

The Supreme Court of South Carolina

Re: Proposed Amendments to Rule 8.4 of the Rules of Professional Conduct

Appellate Case No. 2017-000498

ORDER

In September 2016, the American Bar Association (ABA) submitted a letter to the Court concerning Rule 8.4 of the Rules of Professional Conduct (RPC), which is contained in Rule 407 of the South Carolina Appellate Court Rules. The ABA had recently amended its Model Rule 8.4 to add new paragraph (g), which contains language prohibiting harassment and discrimination in the practice of law. The ABA requested that the Court consider incorporating the provisions of the ABA Model Rule amendments within Rule 8.4, RPC.

At the January 2017 South Carolina Bar Convention, the House of Delegates reviewed a proposal submitted by the Bar's Professional Responsibility Committee recommending the Court decline to incorporate the ABA Model Rule amendments within Rule 8.4, RPC. The House of Delegates adopted a substituted resolution "to not approve [Model] Rule 8.4(g) as written and to have a public hearing and public comment."

On March 7, 2017, the Court issued a request for written comments from the public concerning the ABA's submission and the recommendation of the South Carolina Bar. Twenty-nine written comments were submitted by individual attorneys, and three comments were submitted on behalf of various groups.

Following the conclusion of the comment period, the Commissions on Lawyer and Judicial Conduct, whose members would initially be tasked with investigating alleged violations of any amended rule, informed the Court the Commissions share the same reservations expressed by the South Carolina Bar and others. The Commissions state that, as a result, they do not recommend the Court incorporate the Model Rule provisions submitted by the ABA. However, the Commissions state their respective members are of the opinion that discrimination and lack of diversity within the legal profession are issues that should be addressed in some fashion. The Commissions state they are currently engaging in additional study of those issues, and they request the opportunity to present the Court with alternatives to the adoption of the ABA's proposed amendments to Rule 8.4.

The Court has carefully reviewed the ABA Model Rule, the materials considered by the House of Delegates, the public comments, and the submission of the Commissions on Lawyer and Judicial Conduct. The public comments and the Commissions' letter are available for **review** on the Judicial Department website.

Following review, this Court declines to incorporate the ABA Model Rule within Rule 8.4, RPC, as requested by the ABA. Should the Commissions on Lawyer and Judicial Conduct elect to submit proposed amendments to address problems identified in their letter to the Court, the Court will consider any proposal on its merits.

s/Donald W. Beatty C.J.

s/John W. Kittredge J.

s/Kaye G. Hearn J.

s/John Cannon Few J.

s/George C. James, Jr. J.