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Article
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ABA MODEL RULE 8.4(G) IN THE STATES

I. INTRODUCTION

In August 2016, the American Bar Association (ABA) approved Model Rule of Professional Conduct 8.4(g). Under the amendment, it is misconduct for an attorney to "engage in conduct 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, gender identity, marital status or socioeconomic status in conduct related to the practice of law." Comment [4] explains that:

Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; ***630** and participating in bar association, business or social activities in connection with the practice of law.

The model rule [wa]s just that--a model that did not apply in any jurisdiction. [1]

In 2017, I wrote an article in the GEORGETOWN JOURNAL OF LEGAL ETHICS about Model Rule 8.4(g).[2] I urged the states to hesitate before adopting this provision. First, I noted that the expanded scope of Rule 8.4(g)--"conduct related to the practice of law ... would ... inevitably chill speech on matters of public concern."[3] Second, I wrote that Rule 8.4(g) regulates conduct "with only the most tenuous connection to representation of clients, a lawyer's fitness, or the administration of justice."[4] Third, I observed that Rule 8.4(g) "imposes an unlawful form of viewpoint discrimination."[5] I closed by "offering three simple tweaks to the comments accompanying Rule 8.4(g) that would still serve the drafters' purposes, but provide stronger protection for free speech."[6]

This essay will provide a brief overview of how the states have responded to ABA Model Rule 8.4(g). Part I reviews opinions from four state attorneys general who concluded that the rule is unconstitutional: Texas, South Carolina, Louisiana, and Tennessee. Part II discusses the states that considered the rule with modifications. Part III reviews the states that considered Rule 8.4(g) as drafted. So far, only one state adopted the rule: Vermont. However, the process is still not over, and other states are currently considering the rule.

II. FOUR STATE ATTORNEYS GENERAL CONCLUDED MODEL RULE 8.4(G) WAS UNCONSTITUTIONAL

Four state attorneys general have concluded that Model Rule 8.4(g) is unconstitutional. Specifically, they found the rule violates the Freedom of Speech, Exercise, and Association, and also runs afoul of the Due Process Clause.

A. Texas

In December 2016, Texas Attorney General Ken Paxton issued an opinion titled, "Whether adoption of the American Bar Association's Model Rule of Professional Conduct 8.4(g) would constitute a violation of an attorney's ***631** statutory or constitutional rights."[7] In this opinion, Paxton concluded that the rule as drafted "raise[s] serious concerns about the constitutionality of the restrictions it would place on members of the State Bar and the resulting harm to the clients they represent."[8] Specifically,

> [g]iven the broad nature of this rule, a court could apply it to an attorney's participation in a continuing legal education panel discussion, authoring a law review article, or informal conversations at a bar association event .... [F]or example, ... candid dialogues about illegal immigration, same-sex marriage, or restrictions on bathroom usage will likely involve discussions about national origin, sexual orientation, and gender identity. Model Rule 8.4(g) would subject many participants in such dialogue to discipline, and it will therefore suppress thoughtful and complete exchanges about these complex issues.[9]

Paxton also observed that the rule

> could ... be applied to restrict an attorney's religious liberty and prohibit an attorney from zealously representing faith-based groups. For example, ... [i]f an individual takes an action based on a sincerely-held religious belief and is sued for doing so, an attorney may be unwilling to represent that client in court for fear of being accused of discrimination under the rule.[10]

The Attorney General also concluded that Rule 8.4(g) runs afoul of the freedom of association, is unconstitutionally overboard, and is void for vagueness.[11] Texas has not adopted Model Rule 8.4(g).

B. South Carolina

South Carolina Solicitor General Robert D. Cook reached a similar conclusion in May 2017. [12] His opinion favorably cited Paxton's analysis concerning the First Amendment, and that of Professors Ronald Rotunda and Eugene Volokh. [13] Likewise, the Professional Responsibility Committee of the South Carolina Bar opposed the adoption of Rule 8.4(g). [14] The Committee found that the rule's ***632** vagueness ran afoul of basic due process guarantees. [15] The South Carolina Supreme Court declined to adopt the proposal. [16]

