Professional Misconduct

Ethical Requirements against Bias

By

Ronald D. Jung

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We have all witnessed the turbulent times regarding race relations over the past several years. The fact of human bias has come to the front of societal concerns and been repeatedly confirmed through research and history. As we have seen, the historic practice of redlining has had a dramatic negative and preclusive effect on the ability of minorities to gain wealth through ownership of real property. Other subconscious bias can still have consequences in many aspects of real property issues such as in financing and appraisals.

Efforts have been taken to prohibit bias as part of the ethical requirements of many state rules of professional misconduct for attorneys. The Colorado Supreme Court adopted most of the ABA Model Rules of Professional Conduct in 1992 (effective January 1, 1993), thus creating the Colorado Rules of Professional Conduct. *Shapiro v. Rynek*, No. 13-CV-3086-WJM-KMT, 2017 WL 121617, at 2 (D. Colo. Jan. 11, 2017). These rules apply in state and federal cases in this district. "The rules of professional conduct, as adopted by the Colorado Supreme Court, are adopted as standards of professional responsibility applicable in this court." D.C.Colo. LR 83.6. *Johnson v. Bd. of Cty. Comm'rs for Cty. of Fremont*, 868 F. Supp. 1226, 1231 (D. Colo. 1994), *aff'd in part, disapproved in part*, 85 F.3d 489 (10th Cir. 1996).

Prior to adoption of the Colorado Rules of Professional Conduct, (Colo. RPC), Colorado attorney ethics were governed by the Colorado Code of Professional Responsibility. The Code more broadly proscribed Canons to govern a course of conduct but the individual was given the duty or discretion to morally decide how to deal with conflicts between governing principles. For example, an attorney can easily decipher from the Code of Professional Responsibility that a lawyer should represent a client zealously within the bounds of the law (Canon 7), and that a lawyer should assist in maintaining the integrity and competence of the legal profession (Canon 1), but when these provisions conflict such as a client demanding discriminatory behavior, there is less guidance. See Gilda M. Tuoni, *Teaching Ethical Considerations in the Clinical Setting: Professional, Personal and Systemic.* 52 U. Colo. L. Rev. 409, 411 (1981).[1]

Colo. RPC 8.4 (g) Misconduct

Rule 8.4 Misconduct, of the Colorado Rules of Professional Conduct has been a part of the current rules since its adoption in January 1993. However, Subpart (g) was substantially different until 2008. In 2007, the subpart included as misconduct for a lawyer to: "(g) engage in

[1] Although the Colorado Code of Professional Responsibility was replaced by Colo. RPC, the Code may still be grounds for disciplinary action. C.R.C.P. Rule 251.5 (a).

conduct which violates accepted standards of legal ethics;" In 2008 the subpart was changed to read:

> (g) engage in conduct, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person's race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, whether that conduct is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process.

A current version of Rule 8.4 is attached as Exhibit A.

This focuses the prohibited conduct to engendering bias against these classes. In Colorado, the proscription is not one of discrimination. Discrimination is a legal term of art and has a different meaning than what is proscribed by the Colorado ethics rule. The unethical action does not need to be intended to be a violation. If the conduct exhibits bias it is enough to be considered misconduct. Also, if the conduct is intended to appeal to or engender bias it is misconduct. So, if the conduct objectively exhibits bias without intention, it is misconduct. Also, if the conduct is intended to exhibit or engender bias, it is misconduct even if not successful. As opposed to discrimination, misconduct under the Rule is not determined by its outcome.

This literal interpretation of Colo. RPC 8.4 (g) conflicts with comment 3 to the Rule which provides:

> [3] A lawyer who, in the course of representing a client, knowingly manifests by word or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (g) and also may violate paragraph (d). Legitimate advocacy respecting the foregoing factors does not violate paragraphs (d) or (g). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule. Colo. RPC 8.4 comment (3).

This adds the element of "knowingly" to the requirements and has been so viewed by the courts. In *People v. Abrams*, 459 P.3d 1228, 1238 (Colo. O.P.D.J. 2020) the Court upheld the finding that the respondent knowingly used a word—"f[*]g"—that was directed at a judge that manifested or exhibited bias based on sexual orientation. The court focuses on the intent to use the word. "The People contend that the rule does not purport to regulate biased views or thoughts; the rule calls only for examination of whether, in the course of representing a client, a lawyer's actions or language manifested bias. Concomitantly, they say, the rule merely requires that they show Respondent knew his comment exhibited bias. The People claim that because Respondent used the term, which he was aware exhibits bias and is derogatory, he violated Colo. RPC 8.4(g). Without hesitation we endorse the People's interpretation." *People v. Abrams*, *supra* at 1239.[2]

[2] For an article discussing the Rule in the contest of sexual harassment, see Joseph G. Michaels, Prohibited by Rule Sexual Harassment As Attorney Misconduct, Colo. Law., August/September 2020.

