



Seeking Justice with the Love of God

August 14, 2017

Mr. Richard P. Lemmler, Jr.
Ethics Counsel
Rules of Professional Conduct Committee
Louisiana State Bar Association
601 St. Charles Ave.
New Orleans, Louisiana 70130

Via email (RLemmler@lsba.org) and United Parcel Service Two-Day Delivery

Re: Rule 8.4(g) Subcommittee Recommendation – Comment Letter of Christian Legal Society

Dear Mr. Lemmler:

This letter is filed pursuant to the Louisiana State Bar Association Rules of Professional Conduct Committee's request for comments in response to the "Rule. 8.4 Subcommittee Report," dated March 24, 2017. For the reasons detailed below, the Christian Legal Society opposes adoption of ABA Model Rule 8.4(g), as well as the language proposed by the Subcommittee for a new Louisiana Rule 8.4(h).

Founded in 1961, Christian Legal Society ("CLS") is an interdenominational association of Christian attorneys, law students, and law professors that networks thousands of lawyers and law students in all fifty states, including Louisiana. Among its many activities, CLS engages in two nationwide public ministries through its Christian Legal Aid ministry and its Center for Law & Religious Freedom.

Demonstrating its commitment to helping economically disadvantaged persons, the goal of CLS's Christian Legal Aid program is to meet urgent legal needs of the most vulnerable members of our society. Based on its belief that the Bible commands Christians to plead the cause of the poor and needy, CLS encourages and equips individual attorneys to volunteer their time and resources to help those in need in their communities. CLS provides resources and training to assist approximately sixty local legal aid clinics nationwide. This network increases access to legal aid services for the poor and marginalized.

Demonstrating its commitment to pluralism and the First Amendment, CLS works through its Center for Law & Religious Freedom to protect the right of all citizens to be free from discriminatory treatment based on their religious expression and religious exercise. CLS was instrumental in passage of the federal Equal Access Act of 1984, 20 U.S.C. §§ 4071-74, that protects the right of both religious and LGBT student groups to meet on public secondary school campuses. *See* 128 Cong. Rec. 11784-85 (1982) (Senator Hatfield statement) (recognizing CLS's role in drafting the EAA). *See, e.g., Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (the Act protects religious student groups' meetings); *Straights and Gays for Equality v. Osseo Area Sch.*

No. 279, 540 F.3d 911 (8th Cir. 2008) (the Act protects LGBT student groups' meetings). For forty years, CLS has protected free speech, religious exercise and assembly for all citizens.

I. The Louisiana State Bar Association Rules of Professional Conduct Committee Should Not Adopt Either ABA Model Rule 8.4(g) or the Subcommittee's Newly Proposed Louisiana Rule 8.4(h).

The Louisiana State Bar Association Rules of Professional Conduct Committee formed and appointed a subcommittee in September 2016 to consider whether the LSBA should recommend adoption of the national ABA's Model Rule 8.4(g), which had been adopted by the national ABA House of Delegates in August 2016.

The Subcommittee Report included a recommendation that “[i]f Louisiana chooses to adopt some version of a rule that reflects the concerns embodied within current ABA Model Rule 8.4(g),” it consider adopting a new Louisiana Rule 8.4(h) (hereinafter “Subcommittee’s Proposed Language”) that “*could* read”:

It is professional misconduct for a lawyer to: . . . (h) engage in conduct in connection with the practice of law that the lawyer knows or reasonably should know involves discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability. This Rule does not prohibit legitimate advocacy when race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability are issues, nor does it limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16.

Rule 8.4 Subcommittee Report (hereinafter “Rep.”) 11 (emphasis added). The Subcommittee’s proposed language, as discussed in the Report, raises at least six major concerns that weigh heavily against adoption of either Model Rule 8.4(g) or the proposed language of Louisiana Rule 8.4(h).

A. No jurisdiction has implemented ABA Model Rule 8.4(g).

The Subcommittee examined 21 states’ rules that in the Subcommittee’s view “currently have some version of a rule that attempts to address some or all of the issues that current ABA Model Rule 8.4(g) is intended to address.” Rep. 3. But when the Report was issued in March 2017, no jurisdiction had adopted ABA Model Rule 8.4(g). Since then one jurisdiction, the Vermont Supreme Court, has adopted ABA Model Rule 8.4(g), but the new rule does not go into

effect until September 18, 2017.¹ Therefore, no empirical evidence yet exists as to how ABA Model Rule 8.4(g) will operate.

