

**BAR ADMISSION AND
DISCIPLINARY MATTERS**

**MRPC
8.1**

RULE 8.1- LYING

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, **shall not:**

(a) knowingly make a false statement of material fact; **OR**

RULE 8.1- FAILURE TO DISCLOSE

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, OR knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

8.1 COMMENTS: APPLICATION

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers.

Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application.

8.1 COMMENTS:

MISUNDERSTANDING AND MISSTATEMENT

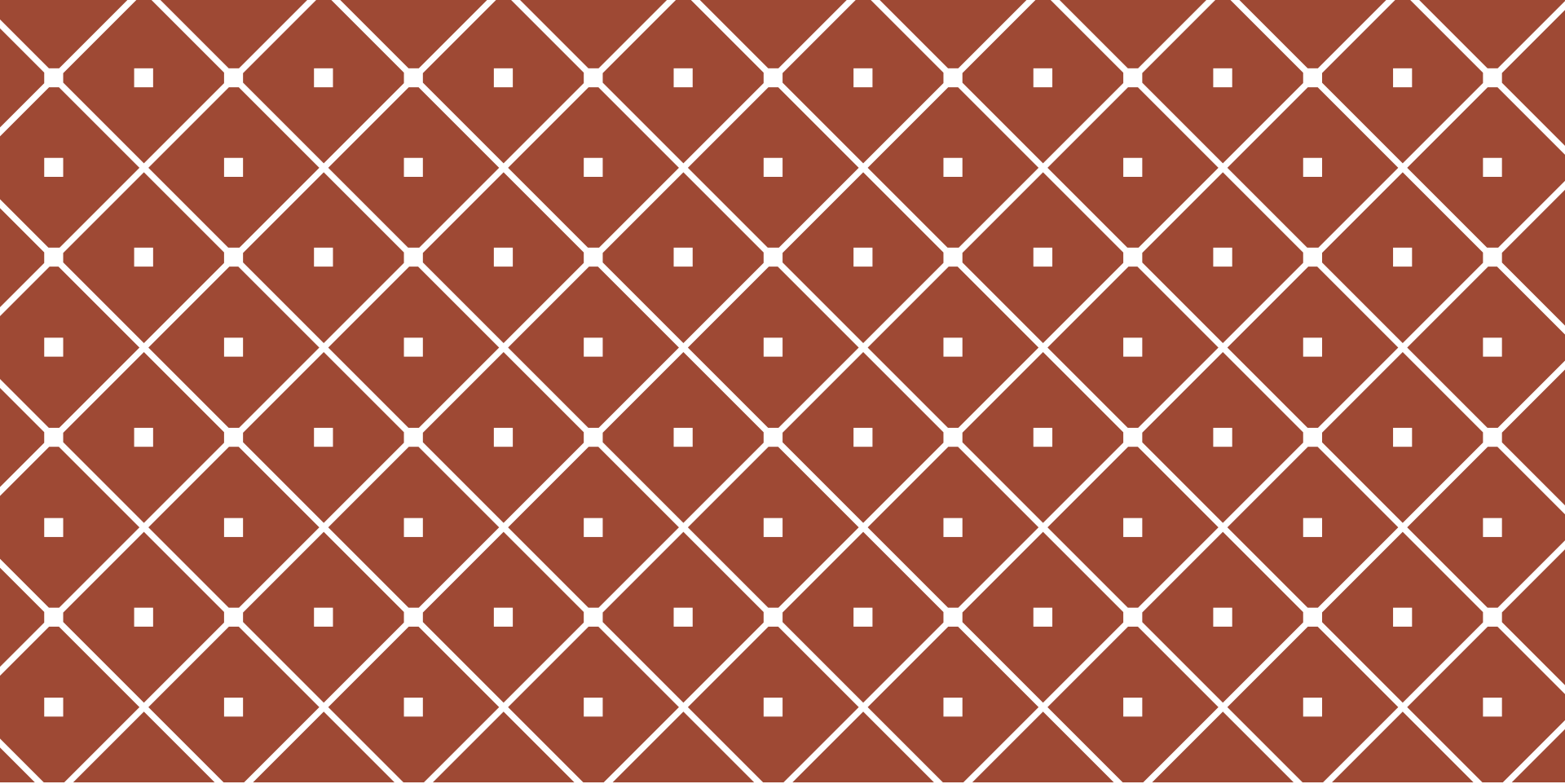
Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

