145

DISCRIMINATION, BIAS, AND SEXUAL HARASSMENT AS PROFESSIONAL MISCONDUCT

Adopted May 14, 2022

I. Introduction and Scope

This Opinion offers guidance on the scope and application of Colorado Rules of Professional Conduct (Colo. RPC or Rules) 8.4(g) and (i) regarding conduct that may constitute discrimination, bias, or sexual harassment. Colo. RPC 8.4(g) prohibits a lawyer – in the representation of a client – from engaging in conduct that exhibits or is intended to appeal to or engender bias against a person on the basis of various characteristics, including race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status. Rule 8.4(i) prohibits a lawyer – in connection with the lawyer's professional activities – from engaging in conduct that the lawyer knows or reasonably should know constitutes sexual harassment.

There are three key differences between Colorado Rules 8.4(g) and 8.4(i) and ABA Model Rule 8.4(g). These differences are summarized in the following chart:

	Colo. RPC 8.4(g)	**Colo. RPC 8.4(i)**	**ABA Model Rule 8.4(g)**
Scope of Application	*Applies to conduct "in the representation of a client"*	*Applies to conduct "in connection with the lawyer's professional activities"*	*Applies to "conduct related to the practice of law"*
Attorney *mens rea*	*Requires that the conduct be "intended to appeal to or engender bias." The comment adds that "A lawyer who. . . knowingly manifests by word or conduct, bias or*	*Requires the lawyer either "know or reasonably should know" the conduct is sexual harassment*	*Requires that the lawyer "knows" the conduct is harassment or discrimination*

	prejudice. . . violates paragraph (g)"		
Triggering Conduct	*Prohibits lawyer conduct that "appeal to or engender bias"*	*Prohibits lawyer conduct that constitutes "sexual harassment"*	*prohibits lawyer conduct that constitutes "harassment or discrimination"*

This Opinion seeks to clarify Colorado Rules 8.4(g) and 8.4(i) and explain how those rules differ from ABA Model Rule 8.4(g) and similar rules in other jurisdictions.[1] It does not address the various types of misconduct enumerated in Colorado Rule 8.4(a)-(f) or (h).

II. Syllabus

1. Colo. RPC 8.4(g) and (i) and their background.
2. The difference in scope of application for Colo. RPC 8.4(g) and 8.4(i).
3. The difference in *mens rea* required for Colo. RPC 8.4(g) and 8.4(i).
4. The difference in the triggering conduct for applying Colo. RPC 8.4(g) and 8.4(i).
5. Application of Rules 8.4(i) and 8.4(g) to hypotheticals.

III. Analysis

A. Colo. Rules 8.4(g) and (i) and Their Background

In 2016, the American Bar Association ("ABA") amended Rule 8.4 adding paragraph (g), which makes it misconduct for a lawyer to "engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination. . . related to the practice of law." The Colorado Supreme Court did not revise the longstanding Colo. RPC 8.4(g), but in September of 2019, the Court added paragraph (i) to Rule 8.4 of the Colorado Rules to supplement sexual harassment to the categories of conduct that constitute lawyer misconduct. In pertinent part, Colo. RPC 8.4(g) and (i) state as follows:

It is professional misconduct for a lawyer to:

***

(g) engage in conduct, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person' race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, whether that conduct is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process;

***

(i) engage in any conduct that the lawyer knows or reasonably should know constitutes sexual harassment where the conduct occurs in connection with the lawyer's professional activities.

The remainder of this opinion discusses the key distinctions between paragraphs (g) and (i) of the Colorado Rule, the differences between those paragraphs and the ABA Model Rule and the implications of those distinctions and differences for Colorado lawyers.

B. The Difference in the Scope of Application of Colo. RPC 8.4(g) and 8.4(i)

The primary distinction between Colo. RPC 8.4(g) and 8.4(i) is the scope of their application. Because Rule 8.4(i) applies to conduct outside of the representation of a client, it applies to a larger scope of lawyer activities than rule 8.4(g). Colorado Rule 8.4(g) is confined to conduct pursued "in the representation of a client." To that end, the Rule provides examples of those to whom covered conduct may be directed: "other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process." Colorado Rule 8.4(i) applies in contrast to conduct "in connection with the lawyer's professional activities." Comment 5A, added when Rule 8.4(i) was promulgated in 2019, further defines this somewhat nebulous term by providing that "'[p]rofessional activities' are not limited to those that occur in a client-lawyer relationship."

