Attorney Monteleone has violated the Maine Rules of Professional Conduct Rule 1.1, 1.2, 3.1, 3.2, 3.3, 3.4, 4.1, 4.3, 8.3, 8.4

RULE 1.1 COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Ex Parte Attachments are only granted in exceptional circumstances so Attorneys have a heightened standard when requesting such drastic measures. Attorney Monteleone is a self described legal expert and clearly understands the law so it's unconscionable to think he wasn't well aware that his clients case was frivolous and fraudulent when filed. Attorney Monteleone didn't make a reasonable inquiry into the facts or law and intentionally tried to deceive the court. The Plaintiffs Opposition to the Defendants Rule 60 Motion states,

> ***"Defendants specifically contend that Plaintiffs' preliminary ex parte motion for attachment omitted four pieces of adverse evidence: (I) a bank appraisal of the property completed in February 2021; (II) text messages between Plaintiff Pierce and Plaintiffs' real estate agent; (lII) an omitted page of text messages between Plaintiffs' real estate agent and the Defendant; and (IV) a sheriffs report relating to the eviction incident. In fact, Plaintiffs' counsel had neither received nor reviewed the bank appraisal, texts between Plaintiff Pierce and Plaintiffs' real estate agent, or the sheriff's report relating to the eviction incident prior to the attachment motion hearing. Counsel did review an incomplete series of texts between Plaintiffs' real estate agent and Defendant, which were cited in the ex parte motion, and immediately supplemented after the inadvertent omission of one page of the text message thread was identified. To date, Plaintiff's counsel has not received or reviewed text messages between Plaintiffs and their real estate agent because of ongoing difficulty recovering those messages from Plaintiffs mobile device. Nonetheless, none of the cited documents present material adverse evidence that would refute Plaintiff's motion for attachment. The appraisal Defendants reference projected the property's value at $420,000. At the time Plaintiffs filed their ex parte motion for attachment, Defendants had publicly listed the property for sale for $475,000, over and above the appraisal price. Moreover, Defendant's subsequently sold the property for an even higher price of $487,000 and have stipulated that the***

$487,000 price accurately reflected the property's value. See Order on the Motion to Dissolve, May 20, 2021. The sheriff's report, which Plaintiffs produced in discovery, does not provide any adverse material evidence that either supports or refutes Plaintiffs' illegal eviction claim. The Sheriff's report does, however, support Plaintiff Pierces sworn statement that sheriff's deputies were called to the property while he removed his possessions."

Attorney Monteleone concedes that he only reviewed the text messages that were submitted with the Ex Parte Verified Complaint prior to filing which prove he intentionally filed a frivolous and fraudulent claim. The text messages he's referring to indicate that the Plaintiffs breach the contract not the Defendant. (See Lord Aff Exhibit A) Even worse, the Plaintiff's entire complaint is based off a fabricated text message and Andy Lord omitted several important text prior to submitting them to the court. (See Lord Supp Aff) Furthermore, Attorney Monteleone states the Defendant publicly listed the property for $475,000 prior to filing their Ex Parte so why did they used an estimated value of $500,000 - $550,000 if they knew the listing price and the Plaintiffs were aware that the Defendant did additional work after the March 5th and coupling that with the fact that the Plaintiffs refused to pay for the $80,000+ in upgrades fully accounts for the increase in price. (Exhibit A at 30) Furthermore, Attorney Monteleone is a Real Estate Attorney and understands that appraisals are part of closing and are the best reflection of a homes value so it's unconscionable that he claims he didn't even look at it prior to filing the Ex Parte nevermind use it as the basis for the properties estimated value.

The only conclusion a reasonable and competent Attorney could draw from those text is that the Plaintiffs breached the contract so there is no doubt that Attorney Monteleone aided and abetted the Plaintiffs with their attempted fraud. Furthermore, the Defendant has presented Attorney Monteleone with a mountain of evidence further proving how frivolous the Plaintiffs claims are (Exhibit A 1-32) but instead of honoring his duty of candor he continued to pursue the Plaintiffs claim even though it was apparent that their position is devoid of merit.

RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(e) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of

any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Criminal, Fraudulent and Prohibited Transactions

(e) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)

Rule 1.2 (e) prohibits a lawyer from assisting or advising a client to engage in criminal or fraudulent conduct. Both passive and active assistance is prohibited by this rule. This rule, however, permits lawyer to assist clients in making good-faith determinations of the validity, scope and meaning of the application of a rule or law.

Attorney Monteleone knew the Plaintiffs claims were fraudulent as filed but instead of correcting the record or withdrawing as counsel he choose to aid and abet his clients in their attempt to use the legal system to Defraud the Defendant. Furthermore, it's clear that Attorney Monteleone has counseled his clients and their witnesses to deceive the court. The record is clear and the amount of evidence is overwhelming which proves every thing Attorney Monteleone presented was perjurious and deceptive and is still attempting to deceive the court till this day.

