

public policy issues, promotes accountability of elected officials and government agencies, and legitimizes the important work that government agencies and their lawyers do.

In sum, the disclosure of aggregate billing information on matters does not pose a risk of harm to the clients of government lawyers. Given the important interest in government transparency, and Colorado's particularly strong commitment to protecting that interest, I am requesting that the Supreme Court Rules of Professional Conduct Standing Committee consider an amendment to the comments to Rule 1.6. The comment would clarify that aggregate billing information for public legal services is not subject to Rule 1.6, provided that it does not actually reveal any specific information that would harm a client's interest. As an initial proposal, a comment could state,

*The total amount of fees or costs incurred by a public entity on a particular matter is not "information relating to the representation of a client" which must be maintained as confidential under Rule 1.6(a).*

I would welcome the opportunity to speak with the Standing Committee about this proposal and would appreciate their consideration in clarifying the parameters of Rule 1.6 for public entities.

Sincerely,



CYNTHIA H. COFFMAN  
Attorney General

Page 6

cc: The Honorable Justice Nathan Coats (by separate cover)  
The Honorable Justice Monica Marquez (by separate cover)



**Marcy G. Glenn**  
Phone 303-295-8320  
Fax 303-975-5475  
mglenne@hollandhart.com

March 21, 2016

Cynthia H. Coffman  
Attorney General  
Ralph L. Carr Colorado Judicial Center  
1300 Broadway, 10th Floor  
Denver, CO 80203

**Re: Proposal for an Amendment to the Comments to Colorado Rule of Professional Conduct 1.6**

Dear Attorney General Coffman:

Thank you for your March 15, 2016 letter, which requested the Colorado Supreme Court Standing Committee on the Colorado Rules of Professional Conduct to consider additional commentary to Rule 1.6, to clarify that a public law office may disclose the total amount of fees or costs incurred on a particular legal matter.

This item will be on the agenda for the next meeting of the Standing Committee, on April 29. Following our usual protocol for proposed amendments to rules and comments, I will distribute your letter to the Standing Committee, I anticipate that at the April 29 meeting we will form a subcommittee to evaluate your proposal, and you will be invited to serve on that subcommittee or to designate another attorney in the Attorney General's Office to serve. For that reason—because the subcommittee's consideration of your proposal will not begin until after the April 29 meeting—it is far from essential for you (or another attorney in your office) to be present at that meeting. However, all Standing Committee meetings are public and you are welcome to attend, either in person or by phone. Please let me know if you would like more detailed information regarding the time and place of the April 29 meeting, and call-in information.

Thank you again for your letter. I appreciate your concerns and I look forward to working with you on this project.

Sincerely,

Marcy G. Glenn  
of Holland & Hart LLP

cc: The Honorable Nathan B. Coats  
The Honorable Monica Márquez

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CYNTHIA H. COFFMAN  
Attorney General

DAVID C. BLAKE  
Chief Deputy Attorney General

MELANIE J. SNYDER  
Chief of Staff

FREDERICK R. YARGER  
Solicitor General

RALPH L. CARR  
COLORADO JUDICIAL CENTER  
1300 N Broadway, 10th Floor  
Denver, Colorado 80203  
Phone (720) 508-6000

STATE OF COLORADO  
DEPARTMENT OF LAW

Office of the Attorney General

April 6, 2016

Marcy G. Glenn  
Chair, Supreme Court Rules of Professional Conduct Standing Committee  
Holland & Hart  
555 17<sup>th</sup> Street, Suite 3200  
Denver, CO 80202

RE: *Proposal for an amendment to the comments to Colorado Rule of Professional Conduct 1.6*

Dear Ms. Glenn:

Thank you for your letter regarding the Supreme Court Rules of Professional Conduct Standing Committee's consideration of the proposal outlined in my letter of March 15, 2016. I welcome the formation of a subcommittee to consider possible revisions to the comments to Rule 1.6 clarifying the extent to which public law offices may disclose the total amount of fees or costs incurred on a matter.

I have requested that David Blake, Chief Deputy Attorney General, and Stephanie Scoville, Senior Assistant Attorney General, participate on a subcommittee. You may reach them at [david.blake@coag.gov](mailto:david.blake@coag.gov) and [stephanie.scoville@coag.gov](mailto:stephanie.scoville@coag.gov) with details about the subcommittee's work.