ABA Model Rule 8.4(g) may shed light on what Colorado considered in crafting the term "professional activities." ABA Model Rule 8.4(g) uses the term "conduct related to the practice of law," a term that does not appear in either Colorado Rule 8.4(g) or 8.4(i). This is, perhaps, because Colorado's enactment of Colorado Rule 8.4(g) preceded ABA Model Rule 8.4(g). Before the 2016 amendment, comment 3 to ABA Model Rule 8.4, as opposed to the Rule itself, prohibited lawyers' discriminatory conduct "in the representation of a client." When the ABA elevated the prohibition from comment 3 to paragraph 8.4(g), it replaced "in the representation of a client" with the broader "conduct related to the practice of law," and added harassment on the basis of sex to its list of protected categories. Following the adoption of ABA Model Rule 8.4(g) and aware of its broader language, Colorado did not revise its longstanding Rule 8.4(g) to match the new ABA Model Rule. Instead, the Colorado Supreme added paragraph (i) to Colorado Rule 8.4 to address sexual harassment by an lawyer in the even broader "in connection with the lawyer's professional activities."

Comment 4 to the Model Rule 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; and participating in bar association, business or social activities in connection with the practice of law." Several of these categories of conduct – interacting with witnesses, coworkers, court personnel, lawyers and others, for example—may be conduct pursued "in the representation of a client" under Colo. RPC 8.4(g). But there are circumstances where such conduct may not be pursued "in the representation of a client," for example, at a law firm committee meeting, lawyer evaluation, firm sponsored networking event, or law firm retreat. Such conduct is generally not covered by Colorado Rule 8.4(g) but is likely covered by Colorado Rule 8.4(i). Moreover, activities that are

"in connection with the practice of law," may include participating in bar association and business or social activities in connection with the practice of law, or activities in the law school setting (such as professor-student and lawyer-student interactions). None of these activities fall under Colo. RPC 8.4(g) if not pursued "in the representation of a client." However, they would plainly fall within the scope of Colo. RPC 8.4(i) because they would be "in connection with the lawyer's professional activities."

In sum, determining the applicability of Colorado Rule 8.4(g) requires assessing whether the alleged misconduct occurred "in the representation of a client." If it did not, Rule 8.4(g) does not apply. There may nonetheless be a question of whether Colo. RPC 8.4(i) applies if the conduct occurred "in connection with the lawyer's professional activities."

C. The Difference in *Mens Rea* Required for Colo. RPC 8.4(g) and 8.4(i)

The second distinction between Colo. RPC 8.4(g) and 8.4(i) is the culpable mental state each may require. Colorado Rule 8.4(g) prohibits conduct that "exhibits" or is "intended to" appeal to bias. While Rule 8.4(g) does not itself state a knowing standard of conduct, Comment 3 to 8.4(g) references a "knowingly manifests" standard. In contrast, the text of Colorado Rule 8.4(i) itself prohibits conduct that the lawyer "knows or reasonably should know" constitutes sexual harassment.

The Colorado Rules define "knowing," "known," or "knows" as "actual knowledge of the fact in question," and explain that such knowledge may be inferred from circumstances. Colo. RPC 1.0(f). The Rules, however, do not define "knowingly manifest" and "reasonably should know." Generally speaking, in the disciplinary context, "an attorney's conduct can be so careless or reckless that it must be deemed to be knowing and will constitute a violation of a specific disciplinary rule." *People v. Rader*, 822 P.2d 950, 953 (Colo. 1992); *People v. Small*, 962 P.2d

258, 260 (Colo. 1998) ("With one important exception, we have considered a reckless state of mind, constituting scienter, as equivalent to 'knowing' for disciplinary purposes."); *see also People v. Zimmermann*, 922 P.2d 325, 329 (Colo. 1996) (knowing misappropriation would result in disbarment). The exception to this broader definition of "knowingly" occurs when a rule's text specifically requires knowledge. In that case, "recklessness is insufficient." Colo. RPC 1.0 cmt. [7A] (quoting *In re Egbune*, 971 P.2d 1065, 1069 (Colo. 1999)).

