



FOR IMMEDIATE RELEASE

Media Inquiries: [Judy Pino](#), 202-869-5218

NCLA Warns NY Bar Not to Adopt Proposed Rule that Would Chill Lawyers' Speech

Proposed Revision to Rule 8.4(g), New York Rules of Professional Conduct

Washington, DC (June 18, 2021) – The New York City Bar has published a proposed amendment to New York Rule of Professional Conduct 8.4(g) that raises significant constitutional concerns. The [Proposed Rule](#) is intended to “more effectively guard against harassment and intimidation in the legal community,” but its vague language exposes attorneys to discipline even if they lack any intent to discriminate against others.

The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed [comments](#) today in opposition to the New York City Bar’s *Proposed Revision to Rule 8.4(g)*. Because “harassment” has no fixed meaning, bar officials would be free to adopt an expansive definition in cases involving speech they find distasteful, declare that the speaker “reasonably” should have been aware of that definition, and impose career-ending sanctions on the speaker. The Proposed Rule does not even require a showing that the lawyer intended to discriminate against or harass anyone. These defects will inevitably chill attorneys’ speech in the future.

The Proposed Rule runs headlong into numerous U.S. Supreme Court decisions that grant First Amendment protection to “disparaging” speech. In *Matal v. Tam*, the Court unanimously declared that a federal statute permitting government officials to penalize disparaging speech was unconstitutional. In *National Institute of Family and Life Advocates v. Becerra* the Court held that the First Amendment protects “professional speech” just as fully as other speech.

Nearly 20 states have either completely or largely rejected the adoption of ABA Model Rule 8.4(g) because of its infringement on free-speech rights. One month after the New York City Bar submitted its Proposed Rule, a federal court struck down Pennsylvania’s nearly identical version of the rule, holding that the rule violates attorneys’ First Amendment rights. The court there held that the rule also violates due process rights because it threatens to deprive lawyers of life, liberty, or property without fair notice of the conduct it punishes, and because it is so standardless that it invites arbitrary enforcement. NCLA’s comments ask the Administrative Board of the Courts to recommend against amending the New York Rules of Professional Conduct to include Proposed Rule 8.4(g).

NCLA released the following statement:

“The Proposed Rule is an unwarranted speech code for attorneys. It is likely to deter lawyers from speaking out on important legal issues, for fear that they will face severe sanctions if someone later concludes that their speech constitutes harassment.” — **Rich Samp, Senior Litigation Counsel, NCLA**

For more information visit the case page [here](#).

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

###