

Proposed changes to Idaho Rule of Professional Conduct 8.4 (g)

17-01



Presented by: Idaho State Bar Board of Commissioners

Resolution 17-01 proposes amending Idaho Rule of Professional Conduct 8.4 to include anti-discrimination and anti-harassment provisions.

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A comment to I.R.P.C. 8.4 **currently** provides,” 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.”

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The proposed rule defines discrimination as unlawful discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, or socioeconomic status.

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The proposed rule defines harassment as “derogatory or demeaning verbal, written, or physical conduct toward a person based upon race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status, or socioeconomic status.”

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**To constitute a violation under the proposed rule,
“harassment must be severe or pervasive enough
to create an environment that is intimidating or
hostile to a reasonable person.”**

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The proposed comment relating to harassment states, “Petty slights, annoyances, and isolated incidents, unless extremely serious, will not rise to the level of harassment” under the proposed rule.

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The proposed rule “does not limit the ability of a lawyer to accept, decline, or withdraw from a representation as otherwise permitted” by the Idaho Rules of Professional Conduct.

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The proposed rule does not “preclude advice or advocacy consistent” with the Idaho Rules of Professional Conduct.

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25 states have already adopted an anti-discrimination and/or anti-harassment provision to their rules of professional conduct.

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In September 2016, the Board of Commissioners asked the Professionalism and Ethics Section of the Idaho State Bar to study the proposed ABA Model Rule of Professional Conduct 8.4(g) and make a recommendation about that Rule to the Board.

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The Professionalism and Ethics Section considered the proposed ABA Model Rule at its December 2016 meeting, and, following that meeting, appointed a Subcommittee of the Section (“Subcommittee”) to study that rule, providing that when the Subcommittee finished its work, the Subcommittee would make a recommendation about a potential rule to the full Section.

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The Subcommittee was comprised of Subcommittee Chair, Jodi Nafzger, Larry Hunter, Bob Aldridge, Dennis Voorhees, Jeremiah Hudson, Catherine Freeman, Mark Freeman, Yvonne Dunbar, Greg LeDonne, Steve Smith, and Jason Gray. Brad Andrews, Bar Counsel, and Caralee Lambert, Assistant Bar Counsel, served as liaisons to the Subcommittee.

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The Subcommittee made substantial revisions to the ABA proposed Model Rule and presented its proposed revisions to the full Professionalism and Ethics Section at its June 2017 meeting.

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Thereafter, by a vote of 86.67 percent in favor, the Professionalism and Ethics Section voted to recommend the Subcommittee's proposed Rule to the Board of Commissioners.

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The Board of Commissioners considered that proposed rule at its September 2017 meeting and voted to recommend the proposed amendments to the Rule be adopted.