

THE STATE OF NEW HAMPSHIRE
SUPREME COURT OF NEW HAMPSHIRE

O R D E R

R-2019-0001, In Re February 8, 2019 Report of the Advisory Committee on Rules (Proposal to amend Rule of Professional Conduct 8.4)

The Advisory Committee on Rules has recommended that the court hold a hearing before the full court on its recommendation to amend Rule of Professional Conduct 8.4 to add a provision (g) which would make it professional misconduct for a lawyer to engage in harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation, marital status or gender identity.

The language of that proposal is attached to this order as appendix A. To see background regarding the proposal, please see the February 8, 2019 Advisory Committee on Rules Report which is available at courts.state.nh.us/committees/adviscommrules/reports/index.htm.

The court hereby orders as follows:

(1) that a public hearing in this matter shall be held on Friday, April 12, 2019, at 10:00 am;

(2) that any individuals who wish to be heard may address the court regarding the proposal and any suggestions made to amend the language of the proposal that were considered by the Committee. Individuals shall limit their comments to five (5) minutes;

(3) that any individuals who wish to submit written comment on the proposal may do so on or before the close of the public hearing on April 12, 2019. It is not necessary to resubmit comments that were submitted to the Advisory Committee on Rules regarding this proposal, and which are identified in the Advisory Committee on Rules February 8 Report, because these materials will be considered by the Court.

Issued: February 11, 2019

ATTEST:



Eileen Fox, Clerk of Court
Supreme Court of New Hampshire

APPENDIX A

Amend New Hampshire Rule of Professional Conduct 8.4 as follows (new material is in **[bold and in brackets]**):

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

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

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

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

(d) state or imply an ability to influence improperly a government agency or official;

(e) state or imply an ability to achieve results by means that violate the Rules of Professional Conduct or other law; or

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

[(g) engage in conduct while acting as a lawyer in any context that the lawyer knew or reasonably should have known is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, physical or mental disability, age, sexual orientation, marital status, or gender identity. Statutory or regulatory exemptions, based upon the number of personnel in a law firm, shall not relieve a lawyer of the requirement to comply with this Rule. This paragraph shall not limit the ability of the lawyer to accept, decline, or withdraw from representation consistent with other Rules, nor does it infringe on any Constitutional right of a lawyer, including advocacy on matters of public policy, the exercise of religion, or a lawyer's right to advocate for a client.]

Ethics Committee Comment[s]

[(1)] Section (d) of the ABA Model Rule is deleted. A lawyer’s individual right of free speech and assembly should not be infringed by the New Hampshire Rules of Professional Conduct when the lawyer is not representing a client. The deletion of section (d) was not intended to permit a lawyer, while representing a client, to disrupt a tribunal or prejudice the administration of justice, no matter how well intentioned nor how noble the purpose may be for the unruly behavior.

[(2) ABA] Model Rule section (e) is split into New Hampshire sections (d) and (e).

[(3) As used in this Rule, discrimination and harassment based upon “sex” and “sexual orientation” are intended to encompass same-sex discrimination and harassment.]