The Subcommittee apparently relied on the ABA's inaccurate claim that twenty-four states and the District of Columbia have black-letter rules dealing with "bias" issues. But each of these black-letter rules differs from ABA Model Rule 8.4(g) in significant ways. These differences between state black-letter rules and Model Rule 8.4(g)'s expansive scope include:

- Many states' black-letter rules apply only to *unlawful discrimination* and require that another tribunal find that an attorney has engaged in unlawful discrimination before the disciplinary process can be initiated.
- Many states limit their rules to "conduct in the course of representing a client," in contrast to Model Rule 8.4(g)'s expansive scope of "conduct related to the practice of law."
- Many states require that the misconduct be "prejudicial to the administration of justice," a requirement that Model Rule 8.4(g) abandons.
- Almost no state black-letter rule enumerates all eleven of Model Rule 8.4(g)'s protected characteristics.
- No state black-letter rule contains Model Rule 8.4(g)'s circular non-protection for "legitimate advocacy . . . consistent with these rules."

Because no state has implemented it, by definition, Model Rule 8.4(g) has no track record. Nor did the Subcommittee Report offer any empirical evidence demonstrating a need *in Louisiana* for its adoption. Rep. 1-3.

B. Official bodies in Illinois, Montana, Pennsylvania, Texas, and South Carolina have urged rejection of Model Rule 8.4(g).

In June 2017, the Supreme Court of **South Carolina** became the first state supreme court to take official action regarding Model Rule 8.4(g) when it rejected adoption of the rule. <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2017-06-20-01>. The Court acted on the recommendation of the House of Delegates of the South Carolina Bar, as well as the South Carolina Attorney General. <http://2hsvz0l74ah31vgcm16peuy12tz.wpengine.netdna-cdn.com/wp-content/uploads/2017/05/McCravy-J.-OS-10143-FINAL-Opinion-5-1-2017-01331464xD2C78-01336400xD2C78.pdf>.

¹ Vermont became the only state to adopt ABA Model Rule 8.4(g) on July 14, 2017, with an effective date of September 18, 2017. Even Vermont did not adopt ABA Model Rule 8.4(g) verbatim.

In December 2016, the **Texas** Attorney General issued an opinion opposing ABA Model Rule 8.4(g). The Texas Attorney General opined that “if the State were to adopt Model Rule 8.4(g), its provisions raise serious concerns about the constitutionality of the restrictions it would place on members of the State Bar and the resulting harm to the clients they represent.” <https://www.texasattorneygeneral.gov/opinions/opinions/51paxton/op/2016/kp0123.pdf>.

On December 2, 2017, the Disciplinary Board of the Supreme Court of **Pennsylvania** explained that Model Rule 8.4(g) was too broad:

It is our opinion, after careful review and consideration, that the breadth of ABA Model Rule 8.4(g) will pose difficulties for already resource-strapped disciplinary authorities. The Model Rule . . . subjects to discipline not only a lawyer who knowingly engages in harassment or discrimination, but also a lawyer who negligently utters a derogatory or demeaning comment. A lawyer who did not know that a comment was offensive will be disciplined if the lawyer should have known that it was.

<http://www.pabulletin.com/secure/data/vol46/46-49/2062.html>.

On December 10, 2017, the **Illinois** State Bar Association Assembly “voted overwhelmingly to oppose adoption of the rule in Illinois.” <https://iln.isba.org/blog/2016/12/15/isba-assembly-oks-futures-report-approves-ube-and-collaborative-law-proposals>.

On April 12, 2017, the **Montana** Legislature adopted a joint resolution expressing its view that Model Rule 8.4(g) would unconstitutionally infringe on the constitutional rights of Montana citizens, and urging the Montana Supreme Court not to adopt Model Rule 8.4(g). <http://leg.mt.gov/bills/2017/BillPdf/SJ0015.pdf>. The impact of Model Rule 8.4(g) on “the speech of legislative staff and legislative witnesses, who are licensed by the Supreme Court of the State of Montana to practice law, when they are working on legislative matters or testifying about legislation before Legislative Committees” greatly concerned the Montana Legislature. Mont. Legis. Jt. Res. 3.

C. ABA Model Rule 8.4(g) operates as a speech code for lawyers.

Significant red flags have been raised by leading First Amendment and professional ethics scholars, who are concerned that, if adopted, ABA Model Rule 8.4(g) would be used to chill lawyers’ expression of disfavored political, social, and religious viewpoints on a multitude of issues.