RULE 3.1 MERITORIOUS CLAIMS AND CONTENTIONS

(a) A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a non-frivolous basis in law and fact for doing so, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Attorney Monteleone has never argued a reversal of law and it's clear that the Plaintiffs claims were frivolous as filed therefore Attorney Monteleone clearly failed to present a non-frivolous claim and didn't have a good faith basis to support their claim.

RULE 3.2 EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client

Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer properly may seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

On 2/1/24 the Plaintiffs wrote the court requesting a status conference and requesting leave to file a Spickler Order and a Gag Order. They didn't provide the court with any evidence justifying their request and proceeded to blame the Defendant for delaying. What's incredible about their claim is the fact that the Plaintiffs ignored the Defendant for 6 months and now have filed (9) Motions to Enlarge. On top of that is the fact that the Plaintiffs have failed to present Prima Facie evidence and they have failed to present any evidence during Summary Judgement. The Defendant requested a Pre-Trial Conference on 7/20/23 regarding the Plaintiffs failure to present Prima Facie evidence and Justice O'Neil denied this request and stated, "Plaintiff's to Prove Prima Facie at Trial" Given the fact that it's been almost 3 years and the Plaintiffs have failed to present any evidence it's unconscionable that they are slandering the Defendants name and calling his Motions frivolous when they have no evidence

<u>RULE 3.3 CANDOR TOWARD THE TRIBUNAL</u> A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) misquote to a tribunal the language of a book, statute, ordinance, rule or decision or, with knowledge of its invalidity and without disclosing such knowledge, cite as authority, a decision that has been overruled or a statute, ordinance or rule that has been repealed or declared unconstitutional

(3) offer evidence that is false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false, except a lawyer in a criminal matter may not refuse to offer the testimony of a defendant, unless the lawyer knows from the defendant that such testimony is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Attorney Monteleone has committed perjury, presented false evidence, fabricated evidence, withheld evidence during an ex Parte proceeding and mislead the court. See Motion for Contempt and Motion for Sanctions.

<u>RULE 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL A lawyer shall not:</u>

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists

Attorney Montelone has withheld discovery, used boilerplate objections, committed perjury and refuses to correct the record.

RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is

necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

COMMENT

Misrepresentation

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. For dishonest conduct that does not amount to a false statement or for misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.

Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or Fraud by Client

[3] Under Rule 1.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6.

SEE MOTION FOR CONTEMPT AND MOTION FOR SANCTIONS

RULE 4.3 DEALING WITH UNREPRESENTED PERSON

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, but may provide legal information to and may negotiate with the unrepresented person. The lawyer may recommend that such unrepresented client secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

COMMENT

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13(f).

[2] The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's

interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person, or recommending an unrepresented person secure counsel. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

[2A] This rule is not intended to limit negotiations between a lawyer and an unrepresented person, nor limit information provided by the lawyer to an unrepresented person.

REPORTER'S NOTES:

Model Rule 4.3 (2002) provides guidance to a lawyer who is dealing on behalf of a client with a person who is not represented by counsel. The Maine Bar Rule that comes closest to addressing the same issues is M. Bar R. 3.6(i), entitled "Avoiding Misreliance." Both rules attempt to make certain that unrepresented persons are not misled about the lawyer's role in a matter, and require a lawyer to take affirmative steps to ensure that misunderstandings about a lawyer's allegiances and duties are rectified. The Task Force thought that Model Rule 4.3's formulation was clearer and more direct and accordingly recommended the adoption of Model Rule 4.3 (2002) as written.

SEE MOTION FOR CONTEMPT AND MOTION FOR SANCTIONS

<u>RULE 5.1 RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORS</u>

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action

COMMENT

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a). [5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct

supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a).

REPORTER'S NOTES:

Model Rule 5.1 (2002) corresponds to M. Bar R. 3.13(a), which was adopted by the Maine Supreme Judicial Court in 1997. M. Bar R. 3.13(a), however, was modeled on the pre-2002 version of Rule 5.1. As part of the Ethics 2000 project, the scope of Rule 5.1 was broadened to address not only the responsibility of law firm partners, but also include as part of the group of responsible lawyers, those lawyers with "managerial authority." This clarification, as it was referred to in the ABA Reporter's Explanation of Changes, recognizes that law is not practiced solely in the context of the traditional law firm partnership; lawyers also organize as professional corporations, they work in corporate and governmental law departments as well as in legal services organizations. The Task Force thought this was an important clarification and recommended adoption of Model Rule 5.1 (2002) as written.

SEE MOTION FOR CONTEMPT AND MOTION FOR SANCTIONS

RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of the Maine 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.7

7 In Maine, the appropriate professional authority will be the Maine Board of Overseers of the Bar, or in certain circumstances, as described in the Maine Rules for Maine Assistance Program for Lawyers and Judges, the Maine Assistance Program for Lawyers and Judges.

(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 professional authority.8

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information obtained in the course of a lawyer's or judge's participation in the Maine Assistance Program for Lawyers and Judges, or an equivalent peer assistance program approved by a state's highest court.