Discrimination Distinguished

Although Colo. RPC 8.4 (g) utilizes protected classes arising in the area of discrimination law, the prohibition is not the same. Discrimination is defined as differential behavior toward group members that is directed toward them specifically because of their group membership. Discrimination, as used in the behavioral sciences, is the behavioral component of intergroup bias, and is defined as behavior toward group members that is directed toward them because of their group membership. In this context, behavior is broadly defined to include actions directed toward group members, as well as judgments and decisions that affect them. Victoria Esses, Ph.D*, Expert Report of*, *EEOC, v. COLUMBINE MANAGEMENT SERVICES, INC., Et Al.,* 2016 WL 8261537 (D.Colo.).

Discrimination is in general a failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored. *Baker v. California Land Title Co.*, 349 F. Supp. 235, 238 (C.D. Cal. 1972), aff'd, 507 F.2d 895 (9th Cir. 1974). Black's Law Dictionary, 5th Edition.

42 U.S.C. § 1982 encompasses race discrimination in relation to real property. See *City of Memphis v. Greene*, 451 U.S. 100, 122, 101 S.Ct. 1584, 1598, 67 L.Ed.2d 769 (1981) (Section 1982 was enacted to vindicate the rights of black persons to hold and acquire property on an equal basis with white persons and the right of blacks not to have property interests impaired because of their race); *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 420, 88 S.Ct. 2186, 2193, 20 L.Ed.2d 1189 (1968).

Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. § 2000e *et seq.,* prohibits employers from discriminating on the basis of race, color, religion, sex, or national origin, or retaliating against their employees for opposing or seeking relief from such discrimination. *Green v. Brennan*, 136 S. Ct. 1769, 1773–74, 195 L. Ed. 2d 44 (2016).

In Colorado, it shall be an unfair housing practice and unlawful:

> to discriminate against any person because of disability, race, creed, color, sex, sexual orientation, marital status, familial status, religion, national origin, or ancestry in the terms, conditions, or privileges pertaining to any housing or the transfer, sale, rental, or lease thereof or in the furnishing of facilities or services in connection therewith. C.R.S. § 24-34-502.

Broadly, Colo. RPC 8.4(g) borrows the classes established by laws of discrimination as its protected classes but does not focus on actions directed toward the protected persons with resultant treatment as do the laws of discrimination. Consequently, typical defenses against discrimination claims such as causation and bona fide business reasons will not excuse misconduct. Instead, all that is needed to be considered misconduct is conduct that exhibits bias or is intended to appeal to or engenders bias against one of the classes.

Socioeconomic as a Protected Class

Rule 8.4 (g) adds socioeconomic status to the list of typically protected classes. This is sometimes referred to as poverty and makes sense to include in the ethical rule. In considering whether socioeconomic status should be included as a protected class in discrimination law, it has been observed:

> Discrimination statutes advance the basic liberal ideals of social mobility and self-determination: People should not have fixed, predetermined social roles. Rather they should be at least "part authors" of their own lives. Discrimination laws advance these ideals by restricting practices that create and perpetuate fixed social hierarchies. In other words, they open up unnecessarily narrow "bottlenecks" in the opportunity structure. A trait like race or sex is an unnecessarily narrow bottleneck when it is subject to social bias that is both (1) pervasive and (2) illegitimate. If both conditions are met, the trait should be protected by discrimination law.
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> Only pervasive bias is likely to constrain a person's overall social mobility--and this is what triggers the principles driving discrimination law.

Danieli Evans Peterman. *Socioeconomic Status Discrimination,* 104 Va. L. Rev. 1283, 1294 (2018).

It makes sense for the definition of misconduct to include conduct that exhibits or is intended to appeal to or engender bias against a person on account of that person's socioeconomic status. Bias against poverty is just as morally repugnant as race. Preamble paragraph 6 agrees and addresses this topic. The Preamble and Scope of Colo. RPC is attached as Exhibit B.

