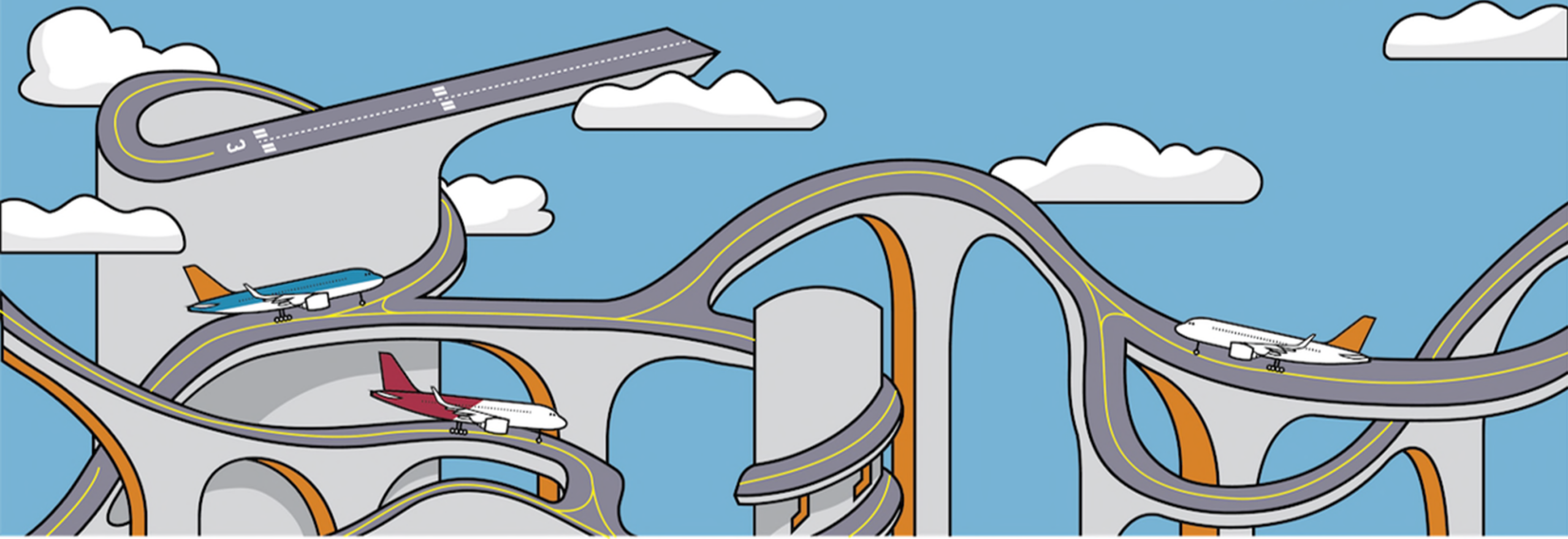


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Rule of Professional Conduct 8.4(g):
Reducing Bias, Harassment, and
Discrimination in the Legal
Profession

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Text of ABA Model Rule 8.4(g)



“It is professional misconduct for a lawyer 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. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.”



History and adoption of Model Rule 8.4(g)



- 1994 – Model Rule 8.4(g) proposed but withdrawn
- 1998 – Anti-discrimination language proposed; becomes a comment to Model Rule 8.4(d)
- 2016 – Model Rule 8.4(g) adopted after stakeholder process



First Amendment Challenges



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ABA Model Rule 8.4(g) - “Knows or reasonably should know”



“It is professional misconduct for a lawyer 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.”