8.1 COMMENTS: CONSTITUTION

[2] This Rule is subject to the provisions of the Fifth Amendment of the United States Constitution and corresponding provisions of state constitutions. A person relying on such a provision in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

8.1 COMMENTS: REPRESENTATION

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including Rule 1.6 and, in some cases, Rule 3.3.



**JUDICIAL AND
LEGAL OFFICIALS**

**MRPC
8.2**

BAR ADMISSION — SUPREME COURT CASES

Supreme Court of N.H. v. Piper, 470 U.S. 274 (1985)

Piper, a resident of Vermont, was allowed to take, and passed, the New Hampshire bar examination. Piper submitted with her application a statement of intent to become a New Hampshire resident, but Piper and her husband (& new baby) lived in Vermont, and they decided not to sell their house.

But pursuant to Rule 42 of the New Hampshire Supreme Court, which limits bar admission to state residents, she was not permitted to be sworn in.

Held: Rule 42 violates the Privileges and Immunities Clause of Art. IV, § 2. A State may discriminate against nonresidents only where its reasons are "substantial" and the difference in treatment bears a close or substantial relationship to those reasons

BAR ADMISSION — SUPREME COURT CASES

Frazier v. Heebe, 482 U.S. 641 (1987)

A federal court in the Eastern District of Louisiana required, as a local rule, either residency OR a maintaining an office in Louisiana for admission to the bar. Frazier challenged this on Equal Protection and Due process grounds

Holding — local district court lacked authority to have this type of requirements, citing *Piper*

BAR ADMISSION – SUPREME COURT CASES

Barnard v. Thorstenn, 489 U.S. 546 (1989)

Virgin Islands' Local Rule 56(b) provides that, before an otherwise qualified attorney is admitted to the Virgin Islands Bar, he must "allege and prove to the satisfaction" of the Committee of Bar Examiners that he has "resided in the Virgin Islands for at least one year immediately preceding his proposed admission," and that, "[i]f admitted to practice, he intends to continue to reside in and to practice law in the Virgin Islands."

HELD - Rule 56(b)'s residency requirements violate the Privileges and Immunities Clause

RULE 8.2: GENERAL RULE

(a) A lawyer **shall not** make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

RULE 8.2: JUDICIAL CANDIDATES

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

8.2 COMMENT 2: JUDICIAL CANDIDATES RULES

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

1ST AMENDMENT & CRITICIZING JUDGES

***Garrison v. Louisiana*, 379 U.S. 64 (1964)**

Prosecutor convicted of **criminal defamation** for holding a press conference and attributed the large backlog of pending criminal cases to the inefficiency, laziness, and excessive vacations of New Orleans judges, as well as their refusal to authorize reimbursements for undercover investigations.