C. Louisiana

In September 2017, Louisiana Attorney General Jeff Landry also found that Model Rule 8.4(g) was unconstitutional. [17] He found that the rule is a "content-based regulation which has the effect of suppressing a lawyer's conduct, actions, and speech in an array of areas and settings outside a lawyer's professional practice." [18] Critically, it would apply to "a private interaction ... at a social activity sponsored by a law firm or bar association." [19] The opinion concluded that the rule "likely ... violates a lawyer's freedom of speech under the First Amendment." [20] Moreover, the attorney general found that the law runs afoul of the freedom of exercise: "a lawyer who acts as a legal advisor on the board of their church would be engaging in professional misconduct if they participated in a march against same-sex marriage or taught a class at their religious institution against divorce (*i.e.*, marital status)." [21] Ultimately, the rule was somewhat unprecedented: anti-bias rules in other states were "narrower in scope than ABA Model Rule 8.4(g)." [22] Also, the Attorney General found, "[t]here has been no demonstration that there is a need for" the proposed rule. [23] The Louisiana Bar rejected the proposal. [24]

D. Tennessee

In March 2018, the Tennessee Attorney General also found that Rule 8.4(g) "would violate the constitutional rights of Tennessee attorneys and conflict with ***633** the existing Rules of Professional Conduct." [25] He explained that the rule "would profoundly transform the professional regulation of Tennessee attorneys. It would regulate aspects of an attorney's life that are far removed from protecting clients, preventing interference with the administration of justice, ensuring attorneys' fitness to practice law, or other traditional goals of professional regulation." [26] In particular, the rule would "chill attorneys from representing clients who wish to advocate positions that could be considered harassment or discrimination based on a protected characteristic, or at least from doing so zealously as required by the Rules of Professional Conduct." [27] I will discuss the proceedings in Tennessee *infra* Part III.F.

III. STATES THAT CONSIDERED MODEL RULE 8.4(G) WITH MODIFICATIONS

At least six states considered Model Rule 8.4(g) with certain modifications. These changes were designed to address possible constitutional concerns with the rule.

A. Maine

In May 2018, the Maine Supreme Judicial Court invited comments on the proposed amendment to Maine Rules of Professional Conduct. [28] The proposed amendment would adopt ABA Model Rule 8.4(g) with "some modifications." [29] For example, the proposal "omitted from the list of types of prohibited discrimination 'marital status' and 'socioeconomic status.'" [30] I commented on the proposal. [31] I wrote:

> While the suggested "modifications" alleviate some of my concerns, the rule should still be rejected. First, defining "harassment" as "demeaning conduct" can still sweep in a wide range of constitutionally protected speech. Second, because the phrase "related to the practice of law" still includes "interacting with ... coworkers," ***634** an attorney's speech at bar functions could still give rise to discipline. [32]

To date, the Maine Supreme Judicial Court has not yet acted on the petition.

B. Louisiana

The Louisiana State Bar Association requested written comments concerning ABA Model Rule 8.4(g). The Subcommittee did not suggest adopting ABA Model Rule 8.4(g) in its entirety. Instead, it proposed adopting the rule with several modifications. [33] I wrote a letter in response in which I proposed several additional modifications. [34]

> *First*, whereas the ABA's rule concerns "conduct related to the practice of law," the recommended rule concerns "conduct in connection with the practice of law." The subcommittee noted that this modification "clearly limits application of the rule to conduct of a lawyer." With respect, this is a distinction without a difference. There is no linguistic difference between "related to the practice of law" and "in connection with the practice of law." These phrases have the same meaning
>
> ....
>
> *Second*, whereas the ABA's Model Rule prohibits "harassment or discrimination," the recommended rule prohibits "discrimination prohibited by law." The former rule defines "harassment" to include "derogatory or demeaning verbal ... conduct." This provision raises distinct Free Speech concerns. As then-Judge Alito observed, there is no "categorical harassment exception" to the First Amendment. The Subcommittee's modification is an important one, as it omits the phrase "harassment ...." [35]

In November 2017, the Rules of Professional Conduct Committee of the Louisiana State Bar Association declined to adopt the rule. [36] Likewise, the Louisiana District Attorneys Association opposed the rule. [37] The Louisiana Attorney General also concluded that the rule was unconstitutional. [38] ***635** Ultimately, the Louisiana State Bar Association Rules of Professional Conduct Committee voted to not proceed with the rule.

