

**Subject: Proposed Amendment to Rule 8.4**

From: Bruce R. Johnson - To: lawcourt.clerk@courts.maine.gov - Date: December 6, 2017 at 2:51 PM

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Honorable Justices -- I am writing on my own behalf to question the wisdom of the proposed amendment to Rule 8.4 of the Maine Rules of Professional Conduct. The proposed rule seems to say either too much or too little. It says too much in the sense that “unlawful harassment or unlawful discrimination” is surely already professional misconduct under Rule 8.4(b). It says too little in the sense that, by appending a comment referring to ABA Model Rule 8.4(g), it would seem to be addressing the same subject matter (“Maine’s version”) but without putting enough flesh on the bones to allow me or any other lawyer to know what is prohibited. Indeed, in contemporary culture, merely to express a view contrary to the *zeitgeist* can be considered “hate speech” and, thus, unlawful harassment or discrimination. In that sense, then, the Advisory Committee’s note might be fairly characterized to advise the reader that “Maine does not tolerate a lawyer whose speech is contrary to the spirit of the age.”

And, of course, advocates of the rule change would say that my characterization does not fairly reflect the spirit of the rule. Really? If the amendment is adopted, only a few years will pass before that characterization will be seen to have been prescient.

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