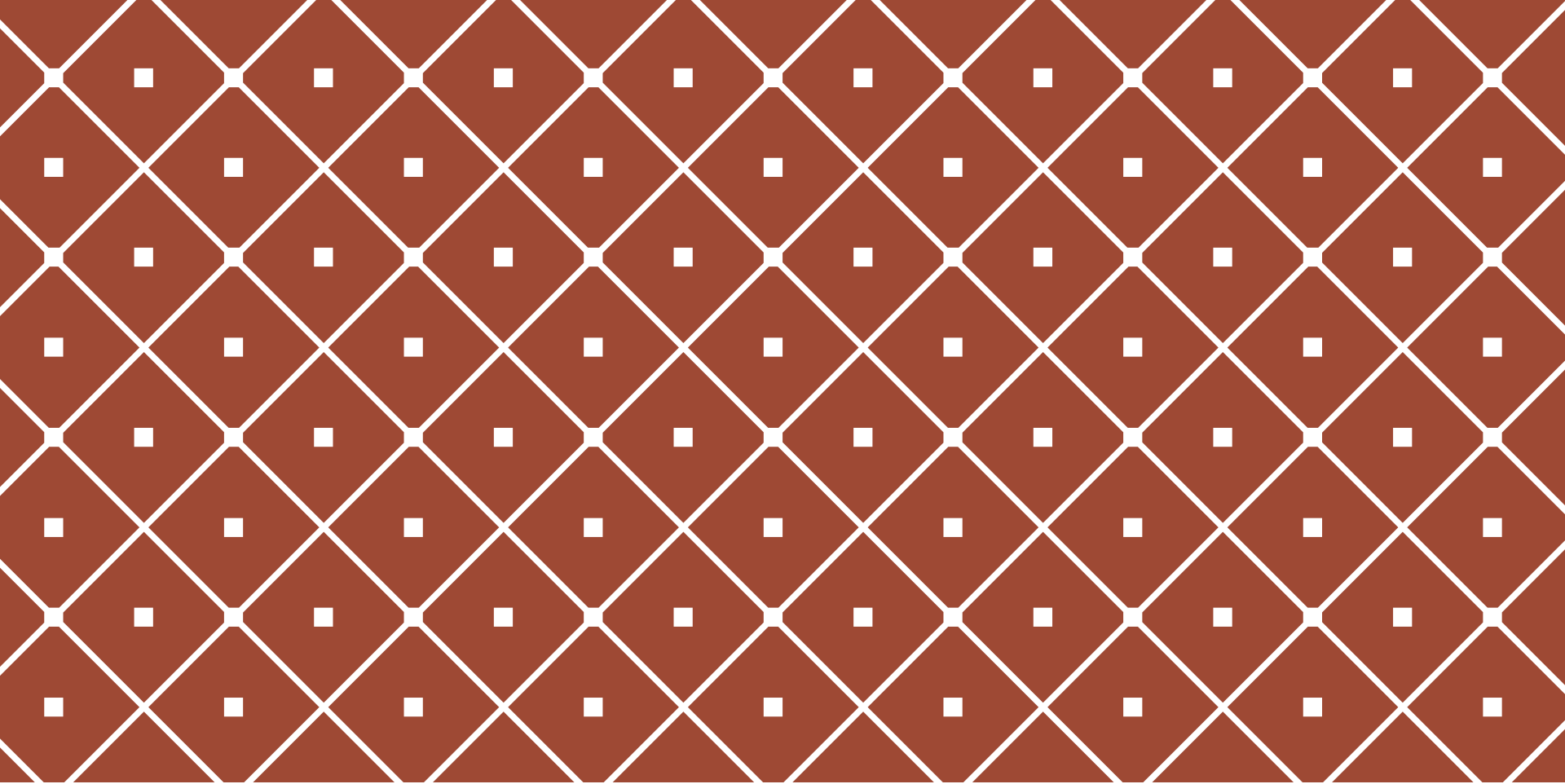
U.S. Supreme Court has held that the First Amendment protects a lawyer from civil or criminal liability for derogatory statements about judges unless the lawyer speaks “with ‘actual malice’--that is, with knowledge of [the statement's] falsity or in reckless disregard of whether it was false or not.”

1ST AMENDMENT & CRITICIZING JUDGES

Rule 8.2(a) adopts the same standard for professional responsibility purposes.

See, e.g., In re Green, 11 P.3d 1078 (Colo. 2000) (discipline for criticizing judge is constitutionally permissible only if (1) disciplinary authority proves criticism was false statement of fact, or was statement of opinion that necessarily implied undisclosed assertion of fact; and (2) lawyer acted with actual malice--that is, with knowledge of or in reckless disregard of its falsity);

Also: Restatement (Third) of the Law Governing Lawyers § 114 (discipline appropriate only for false statements made knowingly or recklessly).



