

**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**

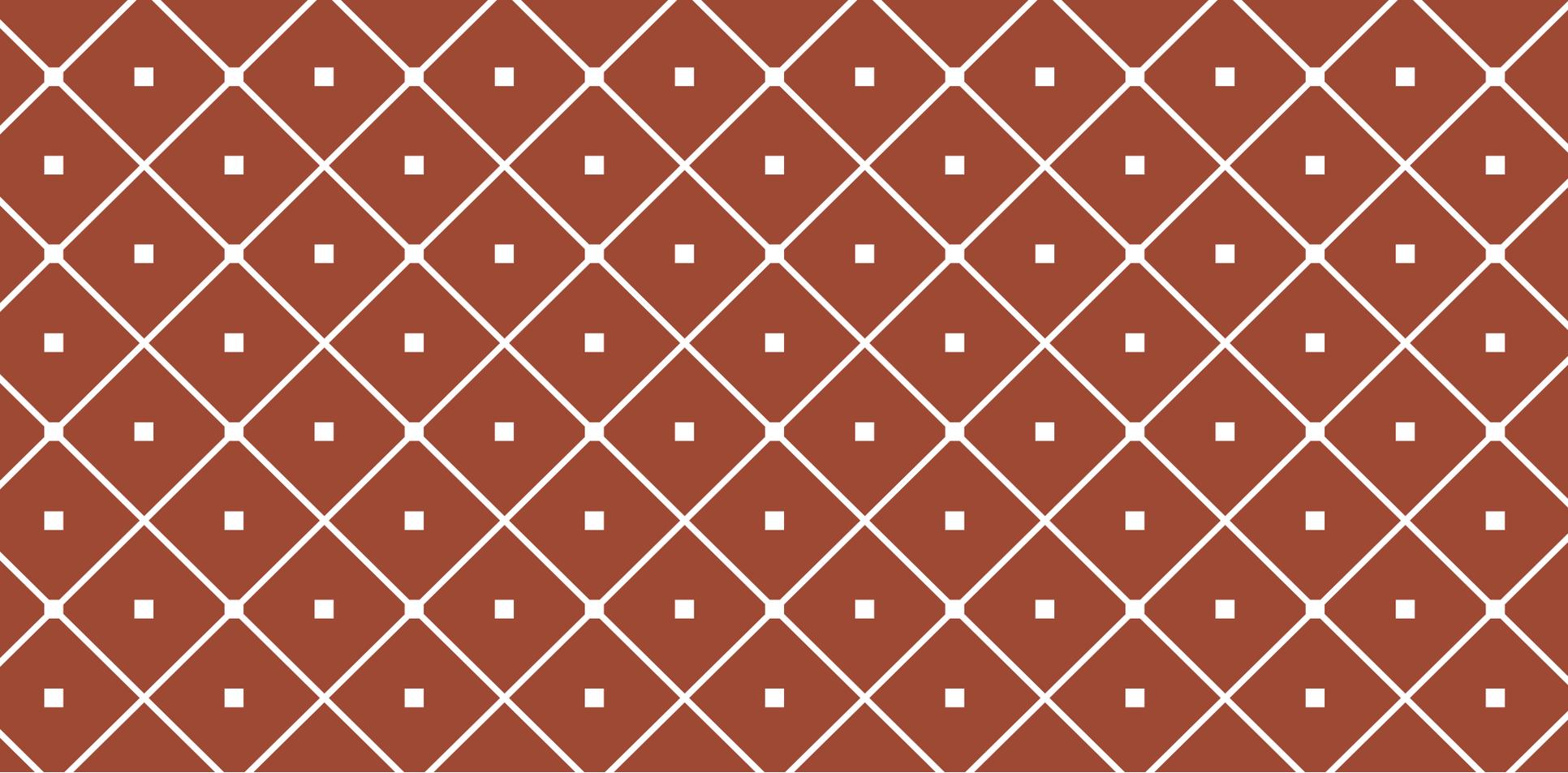
Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