Colo. RPC 8.4(g)'s text does not include the term "knowledge." Therefore, it is likely that Rule 8.4(g) may be violated with a *mens rea* of recklessness. *See Egbune*, 971 P.2d at 1069; *see also* Colo. RPC 1.0, cmt. [7A] (including cases cited therein). Further, the fact that the seemingly higher "knowingly manifest" *mens rea* standard is in a comment, rather than in the Rule itself, likely means that the higher standard will not control. *See* Colo. RPC, Preamble and Scope, cmt [14] ("Comments do not add obligations to the Rules but provide guidance for practicing in compliance the Rules"). Thus, while the Colorado Supreme Court has yet to construe Rule 8.4(g)'s *mens rea* requirement, the culpable mental state necessary to violate Colo. RPC 8.4(g) is likely recklessness.[2]

Recklessness likely is also the standard necessary to violate Colo. RPC 8.4(i). While the first *mens rea* clause of Rule 8.4(i) ("conduct that the lawyer knows ... constitutes sexual harassment") would require more than recklessness, the second *mens rea* clause of Rule 8.4(i) ("conduct that the lawyer … reasonably should know constitutes sexual harassment") would likely be satisfied by recklessness.

In sum, although on first blush Colo. RPC 8.4(i) and 8.4(g) appear distinct in terms of their *mens rea* standards, both will likely be violated by a reckless mental state of mind.

D. The Difference in the Triggering Conduct for Application of Colo. RPC 8.4(g) and 8.4(i)

Another distinction between Colorado Rules 8.4(g) and 8.4(i) is in the conduct they regulate. Colorado Rule 8.4(g)'s prohibition of activities that "exhibits or is intended to appeal to or engenders bias" encompasses a broader list of types of discrimination than Colorado Rule 8.4(i)'s prohibition of sexual harassment. While both rules apply to words or conduct, Colorado Rule 8.4(g) prohibits lawyer conduct that "exhibits or is intended to appeal to or engenders bias." Rule 8.4(i) more specifically prohibits lawyer conduct that is "sexual harassment."

Although "reasonably should know" will likely be satisfied by a recklessness standard, Colorado lawyers should be aware that it is possible that "reasonably should know" will be satisfied by a mental state of mind lower than recklessness but higher than mere negligence. *See People v. Eaton*, 240 P.3d 1282, 1283 (Colo. PDJ 2010) (drawing a distinction between a lawyer's "knew or should have known" and a negligent state of mind); *People v. Beasley*, 241 P.3d 548, 552 (Colo. PDJ 2010 (same). The inquiry leads to the question, what conduct constitutes harassment per Colo. RPC 8.4(i) as opposed to bias Per Colo. RPC 8.4(g)?

Colorado Rule 8.4(g) proscribes biased conduct regarding certain enumerated characteristics: "race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status." Comment 3 of the Rule clarifies that the triggering conduct may be manifested "by word or conduct." The Colorado Supreme Court provided some guidance, through *In re Abrams*, 2021 CO 44, about what constitutes triggering conduct. The Court held that the question was whether "a reasonable person of ordinary intelligence would find that [the lawyer's] conduct was clearly proscribed by Rule 8.4(g)," and it considered both the Respondent's speech and his actions as "conduct." *Id.*, ¶ 32. Whether the Respondent's conduct manifested his own

bias was not relevant; rather, the fact that the conduct was bias under commonly accepted usage was enough to find a Rule violation. *Id.*, ¶ 33.

