

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
COMMISSION ON DISABILITY RIGHTS
DIVERSITY & INCLUSION 360 COMMISSION
COMMISSION ON RACIAL AND ETHNIC DIVERSITY IN THE PROFESSION
COMMISSION ON SEXUAL ORIENTATION AND GENDER IDENTITY
COMMISSION ON WOMEN IN THE PROFESSION

REPORT TO THE HOUSE OF DELEGATES

REVISED RESOLUTION

1 RESOLVED, That the American Bar Association amends Rule 8.4 and Comment of the ABA
2 Model Rules of Professional Conduct as follows (insertions underlined, deletions ~~struck through~~):

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4 Rule 8.4: Misconduct

5
6 It is professional misconduct for a lawyer to:

7
8 (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or
9 induce another to do so, or do so through the acts of another;

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11 (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness
12 or fitness as a lawyer in other respects;

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14 (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

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

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18 (e) state or imply an ability to influence improperly a government agency or official or to
19 achieve results by means that violate the Rules of Professional Conduct or other law; ~~or~~

20
21 (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable
22 rules of judicial conduct or other law; or

23
24 (g) engage in conduct that the lawyer knows or reasonably should know is harassment or
25 discrimination ~~harass or discriminate~~ on the basis of race, sex, religion, national origin, ethnicity,
26 disability, age, sexual orientation, gender identity, marital status or socioeconomic status in
27 conduct related to the practice of law. This ~~Rule paragraph~~ does not limit the ability of a lawyer
28 to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph
29 does not preclude legitimate advice or advocacy consistent with these Rules.

30 Comment

31

32 [1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of
33 Professional Conduct, knowingly assist or induce another to do so or do so through the acts of
34 another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a),
35 however, does not prohibit a lawyer from advising a client concerning action the client is legally
36 entitled to take.

37

38 [2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses
39 involving fraud and the offense of willful failure to file an income tax return. However, some kinds
40 of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses
41 involving "moral turpitude." That concept can be construed to include offenses concerning some
42 matters of personal morality, such as adultery and comparable offenses, that have no specific
43 connection to fitness for the practice of law. Although a lawyer is personally answerable to the
44 entire criminal law, a lawyer should be professionally answerable only for offenses that indicate
45 lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty,
46 breach of trust, or serious interference with the administration of justice are in that category. A
47 pattern of repeated offenses, even ones of minor significance when considered separately, can
48 indicate indifference to legal obligation.

49

50 ~~[3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct,~~
51 ~~bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation~~
52 ~~or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the~~
53 ~~administration of justice. Legitimate advocacy respecting the foregoing factors does not violate~~
54 ~~paragraph (d). A trial judge's finding that peremptory challenges were exercised on a~~
55 ~~discriminatory basis does not alone establish a violation of this rule.~~

56

57 [3] Discrimination and harassment by lawyers in violation of paragraph (g) undermines confidence
58 in the legal profession and the legal system. Such discrimination includes harmful verbal or
59 physical conduct that manifests bias or prejudice towards others ~~because of their membership or~~
60 ~~perceived membership in one or more of the groups listed in paragraph (g).~~ Harassment includes
61 sexual harassment and derogatory or demeaning verbal or physical conduct ~~towards a person who~~
62 ~~is, or is perceived to be, a member of one of the groups.~~ Sexual harassment includes unwelcome
63 sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a
64 sexual nature. The substantive law of antidiscrimination and anti-harassment statutes and case law
65 may guide application of paragraph (g).

66

67 [4] Conduct related to the practice of law includes representing clients; interacting with witnesses,
68 coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or
69 managing a law firm or law practice; and participating in bar association, business or social
70 activities in connection with the practice of law. ~~Paragraph (g) does not prohibit conduct~~
71 ~~undertaken to promote diversity. Lawyers may engage in conduct undertaken to promote diversity~~
72 ~~and inclusion without violating this Rule by, for example, implementing initiatives aimed at~~

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

75
76 ~~[5] Paragraph (g) does not prohibit legitimate advocacy that is material and relevant to factual or~~
77 ~~legal issues or arguments in a representation. A trial judge's finding that peremptory challenges~~
78 ~~were exercised on a discriminatory basis does not alone establish a violation of paragraph (g). A~~
79 lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's
80 practice or by limiting the lawyer's practice to members of underserved populations in
81 accordance with these Rules and other law. A lawyer may charge and collect reasonable fees
82 and expenses for a representation. Rule 1.5(a). Lawyers also should be mindful of their
83 professional obligations under Rule 6.1 to provide legal services to those who are unable to pay,
84 and their obligation under Rule 6.2 not to avoid appointments from a tribunal except for good
85 cause. See Rule 6.2(a), (b) and (c). A lawyer's representation of a client does not constitute an
86 endorsement by the lawyer of the client's views or activities. See Rule 1.2(b).

87
88 {4} [6] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief
89 that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to
90 the validity, scope, meaning or application of the law apply to challenges of legal regulation of the
91 practice of law.

92
93 {5} [7] Lawyers holding public office assume legal responsibilities going beyond those of other
94 citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role
95 of lawyers. The same is true of abuse of positions of private trust such as trustee, executor,
96 administrator, guardian, agent and officer, director or manager of a corporation or other
97 organization.