

Professor Deirdre M. Smith  
[deirdre.smith@maine.edu](mailto:deirdre.smith@maine.edu)  
(207) 780-4376

December 27, 2017

Via electronic mail [lawcourt.clerk@courts.maine.gov](mailto:lawcourt.clerk@courts.maine.gov)

Matthew Pollack, Executive Clerk  
Maine Supreme Judicial Court  
205 Newbury Street, Room 139  
Portland, Maine 04101

Re: Comments on Proposed Amendment to Maine Rule of Professional Conduct 8.4

Dear Justices of the Maine Supreme Judicial Court:

I am a member of the faculty of the University of Maine School of Law, where I teach Evidence and supervise law students in their work as student attorneys in the Cumberland Legal Aid Clinic. I submit here my comments regarding the proposed amendment to the Maine Rules of Professional Conduct (MRPC) to add a new subdivision (g) to MRPC 8.4 deeming it to be professional misconduct for an attorney to “engage in unlawful harassment or unlawful discrimination.”

I practiced litigation in Maine courts for several years, and I now teach many of the future litigators in Maine. I strongly support the Court’s decision to include unlawful discrimination and harassment among the actions constituting professional misconduct under MRPC 8.4. I personally experienced biased and inappropriate conduct by other attorneys during my years in practice. Many of my opposing counsel rationalized their behavior by saying that they “got caught up” in the intensity of the case or were told by their clients to be “aggressive” in advancing their position in the case. Of course, we know that Maine’s most effective and successful litigators are usually also models of civility and professionalism. The adversarial nature of litigation is simply no reason to treat attorneys, litigants, and witnesses with anything short of the utmost respect, no matter what the case involves.

Litigation can be an exciting and engaging use of one’s law degree, and I encourage law students to pursue trial practice after graduation. I find it disheartening to hear my current and former students—particularly younger women—recount their experiences as targets of biased and harassing conduct, some of which occurred while they were student attorneys or soon after they were in practice. These attorneys’ descriptions of the incidents, and their impact, reveal how such conduct can prevent female attorneys from thriving in or even continuing with such a practice. The bench, bar, and legal community

must address the conduct that has already resulted in too many dedicated, smart attorneys leaving trial work. A key role for the Maine Supreme Judicial Court in this effort is through the enactment of an unequivocal statement in our rules of professional conduct that harassing and biased conduct will not be tolerated and is a potential basis for discipline. Such statement from the judiciary is essential to reverse the legal culture that has led some attorneys to engage in such practices with impunity.

Fortunately, the Maine bar has a well-deserved reputation as being one of the most civil in the region. We should, therefore, be a leader in setting a high standard for our attorneys' conduct. I have reviewed the excellent comments of Nan Heald, Executive Director of Pine Tree Legal Assistance, regarding proposed MRPC 8.4(g), and I support her position regarding the need for a clearer and stronger prohibition, such as that in the American Bar Association Model Rule 8.4(g), which was recently adopted by Vermont.

Thank you for your consideration.

Sincerely,



Deirdre M. Smith  
Professor of Law and  
Director of the Cumberland Legal Aid Clinic