



December 22, 2017

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

Dear Mr. Pollack:

The Maine Justice Foundation (MJF) appreciates the opportunity to comment on the proposed amendment to Rule 8.4 of the Maine Rules of Professional Conduct. MJF's mission is to ensure access to civil justice for poor and vulnerable Mainers by providing grants to support civil legal aid. While MJF applauds the effort of the committee to add section (g) to the rule, it is concerned that the proposed amendment does not sufficiently address the harassment that many attorneys experience and the impact that this has on access to justice. MJF urges the Court to develop language that curtails harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status that may not be "unlawful."

The proposed amendment to Rule 8.4 states that it is "misconduct for a lawyer to engage in unlawful harassment or unlawful discrimination." This rule states what is already true; a lawyer should not engage in *any* unlawful conduct. Instead, this rule should prohibit the unprofessional conduct of lawyers based on certain characteristics that is not "unlawful" and does not occur in the presence of the court. Misconduct falling within this gap perpetuates the culture norm of harassment and jeopardizes Mainers' access to justice.

Harassment and discrimination committed by one attorney against another often occurs in courthouse hallways or conference rooms, on telephone calls, and at law firm events. It is incredibly difficult for an attorney to focus on her or his client's best interest when she or he is subjected to harassment. Often clients witness such harassment, which further reduces access to justice by undermining confidence in the legal system. Requiring an attorney to fight a harassment battle while in the midst of litigation is unfair and unacceptable.

Changes to Rule 8.4 should do more than simply state that a lawyer cannot engage in unlawful conduct. It should prohibit misconduct such as unwanted comments about an attorney's appearance or unwanted physical gestures that may not rise to the level of being "unlawful." MJF respectfully requests that the advisory committee take advantage of the opportunity to close this gap and shift the culture around harassment and discrimination with a more expansive rule.

Thank you for the opportunity to provide comment on this rule.

Very Truly Yours,

William D. Robitzek, President  
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