C. Idaho

The Idaho State Bar Association proposed adopting ABA Model Rule 8.4(g) with modifications. [39] In September 2018, the Idaho Supreme Court rejected the resolution. Though it did not pass on the rule's constitutionality, the Chief Justices explained, "[m]embers of the Court encourage the Idaho State Bar to revisit this matter in hopes of narrowing the rule to comport with new United States Supreme Court cases." [40]

D. New Hampshire

During a June 1, 2018 hearing, the New Hampshire Supreme Court Advisory Committee on Rules considered three proposed rules that are very similar to ABA Model Rule 8.4(g). [41] I submitted a letter. [42] I noted that

> [e]ach of the proposed rules raise the same significant First Amendment issues as does the model rule. For example, proposed comment 6 only protects "a lawyer's rights of free speech ... in a manner that is consistent with these Rules." This protection is hollow, because engaging in "free speech" that is not "consistent with these Rules" would put an attorney at risk of disciplinary. [43]

In September 2018, the Committee recommended that a version of the rule should be adopted.[44] Another hearing may be scheduled.

E. Pennsylvania

In October 2016, the Pennsylvania Bar Association Women in the Profession Commission (WIP) proposed adopting Rule 8.4(g).[45] The Disciplinary Board of the Supreme Court of Pennsylvania found that the rule was too broad. It ***636** invited comments on the proposed amendment to Pennsylvania Rule of Professional Conduct (RPC) 8.4 relating to misconduct.[46] The Board did not recommend adopting the rule "wholesale."[47] The Board recognized that, as drafted, Model Rule 8.4(g) is "susceptible to challenges related to constitutional rights of lawyers, such as freedom of speech, association and religion."[48] Therefore, the Board proposed the adoption of ABA Model Rule 8.4(g) with several modifications.[49] These changes are a step in the right direction, but do not cure its constitutional faults. I wrote a letter in response to the modified rule.[50]

"In the Practice of Law"

> The Board recognized that the "broad scope of the language 'conduct related to the practice of law"' in the Model Rule could extend to "lawyers 'participating in bar association, business or social activities in connection with the practice of law."' Specifically, the Board expressed "grave concerns that adoption of such language would unconstitutionally chill lawyers' speech in forums disconnected from the provision of legal services." Therefore, the Board proposed an alternative: "'in the practice of law' as a more narrowly-tailored scope of prohibited conduct." The Board conclude[d] that private activities are not intended to be covered by this proposed rule amendment, since to do so would increase the likelihood of infringing on constitutional rights of lawyers."

> This modification is a positive development. By narrowing the scope of Rule 8.4(g), the Board has expressly excluded speech that may arise in "conduct related to the practice of law," such as "social activities." Yet, this modification still raises constitutional concerns. And these concerns were highlighted by the Supreme Court's recent decision in *National Institute of Family and Life Advocates v. Becerra. NIFLA* considered whether California could require certain medical facilities (both licensed and unlicensed) to display messages concerning the availability of public funding for abortions.

> In recent years, several circuit courts of appeals have strictly regulated speech associated with a regulated profession--that is "professional speech"-- when "it involves personalized services and ***637** requires a professional license from the State." However, such a regime, the Supreme Court explained, "gives the States unfettered power to reduce a group's First Amendment rights by simply imposing a licensing requirement." The Court expressed caution with applying laxer scrutiny to so-called "professional speech," as that standard "would cover a wide array of individuals--doctors, *lawyers*, nurses, physical therapists, truck drivers, bartenders, barbers, and many others." Stated simply, the government lacks an "unfettered power" to regulate the speech of "lawyers," simply because they provide "personalize[d] services" after receiving a "professional license."

> The Court identified two narrow exceptions to this rule, "neither of which turned on the fact that professionals were speaking." In the first circumstance, the Court has "applied more deferential review to some laws that require professionals to disclose factual, noncontroversial information in their 'commercial speech."' This first condition is not relevant to the Proposed Amendments: Speech uttered "in the practice of law" does not "require professionals to disclose factual, noncontroversial information."

Second, the Court noted that "[s]tates may regulate professional conduct, even though that conduct incidentally involves speech." This standard is directly relevant to the proposed rule: the state can "regulate professional conduct ... that ... incidentally involves speech," but it cannot regulate speech that incidentally involves professional conduct. The Proposed Amendment, by its own terms, straddles that line. It applies to *both* "conduct" "in the practice of law" *and* "words" (that is speech) "in the practice of law." If the Board struck the phrase "words," and focused solely on "conduct" "in the practice of law," the Proposed Rule would potentially fall within the second exception identified in *NIFLA*. But as drafted, the regulation of "words" would be subject to traditional strict scrutiny.