## 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**

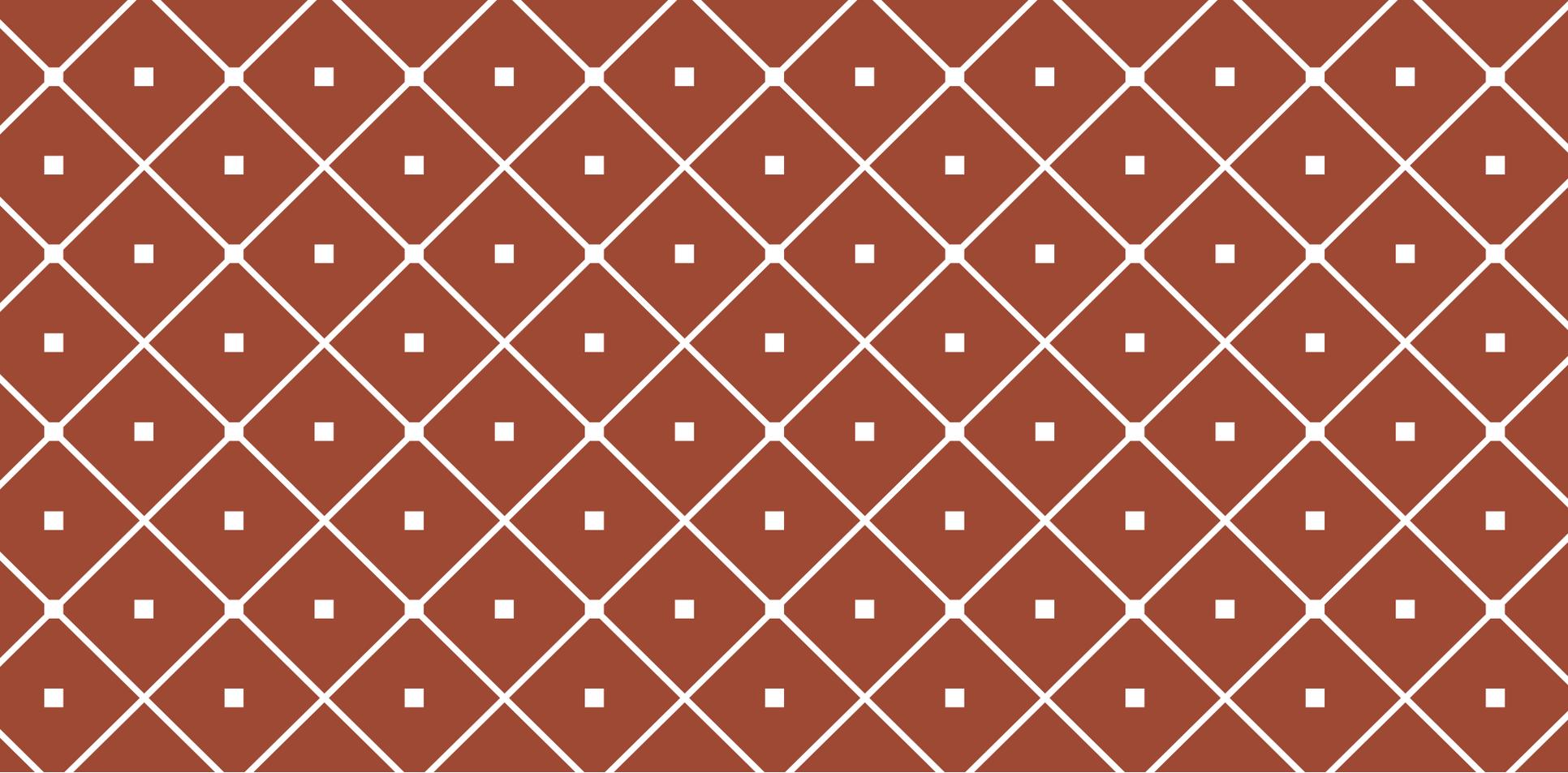
**(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.**

## 8.2 COMMENTS: PUBLIC POLICY CONSIDERATIONS

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices. Expressing honest and candid opinions contributes to improving the administration of justice. False statements by a lawyer can unfairly undermine public confidence in the administration of justice.