Requirement for Conduct to be in the Representation of a Client

In order to be considered misconduct under Colo. RPC 8.4 (g), the conduct must be in the representation of a client. This differs from the recent addition of subpart (i) of Colo. RPC 8.4, which makes it misconduct to: "(i) engage in conduct the lawyer knows or reasonably should know constitutes sexual harassment where the conduct occurs in connection with the lawyer's professional activities." In connection with the lawyer's professional activities is broader than in the representation of a client. There are other broad proscriptions in the misconduct rule such as "(d) engage in conduct that is prejudicial to the administration of justice;" and "(h) engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law;" However, the rule only includes its prohibition against exhibiting or engendering bias against the protected classes during the representation of a client.

What about firms that advertise they are a men's law firm? Advertising is not in the representation of a client and so subpart (g) may not apply. Colo. RPC 7.1 on advertising provides: "A lawyer shall not make a false or misleading communication about the lawyer or the

lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading." While such advertisements may engender bias, they probably do not violate Colo. RPC 8.4 (g). They may violate the ABA Model Rule 8.4 (g).

ABA Model Rule 8.4(g)

The ABA Model Rule 8.4(g) adopted August 8, 2016, is different from the Colorado Rule in that it requires elements of harassment or discrimination.[3] While some commentators argue the ABA Rule is broader, this author perceives the opposite because of this requirement. The ABA Rule is broader in that the prohibition only requires it to occur in conduct related to the practice of law rather than in the representation of a client. Therefore, under the ABA Model Rule, advertising as a men's only law firm could qualify as a violation if the remaining elements of discrimination are found. The ABA Model Rule 8.4(g) proscribes lawyers 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.

A current version of ABA Model Rule 8.4 is attached as Exhibit C. Formal Opinion 493 on the Model Rule 8.4 (g) dated July 15, 2020 is attached hereto as Exhibit D.

In the comments to the Model Rule, the substantive law of discrimination is incorporated which focuses on the effect of the conduct rather than the Colorado Rule which focuses on the conduct itself. Comment 3 of the Model Rules provides:

> Such discrimination includes harmful verbal or physical conduct that manifests bias or prejudice towards others. 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 anti-discrimination and anti-harassment statutes and case law may guide application of paragraph (g). MRPC R. 8.4(g), Comment 3 (2016).

As of March 2019, 6 states have declined to adopt the Model Rule outright. 4 States have adopted the Model Rule in its entirety. 20 States had already adopted a similar rule and 29 states have adopted comments to their rules regarding discrimination. Kristine A. Kubes, Cara D. Davis, and Mary E. Schwind, March 12, 2019. "The Evolution of Model Rule 8.4 (g): Working to Eliminate Bias, Discrimination, and Harassment in the Practice of Law."

[3] It is interesting to note that Colorado adopted its version some 8 years prior to the ABA Model Rule 8.4(g).

First Amendment Concerns

There have been several United States Supreme Court cases that recently address rights of free speech which may limit the application of Colo. RPC 8.4 (g) and similar ethic rules in other states. The First Amendment, applicable to the States through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech." U.S. Const., Amdt. 1. Under that Clause, a government, including a municipal government vested with state authority, "has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95, 92 S.Ct. 2286, 33 L.Ed.2d 212 (1972).

Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests. *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163, 135 S. Ct. 2218, 2226, 192 L. Ed. 2d 236 (2015). Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed. *Reed, supra*, at 163.

The Court in *Matal v. Tam*, 137 S. Ct. 1744, 198 L. Ed. 2d 366 (2017), held that the disparagement clause of the Lanham Act, prohibiting federal trademark registration for marks that might disparage any persons, living or dead, was held to be facially invalid under First Amendment protection of speech. The Court notes:

> We have said time and again that "the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers." *Street v. New York*, 394 U.S. 576, 592, 89 S.Ct. 1354, 22 L.Ed.2d 572 (1969). See also *Texas v. Johnson*, 491 U.S. 397, 414, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable"). *Matal v. Tam*, 137 S. Ct. 1744, 1763, 198 L. Ed. 2d 366 (2017).
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> Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express "the thought that we hate." *Matal v. Tam*, 137 S. Ct. 1744, 1764, 198 L. Ed. 2d 366 (2017).

In *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 138 S. Ct. 2361, 201 L. Ed. 2d 835 (2018), ("*NIFLA*") the petitioners asked the Court to consider whether two sections of a California statute violate the First Amendment. The first section required licensed medical facilities (that provide women with assistance involving pregnancy or family planning) to tell those women where they might obtain help, including financial help, with comprehensive family planning services, prenatal care, and abortion. The second required unlicensed facilities offering somewhat similar services to make clear that they are unlicensed. In striking the statute as unconstitutional, the Court notes:

> Content-based regulations "target speech based on its communicative content." *Reed v. Town of Gilbert*, 576 U.S. 155, 163, 135 S.Ct. 2218, 2226, 192 L.Ed.2d 236

(2015). As a general matter, such laws "are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Ibid*. This stringent standard reflects the fundamental principle that governments have "no power to restrict expression because of its message, its ideas, its subject matter, or its content.' *NIFLA at* 138 S. Ct. 2361, 2371, 201 L. Ed. 2d 835 (2018).