Given that this Proposed Rule is subject to strict scrutiny, members of the Bar would be faced with a notoriously vague standard: [s]pecifically, what "words" are "in the practice of law?" The Bulletin explains, "Pennsylvania RPC and the Pennsylvania Rules of Disciplinary Enforcement do not define what constitutes the practice of law." Rather, "the Supreme Court of Pennsylvania has explained what specific activities constitute the practice of law on a case-by-case basis." Relying on a "case-by-case" regime is the very sort of ad hoc standard that cannot meet strict scrutiny under the First Amendment. In light of *NIFLA*, a content-based restriction applied to "words" "in the practice of law" cannot satisfy the rigorous requirements of strict scrutiny. This rule could possibly be cured by limiting its reach to "conduct in the practice of law" (that is, excluding mere "words"). A more precise fix would limit the Rule's reach to "conduct in the ***638** representation of a client." This approach, which has been adopted in other jurisdictions, would further shrink the nexus between the conduct at issue, and the scope of the Bar's jurisdiction. Both of these **standards** would "regulate **professional** conduct, even though that conduct incidentally involves speech." They would not regulate speech, that incidentally involves "professional conduct."

"Bias, Prejudice, and Harassment"

Pennsylvania's proposed rule does not define the terms *bias*, *prejudice*, and *harassment*. Indeed, it defines those terms by repeating those terms: "in the practice of law, by words or conduct, knowingly manifest *bias* or *prejudice*, or engage in *harassment*, including but not limited to *bias*, *prejudice*, or *harassment*." There is no way for a member of the Bar, to know, in advance, whether his or her speech manifests "bias," "prejudice," or "harassment," since those terms are not defined in the rule itself. Proposed comment three offers "examples of manifestations of bias or prejudice," but notes that the list is not comprehensive. (Indeed, several of the items listed, such as "demeaning nicknames" and "attempted humor based on stereotypes" would be expressly protected by the First Amendment.) Proposed comment four defines *harassment* as "verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation." The comment provides no guidance of what renders "[v]erbal" "conduct," that is speech, "denigrat[ing]" or "show[ing] hostility or aversion." Given that this rule, as interpreted by the comments, is regulating not only "professional conduct," but also "words," this content-based restriction would fail the void-for-vagueness standard.

"Knowingly *Manifest Bias or Prejudice"*

ABA Model Rule 8.4(g) applies to those who "engage in conduct that the lawyer knows or reasonably should know is harassment." The proposed Amendment applies a more stringent *mens rea* standard: one who "*knowingly* manifest[s] bias or prejudice, or engage[s] in harassment." This is a positive development, and would exclude situations where the subjective feelings of a listener may result in an ethics violation. The misconduct must be knowing, and deliberate. However, this change does not cure the Proposed Amendment's other constitutional faults discussed *supra*. [51]

639** ***1. Status

In May 2018, the Disciplinary Board of the Supreme Court of Pennsylvania rejected the rule: "[f]ollowing extensive review and discussion of the numerous comments," it had "determined not to move forward with the proposed amendments, and renewed its study of the issue." [52] The Board proposed a new version of the rule in June 2018. [53] It is currently under consideration.

F. Tennessee

In November 2017, the Board of Professional Responsibility of the Tennessee Supreme Court and the Tennessee Bar Association petitioned the Tennessee Supreme Court to adopt Rule 8.4(g) with several modifications. [54] The Tennessee Attorney General concluded that the rule was unconstitutional. [55] I also submitted a letter, and applauded three additions to the rule. [56]

> *First*, the proposed comment [4] offers a definition of the phrase "legitimate advocacy" for the proposed RPC 8.4(g):
>
> Legitimate advocacy protected by Section (g) includes advocacy in any conduct related to the practice of the law, including circumstances where a lawyer is not representing a client and outside traditional settings where a lawyer acts as an advocate, such as litigation.
>
> This comment could be improved by providing some context of what those non-traditional settings are. This sentence, which I suggest in my article, would suffice: "For example, this Rule does not apply to speech on matters of public concern at bar association functions, continuing legal education classes, law school classes, and other similar forums."' This addition would clarify that an attorney's speech in the context of a lecture, debate, or CLE class, on a matter of public concern, would not amount to disciplinable conduct.
>
> *Second*, proposed comment [4a] includes additional protections for free speech. It provides:
>
> [4a] Section (g) does not restrict any speech or conduct not related to the practice of law, including speech or conduct protected by the First Amendment. Thus, a lawyer's speech ***640** or conduct unrelated to the practice of law cannot violate this Section.

