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NCLA Contests Motion to Dismiss Lawsuit Challenging Vague CT Rule Regulating Attorneys' Speech

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

Washington, DC (February 17, 2022) - Today, the New Civil Liberties Alliance filed a [response](#) to the Connecticut Statewide Bar Counsel and the Chair of the Statewide Grievance Committee's Motion to Dismiss our lawsuit on behalf of two Connecticut-licensed attorneys who say their speech is being chilled. Mario Cerame and Timothy Moynahan have challenged [Rule 8.4\(7\)](#), a recently adopted provision of the Connecticut Rules of Professional Conduct for attorneys licensed in the State, which took effect on January 1, 2022.

The First Amendment forbids content-based restrictions on speech. The chilling effect created by Rule 8.4(7), an unconstitutionally vague speech restriction, is severe and should concern attorneys nationwide. The Rule expands the definition of "professional misconduct" to include verbal or physical conduct that the lawyer "reasonably should know" constitutes "harassment or discrimination" on the basis of any one of 15 categories—including race, sex, religion, disability, sexual orientation, and gender identity.

The Connecticut Statewide Bar Counsel and the Chair of the Statewide Grievance Committee argue in their Motion to Dismiss that the U.S. District Court for the District of Connecticut lacks jurisdiction to hear the claims. They also contend that Mr. Cerame and Mr. Moynahan lack standing to challenge the Rule because they will not suffer any injury unless and until they are charged with violating Rule 8.4(7). But the Plaintiffs' facial challenge involves an enactment which, if invoked against them, could result in the loss of their licenses to practice law. Moreover, the Second Circuit has repeatedly held that chill allegations suffice to establish standing to raise First Amendment claims so long as the fear of enforcement action is actual and well founded.

NCLA's original [Complaint](#) provides detailed factual allegations demonstrating that both attorneys' speech has been chilled by Rule 8.4(7)'s enactment and that the chill arises from the well-founded fear that their speech could generate a misconduct complaint. In the past several years, scores of lawyers have been penalized for expressing divergent views. Mr. Cerame and Mr. Moynahan regularly speak out on issues of public concern as part of their practice of law—both in connection with legal proceedings and in forums unconnected to their representation of clients. While they do not intend to make statements that would constitute discrimination or harassment on the basis of any of the enumerated categories, they reasonably believe that those holding opposing points of view may well, on occasion, construe their criticisms as personally derogatory or demeaning.

NCLA released the following statements:

"Connecticut argues that any First Amendment challenge to its new speech code for lawyers should be deferred until the State decides to prosecute a lawyer for violating the code. But attorneys are being injured right now; they have no choice but to censor their own speech based on a well-founded fear that speaking too freely will lead to a misconduct charge. That injury suffices to give them the standing necessary to challenge the law right now."

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

“Connecticut’s existing rules of professional conduct already prohibit unlawful discrimination. This new rule, by allowing attorneys to be grieved for speech not meant to offend but to which others take offense, creates a here-and-now chill on lawyers’ speech for fear of cancellation-by-grievance.”

— **Peggy Little, Senior Litigation Counsel, NCLA, and Connecticut-licensed attorney**

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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