The Comments to the Rule highlight several important caveats. Comment 3 clarifies that "[l]egitimate advocacy respecting the foregoing factors does not violate paragraphs (d) or (g)." "Legitimate advocacy" is not defined by the Colorado Rules. However, read to be consistent with the Rules as a whole, "legitimate advocacy" may be taking a position that would not be considered frivolous under Rule 3.1 and the comments to it. *See* Colo. RPC 3.1 ("A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law"). Comment 3 of Rule 8.4 also provides a caveat that "a trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule." Colo. RPC 8.4, cmt. [3]. The Comment seeks to define some common litigating strategies as outside the Rule's prohibitions. *Id.*

Comment 3 does not appear to apply to "sexual harassment" per Colorado Rule 8.4(i). Comment 5A, however, contains similar language reflecting that the triggering conduct for Rule 8.4(i) may also be words or conduct. Comment 5A states that "sexual harassment may include, but is not limited to, sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that a reasonable person would perceive as unwelcome. The substantive law of employment discrimination, including anti-harassment statutes, regulations, and case law, may guide, but does not limit, applications of paragraph (i)." Colo. RPC 8.4, cmt. [5A]. The Comment reflects that the focus of Colorado Rule 8.4(i) is on unwelcomed conduct viewed through the eye of the victim or complainant, *not through the subjective intent of the accused*

lawyer. It also reflects acknowledgment of an imbalanced power dynamic commonly recognized in substantive state and federal employment law claims based on harassment.

Notably, there is overlap in Rule 8.4(g) and 8.4(i), such that some conduct may implicate both rules. This is particularly true since 8.4(g) regulates words or conduct that knowingly manifest bias or prejudice based on gender and or sexual orientation, which, depending on applicable law, might also constitute sexual harassment, and 8.4(i) specifically regulates sexual harassment. *See* Colo. RPC 8.4, cmt. [3].

Ultimately the analysis of whether professional misconduct falls under Colorado Rule 8.4(g) or 8.4(i), or both, requires analyzing the scope and circumstances of the conduct (was the conduct in the representation of a client, or in connection with a lawyer's professional activities?), the *mens rea* of the lawyer (was the conduct knowing, or should the lawyer reasonably have known, for example?) as well as the actual words or conduct involved.

E. Application of Rules 8.4(g) and 8.4(i) to Hypotheticals

Applying these Colorado Rules to the same hypotheticals that ABA Opinion 493 employs illustrates the distinction between the Colorado Rules and ABA Model Rule 8.4(g). This section primarily discusses the same representative situations addressed in ABA Opinion 493 but analyzes them in the context of the Colorado Rules. The section concludes with a hypothetical not addressed by Opinion 493.

(1) A religious organization challenges on First Amendment grounds a local ordinance that requires all schools to provide gender-neutral restroom and locker room facilities. Would a lawyer who accepted representation of the organization violate Colorado Rule 8.4(g)?

No. Similar to the interpretation of ABA Model Rule 8.4(g), Colo. RPC 8.4(g), cmt. [3] carves out "legitimate advocacy" by a lawyer during the course of representing a

client as an exception to violation of the Rule. Here, the lawyer is advocating for a client related to a gender discrimination issue. Like the ABA's interpretation of these circumstances under the Model Rule, while "individuals may disagree with the position the lawyer in the hypothetical would be defending, that would not affect the legitimacy of the representation." ABA Opinion 493, p. 12.

(2) A lawyer participating as a speaker at a CLE program on affirmative action in higher education expresses the view that rather than using a race-conscious process in admitting African-American students to highly-ranked colleges and universities, those students would be better off attending lower-ranked schools where they would be more likely to excel. Would the lawyer's remarks violate Colorado Rules 8.4(g) or 8.4(i)?

No. The concern over the conduct is that it relates to race and could be potentially discriminatory or reflecting bias. On first inquiry, the type of conduct may fall within the ambit of Colo. RPC 8.4(g) which regulates lawyer conduct that "is intended to appeal to or engender bias," including bias related to race. However, Rule 8.4(g) requires that the regulated conduct must occur "in the representation of a client." The concerning comments were made during a CLE which is not considered to be "in the representation of a client." Therefore, the conduct does not fall within Colorado Rule 8.4(g). While a CLE does likely fall within the broad definition in Colorado Rule 8.4(i) and comment 5A of "professional activities," this conduct does not concern sexual harassment, so Rule 8.4(i) is also inapplicable. As stated by ABA Opinion 493, "the fact that others may find a lawyer's expression of social or political views to be inaccurate, offensive, or upsetting, is not the type of 'harm' required for a violation."

