

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENT TO THE
MAINE RULES OF PROFESSIONAL CONDUCT

2019 Me. Rules 05

Effective: June 1, 2019

All of the Justices concurring therein, the following amendment to the Maine Rules of Professional Conduct is adopted to be effective on the date indicated above. The specific amendment is stated below. To aid in the understanding and implementing of the amendment, a brief guidance discussion follows the amendment. The guidance discussion is not part of the amendment adopted by the Court.

1. Rule 8.4 of the Maine Rules of Professional Conduct is amended as follows.

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate any provision of either the Maine Rules of Professional Conduct or the Maine Bar Rules, or knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal or unlawful 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 Maine Rules of Professional Conduct, the Maine Bar Rules or law; or

- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or law; or
- (g) engage in conduct or communication related to the practice of law that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity.
- (1) “Discrimination” on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity as used in this section means conduct or communication that a lawyer knows or reasonably should know manifests an intention: to treat a person as inferior based on one or more of the characteristics listed in this paragraph; to disregard relevant considerations of individual characteristics or merit because of one or more of the listed characteristics; or to cause or attempt to cause interference with the fair administration of justice based on one or more of the listed characteristics.
- (2) “Harassment” on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity as used in this section means derogatory or demeaning conduct or communication and includes, but is not limited to, unwelcome sexual advances, or other conduct or communication unwelcome due to its implicit or explicit sexual content.
- (3) “Related to the practice of law” as used in the section means occurring in the course of representing clients; interacting with witnesses, coworkers, court personnel, lawyers, and others while engaged in the practice of law; or operating or managing a law firm or law practice.
- (4) Declining representation, limiting one’s practice to particular clients or types of clients, and advocacy of policy positions or changes in the law are not regulated by Rule 8.4(g).

Guidance – June 2019

This amendment, which adds new Rule 8.4(g), is intended to dispel uncertainty as to what conduct is prohibited. As with any mandate in a rule or a statute, the extent of enforcement or initiation of formal disciplinary proceedings will depend on the level of intentionality and seriousness of the reported violation.

Response to complaints and disciplinary actions initiated under the new Rule 8.4(g), as with disciplinary actions under the present Maine Rules of Professional Conduct, will be subject to similar reasonable and measured enforcement choices, particularly as experience with the new Rule and Continuing Legal Education programs promote better understanding within the Maine legal community of ethical obligations to achieve compliance with the Rule.

Dated: May 13, 2019

FOR THE COURT,*

_____/s/_____
LEIGH I. SAUFLEY
Chief Justice

DONALD G. ALEXANDER
ANDREW M. MEAD
ELLEN A. GORMAN
JOSEPH M. JABAR
JEFFREY L. HJELM
THOMAS E. HUMPHREY
Associate Justices

* This Rule Amendment Order was approved after conference of the Court, all Justices concurring therein.