**REPORTING PROFESSIONAL
MISCONDUCT** | **MRPC
8.3**

RULE 8.3 - REPORTING LAWYER MISCONDUCT

(a) A lawyer who **knows** that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's **honesty, trustworthiness or fitness** as a lawyer in other respects, **shall** inform the appropriate professional authority.

RULE 8.3 - REPORTING JUDICIAL MISCONDUCT

(b) A lawyer who **knows** that a judge has committed a violation of applicable rules of judicial conduct **that raises a substantial question as to the judge's fitness for office** shall inform the appropriate authority.

RULE 8.3 – REPORTING MISCONDUCT

(c) This Rule **does not** require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

RULE 8.3 – COMMENT 2

[2] A report about misconduct is not required where it would involve violation of Rule 1.6.

However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

RULE 8.3 - COMMENT 3

[3] **[NOT EVERY VIOLATION]** . . . This Rule **limits** the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule.

The term "substantial" refers to the **seriousness of the possible offense** and **not the quantum of evidence** of which the lawyer is aware.

RULE 8.3 - COMMENT 4

[4] The duty to report professional misconduct **does not** apply to a lawyer retained to represent a lawyer whose professional conduct is in question.

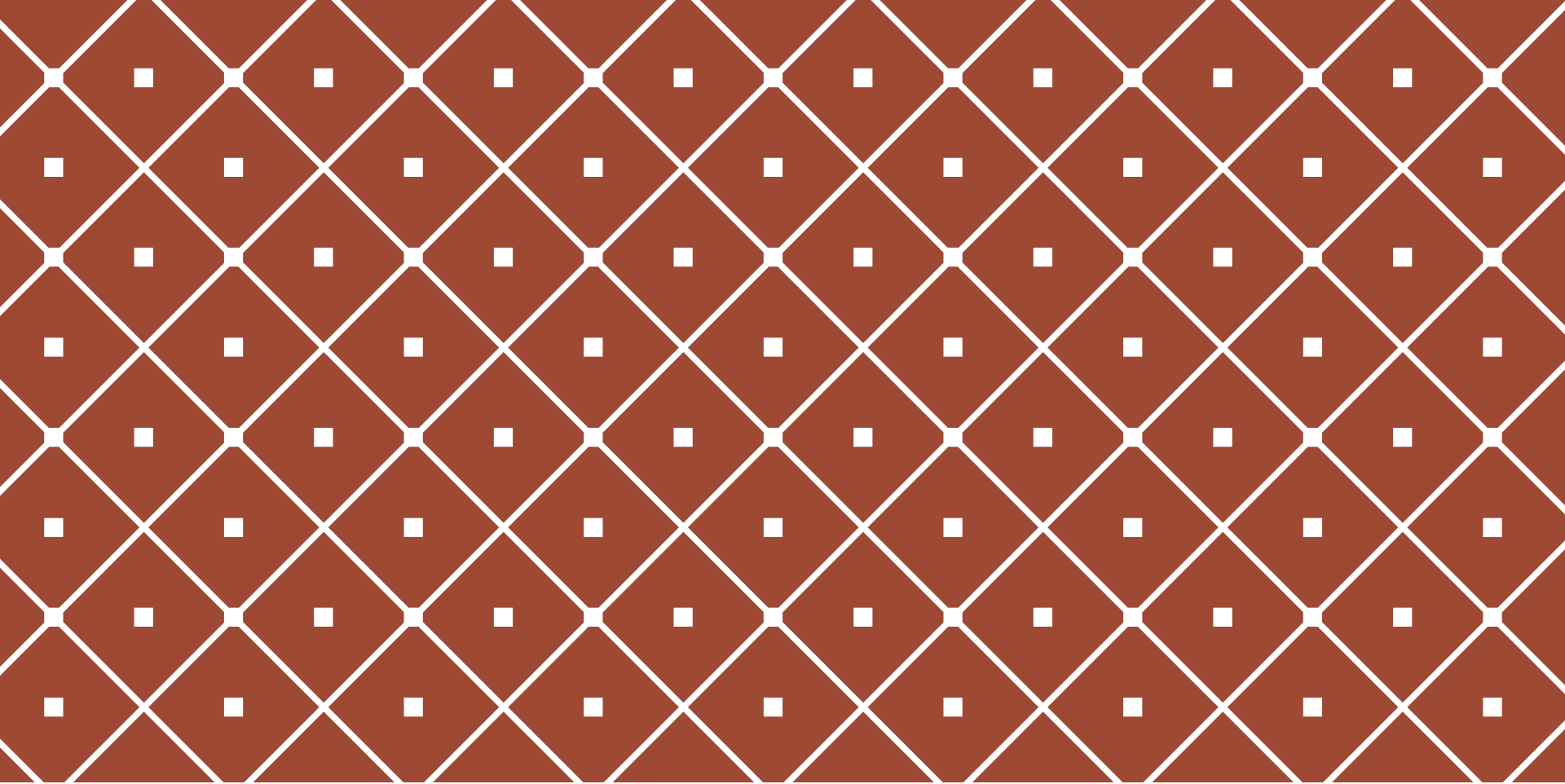
ABA FORMAL OP. 94-383

A lawyer's use of the threat of filing a disciplinary complaint or report against opposing counsel, to obtain an advantage in a civil case, is constrained by the Model Rules, despite the absence of an express prohibition on the subject.

Such a threat may not be used as a bargaining point when the subject misconduct raises a substantial question as to opposing counsel's honesty, trustworthiness or fitness as a lawyer, because in these circumstances, the lawyer is ethically required to report such misconduct.

ABA FORMAL OP. 94-383

Such a threat would also be improper if the professional misconduct is unrelated to the civil claim, if the disciplinary charges are not well founded in fact and in law, or if the threat has no substantial purpose or effect other than embarrassing, delaying or burdening the opposing counsel or his client, or prejudicing the administration of justice.