## 8.2 COMMENTS: JUDICIAL CANDIDATES RULES

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



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

## RULE 8.3: 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: 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: DISCLOSURE

(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.

## 8.3 COMMENTS: PUBLIC POLICY

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation. Lawyers have a similar obligation with respect to judicial misconduct. 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.

## 8.3 COMMENTS: CONSENT TO DISCLOSURE

[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.

## 8.3 COMMENTS: DUTY TO REPORT

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. 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.

## 8.3 COMMENTS: “SUBSTANTIAL”

The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review agency, is more appropriate in the circumstances.

## 8.3 COMMENTS: DUTY TO REPORT EXCEPTION

[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.

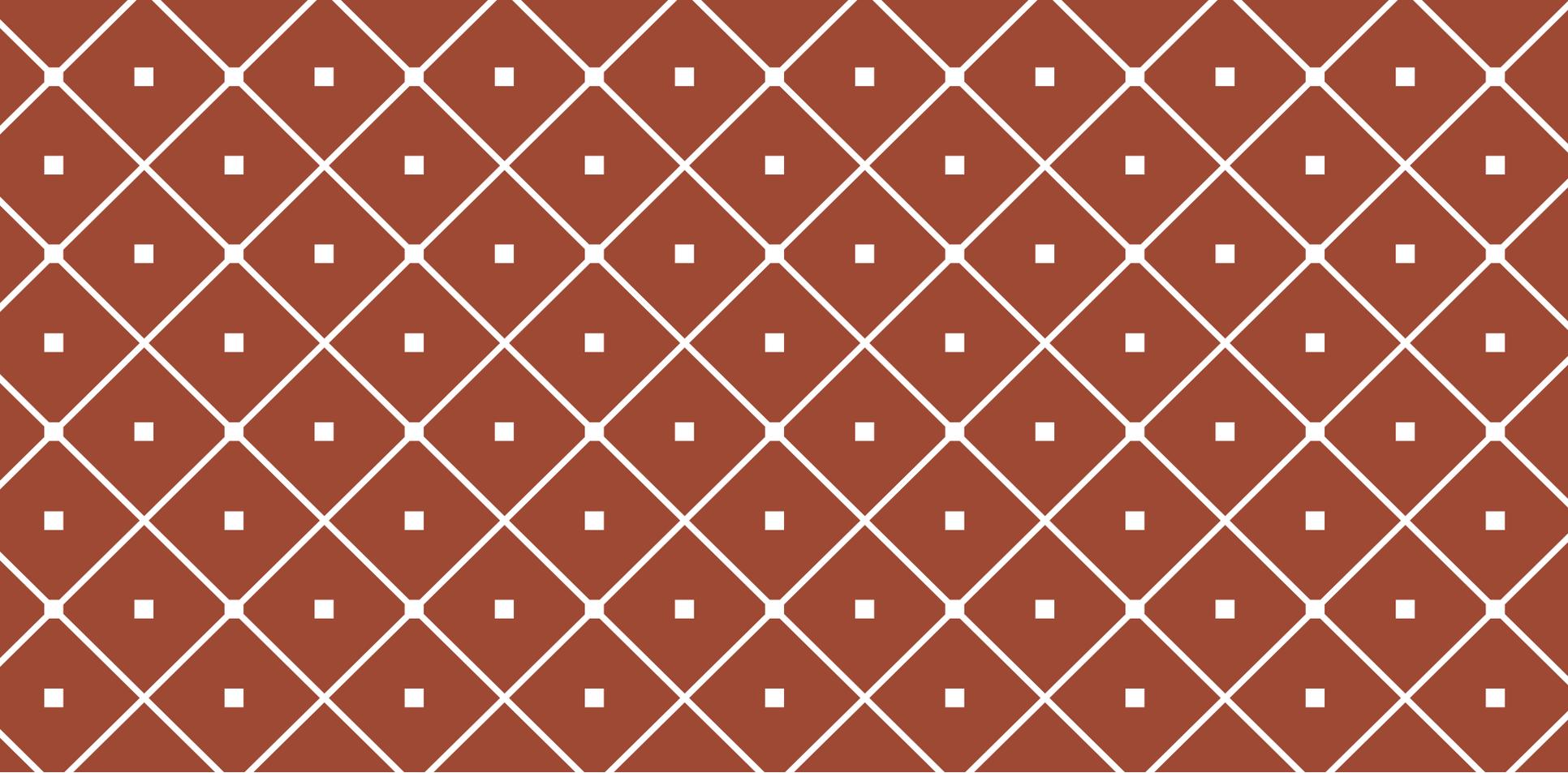
## **ABA FORMAL OP. 94-383**

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: GENERAL RULE

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: GENERAL RULE**

**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: GENERAL RULE**

**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: GENERAL RULE

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: GENERAL RULE**

**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 MISCONDUCT

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.

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. [added in 2016]