I appreciate your consideration of this issue.

Sincerely,

CYNTHIA H. COFFMAN  
Colorado Attorney General

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

NOTICE OF PUBLIC HEARING

Sunday, February 7, 2016  
3:00 p.m. to 5:00 p.m.  
ABA 2016 MidYear Meeting  
Marriott Marquis San Diego Marina  
3rd Floor, South Tower  
Balboa & Mission Hills Meeting Rooms  
San Diego, CA

On December 22, 2015, the ABA Standing Committee on Ethics and Professional Responsibility (“Ethics Committee”) issued a draft proposal to amend ABA Model Rule of Professional Conduct 8.4 and Comment [3] to Rule 8.4. The draft proposal is available at

[http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/rule\\_8\\_4\\_amendments\\_12\\_22\\_2015.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/rule_8_4_amendments_12_22_2015.authcheckdam.pdf).

The memorandum explaining the Ethics Committee’s drafting choices, available at

[http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/rule\\_8\\_4\\_language\\_choice\\_memo\\_12\\_22\\_2015.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/rule_8_4_language_choice_memo_12_22_2015.authcheckdam.pdf)

It reflects the efforts of the Ethics Committee to examine how the Model Rules of Professional Conduct address discrimination and harassment by lawyers.

The Ethics Committee invites comment on this draft proposal both in writing and at its public hearing.

Persons wishing to speak at the **Sunday, February 7, 2016**, public hearing at the Marriott Marquis San Diego Marina, 3rd Floor, South Tower, Balboa & Mission Hills Meeting Rooms, San Diego, CA should register at [abamodelruleamend@americanbar.org](mailto:abamodelruleamend@americanbar.org) by **January 29, 2016**. Speakers should be prepared to speak for four to five minutes and then take questions from the Committee. There may not be enough time to accommodate everyone who wishes to testify. Those registering on-site will be able to speak as time permits.

Please submit all written commentary via e-mail to [abamodelruleamend@americanbar.org](mailto:abamodelruleamend@americanbar.org). NOTE: All written comments received will be made publicly available on the Committee’s Model Rule of Professional Conduct page. **The deadline for written comments on this draft proposal is Friday, March 11, 2016.**

After reviewing comments from the public hearing and comments submitted in writing, the Ethics Committee will resume its work with the aim of producing a final Report and Resolution for consideration by the ABA House of Delegates at the August 2016 Annual Meeting in San Francisco, CA.

## MEMORANDUM

Standing Committee on Ethics and Professional Responsibility  
Draft Proposal to Amend Model Rule 8.4  
December 22, 2015

### INTRODUCTION

Seventeen years ago, the American Bar Association amended the ABA Model Rules of Professional Conduct (“the Model Rules”) to address lawyers who discriminate against others. In 1998, the ABA House of Delegates decided to add a Comment to Model Rule 8.4 to provide that it would be professional misconduct, “prejudicial to the administration of justice,” if a lawyer “knowingly manifests by words or conduct, bias or prejudice” against certain categories of persons, while “in the course of representing a client.” This was a compromise result reached after six years of proposals and counterproposals.

By addressing this issue in a Comment, however, the compromise did not make manifestations of bias or prejudice such as discrimination or harassment a separate and direct violation of the Model Rules. This is because statements in the Comments are not authoritative. As noted in Paragraph [14] of the Preamble and Scope to the Model Rules: “Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.” In addition, paragraph [21] of the Preamble and Scope states: “The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.” Thus, for many, the ABA has not addressed this issue squarely, in the authoritative manner it would be if it were addressed in the text of a Model Rule.

The Standing Committee on Ethics and Professional Responsibility’s proposal moves beyond the Comment to craft a distinct rule within the black letter of the Model Rules of Professional Conduct prohibiting lawyers from engaging in harassment and knowing discrimination in conduct related to the practice of law. By choosing to move the prohibition against discrimination and harassment into a black letter rule, the ABA will join many other professions that prohibit this same behavior in their codes of conduct.<sup>1</sup>

The draft proposal presented here is also a compromise that seeks to harmonize the different views of many individuals and entities. Recently representatives from the Oregon New Lawyers Division drafted a similar proposal for the ABA Young Lawyers Division Assembly to consider. The authors of that resolution explained the need for change eloquently. They wrote:

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<sup>1</sup> See Appendix for information about other licensed professionals’ anti-discrimination provisions in codes of conduct.