But this Court has not recognized "professional speech" as a separate category of speech. Speech is not unprotected merely because it is uttered by "professionals." This Court has "been reluctant to mark off new categories of speech for diminished constitutional protection. *NIFLA at* 138 S. Ct. 2361, 2371–72, 201 L. Ed. 2d 835 (2018).

The Court concluded that its precedents do not permit governments to impose content-based restrictions on speech without "persuasive evidence ... of a long (if heretofore unrecognized) tradition" to that effect. *NIFLA at* 138 S. Ct. 2361, 2372, 201 L. Ed. 2d 835 (2018).

In Colorado, the portion of Colo. RPC 8.4 (g) that requires conduct to be in the representation of a client for there to be misconduct, may assist in arguing that the Rule is constitutional. Licensing of attorneys by the state has been held to be constitutional. Ample precedent exists supporting the authority to prescribe minimum levels of legal competency, measured by a bar examination, as a prerequisite to admission to a state bar. *E.g., Schware v. Board of Bar Examiners*, 353 U.S. 232, 239, 77 S.Ct. 752, 756, 1 L.Ed.2d 796 (1957); *Poats v. Givan*, 651 F.2d 495, 497 (7th Cir.1981); Tyler v. Vickery, 517 F.2d 1089, 1101–02 (5th Cir.1975), *cert. denied*, 456 U.S. 940, 96 S.Ct. 2660, 49 L.Ed.2d 393 (1976); *Chaney v. State Bar*, 386 F.2d 962, 964 (9th Cir.1967), *cert. denied*, 390 U.S. 1011, 88 S.Ct. 1262, 20 L.Ed.2d 162 (1968). A fortiori, a state can require an attorney to take reasonable steps to maintain a suitable level of competency, so long as such requirements have a "rational connection with the [attorney's] fitness or capacity to practice law." *Verner v. State of Colo*., 716 F.2d 1352, 1353 (10th Cir. 1983).

"The interest of states in regulating lawyers is especially great since lawyers are essential to the primary governmental function of administering justice and have historically been 'officers of the courts.' *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 460, 98 S. Ct. 1912, 1920, 56 L. Ed. 2d 444 (1978). In Colorado's Rule, misconduct is limited to occurring in the representation of a client and not broader as in the lawyer's professional activities. Therefore, free speech arguments may not overcome the strong state interest. The State bears a special responsibility for maintaining standards among members of the licensed professions. *Ohralik, supra.*

However, the court specifically rejected such an argument in *Greenberg v. Haggerty*, 491 F. Supp. 3d 12, 29 (E.D. Pa. 2020). The court found: "States cannot choose the protection that speech receives under the First Amendment [by imposing a licensing requirement], as that would give them a powerful tool to impose 'invidious discrimination of disfavored subjects.'" citing

NIFLA, 138 S. Ct. at 2374. In *Greenberg, supra*, the court examined a similar ethics rule. It provided:

> (g) in the practice of law, by words or conduct, knowingly manifest bias or prejudice, or engage in harassment or discrimination, as those terms are defined in applicable federal, state or local statutes or ordinances, including but not limited to bias, prejudice, harassment or discrimination based upon race, sex, gender identity or expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status. 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 advice or advocacy consistent with these Rules. *Greenberg v. Haggerty*, 491 F. Supp. 3d 12, 16–17 (E.D. Pa. 2020).

In *Greenberg*, the plaintiff contended that the rule allows for "tolerant, benign, and respectful speech" while disallowing "biased, prejudiced, discriminatory, critical, and derogatory speech." *Greenberg, supra*, at 25.

> Ultimately, the court is swayed by the chilling effect that the Amendments will have on Plaintiff, and other Pennsylvania attorneys, if they go into effect. Rule 8.4(g)'s language, "by words ... manifest bias or prejudice," are a palpable presence in the Amendments and will hang over Pennsylvania attorneys like the sword of Damocles. This language will continuously threaten the speaker to self-censor and constantly mind what the speaker says and how the speaker says it, or the full apparatus and resources of the Commonwealth may be engaged to come swooping in to conduct an investigation. *Greenberg, supra,* at 24.