COMMENT

[1] the profession inform the appropriate professional authority when they know of 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. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] In order to satisfy the objectives of this Rule, a lawyer may request that a client consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] This Rule limits the reporting obligation to those incidents of misconduct 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 misconduct and not the quantum of evidence of which the lawyer is aware. A report should be made to the appropriate professional authority

In Maine, the appropriate professional authority will be the Committee on Judicial Responsibility and Disability, or, in certain circumstances, as described in the Maine Rules for Maine Assistance Program for Lawyers and Judges, the Maine Assistance Program for Lawyers and Judges.

Self-regulation of the legal profession requires that members of unless some other agency is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client- lawyer relationship.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in the Maine Assistance Program for Lawyers or an equivalent peer assistance program approved by a state's highest court. The Rule creating the Maine Assistance Program for Lawyers encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in the Maine Assistance Program for Lawyers or an equivalent peer assistance program approved by a state's highest court; such an obligation, however, may be imposed by the rules of such program or by other law.

REPORTER'S NOTES:

Model Rule 8.3 (2002) is substantively equivalent to M. Bar R. 3.2(e) and recognizes the obligations stated in the attorney's oath, 4 M.R.S. § 806.

The Task Force recommended a specific reference to the Maine Assistance Program for Lawyers, as well as a recognition of equivalent programs in other states. In 2002, the Maine Supreme Judicial Court created by Rule the Maine Assistance Program for Lawyers (MAP). MAP was designed to address, on a confidential basis, the issue of lawyer or judge impairment from the effects of chemical dependency or mental conditions that result from disease, disorder, trauma or other infirmity that impairs the ability of a lawyer or judge to practice or serve. The Task Force recognized the importance of encouraging the immediate and continuing help to lawyers and judges who suffer from such impairment. Finally, for the reasons set forth in the Reporter's Notes to Rule 8.1, the Task Force recommended the use of the term "misconduct," rather than the 2002 Model Rule use of the term "offense." With the noted modifications, the Task Force recommended adoption of Model Rule 8.3 (2002) as written.

Advisory Note – September 2023

Subdivision (c) of Rule 8.3 and the footnotes contained in the rule are amended to provide the full name of the Maine Assistance Program for Lawyers and Judges, and to provide that

Rule 8.3 does not require disclosure of information “obtained in the course of a lawyer’s or judge’s participation” in the Program or an equivalent approved peer assistance program, whereas it previously provided that Rule 8.3 did not require disclosure of information “gained by a lawyer or judge while participating” in such a program.

SEE MOTION FOR CONTEMPT AND MOTION FOR SANCTIONS

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate any provision of either the Maine Rules of Professional Conduct or the Maine Bar Rules, or knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal or unlawful 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 Maine Rules of Professional Conduct, the Maine Bar Rules or law;

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

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

[2] Many kinds of unlawful 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. 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] Legitimate advocacy does not violate paragraph (d). However, by way of example, a lawyer who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Notwithstanding the foregoing, a trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

[4] 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 1.2(d) 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.

[5] 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.

REPORTER'S NOTES:

Model Rule 8.4 (2002) is substantively equivalent to M. Bar. R. 3.2(f), 3.4(g) and 3.6(g). The Task Force recommended the term "unlawful," rather than the 2002 Model Rule terms "illegal," and "criminal." The Task Force thought that the term "unlawful" was inclusive of and broader than criminal conduct. It is clear that if a lawyer engaged in criminal conduct, he or she would violate these Rules.

The Task Force observed that "conduct that is prejudicial to the administration of justice" is one upon which courts and ethics commissions are reluctant to expand. The Task Force was mindful of the various illustrations provided in Maine Professional Ethics Advisory Opinions. For example the Law Court has found that when a lawyer converts client funds, such conduct is prejudicial to the administration of justice. Because the Task Force thought Model Rule 8.4 (2002) set forth a sound and concise articulation of the rules addressing

attorney misconduct, it recommended adoption of Model Rule 8.4 (2002) with the noted modifications.

Advisory Note – February 2010

When the Maine Rules of Professional Conduct were adopted, they along with the Maine Bar Rules were written or amended to indicate that ethical violations could be found, and disciplinary action initiated, based on violation of either set of rules. This amendment to Rule 8.4, which was recommended by the Advisory Committee on Professional Responsibility, corrects an oversight in the original rules and clarifies that lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct or the Maine Bar Rules, or 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. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

Guidance – June 2019

This amendment, which adds new Rule 8.4(g), is intended to dispel uncertainty as to what conduct is prohibited. As with any mandate in a rule or a statute, the extent of enforcement or initiation of formal disciplinary proceedings will depend on the level of intentionality and seriousness of the reported violation.

Response to complaints and disciplinary actions initiated under the new Rule 8.4(g), as with disciplinary actions under the present Maine Rules of Professional Conduct, will be subject to similar reasonable and measured enforcement choices, particularly as experience with the new Rule and Continuing Legal Education programs promote better understanding within the Maine legal community of ethical obligations to achieve compliance with the Rule.

SEE MOTION FOR CONTEMPT AND MOTION FOR SANCTIONS