There is a need for a cultural shift in understanding the inherent integrity of people regardless of their race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability, to be captured in the rules of professional conduct.

This is true because the Model Rules are supposed to ensure the integrity of the legal profession. Indeed, it is a rhetorical question to ask “what is more important to the integrity of the law than ensuring that those who seek out legal representation are not subject to discrimination, harassment, or intimidation simply because of the color of their skin, their gender or gender identity, having a disability or being lesbian, gay, or bisexual?”

## RULE AMENDMENTS

Under current Model Rule of Professional Conduct 8.4(d), it is professional misconduct for a lawyer to engage in conduct that is “prejudicial to the administration of justice.” Comment [3] to Model Rule 8.4 explains that when, “in the course of representing a client,” a lawyer “knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status,” such words or conduct violate paragraph (d), if they also are prejudicial to the administration of justice.

The draft proposal released for public comment reads:

### **Rule 8.4: Misconduct**

It is professional misconduct for a lawyer to:

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(g) in conduct related to the practice of law, harass or knowingly discriminate against persons on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status.

Comment

[3] Paragraph (g) applies to conduct related to a lawyer’s practice of law, including the operation and management of a law firm or law practice. It does not apply to conduct unrelated to the practice of law or conduct protected by the First Amendment. Harassment or discrimination that violates paragraph (g) undermines confidence in the legal profession and our legal system. Paragraph (g) does not prohibit lawyers from referring to any particular status or group when such references are material and relevant to factual or legal issues or arguments in a representation. Although lawyers should be mindful of their professional obligations under Rule

~~6.1 to provide legal services to those unable to pay, as well as the obligations attendant to accepting a court appointment under Rule 6.2, a lawyer is usually not required to represent any specific person or entity. Paragraph (g) does not alter the circumstances stated in Rule 1.16 under which a lawyer is required or permitted to withdraw from or decline to accept a representation. A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.~~

Below is a discussion of the changes suggested in the draft proposal.

**1. Scope of the Rule.** The draft proposal establishes that it is professional misconduct for a lawyer to “harass or knowingly discriminate against persons” while engaged in “conduct related to the practice of law.”

The draft proposal would expand the coverage of the rule from conduct performed “in the course of representing a client” to conduct that is “related to” the practice of law. “The practice of law” is the term used in the Preamble and Scope of the Model Rules to describe the focus and scope of the Rules.<sup>2</sup> The Preamble to the Model Rules explains that lawyers are representatives of clients, officers of the legal system, and public citizens “having special responsibility for the quality of justice.”<sup>3</sup> Lawyers act as advisors, advocates, negotiators, and evaluators for clients. They also act as third-party neutrals. As officers of the legal system, they participate in activities related to the practice of law through court appointments, bar association activities and other, similar conduct.

In the draft proposal Comment, the Ethics Committee specifies one area of conduct that is “related to” the practice of law: the operation and management of a law firm or law practice. This would include conduct at activities such as law firm dinners and events at which the lawyers were present solely because of their association with the law firm. Nationally, there are states that both explicitly include and explicitly exclude those activities.<sup>4</sup> The Ethics Committee determined that the argument for exclusion of those activities was less compelling than for inclusion—one simply cannot demand one level of professional behavior for lawyers that is

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<sup>2</sup> See ABA Model Rules of Professional Conduct, Scope [16]: “The Rules simply provide a framework for the ethical practice of law.”

<sup>3</sup> ABA Model Rules of Professional Conduct, Preamble [1].

<sup>4</sup> For an example of a jurisdiction that includes employment practices within its anti-discrimination rule of conduct see Washington DC Rule 9.1 Discrimination in Employment and California Rule 2-400 Prohibited Discriminatory Conduct in a Law Practice. New Jersey excludes employment law discrimination from the scope of its rule unless “it has resulted in either an agency or judicial determination of discriminatory conduct.” See New Jersey Supreme Court Comment to Rule 8.4.



external to their own law practice while allowing a lesser standard of behavior inside one's own office.

