

1 **Rule 8.4. Misconduct.**

2 It is professional misconduct for a lawyer to:

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

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

7 (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation,  
8 except that a lawyer may participate in lawful investigatory activities employing  
9 deception for the purpose of detecting ongoing violations of law;

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

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

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

16 **Comment**

17 [1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of  
18 Professional Conduct or knowingly assist or induce another to do so through the acts of  
19 another, as when they request or instruct an agent to do so on the lawyer's behalf.

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

22 [1a] An act of professional misconduct under Rule 8.4(b), (c), (d), (e), or (f) cannot be  
23 counted as a separate violation of Rule 8.4(a) for the purpose of determining sanctions.

24 Conduct that violates other Rules of Professional Conduct, however, may be a violation  
25 of Rule 8.4(a) for the purpose of determining sanctions.

26 [2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as  
27 offenses involving fraud and the offense of willful failure to file an income tax return.  
28 However, some kinds of offenses carry no such implication. Traditionally, the  
29 distinction was drawn in terms of offenses involving "moral turpitude." That concept  
30 can be construed to include offenses concerning some matters of personal morality,  
31 such as adultery and comparable offenses, that have no specific connection to fitness for  
32 the practice of law. Although a lawyer is personally answerable to the entire criminal  
33 law, a lawyer should be professionally answerable only for offenses that indicate lack of  
34 those characteristics relevant to law practice. Offenses involving violence, dishonesty,  
35 breach of trust or serious interference with the administration of justice are in that  
36 category. A pattern of repeated offenses, even ones of minor significance when  
37 considered separately, can indicate indifference to legal obligation.

38 [2a] Paragraph (c) provides a safe harbor for attorneys who engage in lawful covert  
39 operations, often in criminal investigations or investigations involving suspected  
40 violations of constitutional rights or civil law. Examples covered by this rule are  
41 governmental "sting" operations; use of testers in fair-housing cases to determine  
42 whether landlords or real estate agents discriminate against protected classes of  
43 applicants; and gathering evidence of copyright violations. These are legitimate  
44 activities that benefit the common good and that courts and commentators have long  
45 recognized do not violate ethics rules. The safe harbor does not apply when a lawyer  
46 uses deception to violate others' constitutional rights or directs others to do so, and it  
47 does not change the lawyer's obligations for candor and fairness under Rules 3.3 and  
48 3.4.

49 [3] A lawyer who, in the course of representing a client, knowingly manifests by words  
50 or conduct bias or prejudice based upon race, sex, religion, national origin, disability,  
51 age, sexual orientation, or socioeconomic status, violates paragraph (d) when such  
52 actions are prejudicial to the administration of justice. Legitimate advocacy respecting  
53 the foregoing factors does not violate paragraph (d). A trial judge's finding that

54 peremptory challenges were exercised on a discriminatory basis does not alone  
55 establish a violation of this rule.

56 [3a] The Standards of Professionalism and Civility approved by the Utah Supreme  
57 Court are intended to improve the administration of justice. An egregious violation or a  
58 pattern of repeated violations of the Standards of Professionalism and Civility may  
59 support a finding that the lawyer has violated paragraph (d).

60 [4] A lawyer may refuse to comply with an obligation imposed by law upon a good  
61 faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a  
62 good faith challenge to the validity, scope, meaning or application of the law apply to  
63 challenges of legal regulation of the practice of law.

64 [5] Lawyers holding public office assume legal responsibilities going beyond those of  
65 other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the  
66 professional role of lawyers. The same is true of abuse of positions of private trust such  
67 as trustee, executor, administrator, guardian, agent and officer, director or manager of a  
68 corporation or other organization.

69 [6] This rule differs from ABA Model Rule 8.4.