



Via Email
August 2, 2016

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

Re: Support of Resolution 109 to Amend Model Rule of Professional Conduct 8.4 To
Prohibit Discrimination or Harassment in Conduct Related to the Practice of Law

Dear Mr. Lynk,

I write on behalf of Flex-Time Lawyers to express our full support for Resolution 109 to amend Model Rule of Professional Conduct 8.4 to expressly prohibit discrimination or harassment on the part of a lawyer in conduct related to the practice of law. The revision promotes fair and equal treatment in the profession, including for women, and is consistent with one of Flex-Time Lawyers fundamental goals – the advancement of women in the profession. We thank the ABA Standing Committee on Ethics and Professional Responsibility for its effort in drafting the proposed revision to Rule 8.4 and for its thoughtful consideration of comments made to the initial draft of the proposal.

Flex-Time Lawyers is an advocacy organization with a network of over 10,000 lawyers nationally. It is also an international consulting firm with a mission to advance women in the profession and facilitate new career paths and opportunities for lawyers to practice law. Since 1999, Flex-Time Lawyers has been empowering women and men in the legal profession to embrace diversity and the ability for all lawyers to thrive regardless of race, gender or ethnicity.

The proposed revision to Rule 8.4 provides a mechanism for removing barriers to advancement for women and minorities in a profession that is charged with providing justice for all. The amended Rule is necessary because explicit and implicit discrimination is still pervasive in our institutions as well as across a counsel table. Our members experience unequal pay for equal work, misogynistic comments and actions by opposing counsel, limited access to decision-makers, sexual harassment and objectification, inequitable reviews that lead to inequitable compensation, diminishing comments and behavior in meetings, and mistaken assumptions that undermine earned progression in the profession. Those who have experienced these instances of discrimination and harassment are the ones whose careers are derailed, stalled or halted while the perpetrators continue to climb the ladder of success unimpeded in what is essentially an endorsement of their behavior.

We know that discrimination exists in these contexts because it has been documented in deposition and trial transcripts. The perpetrators of discrimination in these circumstances know that their behavior is being documented and are still not deterred. The proposed revision to Rule 8.4 would offer a mechanism to deter countless instances of discrimination that take place both on and off the record.

Flex-Time Lawyers' annual Best Law Firms for Women initiative that it runs with Working Mother shows that there is still so much more work to be done to both retain and advance women in the profession. Additionally, the National Association of Women Lawyers' Annual National Survey on Retention of Women in Law Firms shows that efforts to advance women to equity partnership have all but stagnated over the past decade, despite the efforts of many over the span of many years. Women now make up roughly 18% of equity partners in the AmLaw 200 and make 80% of what their male colleagues make. Men and women of color make up 8% and LGBT lawyers make up 2% of equity partners in the AmLaw 200. The pay gap between men and women equity partners widens by 10% at firms with two or fewer women on their compensation committee as compared with firms with more than two women on the compensation committee. The ABA Commission on Women's study on women of color in law firms reported that once hired, 49% of women of color experienced demeaning comments or harassment. Perhaps when the refusal to accept discrimination and harassment is literally written into the moral code of the legal profession women and minorities will be fully accepted as colleagues, partners, bosses, and opposing counsel.

For all of the above reasons, Flex-Time Lawyers strongly supports passage of Resolution 109 and the adoption of amended Model Rule 8.4(g). We again thank the Standing Committee on Ethics and Professional Responsibility, and the cosponsoring Goal III entities, for this effort.

Very truly yours,

A handwritten signature in blue ink, reading "Deborah Epstein Henry". The signature is fluid and cursive, with a large loop at the end of the last name.

Deborah Epstein Henry, Esq.
Founder & President