(3) A lawyer is a member of a religious legal organization, which advocates, on religious grounds, for the ability of private employers to terminate or refuse to employ individuals based on their sexual orientation or gender identity. Will the lawyer's membership in this legal organization constitute a violation of Colorado Rules 8.4(g) or 8.4(i)?

The hypothetical likely does not present a circumstance where Rule 8.4(i) applies. Although the lawyer's membership in the organization is likely to be considered a "professional activity" per comment 5A, no conduct by the lawyer has been alleged. There are no facts that suggest the lawyer has herself taken action that could be analyzed for whether or not it was "sexual harassment" under either comment 5A's definition, or pursuant to substantive law. Similarly, the hypothetical likely does not present a circumstance where Rule 8.4(g) applies. The lawyer's membership in the organization does not constitute conduct regulated by the rule, nor does it reflect an lawyer-client relationship. In short, there is no conduct to be regulated "in the representation of a client" here.

(4) A lawyer serving as an adjunct professor supervising a law student in a law school clinic made repeated comments about the student's appearance and also made unwelcome, nonconsensual physical contact of a sexual nature with the student. Would this conduct violate Colorado Rules 8.4(g) and 8.4(i)?

Yes, the conduct would very likely violate Rule 8.4(i) but most likely would not be a violation of Rule 8.4(g). The conduct is likely "sexual harassment" under comment 5A, and adjunct teaching in a law school is very likely a "professional activity" of the lawyer. (Note that if the class was not in a law school clinic but instead, for example, at the undergraduate level, a technical school, or police academy, whether it was a

"professional activity" of the lawyer may be more open-ended). Therefore, the conduct is within the scope of Rule 8.4(i). Whether Rule 8.4(i) was violated will come down to a matter of *mens rea*: did the lawyer know or reasonably should have known that the conduct constituted sexual harassment? Circumstantial facts including but not limited to the student's response to the comments and what the physical contact was may be relevant to assess the lawyer's mental culpability.

Rule 8.4(g) probably does not apply, unless additional facts would indicate that the comment was made "in the course of representation of a client."[3]

(5) A partner and a senior associate in a law firm have been tasked with organizing an orientation program for newly-hired associates to familiarize them with firm policies and procedures. During a planning session, the partner remarked that: "Rule #1 should be never trust a Muslim lawyer. Rule #2 should be never represent a Muslim client. But, of course, we are not allowed to speak the truth around here." Do the partner's remarks violate Colorado Rules 8.4(g) and 8.4(i)?

No. The concerning conduct may reflect a bias based on religion or race. It did not, however, occur during representation of a client. Therefore, Colorado Rule 8.4(g) is inapplicable. Rule 8.4(i) is also inapplicable because the conduct does not raise a concern of sexual harassment.

This hypothetical reflects a marked difference between ABA Model Rule 8.4(g) and the Colorado Rules. Under ABA Model Rule 8.4(g), the conduct violates the Rule because that Rule applies more broadly to conduct reflecting bias and "related to the practice of law."

(6) Attorneys from the same law firm attend a firm-sponsored social event at a baseball game intended for marketing with clients. In attendance is a constituent of a large corporate client with ongoing litigation cases at the firm. During the event, an associate lawyer who works on the client's cases with the constituent is told by a partner that she looks attractive. The partner suggests that the associate "make use of the only thing she adds to the case" and "cozy up" with the constituent to discuss a dispute recently covered in the newspaper involving the client but for which the client has not yet retained the firm as counsel. Does the partner's conduct violate Colorado Rules 8.4(g) and 8.4(i)?

The hypothetical reflects an area where Rules 8.4(g) and 8.4(i) may overlap. The conduct occurred during a firm-sponsored event which is likely a "professional activity" under Rule 8.4(i). Moreover, clients are also in attendance, and the conduct suggests the associate lawyer takes action with regard to a client she is close with in order to obtain further representation of the client, making Rule 8.4(g) potentially applicable as well.

