

Name: Anne Bachle Fifer

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Comment:

I am opposed to this proposal. The proposed language is vague and over-broad, and could become in effect a speech code for lawyers. It's based on ABA Model Rule 8.4(g), which has been adopted by some states for judges, but has been rejected by most states that have considered applying it to lawyers. My understanding is that only Vermont and New Mexico adopted ABA Model Rule 8.4(g) as originally drafted; New York adopted a modified version in June 2022. Several states found it unconstitutional, including Texas and South Carolina. Other states, including Idaho, Arizona, Pennsylvania and Tennessee, expressly declined to adopt some version of it.

I don't know what problem Michigan is trying to fix, but I don't think this rule is the answer. It is so broad and general that attorneys could unwittingly violate it in the course of appropriately practicing law. Its purpose is to prohibit discrimination and harassment in the practice of law, but, as one scholar noted, "it may violate lawyers' First Amendment free speech rights, especially in relation to their religious beliefs or political views, and have a chilling effect on expression." Texie Montoya, "The Past, Present and Future of ABA Model Rule 8.4(g) in Other States and Idaho," 2023.

In this era when government is targeting lawyers for taking a position on controversial issues, it seems like we should be supporting lawyers' right to free speech, not limiting it. How is the current rule inadequate? The current rule phrases the standard positively – here's how we want lawyers to behave. The proposed rule is negative, sounding punitive rather than instructive. If the current MRPC 6.5 is deficient in some way, let's strengthen it -- but adopting ABA Model Rule 8.4(g) is not the way to do it.