The Ethics Committee has heard from some in the bar that because legal remedies are available to persons who believe that a lawyer or law firm has harassed or discriminated against them in employment, such conduct by lawyers should not also be deemed to be professional misconduct. The Ethics Committee notes, however, that legal remedies are available for other conduct, such as that described in paragraph (c) to Rule 8.4 – fraud, deceit or misrepresentation – but such conduct also constitutes professional misconduct.

**2. Prohibited Activity.** The draft proposal prohibits “harassment and knowing discrimination.” The term used in the current Comment -- “words or conduct manifesting bias or prejudice” -- is very broad. It arguably was appropriate when Rule 8.4(d) prohibited such words or conduct only “in the course of representing a client,” and only when prejudicial to the administration of justice. However, when the scope of the Rule is refined to cover all conduct related to the practice of law, the Ethics Committee determined it appropriate to balance this broader scope with a more specific definition of the conduct to which the rule would apply.

The terms “harassment” and “discrimination” are defined terms under law; they refer to the adverse, negative consequences of conduct that manifests bias or prejudice. But to simply refer to any “conduct related to the practice of law” that manifests bias or prejudice without reference to whether such conduct constitutes harassment or discrimination, was considered amorphous a basis upon which to define professional misconduct.

The Ethics Committee therefore decided to use the terms “harassment” – which is understood to include the creation of a hostile work environment and is evaluated in terms of the reasonable perception of the victims of such conduct – and “knowing discrimination” – which is understood to include conduct that a person engaging in such conduct knows will result in a person or persons being treated in a different and harmful way because of their membership or perceived membership in one or more of the categories listed in the rule. The word “knowing” was retained when applied to discrimination because the Ethics Committee concluded that conduct which had a non-discriminatory intent, such as hiring decisions based on class rank or the willingness of the applicant to relocate to a particular jurisdiction, should not be a basis for a finding of professional misconduct. In addition, “knows” is a defined term in the Model Rules of Professional Conduct. The Rules define “knows” as “actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.”<sup>5</sup> Because this is the standard used throughout the Model Rules, it is appropriate to incorporate it here.

**3. Protected Groups.** The categories of protected groups now include “ethnicity”, “gender identity”, and “marital status.” These additional categories reflect current concerns regarding discriminatory practices. For example, questions of “ethnicity” may reflect individuals who are

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<sup>5</sup> ABA Model Rules of Professional Conduct, Rule 1.0(f).

of mixed national origins or races. “Gender identity” is relevant as a new societal awareness of the individuality of gender has changed the traditional binary concept of sexuality. And the Supreme Court’s decision holding that marriage is a fundamental constitutional right regardless of sexual orientation,<sup>6</sup> and the rise in single parenthood in our society, makes the addition of “marital status” apt.

**4. Constitutionally Protected Activities.** To avoid ambiguity and to address the Constitutional concerns that were raised by some commentators, the new Comment explicitly states that the Rule does not apply to conduct that is unrelated to the practice of law or to conduct protected by the First Amendment. The Comment makes clear that a lawyer does retain a “private sphere” where personal opinion, freedom of association, religious expression, and political speech is protected by the First Amendment and not subject to the Rule. We believe this is a useful clarification. The Ethics Committee’s research indicated that when state courts adopted similar black letter prohibitions, possible First Amendment challenges and issues were considered. Therefore, adding this language to the Comment would appropriately address this concern.

**5. Advocacy Exception.** The proposal retains but redrafts the advocacy exception contained in the current Comment [3] to Model Rule 8.4. Current Comment [3] includes the statement: “Legitimate advocacy respecting the foregoing factors does not violate paragraph (d).” The draft proposal reads: “Paragraph (g) does not prohibit lawyers from referring to any particular status or group when such references are material and relevant to factual or legal issues or arguments in a representation.” The question of whether a person’s status or group affiliation is material and relevant to factual or legal issues or arguments in a matter is a clearer standard than “legitimate advocacy” for disciplinary counsel and state courts to apply, as it incorporates concepts already known in the law — “material” and “relevant.”