MISCONDUCT | **MRPC** **8.4**

RULE 8.4 - MISCONDUCT

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, **or** do so through the acts of another;

RULE 8.4 - MISCONDUCT

It is professional misconduct for a lawyer to:

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

RULE 8.4 - MISCONDUCT

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

RULE 8.4 - MISCONDUCT

It is professional misconduct for a lawyer to:

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

RULE 8.4(F) - MISCONDUCT

It is professional misconduct for a lawyer to:

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Rule 8.4(g) [added 2016]

It is professional misconduct for a lawyer to:

(g) engage in conduct that the lawyer knows or reasonably should know is **harassment or discrimination** on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct **related to the practice of law.**

Rule 8.4(g) [added 2016]

(g) . . . This paragraph **does not** limit the ability of a lawyer to **accept, decline** or **withdraw** from a representation in accordance with Rule 1.16.

This paragraph **does not** preclude legitimate advice or advocacy consistent with these Rules.

RULE 8.4 - COMMENT 2

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving **fraud** and the offense of **willful failure to file an income tax return.**

However, some kinds of offenses carry no such implication...

RULE 8.4 - COMMENT 2 CONT'D...

[2] . . . Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude."

That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law.

RULE 8.4 - CMT 2 CONTINUED...

... Although a lawyer is personally answerable to the entire criminal law, a lawyer should be answerable only for offenses that indicate lack of those characteristics relevant to law practice.

Offenses involving **violence, dishonesty, breach of trust, or serious interference** with the administration of justice are in that category.

RULE 8.4 - CMT 2 CONTINUED...

... A pattern of **repeated offenses**, even ones of **minor significance** when considered separately, can indicate indifference to legal obligation.

RULE 8.4 - COMMENT 3 [ADDED 2016]

[3] Discrimination and harassment by lawyers in violation of **paragraph (g)** undermine confidence in the legal profession and the legal system.

