ABA Ethics Committee  
Center for Professional Responsibility  
American Bar Association  

I am a member of the ABA. I join in opposing the amendment of Model Rule 8.4 and cmt (3) for the reasons stated in the comment submitted by 52 ABA Member Attorneys and the Christian Legal Society.

Discrimination against a person has become a subjective and relative term. Without implying a particular negative, egregious, or improper standard, the rule clearly applies in an absurd manner. For example, an attorney who knowingly defers to an elder has discriminated against younger attorneys and an attorney who respects the ethnic customs of a client has knowingly discriminated against those who do not share the customs. Improper or proper discriminatory judgments are often relative to the social norms and cultural preferences of the politically powerful. Compromise, humility, and discernment must be exercised. In contrast, incorporation of the proposed standard for determining improper attorney behavior is particularly susceptible to misuse by politically powerful groups as a tool to consolidate and maintain power, to shame and attack political and cultural opponents, to limit access to power centers, and to try to reinforce particular subjective norms.

I believe the amendment will be used as a tool to chill independent professional judgment, responsibility, and diversity within the profession rather than promote such ideals. The rule fails to establish a damage or harm basis any different than what a person might suffer from voluntarily subjecting one’s self to offensive free speech in an editorial. The amended rule is likely to be used to require attorneys with disfavored beliefs to violate conscience, their personal judgment, and their sense of responsibility to their clients and communities in be allowed to practice law, and in many instances may exclude persons with disfavored opinions from access to the legal profession. It will furthermore likely be used to prevent disfavored persons within the public from having access to professional legal assistance from diverse attorneys who share their beliefs and convictions.

Thank you,

Douglas R. Griess, Esq.