Via Email
July 21, 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,

We write on behalf of the National Association of Women 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 NAWL’s 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.

NAWL’s mission is to provide leadership, a collective voice, and essential resources to advance women in the legal profession and advocate for the equality of women under the law. Since 1899, NAWL has been empowering women in the legal profession, cultivating a diverse membership dedicated to equality, mutual support, and collective success. NAWL played a role in the movement to admit women lawyers to the bars of their respective jurisdictions, the suffrage movement, as well as the movement to reform property and divorce laws that stripped women of their ability to be economically and professionally independent. NAWL has long linked its mission to other underrepresented groups in the legal profession, including its work to strengthen the protections of Title VII, ensure marriage equality, and ensure the protection of people of all backgrounds and economic situations from domestic violence.

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.

NAWL's Annual National Survey on Retention and Promotion 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 people over the span of many years. Women now account for roughly 18% of equity partners in the AmLaw 200 and are only paid 80% of what their male colleagues are paid. 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 in the Profession'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, the National Association of Women 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,

Marsha L. Anastasia
President, National Association of Women Lawyers