## 8.4 COMMENTS:

# VIOLETING RULES OF PROFESSIONAL CONDUCT

[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.

## 8.4 COMMENTS: ILLEGAL CONDUCT REFLECTING ADVERSELY ON FITNESS

[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.

## 8.4 COMMENTS: ILLEGAL CONDUCT REFLECTING ADVERSELY ON FITNESS CONTINUED...

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.

## 8.4 COMMENTS: ILLEGAL CONDUCT REFLECTING ADVERSELY ON FITNESS: WHAT COUNTS

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

## 8.4 COMMENTS:

### DISCRIMINATORY CONDUCTS AND WORDS

[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.

## 8.4 COMMENTS:

### DISCRIMINATORY CONDUCTS AND WORDS

[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.

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

## **8.4 COMMENTS:**

### **DISCRIMINATORY CONDUCTS AND WORDS**

**[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.**

## 8.4 COMMENTS:

### DISCRIMINATORY CONDUCTS AND WORDS

[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.

## 8.4 COMMENTS:

### DISCRIMINATORY CONDUCTS AND WORDS

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

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.

## 8.4 COMMENTS: DISCRIMINATORY CONDUCTS AND WORDS

[5] A lawyer may charge and collect reasonable fees and expenses for a representation. Rule 1.5(a).

Lawyers also should be mindful of their professional obligations under Rule 6.1 to provide legal services to those who are unable to pay, and their obligation under Rule 6.2 not to avoid appointments from a tribunal except for good cause. See Rule 6.2(a), (b) and (c).

A lawyer's representation of a client does not constitute an endorsement by the lawyer of the client's views or activities. See Rule 1.2(b).