Such discrimination includes harmful **verbal** or **physical** conduct that manifests **bias or prejudice** towards others.

RULE 8.4 - CMT 3 CONTINUED [ADDED 2016]

[3] . . . Harassment includes **sexual harassment** and **derogatory or demeaning** verbal or physical conduct.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature.

RULE 8.4 - CMT 3 CONTINUED [ADDED 2016]

[3] . . . The substantive law of antidiscrimination and anti-harassment statutes and case law **may** guide application of paragraph (g).

RULE 8.4 – COMMENT 4

[4] **“Conduct related to the practice of law”** includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law; operating or managing a law firm or law practice; and participating in bar association, business or social activities in connection with the practice of law.

RULE 8.4 – COMMENT 4

[4] . . . Lawyers **may** engage in conduct undertaken to **promote diversity** and inclusion without violating this Rule by, for example, implementing initiatives aimed at recruiting, hiring, retaining and advancing diverse employees or sponsoring diverse law student organizations.

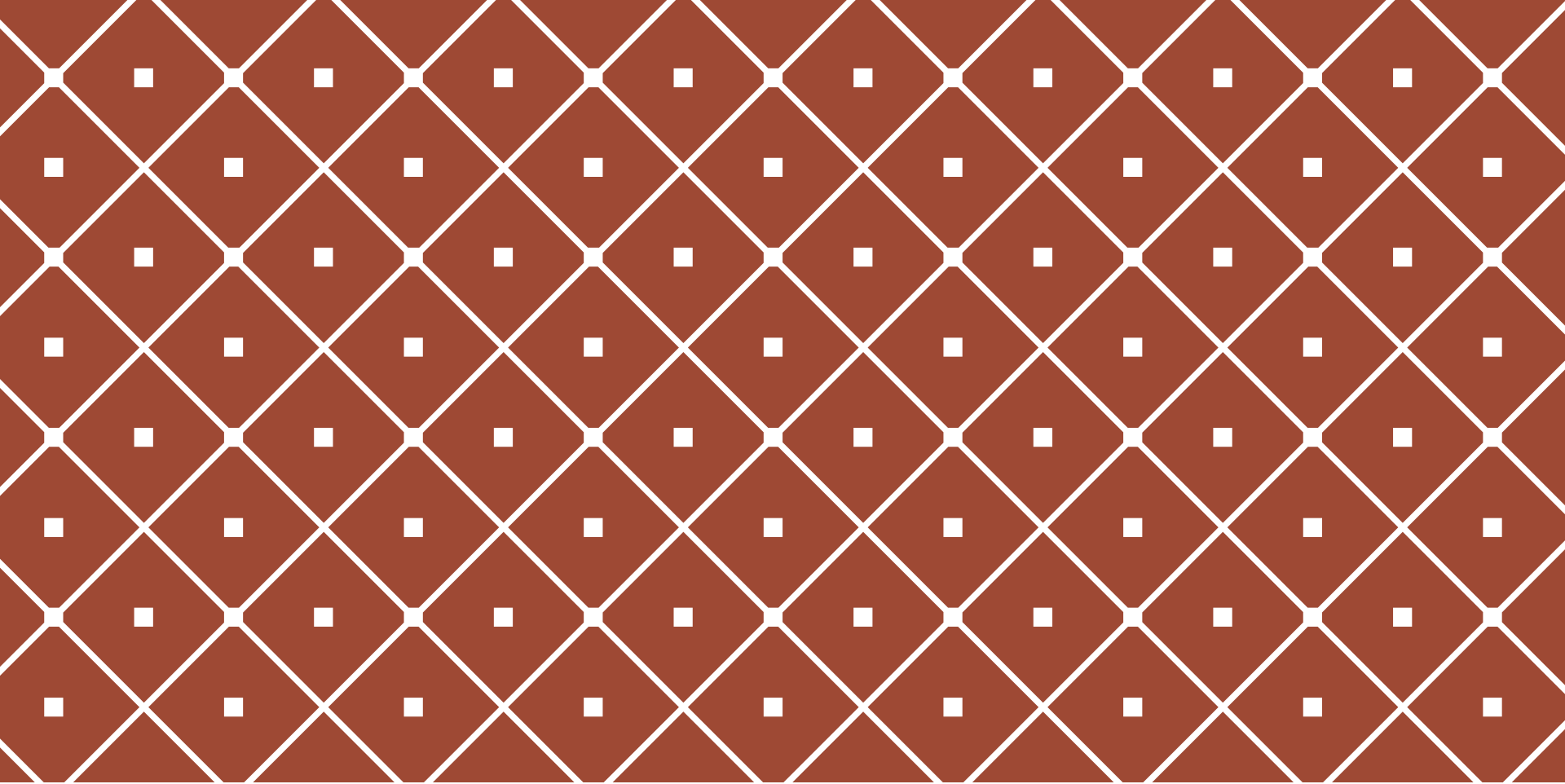
[**affirmative action** in hiring is permissible]