**6. Peremptory Challenges.** The proposal does not include the following statement currently in Comment [3]: “A trial judge’s finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.” A concern was raised with the Ethics Committee that this sentence could be read as limiting a trial judge’s discretion on whether to refer such conduct for discipline. The Ethics Committee concluded that the Comment to this Rule need not address or take a position, either way, on the weight of evidence in a disciplinary proceeding or pre-empt the disciplinary process.

**7. New Language.** The proposed new Comment includes the following new language: “Although lawyers should be mindful of their professional obligations under Rule 6.1 to provide legal services to those unable to pay, as well as the obligations attendant to accepting a court appointment under Rule 6.2, a lawyer is usually not required to represent any specific person or entity. Paragraph (g) does not alter the circumstances stated in Rule 1.16 under which a lawyer is required or permitted to withdraw from or decline to accept a representation.” The Ethics

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<sup>6</sup> Obergefell v. Hodges, 576 U.S. \_\_\_(2015).

Committee concluded it was important in the context of this rule to remind lawyers of their pro bono and public service responsibilities under Model Rules 6.1 and 6.2, and also that Model Rule 1.16 allows lawyers to limit their practice, accept or decline representation, and withdraw from matters for many reasons. These include when there is a substantial risk that the representation will be materially limited by the lawyer's personal interest.

## PROPOSAL HISTORY

This review of Model Rule 8.4(d) and Comment [3] was prompted by a May 2014 letter the ABA's Goal III Commissions (the Commission on Women in the Profession; Commission on Racial and Ethnic Diversity in the Profession; Commission on Disability Rights; and Commission on Sexual Orientation and Gender Identify) wrote to the Standing Committee on Ethics and Professional Responsibility asking it to consider amending the Model Rules to better address issues of harassment and discrimination by lawyers.

As noted above, the last time this issue was addressed in the Model Rules was 17 years ago in 1998 after several failed attempts over a six year period. The result was the adoption of Comment [3] to Rule 8.4. Since then, however, twenty-four jurisdictions have crafted rules of professional conduct that in the black letter of their rules address bias, discrimination, or harassing behavior by a lawyer. These rules vary – some addressing the issue very broadly, some more narrowly.

More recently, the ABA has adopted policy that directly addresses biased behavior and harassment by lawyers and judges. For example, the ABA Model Code of Judicial Conduct, revised and adopted by the House of Delegates in 2007, includes Rule 2.3, *Bias, Prejudice, and Harassment*. In the black letter of the Rule judges are prohibited from speaking or behaving in a way that manifests "bias or prejudice," and from engaging in harassment, "based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation." The Rule also calls upon judges to require lawyers to refrain from this same activity in proceedings before the court.<sup>7</sup>

Also, in February 2015, the ABA House of Delegates adopted revised *ABA Standards for Criminal Justice: Prosecution Function and Defense Function* which now include anti-bias provisions. These provisions are in Standards 3-1.6 and 4.16.<sup>8</sup> These Standards explain that prosecutors and defense counsel should not "manifest or exercise, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation,

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<sup>7</sup> ABA Model Code of Judicial Conduct, Rule 2.3 (C) ("A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.")

<sup>8</sup> ABA Standards for Criminal Justice: Prosecution Function and Defense Function available at [http://www.americanbar.org/groups/criminal\\_justice/standards.html](http://www.americanbar.org/groups/criminal_justice/standards.html)

gender identity or socioeconomic status.” This statement appears in the black letter of the Standards, not in a comment.

These developments, both within the ABA and within legal ethics circles nationally, illustrate the depth of concern about this issue. In the seventeen years since this subject was addressed in the Model Rules of Professional Conduct, perspectives continue to change in our society. Harassment, including sexual harassment, has been recognized for the serious problems that it is. To some, the phrase, “conduct that manifests bias of prejudice,” seems outdated. Gender identity, not just sexual orientation, has been identified as a basis for discrimination. Debate has continued as to what ethical effect to give a trial judge’s finding that preemptory challenges have been exercised on a discriminatory basis.