I also applaud this addition. It could be improved even further by replacing the first sentence with one used in an earlier draft of ABA Model Rule 8.4(g) from 2015, but was ultimately removed (see pp. 248-49 of my article). The comment provides: "This Rule does not apply to conduct protected by the First Amendment, as 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 this rule." Making this change would clarify that not only are values of free speech protected, but also those of freedom of association, as well as freedom of exercise.

> *Third*, proposed comment [5b] excludes a provision that was included in ABA Model Rule 8.4(g):
>
> A lawyer may charge and collect reasonable fees and expenses for a representation. Rule 1.5(a).

Rather, comment [5d] expands on this sentiment by clarifying that charging fees does not amount to discrimination on the basis of socioeconomic status:

> Nevertheless, a lawyer does not engage in conduct that harasses or discriminates based on socioeconomic status merely by charging and collecting reasonable fees and expenses for a representation.

I applaud this addition, which retains the right of an attorney to set "reasonable fees," without fear of a bar complaint. [57]

The Tennessee Bar adopted several of my comments verbatim and proposed a revised rule. [58] Bloomberg BNA observed, "[t]hose revisions focused on trying to avoid confusion and clarify the legitimate advocacy exception and that the ***641** rule does not apply to conduct protected by the First Amendment." [59] In April 2018, the Tennessee Supreme Court rejected the petition. [60]

IV. STATES THAT CONSIDERED MODEL RULE 8.4(G) AS DRAFTED

At least four states considered ABA Model Rule 8.4(g) without any modifications.

A. Vermont

Vermont was the first, and so far, only state to adopt ABA Model Rule 8.4(g) as drafted. [61] It did so in 2017, quietly and "without discernable opposition." [62] Indeed, in one important regard, the Vermont Supreme Court "made the rule's restrictions on lawyers even greater." [63] The ABA's proposed rule does not apply to a decision to make an otherwise discretionary withdrawal from a representation. However, Vermont's rule provides that "[t]he optional grounds for withdrawal set out in Rule 1.16(b) must also be understood in light of Rule 8.4(g). They cannot be based on discriminatory or harassing intent without violating that rule." [64] In other words, it would be misconduct for an attorney to withdraw from a representation, if doing so would violate Rule 8.4(g). Vermont is very much an outlier.

B. Arizona

In February 2017, the Central Arizona Chapter of the National Lawyers Guild petitioned the Arizona Supreme Court to adopt ABA Model Rule 8.4(g). [65] I ***642** submitted a letter opposing the petition. [66] That petition was denied on August 27, 2018. [67]

C. Nevada

In May 2017, The Board of Governors of the State Bar of Nevada petitioned the Supreme Court of Nevada to amend its Rule of Professional Conduct 8.4 to include the ABA's Model Rule of Professional Conduct 8.4(g). [68] In June 2017, I submitted a letter opposing the proposed rule. [69] In September 2017, the Board of Governors of the State Bar withdrew the petition. [70]

D. Montana

The Montana Supreme Court accepted comments on Rule 8.4(g) through April 2017. [71] The Montana Legislature passed a joint resolution opposing the constitutionality of Rule 8.4(g). [72] To date, the Montana Supreme Court has taken no action on the rule.

Footnotes

f1 Associate Professor, South Texas College of Law Houston.

1 Myles V. Link, *Report to House of Delegates, Revised Resolution 109*, 2016 A.B.A. SEC. CIV. RTS. & SOC. JUST. 1, http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/final_revised_resolution_and_report_109.authcheckdam.pdf [https://perma.cc/K2XB-T76E].

2 Josh Blackman, *Reply: A Pause for State Courts Considering Model Rule 8.4(g)*, 30 GEO. J. LEGAL ETHICS 241 (2017).

3 *Id*. at 242.

4 *Id*.

5 *Id*.

6 *Id*.

7 Tex. Att'y Gen. Op. KP-0123 (Dec. 20, 2016), https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/op/2016/kp0123.pdf [https://perma.cc/M248-HKGG].

