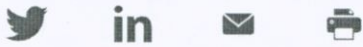


# Rule 8.4: Misconduct

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## *Maintaining The Integrity Of The Profession*

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;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (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;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (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. 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.

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ETHICS

# Lawyers accused of misconduct for offensive, inappropriate emails about colleagues, minorities

BY DEBRA CASSENS WEISS ([HTTPS://WWW.ABAJOURNAL.COM/AUTHORS/4/](https://www.abajournal.com/authors/4/))

JUNE 19, 2019, 6:30 AM CDT

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Already an

Yes

Two lawyers should be disciplined or subjected to remedial action for participating in an email chain with a group of people calling themselves the “Forum of Hate,” according to the Attorney Grievance Commission of Maryland.

One of the lawyers, James Markey, was an administrative law judge at the Board of Veterans’ Appeals, according to the petition for discipline (<https://www.abajournal.com/files/MarkeyHancockPetition.pdf>) filed May 30. The other, Charles Hancock, was an attorney adviser at the Board of Veterans’ Appeals. The Legal Profession Blog has coverage

([https://lawprofessors.typepad.com/legal\\_profession/2019/06/maryland-bar-counsel-has-recently-filed-charges-alleging-that-two-attorneys-engaged-in-misconduct-in-emails-mr-markey-was-a.html](https://lawprofessors.typepad.com/legal_profession/2019/06/maryland-bar-counsel-has-recently-filed-charges-alleging-that-two-attorneys-engaged-in-misconduct-in-emails-mr-markey-was-a.html)).

Both lawyers used their official government email accounts to send and receive offensive and inappropriate emails with three other group members, according to the petition. The three others are not members of the Maryland bar.

According to the petition, Markey and Hancock used offensive terms to refer to minorities and women, participated in email chains mocking officials’ accents, and participated in email chains using gay slurs.

Hancock referred to a chief administrative law judge as “G-Pot,” which was short for “ghetto hippopotamus,” according to the petition.

The emails were discovered by the Veterans’ Affairs Office of Inspector General during an unrelated investigation. Hancock retired from his position in January 2016. A November 2017 decision ([https://nebula.wsimg.com/06ebc7b1278abc5e0d4f27d6ae8e5ae2?](https://nebula.wsimg.com/06ebc7b1278abc5e0d4f27d6ae8e5ae2?AccessKeyId=1FBD76F67BF87C8DD859&disposition=0&alloworigin=1)

[AccessKeyId=1FBD76F67BF87C8DD859&disposition=0&alloworigin=1](https://nebula.wsimg.com/06ebc7b1278abc5e0d4f27d6ae8e5ae2?AccessKeyId=1FBD76F67BF87C8DD859&disposition=0&alloworigin=1)) by the Merit Systems Protection Board authorized the removal of Markey from his position.

The petition and the Merit Systems Protection Board included several examples from the emails, including these:

- Markey altered a news article about a sheriff who posted gun rights videos while shouting obscenities about liberals, minorities and the Second Amendment. Markey altered the article to say the sheriff’s supporters got into a heated debate with an opponent, “a fast food working, basketball player who played the man.” Markey’s alteration said the opponent “left, timidly, when 11 people ... tossed ropes at him.”

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- Hancock said the employee described as G-Pot was “a despicable impersonation of a human woman, who ought to [have] her cervix yanked out of her by the Silence of the Lamb guy, and force fed to her.”

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- Hancock used offensive terms when he said there were no minorities on his son’s Little League team. Markey responded, “Nice, but where are the white sheets? Gotta start them when they are young.”

Markey had argued before the Merit Systems Protection Board that the emails were a way to blow off steam by making members of the group laugh with over-the-top comments.

The board noted that there was no evidence that Markey had written a decision discriminating against a veteran based on race, sexual orientation, sex or national origin.

But the Legal Profession Blog notes a March 2018 lawsuit

([https://law.yale.edu/system/files/documents/pdf/Clinics/pod-cvlc\\_va\\_complaint\\_plus\\_exhibits\\_3.7.18.pdf](https://law.yale.edu/system/files/documents/pdf/Clinics/pod-cvlc_va_complaint_plus_exhibits_3.7.18.pdf)) filed by two veterans' groups that cited the "Forum of Hate" emails. The lawsuit sought records of decisions to determine whether there was bias in the adjudication of claims for disability benefits.

