

To: Del Ciampo, Joseph
Subject: RE: Proposed Rule 8.4(7)

From: Merry DiLi <m.diliberto3@outlook.com>
Sent: Thursday, November 5, 2020 9:21 AM
To: Del Ciampo, Joseph <Joseph.DelCiampo@jud.ct.gov>
Subject: Proposed Rule 8.4(7)

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November 2020

The Honorable Andrew J. McDonald, Chair
The Honorable Holly Aberly-Wetstone
The Honorable Barbara N. Bellis
The Honorable Susan Quinn Cobb
The Honorable John B. Farley
The Honorable Alex V. Hernandez
The Honorable Tammy T. Nguyen-O'Dowd
The Honorable Sheila M. Prats
The Honorable Anthony D. Truglia, Jr.
Rules Committee of the Superior Court

Attn: Joseph DelCiampo, Esq.

By email (joseph.delciampo@jud.ct.gov)

RE: Comment Letter Opposing Proposed Rule of Professional Conduct 8.4(7)

Dear Justice McDonald, Judge Aberly-Wetstone, Judge Bellis, Judge Cobb, Judge Farley, Judge Hernandez, Judge Nguyen-O'Dowd, Judge Prats, and Judge Truglia:

I write to support the position of the Christian Legal Society's November 2, 2020 letter addressing the constitutional concerns regarding Proposed Rule 8.4(7). Proposed Rule 8.4(7) will result in viewpoint-based discrimination of Connecticut lawyers.

Proposed Rule 8.4(7) is modeled on the widely criticized ABA Model Rule 8.4(g), proposed by the ABA in 2016. After four years of deliberations in many states across the country, only two states, Vermont and New Mexico, have fully adopted this highly flawed rule. In contrast, over a dozen

states have concluded, after careful study, that ABA Model Rule 8.4(g) is both unconstitutional and unworkable. I respectfully request that the Court reject Proposed Rule 8.4(7).

Since the ABA adopted Model Rule 8.4(g) in August 2016, the United States Supreme Court has issued two important free speech decisions that demonstrate its unconstitutionality. First, under the Court's analysis in *National Institute of Family and Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018), ABA Model Rule 8.4(g) is an unconstitutional content-based restriction on lawyers' speech. In *Becerra*, the Supreme Court held that state restrictions on "professional speech" are presumptively unconstitutional and subject to strict scrutiny. Second, under the Court's analysis in *Matal v. Tam*, 137 S. Ct. 1744 (2017), ABA Model Rule 8.4(g) is an unconstitutional viewpoint-based restriction on lawyers' speech that cannot survive strict scrutiny.

Connecticut attorneys should not be subject to a rule of questionable constitutionality and one that contradicts the U.S. Supreme Court's recent rulings on free speech. I respectfully request that the Court reject Proposed Rule 8.4(7). I thank the Court for considering these comments.

Sincerely,

Meredith Di Liberto