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December 20, 2017

Matthew Pollack
Executive Clerk
Maine Supreme Judicial Court
205 Newbury Street
Room 139
Portland, ME 04112-0368

Re: Proposed Amendment to Rule 8.4 of the Maine Rules of Professional Conduct

Dear Matt:

On behalf of Bernstein Shur, please find our firm's comments on the proposed amendment to Rule 8.4 of the Maine Rules of Professional Conduct.

Please contact us if the Court has any questions about these comments or needs any additional information.

Sincerely,

A handwritten signature in blue ink that reads "Patrick J. Scully".

Patrick J. Scully
Chief Executive Officer

A handwritten signature in blue ink that reads "Paul McDonald".

Paul McDonald
General Counsel

RECD ME SUPREME JUD CT
DEC 22 '17 AM 10:21

Bernstein Shur Comments on Proposed Amendment to Rule 8.4 of the Maine Rules of Professional Conduct

Bernstein Shur is grateful for the opportunity to comment on the pending proposed amendment to Rule 8.4 of the Maine Rules of Professional Conduct. We respectfully request that the Court delay ruling on the proposed rule to allow further study and public input to enable the Court to develop a modified proposal for consideration.

Bernstein Shur is staunchly opposed to harassment or discrimination of any kind within the legal profession. We were particularly disheartened by the recent revelations of the conduct described in "*Unprofessional Conduct by Maine Lawyers*," published in the November 24, 2017 edition of the *Maine Lawyers Review*, which described a wide range of offensive and unacceptable behaviors directed at Pine Tree Legal Assistance's attorneys.

While we applaud the Court's effort to explicitly address harassment and discrimination in the Maine Rules of Professional Conduct, we are concerned that the proposed amendment does not go far enough to address instances of discrimination and harassment by an attorney that reflect adversely on the attorney's fitness to practice law. In light of the legal standards required to prove "unlawful harassment," for example, many of the incidents described in the Pine Tree article likely would not be actionable under the newly proposed Rule 8.4(g). Further, the legal standard for "unlawful" discrimination can vary depending on which type of discrimination is alleged and whether an action is pending in state or federal court. Thus, we believe that adopting a rule that prohibits only "unlawful harassment or unlawful discrimination" sets the bar for our professional standards at too low a level.

As the Court likely knows, twenty-three states and the District of Columbia have adopted some form of ABA Model Rule 8.4(g). As a firm, we are not of one mind on whether to propose that Maine adopt ABA Model Rule 8.4(g), but we do agree that we would prefer a modified version of the model rule over the Rule 8.4(g) that is currently under consideration by the Court.

We urge the Court to delay ruling on the proposed rule and consider appointing a working group to work with the Court to develop a modified proposal so that this important issue for our profession can be given due time, energy and research by a broad cross section of the Maine bar. Bernstein Shur would be pleased to participate in such a working group or to otherwise work to further hone the proposed language for a new Rule 8.4(g) of the Maine Rules of Professional Conduct.

Thank you for the Court's attention to this important topic.

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