8 *Id*. at 3.

9 *Id*.

10 *Id*.

11 *Id*. at 4-6.

12 S.C. Att'y Gen. Op. Letter at 13 (May 1, 2017), http://www.scag.gov/wp-content/uploads/2017/05/McCravy-J.-OS10143-FINAL-Opinion-5-1-2017-01331464xD2C78-01336400xD2C78.pdf [https://perma.cc/ED72-3UGM].

13 *Id*. at 5-8.

14 *Id*. at 11.

15 *Id*.

16 Order, In re Proposed Amendments to Rule 8.4 of the Rules of Professional Conduct (S.C. June 20, 2017) (No. 2017-000498), https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2017-06-20-01 (declining "to incorporate ABA Model Rule 8.4 within Rule 8.4, RPC, as requested by the ABA.").

17 La. Att'y Gen. Op. No. 17-00114 at 9 (Sept. 8, 2017), https://perma.cc/9TWR-8GY9 (opining that ABA Model Rule of Professional Conduct 8.4(g) and LSBA proposed Rule 8.4(g) violate the First and Fourteenth Amendments of the United States Constitution) [hereinafter La. Att'y Gen. Op.].

18 *Id*. at 5.

19 *Id*. at 6.

20 *Id*. at 5.

21 *Id*. at 7.

22 *Id*. at 4.

23 *Id*. at 9.

24 *LSBA Rules Committee Votes Not to Proceed Further with Subcommittee Recommendations Re: ABA Model Rule 8.4(g)*, LA. STATE BAR ASS'N, https://www.lsba.org/BarGovernance/CommitteeInfo.aspx?

Committee=01fa2a59-9030-4a8c-9997-32eb7978c892 [https://perma.cc/74SP-Z3TH] (last visited Oct. 12, 2019) [hereinafter *LSBA Rules Comm. Votes No*].

25 Tenn. Att'y Gen. Comment Letter No. ADM2017-02244 Opposing Proposed Rule of Professional Conduct 8.4(g) 1 (Mar. 16, 2018), https://www.tn.gov/content/dam/tn/attorneygeneral/documents/foi/rule84g/comments-3-16-2018.pdf.

26 *Id*. at 2. The opinion also cited my article in the Georgetown Journal of Legal Ethics, though it referred to me as "John Blackman." *Id*. at n.2.

27 *Id*. at 11.

28 *Notice of Opportunity for Comment*, ME. SUP. JUD. CT. (May 22, 2018), https://www.courts.maine.gov/rules_adminorders/rules/proposed/2018-5-22/prof_conduct_notice_2018-5-22.pdf (last visited Oct. 12, 2019).

29 *Proposed Amendment to the Maine Rules of Prof'l Conduct*, ME. SUP. JUD. CT., https://www.courts.maine.gov/rules_adminorders/rules/proposed/2018-5-22/mr_prof_conduct_proposed_amends_2018-5-22.pdf (last visited Oct. 12, 2019).

30 *Id*.

31 Letter from Josh Blackman, Assoc. Professor, S. Tex. Coll. of L. Hous., to Matthew Pollack, Exec. Clerk, Me. Supreme Judicial Court (May 29, 2018), https://courts.maine.gov/rules_adminorders/rules/proposed/2018-5-22/comments/blackman.pdf.

32 *Id*.

33 LSBA RULES OF PROF'L CONDUCT COMM., RULE 8.4 SUBCOMM. REPORT 9-11 (Mar. 24, 2017), http://files.lsba.org/documents/News/LSBANews/RPCSubFinalReport.pdf (last visited Oct. 13, 2019).

34 Letter from Josh Blackman, Assoc. Professor, S. Tex. Coll. of L. Hous., to Richard P. Lemmler, Jr., Ethics Counsel, La. State Bar Ass'n (Aug. 18, 2017) (on file with author).

35 *Id*.

36 *LSBA Rules Comm. Votes No*, *supra* note 24.

37 Letter from E. Pete Adams, Exec. Dir., La. State Dist. Attorney's Ass'n., to Dona Kay Renegar, President, La. State Bar Ass'n (Aug. 31, 2017), https://www.christianlegalsociety.org/sites/default/files/site_files/Louisiana%20DAs%C20Proposed%C20New%C20Disciplinary%C20Rule%208.4h.pdf.