Further conduct which exhibits bias might not even be considered speech in some instances. In has been held, in general, Colorado's ban on the unauthorized practice of law does not implicate the First Amendment because it is directed at conduct, not speech. *People v. Shell*, 148 P.3d 162, 173 (Colo. 2006). This argument was rejected in *Greenberg*, supra at 26 but the rule was different than in Colorado as it specifically prohibited words and conduct. The description of "exhibits" is probably the same.

Ultimately, viewpoint discrimination is "[w]hen the government targets not subject matter, but particular views taken by speakers on a subject." (quoting *Rosenberger v. Rector & Visitors of Univ. of Va*., 515 U.S. 819, 829, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995)). "Viewpoint discrimination is thus an egregious form of content discrimination." *Greenberg, supra, at* 30.

Other Rules of Professional Conduct

In general, the Colorado Rules envision a legal engagement where the objectives of representation are determined by the client and the means by which they are to be pursued are primarily determined by the attorney. Colo. RPC 1.2 (a) and comments (1) and (2). In certain circumstances where a client exhibits bias, the client may direct the attorney to act in consort with it. In those situations, the Rules provide the ability of the attorney to limit the scope of

representation if the attorney views the actions sought by the client to be repugnant or imprudent. Colo. RPC 1.2, comment (6). Also, the attorney may decline representation or withdraw if the lawyer considers the actions insisted by the client to be repugnant or with which the lawyer has a fundamental disagreement. Colo. RPC 1.16 (b)(4). For a good discussion of the issue see: Alec Rothrock, "Repugnant Objectives," 41-DEC Colo. Law. 51.

The Preamble to Colo. RPC provides guidance that is useful to oppose bias. While the word "moral" only appears twice in the entire Preamble and Scope, the statements are useful in admonishing that the lawyer must rely on their sense of morality when conducting their professional lives. For example, the Preamble states: Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. Colo. RPC Preamble (9). It also states: "…a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service." Colo. RPC Preamble (7).

The Scope also concludes: Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law. Colo. RPC Scope (16).

Real Estate Professionals

Real estate brokers and other professionals have laws designed to overcome racial bias. "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U.S.C. § 1982. Further, the federal Fair Housing Act prohibits racial discrimination in owning real property. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin. 42 U.S.C.§ 3604. Also, it shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin. 42 U.S.C. § 3605.

Colorado has laws consistent with the federal Fair Housing Act. Part 5 of Article 34 of Title 24, C.R.S. of the Law concerning housing practices are substantially equivalent to Federal law concerning fair housing as set forth in the federal Fair Housing Act. 3 Colo. Code Regs. § 708-1:30.1. It is unlawful to discriminate against any person because of disability, race, creed, color, sex, sexual orientation, marital status, familial status, religion, national origin, or ancestry

in the terms, conditions, or privileges pertaining to any housing or the transfer, sale, rental, or lease thereof or in the furnishing of facilities or services in connection therewith. C.R.S. § 24-34-502.

Further, Colorado has adopted the requirement for Anti-Discrimination Notices in Housing which provides:

> Every real estate broker or agent, home builder, home mortgage lender, and all other persons who transfer, rent, or finance real estate, shall post and maintain in all places where real estate transfers, rentals and loans are executed, a notice that summarizes the discriminatory or unfair practices prohibited by the Law in housing. The Division shall make a notice available for printing on its website or provide a copy upon request. The notices shall be posted and maintained in conspicuous, well-lit, and easily accessible places ordinarily frequented by prospective buyers, renters, borrowers, and the general public. 3 Colo. Code Regs. § 708-1:20.2.

A copy of the Housing Discrimination Poster from the Department of Regulatory Agencies, Colorado Civil Rights Division is attached as Exhibit E.

The National Association of Realtors has adopted similar standards of practice prohibiting discrimination in its Article 10. A copy of its Poster and Article 10 of its 2021 Code of Ethics & Standards of Practice is attached hereto as Exhibit F.

The Appraisal Foundation has drafted proposed changes to Advisory Opinion 16 for the purpose of avoiding bias in real property appraisal and appraisal review development and report. It is fairly comprehensive. A copy of the memo dated March 1, 2021 is attached as Exhibit G.

Conclusion

Unconscious bias is difficult to overcome since it is by its name unconscious or implicit. By learning and self-recognition, we can seek to minimize it. Diversity is a good tool to combat implicit bias. In any event, as reflected herein, there are rules and laws that prohibit implicit bias as well as cognitive bias. We must try hard to be open minded and fair in our societal and professional interactions.