To: Myles V. Lynk, Chair  
ABA Standing Committee on Ethics and Professional Responsibility

From: ABA Standing Committee on Client Protection

Date: March 11, 2016

Re: Proposed Amendment of Rule 8.4 of the Model Rules of Professional Conduct

The ABA Standing Committee on Client Protection (“Client Protection Committee”) appreciates the opportunity to provide comments on the Standing Committee on Ethics and Professional Responsibility’s (“Ethics Committee”) proposed amendments to Rule 8.4 of the ABA Model Rules of Professional Conduct (“Model Rules”). The Client Protection Committee supports the inclusion of language prohibiting harassment and knowing discrimination in the black letter of the Model Rule. The proposed amendment appropriately classifies prohibited discriminatory conduct as a disciplinary violation. The proposal furthers the objectives of Association Goal III to “promote full and equal participation in the association, our profession, and the justice system by all persons” and “eliminate bias in the legal profession and the justice system.”

The Client Protection Committee has no objection to the scope of protected classes included in the proposed rule. While we recognize that the current draft language may include certain regulatory hurdles, we believe that they are outside the scope of the Client Protection Committee’s expertise. There is concern that the current proposed language in Comment [3] could be interpreted to compel representation or prohibit withdrawal under Model Rule 1.16. The Ethics Committee’s December 22, 2015 memorandum states that the Model Rule allows lawyers to decline or terminate representation under Model Rule 1.16 if there is “substantial risk that the representation will be materially limited by the lawyer’s personal interest.” In this context, how is it determined that representation is materially limited? A Client should be comfortable in the knowledge that the lawyer hired to represent her interests will do so. Lawyers with insurmountable biases may not decline representation for fear of discipline thus subjecting the client to the risk of negligent representation. As a practical matter, is it not preferable for a lawyer who has certain biases to decline representation when said bias is potentially harmful to clients?

The Client Protection Committee applauds the Ethics Committee’s efforts to address this very important issue. The position asserted in this letter is that of the Client Protection Committee collectively. Individual members may submit separate comments.