The case has settled, according to a May stipulation filed with the court.

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**WESTLAW Maryland Code and Court Rules**[Home Table of Contents](#)**RULE 19-308.4. MISCONDUCT (8.4)**  
West's Annotated Code of Maryland  
Maryland Rules

West's Annotated Code of Maryland  
 Maryland Rules  
 Title 19. Attorneys  
 Chapter 300. Maryland Attorneys' Rules of Professional Conduct  
 Maintaining the Integrity of the Profession [Rules 19-308.1 to 19-308.5]

MD Rules Attorneys, Rule 19-308.4

**RULE 19-308.4. MISCONDUCT (8.4)**Currentness

It is professional misconduct for an attorney to:

- (a) violate or attempt to violate the Maryland Attorneys' Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as an attorney in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) knowingly manifest by words or conduct when acting in a professional capacity bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status when such action is prejudicial to the administration of justice, provided, however, that legitimate advocacy is not a violation of this section;
- (f) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Maryland Attorneys' Rules of Professional Conduct or other law; or
- (g) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

## COMMENT

[1] Attorneys are subject to discipline when they violate or attempt to violate the Maryland Attorneys' Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the attorney's behalf. Section (a) of this Rule, however, does not prohibit an attorney from advising a client concerning action the client is legally entitled to take.

[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 offense carry no such implication. 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. Although an attorney is personally answerable to the entire criminal law, attorney should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, or breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] Sexual misconduct or sexual harassment involving colleagues, clients, or co-workers may violate section (d) or (e) of this Rule. This could occur, for example, where coercion or undue influence is used to obtain sexual favor in exploitation of these relationships. See *Attorney Grievance Commission v. Goldsborough*, 330 Md. 342 (1993). See also Rule 19-301.7 (1.7).

[4] Section (e) of this Rule reflects the premise that a commitment to equal justice under the law lies at the very heart of the legal system. As a result, even when not otherwise unlawful, an attorney who, while acting in a professional capacity, engages in the conduct described in section (e) of this Rule and by so doing prejudices the administration of justice commits a particularly egregious type of discrimination. Such conduct manifests a lack of character required of members of the legal profession. A trial judge's finding

that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule. A judge, however, must require attorneys to refrain from the conduct described in section (e) of this Rule. See Md. Rule 18-102.3.

[5] An attorney may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 19-301.2 (d) (1.2) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges to legal regulation of the practice of law.

[6] Attorneys holding public office assume legal responsibilities going beyond those of other citizens. A attorney's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

**Model Rules Comparison:** Rule 19-308.4 (8.4) is substantially similar to the language of the Ethics 2000 Amendments to the ABA Model Rules of Professional Conduct, with the exception of adding Rule 19-308.4 (e) (8.4) and redesignating the subsections of Rule 19-308.4 (8.4) as appropriate, adding Comment [4] above, and retaining Comment [3] above from existing Maryland language.

### Credits

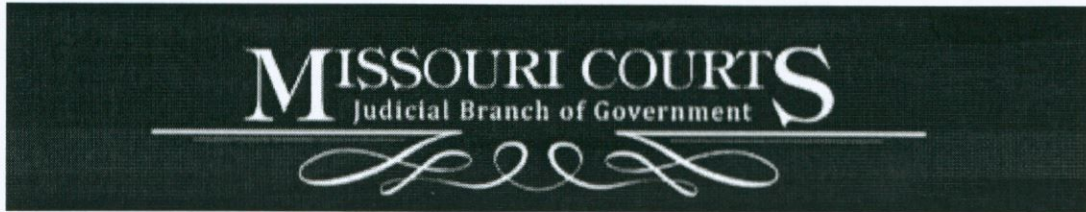
[Adopted June 6, 2016, eff. July 1, 2016.]

MD R Attorneys, Rule 19-308.4, MD R ATTORNEYS Rule 19-308.4

Current with amendments received through February 1, 2023. Some sections may be more current, see credits for details.

