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NCLA Asks Second Circuit to Strike Down New Ethics Rule Muzzling Connecticut Attorneys' Speech

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

Washington, DC (February 27, 2023) – Mario Cerame and Tim Moynahan, two Connecticut-licensed attorneys, are challenging a recently adopted provision of the Connecticut Rules of Professional Conduct, which imposes a content- and viewpoint-based speech restriction. Rule 8.4(7) defines “professional misconduct” by a Connecticut attorney as including speech that the lawyer knows or reasonably should know “is harassment or discrimination on the basis of” any of 15 listed characteristics—among them race, sex, religion, disability, sexual orientation, and gender identity. Because Cerame and Moynahan reasonably fear misconduct charges, their speech has been chilled. Both men have felt compelled to censor their own speech to reduce the risk that they will face charges.

The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed an [opening brief](#) in the U.S. Court of Appeals for the Second Circuit in *Cerame v. Bowler* opposing Rule 8.4(7), whose overly vague terms fail to provide sufficient guidance on what speech it prohibits. The Rule also violates Plaintiffs’ First and Fourteenth Amendment rights. Because Cerame and Moynahan frequently speak frankly on controversial topics in their roles as members of the Connecticut bar, they fear being charged with violating the Rule. The reasonableness of their fear is well supported. For example, one of the two initial Rule 8.4(7) sponsors testified that the rule will serve as an important tool for sanctioning lawyers who engage in derogatory or demeaning speech, making clear sanctions are appropriate even if speech does no more than offend a listener’s sensibilities.

American Bar Association Model Rule 8.4(g) has proven to be highly controversial. A significant majority of States have declined to adopt it, after deeming it unconstitutional. The Idaho Supreme Court rejected adopting a version of Rule 8.4(g) after concluding that the proposed rule is: (1) a content- and viewpoint-based speech regulation that violates First Amendment speech rights; and is (2) unconstitutionally overbroad and vague. A federal district court has likewise permanently enjoined Pennsylvania’s version of 8.4(g). NCLA filed an [amicus curiae brief](#) in that case, *Greenberg v. Lehocky, et al.*, opposing Pennsylvania officials’ attempt to revive the rule.

The Second Circuit must first decide whether the plaintiffs have “standing” to challenge Rule 8.4(7) even though they have not yet been charged with a violation. The Second Circuit has repeatedly held that pre-enforcement First Amendment challenges to speech restrictions face relaxed standing criteria because they risk chilling First-Amendment-protected speech. To establish injury-in-fact, plaintiffs need only allege facts suggesting “an actual and well-founded fear that the law will be enforced against” them, as Cerame and Moynahan have done.

NCLA released the following statements:

“Connecticut’s efforts to enforce a speech code for lawyers is blatantly unconstitutional. The government may not restrict speech based on its disagreement with the viewpoint being expressed. Rule 8.4(7) hangs like a sword of Damocles over the heads of lawyers who would dare to challenge orthodox views on controversial issues.”

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

“Connecticut’s adoption of this rule is unwise, unnecessary—and unconstitutional. Existing rules of professional conduct already robustly prohibit discrimination by lawyers. This new speech code defies binding Supreme Court authority forbidding government penalties for expression of viewpoints. Such penalties chill constitutionally protected speech, which is all that is necessary for NCLA’s clients to challenge the rule in court.”
— **Peggy Little, 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.

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