First Amendment scholar and editor of *The Washington Post's* daily legal blog, *The Volokh Conspiracy*, UCLA Professor Eugene Volokh has warned against adoption of Model Rule 8.4(g) because it will function as a speech code for lawyers. In a two-minute video released by the Federalist Society, Professor Volokh succinctly summarized why the model rule should be rejected. <https://www.youtube.com/watch?v=AfpdWmlOXbA>. In a debate at the Federalist Society's National Student Symposium in March 2017, Professor Volokh demonstrated the flaws of Model Rule 8.4(g) despite his debate opponent's efforts to gloss over them. <http://www.fed-soc.org/multimedia/detail/aba-model-rule-84-event-audiovideo>.

Publisher of the *Louisiana Legal Ethics* blog, Professor Dane S. Ciolino of Loyola University New Orleans College of Law has expressed similar concerns with the overly broad scope of ABA Model Rule 8.4(g). He has recommended against adoption of the Subcommittee's proposed rule, writing:

Louisiana should not adopt the March 2017 proposal of the Rule 8.4 Subcommittee. Granted, the subcommittee's proposal is less problematic than the new ABA model rule. For example, it does not brand any sort of "harassment" as misconduct, and thereby avoids the myriad problems associated with the ABA anti-harassment standard.

However, the subcommittee proposal still raises questions. It brands as "misconduct" purely negligent discrimination.

Prof. Dane S. Ciolino, "LSBA Seeks Public Comment on Proposed Anti-Discrimination Rule of Professional Conduct," *Louisiana Legal Ethics*, Aug. 6, 2017, <https://lalegaethics.org/lsba-seeks-public-comment-on-proposed-anti-discrimination-rule-of-professional-conduct/>.

Known for his treatise for the ABA on legal ethics, as well as his American constitutional law treatise, Professor Ronald Rotunda wrote an extensive critique of Model Rule 8.4(g), entitled "The ABA Decision to Control What Lawyers Say: Supporting 'Diversity' But Not Diversity of Thought," <http://thf-reports.s3.amazonaws.com/2016/LM-191.pdf>, as well as a *Wall Street Journal* article entitled "The ABA Overrules the First Amendment." <https://www.wsj.com/articles/the-aba-overrules-the-first-amendment-1471388418>.

D. The scope of attorney conduct that would be regulated by the Subcommittee's proposed language is overly broad.

1. The expansive scope of ABA Model Rule 8.4(g) and newly proposed Louisiana Rule 8.4(h) would negatively impact Louisiana attorneys' free speech and free exercise:

ABA Model Rule 8.4(g) explicitly applies to all "conduct related to the practice of law." Comment 4 to ABA Model Rule 8.4(g) delineates its expansive scope: "Conduct related to the practice of law includes representing clients; interacting with witnesses, coworkers, court personnel, lawyers and others while engaged in the practice of law, operating or managing a law firm or law practice; and participating in bar association, business *or social activities in connection with the practice of law.*" (Emphasis supplied.)

Indeed, the question becomes, what conduct does ABA Model Rule 8.4(g) not reach? Virtually everything a lawyer does is "conduct related to the practice of law." Swept up in the rule are dinners, parties, golf outings, conferences, and any other business or social activity that lawyers attend. Much of a lawyer's social life can be viewed as business development and opportunities to cultivate relationships with current clients or gain exposure to new clients.

For example, would Model Rule 8.4(g) be violated by a law firm inviting clients or summer associates to a football game between the Saints and the Redskins? *Cf., Pro-Football, Inc., v. Blackhorse*, 112 F.3d 439 (E.D. Va. 2015) (challenge to Redskins' trademark as racially disparaging), *on appeal*, No. 15-1874 (4th Cir.) (parties have agreed that court should order district court judgment vacated and remand for entry of summary judgment in favor of Redskins' keeping trademark in light of *Matal v. Tam*, 137 S. Ct. 1744 (U.S., June 19 2017)).

