

Lawsmith Legal Services, L.L.C.
P.O. Box 1049 Bangor, ME 04402
304 Hancock St. Suite 1K Bangor, Maine
zachary@lawsmithmaine.com
phone (207) 573-4229
fax (207) 573-9326
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Matthew Pollack, Executive Clerk
Maine Supreme Judicial Court
205 Newbury Street, Room 139
Portland, Maine 04101

sent via email only

In re: Proposed M. R. Prof. Conduct 8.4(g)

Mr. Pollack:

Please accept the following comments on the proposed amendment to the Maine Rules of Professional Conduct. (Although it is a few hours past the deadline as I finish writing, I would ask that my comments still be considered.) In brief, I support the ABA's model rule and would prefer that it be adopted in full (with its official comments) rather than in the truncated form that is currently proposed.

I have some concern about the vagueness of the proposed rule, which is exacerbated because no comment is appended. If the Court adopts it as written and without any official commentary, attorneys may have insufficient notice about what kinds of discrimination and harassment are being prohibited and why. The ABA's model rule specifies the kinds of harassment and discrimination that it prohibits (e.g., "on the basis of race") and provides a *mens rea* element ("knows or reasonably should know"), giving members of the Maine bar prominent notice that such acts of harassment and bigotry and related abuses of power are not tolerated in the profession. In addition, the ABA's comment makes the purposes of the rule clear and gives examples. I would add a sentence to the comment that recognizes attorneys' relatively powerful position in society and the correspondingly greater potential for abuse of that position. More detailed language should make the rule's goal clearer and, more pragmatically, fend off potential challenges based on alleged overbreadth or vagueness.

Respectfully,

/s/

Zachary J. Smith