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NCLA Contests Vague Rule that Unconstitutionally Chills Free Speech for Attorneys in Connecticut

Mario Cerame, et al. v. Michael Bowler, in his official capacity as Connecticut Statewide Bar Counsel, et al.

Washington, DC (November 10, 2021) – Connecticut has adopted an amendment to its Rules of Professional conduct for Connecticut-licensed lawyers that includes unconstitutional and impermissibly vague language governing speech by lawyers. The provision, [Rule 8.4\(7\)](#), applies broadly, permitting sanctions even against those who have not knowingly violated the Rule, and supplies only vague definitions of actionable speech on the basis of any one of 15 categories—among them race, sex, religion, disability, sexual orientation, and gender identity.

The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a [complaint](#) today on behalf of two Connecticut-licensed attorneys seeking a declaration from the U.S. District Court for the District of Connecticut that the Rule violates the First Amendment and provisions of the Connecticut Constitution.

The First Amendment fully protects offensive, derogatory, or demeaning speech. “Derogatory” or “demeaning” speech is not subject to decreased constitutional protection simply because it is spoken by a lawyer in a setting “related to the practice of law.” The lack of clarity in the Rule deprives attorneys of the ability to discern what speech and conduct it proscribes, and thus they cannot know how to conform their speech in advance to the terms of the Rule. Because Rule 8.4(7) regulates speech, attorneys will be forced to “chill” their speech on certain subjects to provide extra assurance that they will not be the targets of disciplinary proceedings. The Rule also grants enforcement personnel too much discretion to decide what speech is sanctionable and what speech is not.

Nearly 20 states have either completely or largely rejected the adoption of similar American Bar Association proposed rules of professional conduct because they infringe free-speech rights. A federal court recently [struck down](#) Pennsylvania’s version of Rule 8.4(7), holding that the plaintiff was likely to succeed on his claim that the Rule amounted to viewpoint-based speech discrimination in violation of the First Amendment and also was unconstitutionally vague. Connecticut has ignored the experience of other states and plunged ahead to the detriment of attorneys licensed there. For these reasons, the District Court should strike down Connecticut’s Rule.

NCLA released the following statements:

“Connecticut’s Rule amounts to a speech code for lawyers. The Constitution State ought to encourage lawyers to speak out on controversial issues, not threaten to sanction those who dare to express unpopular views.”

— **Rich Samp, Senior Litigation Counsel, NCLA**

“Connecticut’s existing Rules of Professional Conduct already provide robust protection against discriminatory behavior and speech by lawyers. This proposed expansion abridges attorneys’ rights to express unpopular views, including core political speech. Connecticut has unwisely disregarded Supreme Court precedent that recognizes how such rules chill speech. Accordingly, NCLA seeks judicial restoration of lawyers’ First Amendment rights.”

— **Peggy Little, Senior Litigation Counsel (and Connecticut-licensed attorney), 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.

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