In developing this proposal to add a new paragraph (g) to Model Rule 8.4 and amend Comment [3] to MR 8.4, the Ethics Committee has benefitted from the many comments it received at the Roundtable Discussion it held at the 2015 ABA Annual Meeting on an earlier Working Discussion Draft, and from the written comments it received after that meeting, from different ABA Sections, Commissions, Committees and individual members. These comments were each and all carefully considered in the preparation of this revised proposal. The current proposal represents an effort to harmonize the sometimes divergent but always legitimate views we received. Many of the changes reflected in this proposal were prompted by the suggestions made and comments expressed in those communications. At the same time it is important to remember that no rule can capture all unethical or illegal conduct that may occur in this sphere, but this proposal does capture the egregious conduct that diminishes the profession.

## **CONCLUSION**

While this proposal is being presented by the Standing Committee on Ethics and Professional Responsibility, the issue transcends the Model Rules of Professional Conduct. The Model Rules of Professional Conduct are both rules used by the states and courts to establish standards of conduct and professional discipline and, at the same time, they are a statement of the minimum expected by all lawyers. It is time that harassment and discriminatory conduct by a lawyer based on race, religion, sex, disability, LGBTQ status or other factors, be considered professional misconduct when such conduct is related to the practice of law. The question is not whether such conduct is or is not common in our profession. Any such conduct brings disrepute to the profession. Rather, the public has a right to know that as a largely self-governing profession we hold ourselves to normative standards of conduct in all our professional activities, in furtherance of the public’s interest in respect for the rule of law and for those who interpret and apply the law, the legal profession.

**American Association of University Professors – Statement on Professional Ethics**

- 2. Professors make every reasonable effort to foster honest academic conduct and to ensure that their evaluations of students reflect each student’s true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students.
- 3. As colleagues, professors have obligations that derive from common membership in the community of scholars. Professors do not discriminate against or harass colleagues.

**American Counseling Association – Code of Ethics**

- Section C, Professional Responsibility. Part 5. Nondiscrimination. Counselors do not condone or engage in discrimination against prospective or current clients, students, employees, supervisees, or research participants based on age, culture, disability, ethnicity, race, religion/spirituality, gender, gender identity, sexual orientation, marital/partnership status, language preference, socioeconomic status, immigration status, or any basis proscribed by law.
- Section C, Part 6. Public Responsibility. Part a. Counselors do not engage in or condone sexual harassment. Sexual harassment can consist of a single intense or severe act, or multiple persistent or pervasive acts.

**American Dental Association – Principles of Ethics and Code of Professional Conduct**

- **Code of Professional Conduct, Section 4.A. Patient Selection.** While dentists, in serving the public, may exercise reasonable discretion in selecting patients for their practices, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient’s race, creed, color, sex or national origin.

**American Institute of Architects – Code of Ethics and Professional Conduct**

- **Rule 1.401** Members shall not discriminate in their professional activities on the basis of race, religion, gender, national origin, age, disability, or sexual orientation.

**American Institute of Certified Public Accountants – Code of Professional Conduct**

- 1.400.010 Discrimination and Harassment in Employment Practices. A *member* would be presumed to have committed an act discreditable to the profession, in violation of the “Acts Discreditable Rule” [1.400.001] if a final determination, no longer subject to appeal, is made by a court or an administrative agency of competent jurisdiction that a *member* has violated any antidiscrimination laws of the United States, a state, or a municipality, including those related to sexual and other forms of harassment.

**American Medical Association – Principles of Medical Ethics, Principles:**

- I. A physician shall be dedicated to providing competent medical care, with compassion and respect for human dignity and rights.
- III. A physician shall respect the law and also recognize a responsibility to seek changes in those requirements which are contrary to the best interests of the patient.
- V. A physician shall continue to study, apply, and advance scientific knowledge, maintain a commitment to medical education, make relevant information available to patients, colleagues, and the public, obtain consultation, and use the talents of other health professionals when indicated.
- VI. A physician shall, in the provision of appropriate patient care, except in emergencies, be free to choose whom to serve, with whom to associate, and the environment in which to provide medical care.

Interpreted in **Opinion 9.12** to mean physicians who offer their services to the public may not decline to accept patients because of race, color, religion, national origin, sexual orientation, gender identity or any other basis that would constitute invidious discrimination.

