

In 2016, the Louisiana Supreme Court adopted a revised version of ABA Model Rule 1.17 permitting the sale of a law practice.

In 2018, the court amended Rule 1.15 to address a lawyer's obligations with regard to "Unclaimed Funds" in a lawyer's trust account. *See* Louisiana Supreme Court Order Amending Rule 1.15 Sections (g)(8) and (h) (signed November 27, 2018) (codified at Louisiana Rule 1.15(h)). The amendment defined the term "Unclaimed Funds" to include "client or third person funds on deposit in an IOLTA account for at least two years that after reasonable due diligence the owner cannot be located or the owner refused to accept the funds." *See id.* As to such funds, the amendment provided that the lawyer "must remit the funds to the Louisiana Bar Foundation." *See* La. Rules of Professional Conduct r. 1.15(h).

## 2018 LOUISIANA LEGAL ETHICS YEAR IN REVIEW

Want a quick overview of what has changed since last year? These are the top developments in Louisiana legal ethics in 2018.

### LOUISIANA AND OTHER STATES DECLINE TO ADOPT ABA ANTI-DISCRIMINATION RULE

In 2018, the Idaho Supreme Court joined six other states that have expressly declined to adopt the ABA's 2016 model anti-discrimination rule. *See* ABA

Center for Professional Responsibility, Policy Implementation Committee, Jurisdictional Adoption of Rule 8.4(g) of the ABA Model Rules of Professional Conduct (as of Sep. 19, 2018). To date, only Vermont has adopted the model rule, although twenty states have preexisting rules that are analogous to Model Rule 8.4(g). *Id.*; *see generally* Scott Flaherty, *Several States Weigh ABA's Anti-Discrimination Rule*, Law.com (May 22, 2018).



### Background: The 2016 Adoption of ABA Model Rule 8.4(g)

In 2016, the ABA amended Model Rule 8.4 to include a broad anti-discrimination and anti-harassment provision, and three revised comments. The amendment, which was sponsored by several ABA groups, added this new paragraph (g) to the black-letter of Rule 8.4:

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.

*See* ABA Revised Resolution 109 (adopted Aug. 8, 2016).

### Louisiana Considers Adopting an Anti-Discrimination Rule

On November 27, 2017, the LSBA Rules of Professional Conduct Committee reported that it would make “no recommendation” regarding the adoption of a rule prohibiting discrimination and harassment in conduct related to the practice of law. *See* Richard C.

Stanley, Letter to LSBA Outreach and Diversity Director (Nov. 27, 2017). This “no recommendation” vote came after more than a year of analysis and discussion in the wake of the ABA’s adoption of Model Rule 8.4(g).



Prior to the committee’s vote, a subcommittee had proposed the addition of a new Louisiana Rule 8.4(h), that would have provided as follows:

It is professional misconduct for a lawyer to: . . . (h) engage in conduct in connection with the practice of law that the lawyer knows or reasonably should know involves discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability. This Rule does not prohibit legitimate advocacy when race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability are issues, nor does it limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16.

*See* LSBA Rules of Professional Conduct, Rule 8.4 Subcommittee Report Executive Summary at p. 2 (Mar. 24, 2017); *see also* LSBA Rules of Professional Conduct Committee, Rule 8.4 Subcommittee Report (Mar. 24, 2017) (full report). In July 2017, the LSBA Rules Committee published the subcommittee’s proposal and invited written comments on the adoption of a new anti-discrimination standard of professional conduct.

On October 30, 2017, the committee met in New Orleans to consider the comments received and to discuss adopting the ABA model rule or the subcommittee’s proposal. After a long debate, the committee voted 7-4 to make “no recommendation.” *See* Richard C. Stanley, Letter to LSBA Outreach and Diversity Director (Nov. 27, 2107). Although the committee’s chairperson noted that “it is difficult to summarize the rationale of the lengthy debate in its entirety, the primary arguments made by those opposing the rule” were as follows:

- Existing rules permit ODC to prosecute much of the conduct that would be covered by the proposed rule, “thus making it unnecessary.”
- The proposed rule contains ambiguous terms that could engender litigation and create uncertainty.
- The proposed rule may be unconstitutional.

*Id.* at pp. 1-2.