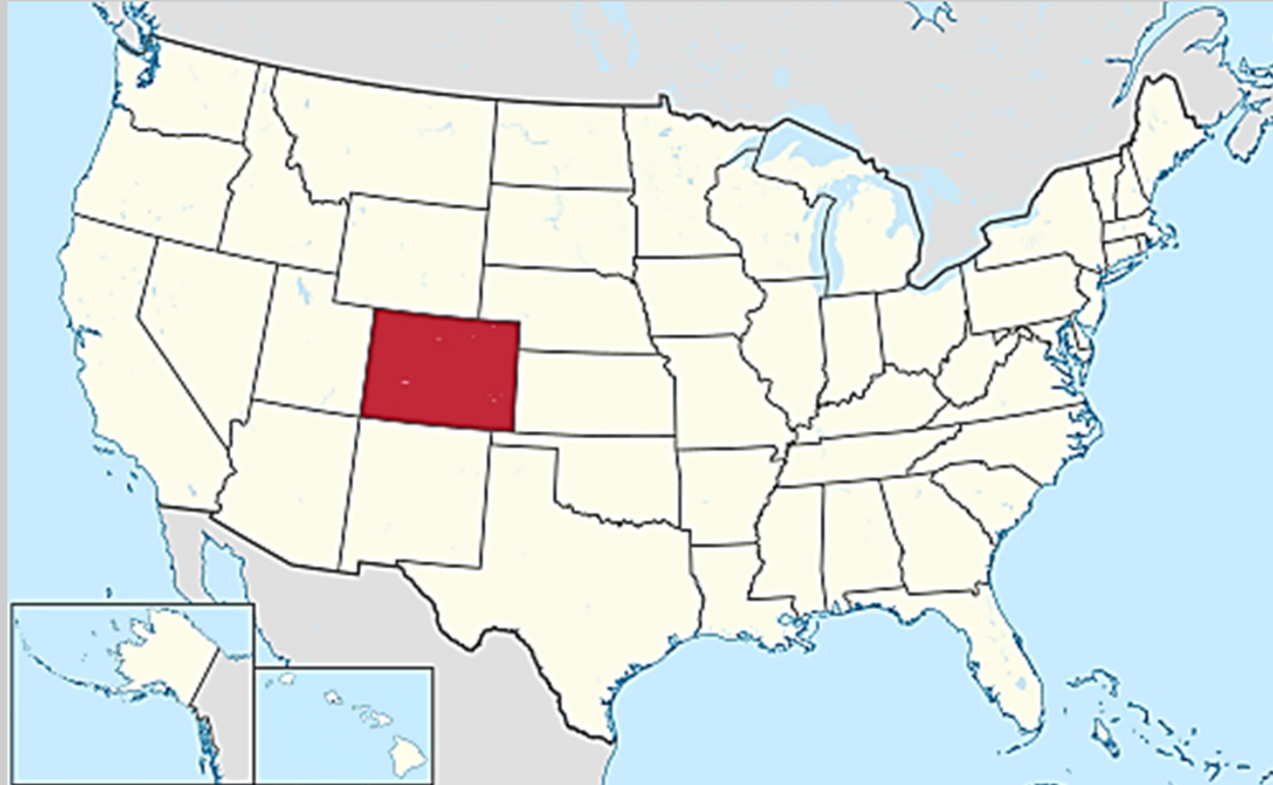
ABA Model Rule 8.4(g) - “harassment or discrimination”



“It is professional misconduct for a lawyer 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.”



Rule 8.4(g) in practice – Colorado



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ABA Model Rule 8.4(g) - “related to the practice of law”



“It is professional misconduct for a lawyer 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.**”



Rule 8.4(g) in practice – Iowa



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ABA Model Rule 8.4(g) - limitations



“This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.”



Rule 8.4(g) in practice – Indiana



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Hypotheticals and interaction with other RPC



Resources



ABA Materials

Model Rule 8.4:

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct/

Model Rule 8.4 Comments:

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_4_misconduct/comment_on_rule_8_4/

ABA Formal Opinion 493 (July 15, 2020) (available with ABA Membership)

www.kaplankirsch.com | www.aaae.org | www.imla.org



Resources



State Materials

In re Abrams, 488 P.3d 1043 (Colo. 2021) (upholding Colo. RPC 8.4(g) as constitutional and affirming hearing board's decision finding violation of Rule 8.4(g))

In re Moothart, 860 N.W.2d 598 (Iowa 2015) (concluding attorney violated Iowa RPC 32:8.4(g))

Greenberg v. Haggerty, 491 F. Supp. 3d 12 (E.D. Pa. 2020) (granting preliminary injunction of Pa. RPC 8.4(g) based on constitutional claims)

Greenberg v. Goodrich, 2022 U.S. Dist. LEXIS 52881, ___ F. Supp. 3d ___ (E.D. Pa. Mar. 24, 2022) (granting summary judgment holding revised Pa. RPC 8.4(g) unconstitutional)

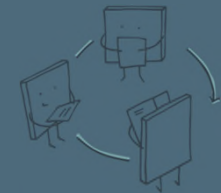
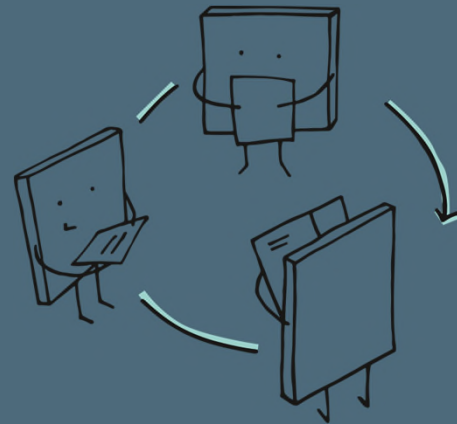
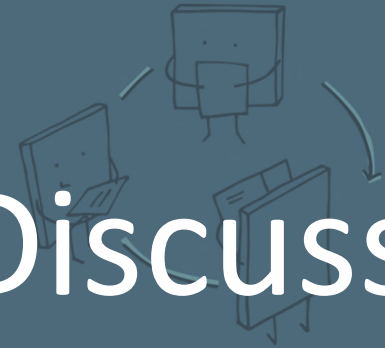
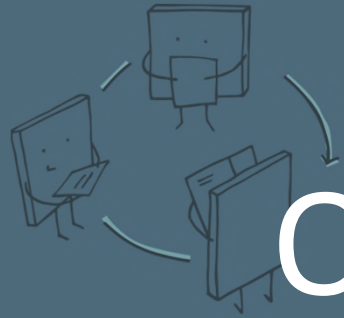
In re Thomsen, 837 N.E.2d 1011 (Ind. 2005) (holding attorney violated Ind. Professional Conduct Rule 8.4(g))

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Questions and Discussion



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