38 La. Att'y Gen. Op., *supra* note 17.

39 Letter from Roger S. Burdick, Chief Justice, Idaho Supreme Court, to Diane Minnich, Exec. Dir., Idaho State Bar (Sept. 6, 2018), https://www.clsreligiousfreedom.org/sites/default/files/site_files/ISC%20Letter%20-%20IRPC%208.4(g).pdf.

40 *Id*.

41 Advisory Comm. on Rules, *Public Hearing Notice*, N.H. SUP. CT. (Apr. 3, 2018), https://www.courts.state.nh.us/committees/adviscommrules/Public-Hearing-Notice-0618.pdf (last visited Dec. 16, 2019).

42 Letter from Josh Blackman, Assoc. Professor, S. Tex. Coll. of L. Hous., to Chief Justice Robert J. Lynn, N.H. Supreme Court (May 29, 2018), https://www.courts.state.nh.us/committees/adviscommrules/dockets/2016/2016-009/2016-009-Rule-of-Prof-Conduct-8-4-05-29-letter-from-Professor-Blackman.pdf.

43 *Id*.

44 Advisory Comm. on Rules, *Minutes of Public Meeting*, N.H. SUP. CT. (Sept. 7, 2018), https://www.courts.state.nh.us/committees/adviscommrules/sept-7-2018m.pdf.

45 PA. BAR ASS'N, WOMEN IN THE PROFESSION COMM'N, AMENDED RECOMMENDATION AND REPORT 2, https://www.christianlegalsociety.org/sites/default/files/site_files/PA%20WIP%20Proposal.pdf (last visited Oct. 13, 2019).

46 *Proposed Amendments to the Pennsylvania Rules of Professional Conduct Regarding Misconduct*, PA. BULL. (May 19, 2018), https://www.pabulletin.com/secure/data/vol48/48-20/773.html (last visited Oct. 13, 2019).

47 *Id*.

48 *Id*.

49 *Id*.

50 Letter from Josh Blackman, Assoc. Professor, S. Tex. Coll. of L. Hous., to the Disciplinary Bd. of the Supreme Court of Pa. (July 13, 2018), https://www.christianlegalsociety.org/sites/default/files/site_files/Letter-Pennsylvania-Blackman.pdf.

51 *Id*.

52 PA. BULL., *supra* note 45.

53 *Id*.

54 Order, In re Petition for the Adoption of a New Tenn. Sup. Ct. R. 8, RPC 8.4(g), (Tenn. Apr. 23, 2018) (No. ADM2017-02244), https://www.tncourts.gov/sites/default/files/order_denying_**8**.**4g**_petition_.pdf [https://perma.cc/6HBN-7TAA] [hereinafter Tenn. Order].

55 Tenn. Att'y Gen., *supra* note 25, at 9.

56 Letter from Josh Blackman, Assoc. Professor, S. Tex. Coll. of L. Hous., to Hon. James Hivner, Supreme Court of Tenn. (Dec. 11, 2017), https://www.tba.org/sites/default/files/6_blackman_cmt_to_tenn_sup_ct.pdf.

57 *Id*.

58 Comment of the Board of Professional Responsibility of the Supreme Court of Tennessee and the Tennessee Bar Association, In re Petition for the Adoption of a New Tenn. Sup. Ct. R. 8, RPC 8.4(g), No. ADM2017-02244 (Tenn. Mar. 21, 2018), https://www.christianlegalsociety.org/sites/default/files/site_files/TBA%20and%C20BPR%C20Comment%C20Amending%C20Proposed%C20Language%2003-21-2018.pdf (last visited Oct. 13, 2019). The Board of Professional Responsibility and the Tennessee Bar Association:
amend[ed] their joint proposed language for a new Rule 8.4(g) in response to, and to accommodate a number of, the constructive suggestions for the improvement of the proposed Rule made by Professor Josh Blackman of the South Texas College of Law and the Knoxville Bar Association. Professor Blackman's comments, filed by email on December 11, 2017, included praise for certain aspects of Petitioner's modifications of the ABA Model Rule and several specific suggestions for further improvement.
Id.

59 Mindy Rattan, *Tennessee Again Rejects Anti-Discrimination Ethics Rule*, BLOOMBERG BNA (May 1, 2018), https://www.bna.com/tennessee-again-rejects-n57982091727/.

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