Interpreted in **Opinion 10.05** to mean physicians cannot refuse to care for patients based on race, gender, sexual orientation, or any other criteria that would constitute invidious discrimination or refuse to provide a specific treatment sought by an individual that is incompatible with the physician's personal, religious, or moral beliefs.

#### **American Nurses Association – Code of Ethics**

- Provision 1. The nurse, in all professional relationships, practices with compassion and respect for the inherent dignity, worth, and uniqueness of every individual, unrestricted by considerations of social or economic status, personal attributes, or the nature of health problems.
- 1.1 Respect for human dignity. A fundamental principle that underlies all nursing practice is respect for the inherent worth, dignity, and human rights of every individual. Nurses take into account the needs and values of all persons in all professional relationships.
- 1.2 Relationships to patients. The need for health care is universal, transcending all individual differences. The nurse establishes relationships and delivers nursing services with respect for human needs and values, and without prejudice. An individual's lifestyle, value system and religious beliefs should be considered in planning health care with and for each patient. Such consideration does not suggest that the nurse necessarily agrees with or condones certain individual choices, but that the nurse respects the patient as a person.

**American Psychological Association – Ethical Principles of Psychologists and Code of Conduct.**

- **Ethical Standard 1.10 Nondiscrimination.** In their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, socio-economic status, or any basis proscribed by law.
- **Ethical Standard 1.11 Sexual harassment** (a) Psychologists do not engage in sexual harassment.
- **Ethical Standard 1.12 Other harassment.** Psychologists do not knowingly engage in behavior that is harassing or demeaning to persons with whom they interact in their work based on factors such as those persons' age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

**National Association of Social Workers – Code of Ethics**

- Ethical Standards 4.02. Social workers should not practice, condone, facilitate, or collaborate with any form of discrimination on the basis of race, ethnicity, national origin, color, sex, sexual orientation, gender identity or expression, age, marital status, political belief, religion, immigration status, or mental or physical disability.

**National Education Association – Code of Ethics**

- Principle 1. The educator strives to help each student realize his or her potential as a worthy and effective member of society. The educator therefore works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals. In fulfillment of the obligation to the student, the educator . . . Shall not on the basis of race, color, creed, sex, national origin, marital status, political or religious beliefs, family, social or cultural background, or sexual orientation, unfairly: exclude any student from participation in any program; deny benefits to any student; grant any advantage to any student

**National Realtors – Code of Ethics and Standards of Practice**

- Article 10. Realtors® shall not deny equal professional services to any person for reasons of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. Realtors® shall not be parties to any plan or agreement to discriminate against a person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity. Realtors®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, handicap, familial status, national origin, sexual orientation, or gender identity.





**Rule 8.4: Misconduct**

It is professional misconduct for a lawyer to:

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(g) in conduct related to the practice of law, harass or knowingly discriminate against persons on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status.

Comment

[3] Paragraph (g) applies to conduct related to a lawyer's practice of law, including the operation and management of a law firm or law practice. It does not apply to conduct unrelated to the practice of law or conduct protected by the First Amendment. Harassment or discrimination that violates paragraph (g) undermines confidence in the legal profession and our legal system. Paragraph (g) does not prohibit lawyers from referring to any particular status or group when such references are material and relevant to factual or legal issues or arguments in a representation. Although lawyers should be mindful of their professional obligations under Rule 6.1 to provide legal services to those unable to pay, as well as the obligations attendant to accepting a court appointment under Rule 6.2, a lawyer is usually not required to represent any specific person or entity. Paragraph (g) does not alter the circumstances stated in Rule 1.16 under which a lawyer is required or permitted to withdraw from or decline to accept a representation. A lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

**Rule 8.4. Misconduct.****Colo. RPC 8.4(2012)  
Rule 8.4. Misconduct.****\*\*reflects changes received through March 13, 2012\*\*****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) engage in conduct that is prejudicial to the administration of justice;**
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;**
- (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, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person's race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, whether that conduct is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process; or**
- (h) engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law.**

**Source:** Committee comment amended October 17, 1996, effective January 1, 1997; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008.

**COMMENT**

[1] Lawyers are subject to discipline when they 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, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer who, in the course of representing a client, knowingly manifests by word or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (g) and also may violate paragraph (d). Legitimate advocacy respecting the foregoing factors does not violate paragraphs (d) or (g). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.