

Joint Committee on Attorney Standards

**North Dakota Supreme Court
Judicial Wing, 1st Floor
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Bismarck, ND 58505-0530
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**Hon. Dann E. Greenwood, Chair
51 Third St. E, Suite 202
Dickinson, ND 58601
Phone: (701) 227-3150**

December 14, 2017

Honorable Gerald W. VandeWalle
Chief Justice
North Dakota Supreme Court
Judicial Wing, 1st Floor
600 E. Boulevard Ave
Bismarck, ND 58505-0530

Re: Review of Recent Amendment to Rule 8.4 of the ABA Model Rules of Professional Conduct

Dear Chief Justice VandeWalle:

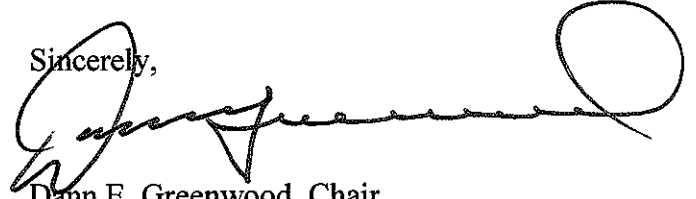
The Joint Committee on Attorney Standards has reviewed the amended Model Rule 8.4(g) and associated comments related to professional misconduct by lawyers as requested by the Court. The Joint Committee does not recommend any changes to current N.D.R.Prof.Conduct Rule 8.4 at this time.

The Committee considered the information provided by the ABA in its September 29, 2016 letter, the ABA Revised 109 Resolution and Report, numerous law review, scholarly, and news articles both opposing and supporting the new model rule, and reviewed responses by other states with respect to the new model rule. The Committee also considered information from the ND Labor Commissioner Michelle Kommer comparing protection from discrimination under the ND Human Rights Act, the ABA Model Rule 8.4 and N.D.R.Prof.Conduct Rule 8.4. Dan Traynor, ABA Delegate for SBAND, and Andy Askew, SBAND Young Lawyer Representative, attended the September 15, 2017 committee meeting and provided the committee members with information and their recommendations regarding the new model rule. After extensive discussion at the March 24, 2017 and September 15, 2017 meetings, the committee voted to retain the current N.D.R.Prof.Conduct Rule 8.4 and did not recommend the adoption of ABA Model Rule 8.4(g) or associated comments.

The primary concerns noted by the committee members were: 1) North Dakota's Rule

8.4(f) already incorporated anti-discrimination and anti-harassment provisions into the black letter of the law prior to the adoption of Model Rule 8.4(g), 2) the model rule is overbroad, vague, and imposes viewpoint discrimination, 3) the model rule may have a chilling effect on free discourse by lawyers with respect to controversial topics or unpopular views, and 4) there is uncertainty with how the phrase "conduct related to the practice of law" would be interpreted. The committee members commented that the model rule is well-intentioned and the goals of eliminating discriminatory and biased conduct from the legal profession are laudable; however, North Dakota's current rule already establishes appropriate disciplinary standards for discriminatory or biased conduct by lawyers and there are other avenues, such as education, that are more appropriate to serve as an impetus for further change in those areas.

Sincerely,

A handwritten signature in black ink, appearing to read "Dann E. Greenwood", with a large, stylized loop at the end.

Dann E. Greenwood, Chair
Joint Committee on Attorney Standards

DEG/ln

cc: Penny Miller, Clerk of the ND Supreme Court
Lindsey Nieuwsma