

1 **Rule 8.4. Misconduct.**

2 It is professional misconduct for a lawyer to:

3 (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another
4 to do so, or do so through the acts of another;

5 (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as
6 a lawyer in other respects;

7 (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

8 (d) engage in conduct that is prejudicial to the administration of justice;

9 (e) state or imply an ability to influence improperly a government agency or official or to achieve
10 results by means that violate the Rules of Professional Conduct or other law; or

11 (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial
12 conduct or other law;

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

17 (h) egregiously violate, or engage in a pattern of repeated violations of, Rule 14-301 if such violations
18 harm the lawyer's client or another lawyer's client or are prejudicial to the administration of justice.

19 Comment

20 [1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional
21 Conduct or knowingly assist or induce another to do so through the acts of another, as when they request
22 or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer
23 from advising a client concerning action the client is legally entitled to take.

24 [1a] An act of professional misconduct under Rule 8.4(b), (c), (d), (e), (f), (g), or (h) cannot be counted
25 as a separate violation of Rule 8.4(a) for the purpose of determining sanctions. Conduct that violates
26 other Rules of Professional Conduct, however, may be a violation of Rule 8.4(a) for the purpose of
27 determining sanctions.

28 [2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses
29 involving fraud and the offense of willful failure to file an income tax return. However, some kinds of
30 offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving
31 "moral turpitude." That concept can be construed to include offenses concerning some matters of
32 personal morality, such as adultery and comparable offenses, that have no specific connection to fitness
33 for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer
34 should be professionally answerable only for offenses that indicate lack of those characteristics relevant
35 to law practice. Offenses involving violence, dishonesty, breach of trust or serious interference with the
36 administration of justice are in that category. A pattern of repeated offenses, even ones of minor
37 significance when considered separately, can indicate indifference to legal obligation.

38 [3] A lawyer who, in the course of representing a client, knowingly manifests by words or conduct bias
39 or prejudice based upon race;; color; sex; pregnancy, childbirth, or pregnancy-related conditions; age, if
40 the individual is 40 years of age or older; religion; national origin; disability; age, sexual orientation;
41 gender identity; or genetic information socioeconomic status, may violate ~~violates~~ paragraph (d) when
42 such actions are prejudicial to the administration of justice. The protected classes listed in this comment
43 are consistent with those enumerated in the Utah Antidiscrimination Act of 1965, Utah Code Sec. 34A-5-
44 106(1)(a) (2016), and in federal statutes and is not meant to be an exhaustive list as the statutes may be
45 amended from time to time. Legitimate advocacy respecting the foregoing factors does not violate
46 paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis
47 does not alone establish a violation of this rule.

48 ~~[3a] The Standards of Professionalism and Civility approved by the Utah Supreme Court are intended~~
49 ~~to improve the administration of justice. An egregious violation or a pattern of repeated violations of the~~
50 ~~Standards of Professionalism and Civility may support a finding that the lawyer has violated paragraph~~
51 ~~(d).~~

52 [4] The substantive law of antidiscrimination and anti-harassment statutes and case law governs the
53 application of paragraph (g), except that for purposes of determining a violation of paragraph (g), the size
54 of a law firm or number of employees is not a defense. Paragraph (g) does not limit the ability of a lawyer
55 to accept, decline, or, in accordance with Rule 1.16, withdraw from a representation, nor does paragraph
56 (g) preclude legitimate advice or advocacy consistent with these rules. Discrimination or harassment
57 does not need to be previously proven by a judicial or administrative tribunal or fact-finder in order to
58 allege or prove a violation of paragraph (g). Lawyers may discuss the benefits and challenges of diversity
59 and inclusion without violating paragraph (g). Unless otherwise prohibited by law, implementing or
60 declining to implement initiatives aimed at recruiting, hiring, retaining, and advancing employees of
61 diverse backgrounds or from historically underrepresented groups, or sponsoring diverse law student
62 organizations, are not violations of paragraph (g).

63 [5] Paragraphs (g) and (h) do not apply to expression or conduct protected by the First Amendment to
64 the United States Constitution or by Article I of the Utah Constitution.

65 [6] A lawyer does not violate paragraph (g) by limiting the scope or subject matter of the lawyer's
66 practice or by limiting the lawyer's practice to members of underserved populations in accordance with
67 these Rules and other law. A lawyer may charge and collect reasonable fees and expenses for a
68 representation. Rule 1.5(a). Lawyers also should be mindful of their professional obligations under Rule
69 6.1 to provide legal services to those who are unable to pay and their obligation under Rule 6.2 not to
70 avoid appointments from a tribunal except for good cause. See Rule 6.2(a), (b), and (c). A lawyer's
71 representation of a client does not constitute an endorsement by the lawyer of the client's views or
72 activities. See Rule 1.2(b).

73 | ~~[7]~~^[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that
74 | no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity,
75 | scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

76 | ~~[8]~~ ~~[5]~~ Lawyers holding public office assume legal responsibilities going beyond those of other
77 | citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers.
78 | The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian,
79 | agent and officer, director or manager of a corporation or other organization.

80 | [9] This rule differs from ABA Model Rule 8.4 to the extent that it changes paragraph (g), adds new
81 | paragraph (h), and modifies the comments accordingly.

82