RULE 8.4 - COMMENT 5

[5] A trial judge's finding that peremptory challenges were exercised on a discriminatory basis **does not alone** establish a violation of paragraph (g).

RULE 8.4 - COMMENT 5

[5] . . . A lawyer **does not** violate paragraph (g) by **limiting** the **scope** or subject matter of the lawyer's **practice** or by **limiting the lawyer's practice to members of underserved populations** in accordance with these Rules and other law.



**DISCIPLINARY AUTHORITY:
CHOICE OF LAW**

**MRPC:
8.5**

RULE 8.5: DISCIPLINARY AUTHORITY

(a) A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, **regardless of where** the lawyer's conduct occurs.

A lawyer **not admitted** in this jurisdiction is also **subject to** the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide **any** legal services in this jurisdiction.

RULE 8.5: DISCIPLINARY AUTHORITY

(a) . . . A lawyer may be subject to the disciplinary authority of **both** this jurisdiction and **another jurisdiction** for the same conduct.

RULE 8.5: CHOICE OF LAW

(b) In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, **unless** the rules of the tribunal provide otherwise; and

Rule 8.5(b)(2)...

(b) In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, **or**, if the **predominant effect** of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct.

(predominant effect wins over location of act)

Rule 8.5(b)(2) continued...

(b)(2) . . . A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

[good-faith safe harbor provision]

RULE 8.5 - COMMENT 1

[1] . . . The fact that the lawyer is subject to the disciplinary authority of this jurisdiction **may be a factor** in determining whether personal jurisdiction may be asserted over the lawyer for **civil matters**.

[maybe, not always]

RULE 8.5 - COMMENT 2

[2] A lawyer may be potentially subject to **more than one set of rules** of professional conduct.

The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice...

RULE 8.5 - COMMENT 3

[3] Paragraph (b) seeks to resolve potential conflicts.

Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession).

RULE 8.5 - COMMENT 5

[5] [safe harbor provision when it is unclear which state's rules apply]

... So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

RULE 8.5 - COMMENT 5

With respect to **conflicts of interest**, in determining a lawyer's reasonable belief under paragraph (b)(2), a written agreement between the lawyer and client that reasonably **specifies a particular jurisdiction** as within the scope of that paragraph **may be considered** if the agreement was obtained with the client's informed consent confirmed in the agreement.

[permits lawyers-clients to specify which state's rules apply to conflicts]

RULE 8.5 - COMMENT 6

[6] If two admitting **jurisdictions** were to proceed against a lawyer for the same conduct, **they should**, applying this rule, identify the same governing ethics rules.

They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should **avoid proceeding** against a lawyer on the basis of two **inconsistent rules**.

8.5 COMMENTS: JURISDICTION DUTIES

[7] The choice of law provision **applies** to lawyers engaged in **transnational practice**, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.