools*, AMERICAN BAR ASSOCIATION (May 24, 2021), <https://www.americanbar.org/news/abanews/aba-news-archives/2021/05/law-school-standards/>.

both at the beginning and later in their legal studies.”¹⁷⁰ Months later, on August 16, 2021, the Standards Committee made final recommendations to Standard 303 “requiring law schools to provide education on bias, cross-cultural competency, and racism.”¹⁷¹ The Standards Committee approved the changes to Standard 303, as follows:

Standard 303: Curriculum

- (a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:
 - (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members;
 - (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and
 - (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement, as defined in Standard 304.
- (b) A law school shall provide substantial opportunities to students for:
 - (1) law clinics or field placement(s); and
 - (2) student participation in pro bono legal services, including law-related public service activities.; and
 - (3) the development of a professional identity.
- (c) A law school shall provide education to law students on bias, cross-cultural competency, and racism:
 - (1) at the start of the program of legal education, and
 - (2) at least once again before graduation.

For students engaged in law clinics or field placements, the second educational occasion will take place before, concurrent with, or as part of their enrollment in clinical or field placement courses.

Interpretation 303-5

Professional identity focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society. The development of professional identity should

¹⁷⁰ *Id.*

¹⁷¹ *Legal Education and Admissions to the Bar Memorandum*, AMERICAN BAR ASSOCIATION (August 16, 2021), <https://taxprof.typepad.com/files/aba-council.pdf>.

involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice. Because developing a professional identity requires reflection and growth over time, students should have frequent opportunities for such development during each year of law school and in a variety of courses and co-curricular and professional development activities.

Interpretation 303-6

With respect to 303(a)(1), the importance of cross-cultural competency to professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law should be among the values and responsibilities of the legal profession to which students are introduced.

Interpretation 303-7

Standard 303(c) may be satisfied by:

- (1) Orientation sessions for incoming students on bias, cross-cultural competency, and racism;
- (2) Guest lectures by experts in the areas of bias, cross-cultural competency, and racism;
- (3) Courses on racism and bias in the law; or
- (4) Other educational experiences that educate students in cross-cultural competency.

While law schools need not add a required upper-division course to satisfy this requirement, law schools must demonstrate that all law students are required to participate in a substantial activity designed to reinforce the skill of cultural competency and their obligation as future lawyers to work to eliminate racism in the legal profession.

Interpretation 303-8

Standard 303 does not prescribe the form or content of the education on bias, cross-cultural competency, and racism required by Standard 303(c).¹⁷²

Georgia's best option is to adopt Model Rule 8.4 (g) or at least add language to Model Rule 8.4's comments similar to other states so that

¹⁷² *Id.*

lawyers are held accountable for their actions when they act in a discriminatory fashion. Lawyers must hold themselves to a higher standard and do their utmost to eliminate discrimination and racism in the legal profession. These new requirements would help young lawyers and legal apprentices conduct themselves in a manner that is non-discriminatory and non-biased. Additionally, there must be consequences when a lawyer behaves discriminatorily. Consequences should include fines and/or training on discrimination and bias based on the seriousness of the misconduct and whether it is a first-time offense or a recurring problem. These new requirements and consequences are necessary steps in the right direction that need to be taken sooner rather than later for the betterment of our legal society.