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June 5, 2018

Matthew Pollack
Executive Clerk
Maine Supreme Judicial Court
205 Newbury Street, Room 139
Portland, ME 04112-0368

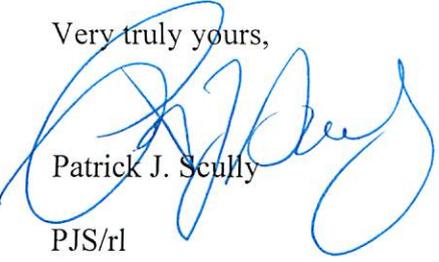
Re: Proposed Amendments to Rule 8.4 of the Maine Rules of Professional Conduct and
Maine Bar Rule 5

Dear Matt:

On behalf of Bernstein Shur, please find our firm's Supplemental Comments on the proposed amendments to Rule 8.4 of the Maine Rules of Professional Conduct and Maine Bar Rule 5.

Please contact us if the Court has any questions about these comments or needs any additional information.

Very truly yours,


Patrick J. Scully

PJS/rl
enclosure

RECD ME SUPREME JUD CT
JUN 5 '18 PM 3:38

Bernstein Shur Supplemental Comments on Proposed Amendments to the Rule 8.4 of the Maine Rules of Professional Conduct and Maine Bar Rule 5

Bernstein Shur appreciates the opportunity to comment on the revised proposal to amend both Rule 8.4 of the Maine Rules of Professional Conduct and Maine Bar Rule 5 to provide more specific education and expectations around sexual harassment, and harassment and discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity.

As noted in Bernstein Shur's previous comments, we are opposed to harassment or discrimination within the legal profession. We deeply appreciate the Court's efforts to address these issues in the Maine Rules of Professional Conduct and the Maine Bar Rules.

Upon review of the proposed revised language of Maine Rules of Professional Conduct 8.4, we request that the Court consider the following additional revisions:

- 1) Adding a specific reference to sexual harassment. While the draft Advisory Committee Note expressly defines harassment to include sexual harassment, the impetus for the proposed amendment seems based in significant part on issues around sexual harassment, making it appropriate to place the concept squarely within the language of the Rule. Further, "sexual harassment" is not synonymous with harassment on the basis of "sex," so it is important to us that both are expressly listed as prohibited activities in Rule 8.4.
- 2) Removing the comma after the word harassment to make clear the intent to prohibit harassment – and not just discrimination – on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity. Putting our first two comments together, the revised language we suggest is: "...sexual harassment, and harassment and discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity and gender expression and any other class protected by law."
- 3) Including an exception making clear that representation of a client who might be otherwise be accused of harassment or discrimination does not itself give rise to a violation of the Rule.

We would also ask the Court to consider expanding upon the definition of "Harassment" in the Advisory Committee Note to more clearly include both sexual harassment and other types of derogatory or demeaning conduct or communication that is based on any of the protected classes set forth in the Rule.

With regard to Maine Bar Rule 5, Bernstein Shur asks that the Court consider forming a committee to develop and require an agreed upon curriculum outline for the newly described live credit hour to ensure some consistency in understanding around these important issues throughout the membership of the Maine bar.

Thank you for the opportunity to comment, for your consideration of our comments, and for your continued attention to this important issue.