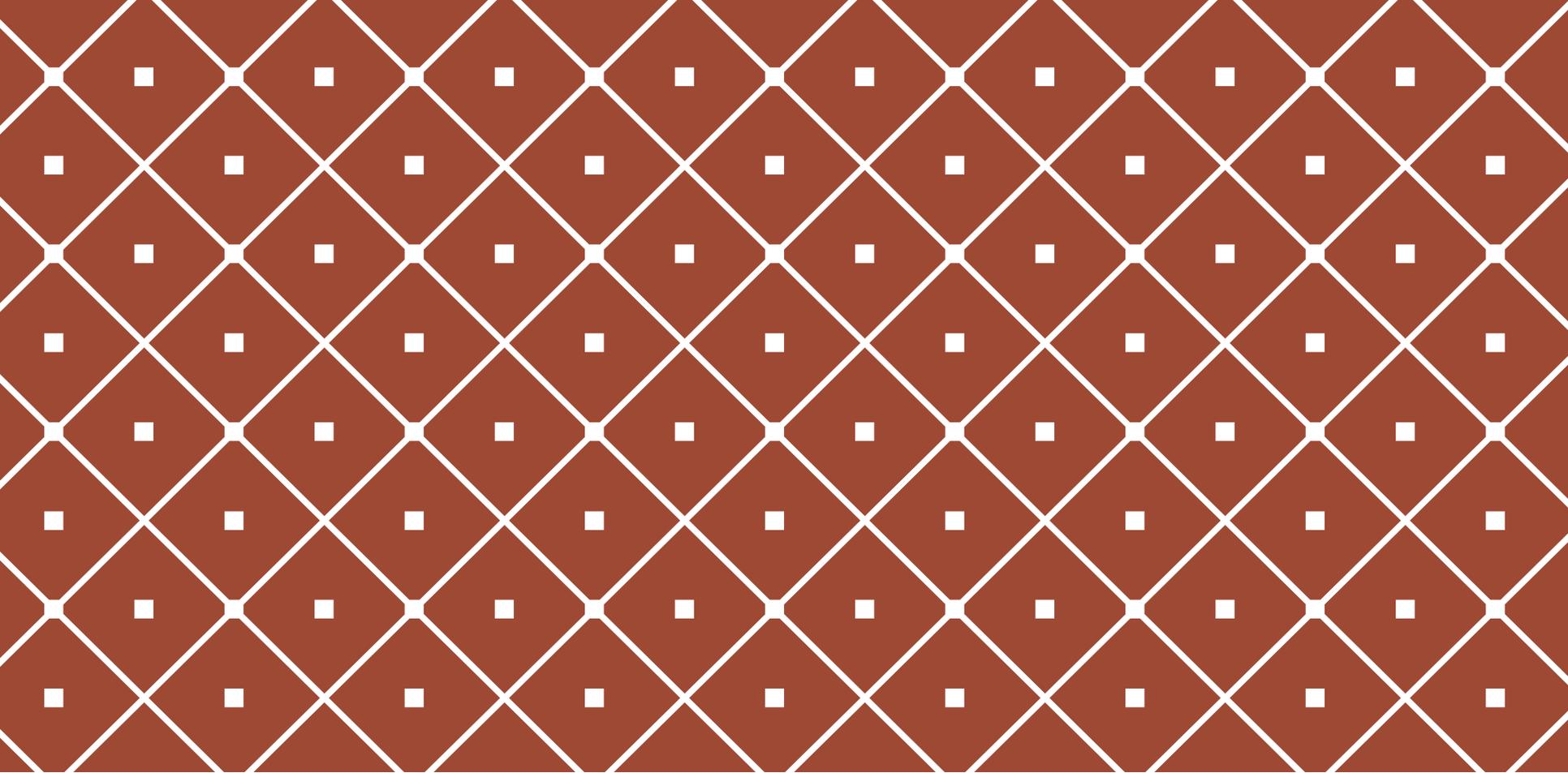
## 8.4 COMMENTS: GOOD FAITH EXCEPTION

[6] 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.

## 8.4 COMMENTS: LAWYER AND PUBLIC OFFICE

[7] 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, and officer, director or manager of a corporation or other organization.



**DISCIPLINARY AUTHORITY:  
CHOICE OF LAW**

**MRPC:  
8.5**

## **RULE 8.5: DISCIPLINARY AUTHORITY DEFINED**

(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. 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: CHOICE OF LAW CONTINUED...

(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.

## **RULE 8.5: CHOICE OF LAW CONTINUED...**

**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.**

## 8.5 COMMENTS: DISCIPLINARY AUTHORITY

[1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. 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.

## 8.5 COMMENTS: CHOICE OF LAW

[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. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

## 8.5 COMMENTS: MINIMIZING CONFLICTING LAWS

[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).

## 8.5 COMMENTS: MINIMIZING CONFLICTS

Paragraph (b) takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

## 8.5 COMMENTS: TRIBUNALS

[4] Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits **unless** the rules of the tribunal, including its choice of law rule, provide otherwise.

## 8.5 COMMENTS: TRIBUNALS CONTINUED...

As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct.

## 8.5 COMMENTS: TRIBUNALS CONTINUED...

In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

## 8.5 COMMENTS: MULTIPLE JURISDICTIONS

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. 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.

## 8.5 COMMENTS: CONFLICT OF INTEREST

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.

## 8.5 COMMENTS: TWO JURISDICTIONS

[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.