Yes, the conduct may violate Rule 8.4(g). There are two potential issues with the conduct. First, was the conduct in fact pursued "in the representation of a client?" Under these facts, this is a gray area. The conduct relates to a current client. But rather than occurring during the representation, it occurs in pursuit of further representation. It appears relevant that the associate lawyer currently works closely with the client constituent on a current case. The implication is that the associate lawyer is to use her current client relationship with the constituent under the circumstances.

Assuming for purposes of the hypothetical that the conduct is pursued "in the representation of a client," the next issue is whether the conduct was "intended to appeal to or engender bias," here based on the associate's gender or sexual orientation. The partner's suggestive comments reflect he knows the associate's gender and or appearance may be persuasive, he references them in a derogatory or diminutive way, both of which may reflect either his own bias or intention to use such bias in obtaining the client representative's openness to further business with the firm. It is within reason that this could constitute a violation of Rule 8.4(g).

Yes, the conduct likely violates Rule 8.4(i). The conduct was pursued at a professional activity associated with being a lawyer. Comment 5A prohibits "request for sexual favors, and other verbal or physical conduct of a sexual nature that a reasonable person would perceive as unwelcome" because it constitutes sexual harassment. The partner's conduct toward the associate, indicating her physical appearance was suggestive and could be persuasive to obtaining business from the client, likely meets the *mens rea* requirement that the partner knew the conduct would reasonably constitute sexual harassment in violation of Rule 8.4(i).

IV. Conclusion

Colorado Rules 8.4(g) and 8.4(i) are rooted in the understanding that lawyers are not only advocates and counselors but also serve a broader role in "furthering the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority." Colo. RPC Preamble, cmt. [6]. Pursuant to Colorado Rule 8.4(g), while a lawyer may engage in "legitimate

advocacy" in representing her client, she may not engage in conduct that is intended to appeal to, or that engenders, bias during the representation.

Colorado Rule 8.4(i) specifically prohibits sexual harassment by an lawyer not only in conduct pursued in representing a client but also more broadly in activities a lawyer is engaged in or connected with her profession. Whether a lawyer's conduct falls within Colorado Rule 8.4(g), 8.4(i), or both depends on the context in which the conduct arises, the mental culpability of the lawyer, and the conduct itself. Colorado lawyers should consider that both Rules are a reminder that "a lawyer's conduct should conform to the requirements of the law, both in professional services to clients and in the lawyer's business and personal affairs," and, as such, a lawyer should aim not to harass and intimidate, but rather to convey respect for the legal system, the rule of law, and the individuals with whom they interact. Colo. RPC Preamble, cmt. [5].

---

[1] *See also* ABA Comm. On Ethics and Prof. Resp., Formal Op. 493, "Model Rule 8.4(g): Purpose, Scope, and Application" (2020) (hereinafter ABA Opinion 493). Opinion 493 addresses the purpose, scope, and application of Model Rule 8.4(g). This opinion is intended to highlight the distinctions in the Colorado Rules from the Model Rule and does not take a position on Opinion 493. While other jurisdictions have seen successful challenges to the constitutionally of their versions of ABA Model Rule 8.4(g), the Colorado Supreme Court rejected similar challenges to the distinct Colorado Rule. The Colorado Supreme Court held that Colorado Rule 8.4(g) neither impermissibly regulates speech protected by the First Amendment, nor is it overbroad, and that the Rule is therefore constitutional. *In re Abrams*, 2021 CO 44, ¶¶ 28-24, 488 P.3d 1043, 1053-55 (2021). Accordingly, the constitutionality of ABA Model Rule 8.4(g) and Colorado Rule 8.4(g) is not further discussed in this Opinion.

[2] The only Colorado Supreme Court case construing Colo. RPC 8.4(g), *In re Abrams*, does not provide further guidance on the required *mens rea*. The appeal in that case was primarily a constitutional challenge to Rule 8.4(g), and that issue was not raised nor addressed by the Court. *In re Abrams*, 2021 CO 44 ¶34 (holding Colo. RPC 8.4(g) constitutional).

[3] One such instance where Rule 8.4(g) probably applies in the law school setting is in a law school clinic where the law students are actively representing clients in court or otherwise, even under the supervision of a professor or licensed lawyer.