Rule 8.4. Misconduct.

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; or

(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 that is an unlawful, discriminatory, or retaliatory employment practice under Title VII of the Civil Rights Act of 1964 or the Utah Antidiscrimination Act, except that for the purposes of this paragraph and in applying those statutes, "employer" shall mean any person or entity that employs one or more persons; or

(h) egregiously violate, or engage in a pattern of repeated violations, of the Standards of Professionalism and Civility if such violations harm the lawyer's client or another lawyer's client or are prejudicial to the administration of justice.

Comment

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct or knowingly assist or induce another to 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.

[1a] An act of professional misconduct under Rule 8.4(b), (c), (d), (e), (f), (g), or (h) cannot be counted as a separate violation of Rule 8.4(a) for the purpose of determining sanctions. Conduct that violates other Rules of Professional Conduct, however, may be a violation of Rule 8.4(a) for the purpose of determining sanctions.

[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 words or conduct bias
or prejudice based upon race; color; sex; pregnancy, childbirth, or pregnancy-related conditions; age, if
the individual is 40 years of age or older; religion; national origin; disability, age, sexual orientation; or
genetic information socioeconomic status, may violate paragraph (d) when such actions are
prejudicial to the administration of justice. The protected classes listed in this Comment are consistent
with those enumerated in the Utah Antidiscrimination Act of 1965, Utah Code Sec. 34A-5-106(1)(a)
(2016), and in federal statutes, and is not meant to be an exhaustive list as the statutes may be amended
from time to time. 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 paragraph (d) rule.

[3a] The Standards of Professionalism and Civility approved by the Utah Supreme Court are intended
to improve the administration of justice. An egregious violation or a pattern of repeated violations of the
Standards of Professionalism and Civility may support a finding that the lawyer has violated paragraph
(d).

[4] The substantive law of antidiscrimination and anti-harassment statutes and case law guides the
application of paragraph (g), except that for purposes of determining a violation of paragraph (g), the size
of a law firm or number of employees is not a defense. Paragraph (g) does not limit the ability of a lawyer
to accept, decline, or in accordance with Rule 1.16, withdraw from a representation, nor does paragraph
(g) preclude legitimate advice or advocacy consistent with these rules. Discrimination or harassment
does not need to be previously proven by a judicial or administrative tribunal or fact-finder in order to
allege or prove a violation of paragraph (g). Lawyers may engage in conduct undertaken to discuss
diversity and inclusion, including any benefits and challenges, without violating paragraph (g).
Implementing initiatives aimed at recruiting, hiring, retaining and advancing employees of diverse
backgrounds or from historically underrepresented groups, or sponsoring diverse law student
organizations, are not violations of paragraph (g).

[4a] Paragraph (g) does not apply to expression or conduct protected by the First Amendment to the
United States Constitution or by Article I of the Utah Constitution.

[5] A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer’s
practice or by limiting the lawyer’s practice to members of underserved populations in accordance with
these Rules and other law. A lawyer may charge and collect reasonable fees and expenses for a
representation, Rule 1.5(a). Lawyers also should be mindful of their professional obligations under Rule
6.1 to provide legal services to those who are unable to pay, and their obligation under Rule 6.2 not to
avoid appointments from a tribunal except for good cause. See Rule 6.2(a), (b) and (c). A lawyer’s
representation of a client does not constitute an endorsement by the lawyer of the client’s views or
activities. See Rule 1.2(b).
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.

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.

This rule differs from ABA Model Rule 8.4 to the extent that it changes paragraph (g), adds new paragraph (h), changes comments [3] and [4], and contains comments [1a] and [4a].