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END OF DOCUMENT



## Clerk Handbooks

### Supreme Court Rules

<b>Subject:</b>	<b>Rule 4 - Rules Governing the Missouri Bar and the Judiciary - Rules of Professional Conduct</b>	<b>Section/Rule:</b>	<b>4- 8. 4</b>
		<b>Publication / Adopted Date:</b>	<b>September 28, 1993</b>
<b>Topic:</b>	<b>Maintaining the Integrity of the Profession - Misconduct</b>	<b>Revised / Effective Date:</b>	<b>July 18, 2019</b>

## **RULE 4-8.4: 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;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. It shall not be professional misconduct for a lawyer for a criminal law enforcement agency, regulatory agency, or state attorney general to advise others about or to supervise

another in an undercover investigation if the entity is authorized by law to conduct undercover investigations, and it shall not be professional misconduct for a lawyer employed in a capacity other than as a lawyer by a criminal law enforcement agency, regulatory agency, or state attorney general to participate in an undercover investigation, if the entity is authorized by law to conduct undercover investigations;

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

(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;

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

(g) manifest by words or conduct, in representing a client, bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status. This Rule 4-8.4(g) does not preclude legitimate advocacy when race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or other similar factors, are issues. This paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 4-1.16.

*(Adopted Aug. 7, 1985, eff. Jan. 1, 1986. Amended Nov. 21, 1995, eff. Jan. 1, 1996; Nov. 25, 2003, eff. Jan. 1, 2004; March 1, 2007, eff. July 1, 2007; June 28, 2011, eff. Jan. 1, 2012; April 27, 2012, eff. July 1, 2012; July 18, 2019, eff. July 18, 2019).*

#### COMMENT

[1] Lawyers are subject to discipline when they 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, as when they request or instruct an agent to do so on the lawyer's behalf



Rule 4-8.4(a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[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. 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. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally 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. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] Rule 4-8.4(c) recognizes instances where lawyers for criminal law enforcement agencies, regulatory agencies, or the state attorney general advise others about or supervise others in undercover investigations and provides an exception to allow the activity without the lawyer engaging in professional misconduct. The exception acknowledges current, acceptable practice of these entities. This exception is not intended to state or imply that an entity has the authority to conduct undercover investigations unless that authority is separately granted to the entity by law. Although the exception appears in this rule, it is also applicable to Rules 4-4.1 and 4-4.3. This exception does not authorize conduct otherwise prohibited by Rule 4-4.2. Nothing in the rule allows the lawyer to advise others about or supervise others in undercover investigations unless the criminal law enforcement agency, regulatory agency, or state attorney general is authorized by law to engage in such conduct.

[4] Rule 4-8.4(g) identifies the special importance of a lawyer's words or conduct, in representing a client, that manifest bias or prejudice or constitute harassment against others based upon race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status. Rule 4-8.4(g) excludes those instances in which a lawyer engages in legitimate advocacy with respect to these factors. A lawyer acts as an officer of the court and is licensed to practice by the state. The manifestation of bias or prejudice or the engagement in harassment by a lawyer, in representing a client, fosters discrimination in the provision of services in the state judicial system, creates a substantial likelihood of material prejudice by impairing the integrity and fairness of the judicial system, and undermines public confidence in the fair and impartial administration of justice.

Whether a lawyer's conduct constitutes professional misconduct in violation of Rule 4-8.4(g) can be determined only by a review of all the circumstances; e.g., the gravity of the acts and whether the acts are part of a pattern of prohibited conduct. For purposes of Rule 4-8.4(g), "bias or prejudice" means words or conduct that the lawyer knew or should have known discriminate against, threaten, intimidate, or denigrate any individual or group. Examples of manifestations of bias or prejudice include, but are not limited to, epithets;

slurs; demeaning nicknames; negative stereotyping; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. For purposes of Rule 4-8.4(g), "harassment" is verbal or physical conduct that shows hostility or aversion toward a person based upon race, sex, gender, gender identity, religion, national origin, ethnicity, disability, age, sexual orientation, or marital status. "Harassment" includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(a) submission to that conduct is made, either explicitly or implicitly, a term or condition of the individual's employment;

(b) submission to or rejection of such conduct by an individual is used as a factor in decisions affecting such individual; or

(c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive environment.

[5] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 4-1.2(f) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

[6] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent, and officer, director, or manager of a corporation or other organization.

*(Adopted Aug. 7, 1985, eff. Jan. 1, 1986. Amended July 18, 2019, eff. July 18, 2019).*