

# **NATIONAL CLIENT PROTECTION ORGANIZATION**

**RESPECT FOR THE LAW AND THE  
ADMINISTRATION OF JUSTICE**

**Fall 2025 NCPO Workshop  
AC Hotel Portland  
158 Fore St, Portland, ME 04101**



# AGENDA

Participants will:

Identify core values of the profession within Rule 8.4(d) that impact the substance of lawyers' work.

Identify core tenets of the profession within Rule 8.4(d) that impact how lawyers engage in lawyering.

Recognize ways in which these core values and tenets may be expressed in lawyering, even when yielding contrasting outcomes.

Identify strategies to promote greater appreciation for the administration of justice.



- Review of Historical Context
- Define the Administration of Justice
- Application of Principles of Justice
- Strategy v. Duty
- The Role of Judges and Lawyers in Opposing Conduct Prejudicial to the Administration of Justice

# In the Context of History

*Plessy v. Ferguson*, 163 U.S. 537 (1896)

- **Key Points:**
  - Segregation does not, by itself, imply the inferiority of African Americans.
  - Laws requiring racial separation were considered a “reasonable exercise” of state police powers.
  - The Court reasoned that social prejudices could not be overcome by legislation.

*Brown v. Board of Education* 347 U.S. 483 (1954)

- **Key Points:**
  - **Overruled *Plessy v. Ferguson* (1896)** in the context of public education. The Court rejected the “separate but equal” doctrine.
  - **Equal Protection Clause of the 14th Amendment** was violated by segregation, because separating children solely on the basis of race generated a sense of inferiority that undermined educational opportunities.
  - The Court emphasized the **intangible factors** of education—such as psychological effects and the importance of equal access to learning environments—not just physical equality of facilities.

# Modern History

*Students for Fair Admissions, Inc. v. University of North Carolina (UNC)*, 600 U.S. 39 (2023)

## Key Points:

- UNC's race-conscious admissions policy violated the **Equal Protection Clause of the 14th Amendment**.
- The Court found that UNC's use of race could not be justified under strict scrutiny.
- The asserted educational benefits of diversity were not concrete or measurable enough, and the policy did not show an endpoint to racial classifications, which the Court has long required.

*Students for Fair Admissions, Inc. v. President & Fellows of Harvard College (Harvard)*, 600 U.S. 181 (2023)

## Key Points:

- Harvard's admissions program, which considered race as a factor, was unconstitutional under **Title VI**.
- Title VI prohibits discrimination on the basis of race and is coextensive with the Equal Protection Clause..



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## The Administration of Justice

- Is the law a tool of justice? Or just a tool?
  - Unpacking "Prejudicial"

Conduct so **flagrantly violative** of accepted **professional norms** that it **undermines the legitimacy of the profession.**

*Matter of Bradley and O'Sullivan*, HCRpt. at 69 (citing *Matter of Gomez*, 38 Mass. Att'y Disc. R. 161 (2022), quoting *Matter of the Discipline of an Attorney*, 442 Mass. 660, 668 (2004).



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## The Administration of Justice

- Is the law a tool of justice? Or just a tool?
  - Unpacking "Prejudicial"

Conduct that **negatively affects** the **perception** of lawyers and, in that sense, **may breed disrespect** for the legal profession and potentially for the courts. *Attorney Griev. Comm'n v. Link*, *Attorney Griev. Comm'n v. Alison* 380 Md. 405, 844 A.2d 1197 (2004) (citing, 317 Md. 523, 536, 565 A.2d 660, 666 (1989)).



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## The Administration of Justice (Cont'd.)

- Is the law a tool of justice? Or just a tool?
  - Unpacking "Prejudicial"

[T]he disciplinary authority must present clear and convincing evidence: "(1) that the attorney acted improperly in that he either [took] improper action or fail[ed] to take action when ... he or she should [have] act[ed]; (2) that the **conduct** involved bear[s] directly upon the judicial process (*i.e.*, the administration of justice) with respect to an identifiable case or tribunal; and (3) that the **conduct** taint[ed] the judicial process in more than a *de minimis* way, meaning that it at least potentially impact[ed] upon the process to a serious and adverse degree." *Board of Professional Responsibility, Wyoming State Bar v. Hinkley*, 503 P.3d 584, 611 (citing [\*In re Owusu\*, 886 A.2d 536, 541 \(D.C. 2005\)](#) (citations and quotation marks omitted)). See also, [\*Att'y Grievance Comm'n v. Moawad\*, 475 Md. 424, 257 A.3d 611, 644 \(2021\)](#) ("An attorney \*612 violates [**Rule 8.4(d)**] when his or her **conduct** impacts negatively the public's perception or efficacy of the courts or legal **profession**.")) (citation and quotation marks omitted)



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## The Administration of Justice

- Is the law a tool of justice? Or just a tool?
  - Unpacking “justice”

Compare MRPC 1.2(a) (abide by client’s decisions concerning the representation) and MRPC 8.4(d) (misconduct to engage in conduct prejudicial to the administration of justice)

Some jurisdictions, like Massachusetts indicate the lawyer’s duty is to the client’s “lawful” objectives. Mass. R. Prof. C. 1.2.



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## The Administration of Justice

- Is the law a tool of justice? Or just a tool?

Some jurisdictions, like Massachusetts indicate the lawyer's duty is to "seek" the client's "lawful" objectives. Mass. R. Prof. C. 1.2.

- Comment [6] advises that the scope of a representation, "may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent."

# What is (the pursuit of) justice?

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- What are the elements of a just cause?
  - Room for disagreement- Politics and justice?
  - Impact on the judiciary
  - Independence of the profession
    - Bar Complaints filed against
      - Pam Bondi, FL (dismissed)
      - John Eastman, CA (pending hrg.)
      - Rudolph Giuliani, NY (disbarred)
      - Kurt Olson, MD (pending)
      - Stefan Passantino, GA (dismissed)
      - Ken Paxton, TX (pending)



# STRATEGY V. DUTY

- Does the risk of personal or financial loss absolve us of our duty?
- If there is a duty, it is absolute?
- If there is a duty, it is the same for a public interest lawyer or a lawyer who earns thousands per hour?
- If we, as lawyers don't stand against tyranny, who will?

# Comments and Questions

Thank You!



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Lawyers Concerned  
for Lawyers, MA  
Executive Director