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Mr. Robert Stone
President, Alaska Bar Association
840 K Street, Suite 100
Anchorage, Alaska 99501
hand delivered

*Re: report from Alaska Rules of
Professional Conduct Committee
after review of Comments to
Proposed Rule 8.4(f)*

Dear Rob,

I have been asked to give you our update on proposed rule 8.4(f).

The Committee met yesterday after each member had an opportunity to review the hundreds of pages of comments. The amount of comments was unprecedented and provided quite a bit of insight into members' thoughts about the proposal, as well as the opinions of individuals not members of the Alaska Bar.

The Committee voted, by an 8-1 margin, to recommend that

- (1) the Board of Governors not advance this proposed rule to the Supreme Court, and
- (2) remand the rule to our committee for additional drafting and revisions.

We cannot think of an instance where we asked to have a rule post publication remanded to us, so we want to give you some information about what we would like to do with the rule itself. Although we have not voted on language, these are the concepts that we would like to further consider

- should the scope of the protected classes in proposed Rule 8.4(f) be modified from what the ABA proposed? Specifically, we have begun to review the scope of protections under the State Commission for Human

- Rights, found in Title 18.10.010 *et seq.* A possible benefit of that approach would be the use of terms defined by the Alaska Legislature.
- should there be a modification of the mental state in the rule? The ABA rule provides a basis for discipline based on negligent acts by its use of the term “or reasonably should have known”. The committee would like to further explore whether this is an appropriate standard for this rule
 - should there be definitions of “harassment or discrimination”? The ABA rule does not provide any definitions, which is contrary to the approach taken by our committee over the decades. We have begun to discuss whether the definition of harassment found in the criminal code at 11.61.120 or in a statute regarding school discipline- 14.33.250- can be used or at least form a basis for creating definitions.
 - should the scope of under what circumstances does the rule apply be narrowed from the ABA rule? Some comments addressed how the proposed rule would apply in varying circumstances, such as “social activities in connection with the practice of law”.
 - Nelson Page has provided us with a comprehensive list of the language used in other jurisdictions, as it appears only one state has adopted the ABA proposal *verbatim*. The Committee would like to revisit that other language to see if any of it can help address the issues posed in the comments.

In summary, the Committee continues to agree that certain conduct that we know has occurred should be subject to discipline and that, at present, no rule provides Bar Counsel the authority to do so. Although, in general, the Committee does not agree with each ‘horrible’ posited in the comments, the comments have illustrated that a tightening of language and inclusion of definitions may ease unfounded concerns and can yet provide an effective tool for enforcement. That is why we recommend that the Board of Governors *not* advance present proposed 8.4(f) to the Supreme Court, but rather give us an opportunity to further revise the proposal in light of the comments we have received.

Thank you for taking the time to review this and I would ask that you provide copies to all members of the Board of Governors.

Sincerely yours,



John Murtagh
Chairman, Alaska Rules of
Professional Conduct