Additional activities that may fall within Model Rule 8.4(g)'s scope include:

- presenting CLE courses;
- teaching law school classes as faculty or adjunct faculty;
- authoring law review articles;
- writing blogposts and op-eds;
- giving guest lectures at law school classes;
- speaking at public events;
- participating in panel discussions that touch on controversial political, religious, and social viewpoints;
- serving on the boards of various religious or other charitable institutions;
- lending informal legal advice to nonprofits;
- serving at legal aid clinics;
- serving political or social action organizations;
- lobbying for or against various legal issues;
- serving on the board of one's religious congregation;

- serving on the board of a religious school or college;
- serving religious ministries that assist vulnerable populations;
- serving on the boards of fraternities or sororities;
- volunteering with or working for political parties;
- speaking on legislative matters;
- working with social justice organizations; and
- any pro bono work that involves advocating for or against controversial socioeconomic, religious, social, or political issues.

ABA Model Rule 8.4(g) creates a cloud of doubt that will inevitably chill lawyers' public speech on one side of these current political and social issues, while simultaneously creating no disincentive for lawyers who speak on the opposing side of these controversies. Sadly, we live at a time when many people, including other lawyers, are willing to suppress the free speech of those with whom they disagree. At a time when freedom of speech needs more breathing space, not less, ABA Model Rule 8.4(g) suffocates attorneys' speech.

ABA Model Rule 8.4(g) creates additional concerns for attorneys that sit on boards of religious nonprofits or belong to religious organizations. Many lawyers sit on the boards of their religious congregations, religious schools and colleges, and other religious nonprofit ministries, which regularly turn to the lawyers serving as volunteers on their boards for pro bono guidance. As a volunteer on religious institutions' boards, a lawyer may not be "representing a client," but may nonetheless be engaged in "conduct related to the practice of law."

ABA Model Rule 8.4(g) raises severe doubts about the ability of lawyers to participate in political, social, or religious organizations that promote traditional values regarding sexual conduct and marriage. For example, in 2015, the California Supreme Court adopted a disciplinary rule that prohibited all California state judges from participating in Boy Scouts of America because of its views regarding sexual conduct. http://www.courts.ca.gov/documents/sc15-Jan_23.pdf. The Model Rule raises additional concerns about whether an attorney may be disciplined for her membership in a religious organization that chooses its leaders according to its religious beliefs. *See Texas A.G. Op., supra*, at 5.

2. The Subcommittee's proposed language is as broad as, if not broader than, the ABA Model Rule's language: Apparently recognizing the overly broad scope of ABA Model Rule 8.4(g), the Subcommittee Report recommended language that it characterized as "limiting language" (Rep. 5), but the proposed language is actually as broad as – and arguably broader than -- ABA Model Rule 8.4(g). Its language "in connection with the practice of law" is actually found in Comment 4 of ABA Model Rule 8.4(g). The Subcommittee Report would substitute "in connection with the practice of law" for ABA Model Rule 8.4(g)'s "related to the practice of

law.” But “in connection with the practice of law” is not narrower than “related to the practice of law.” If anything, it would seem broader.

3. The Subcommittee’s proposed language would make state bar disciplinary proceedings a tribunal of first resort for discrimination claims against attorneys: The Subcommittee’s proposed language does improve on ABA Model Rule 8.4(g) in two ways. It deletes “harassment” and modifies “discrimination” with “prohibited by law.” Nonetheless, the proposed language “discrimination prohibited by law” remains problematic in five ways:

a. The Subcommittee’s proposed language substitutes the verb “involves” for “is.” In other words, the conduct need only “involve[] discrimination prohibited by law” rather than actually be “discrimination prohibited by law.” The verb “involve” is broader and unnecessarily vaguer than “is.”

b. The proposed language “discrimination prohibited by law” fails to identify the specific laws to which it refers. Does its scope refer only to federal and state laws, or are local ordinances included as well? If so, the rule’s applicability varies according to the laws of the locality in which the attorney practices. Does its scope include regulations and other administrative guidance, or only laws enacted by Congress and the Louisiana Legislature?

c. Some states that have a black-letter rule regarding discrimination prohibited by law, such as Illinois Rule of Professional Conduct 8.4(j), maintain additional requirements that the conduct also “reflect[] adversely on the lawyer's fitness as a lawyer” and specify that “[w]hether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including: the seriousness of the act; whether the lawyer knew that the act was prohibited by statute or ordinance; whether the act was part of a pattern of prohibited conduct; and whether the act was committed in connection with the lawyer's professional activities.” Ill. RPC 8.4(j). The Subcommittee’s proposed language lacks these protections.

d. Illinois Rule of Professional Conduct 8.4(j) further provides that another tribunal (other than a bar disciplinary tribunal) must first have found that unlawful discrimination occurred and that all appeals have been exhausted before a disciplinary charge may be brought. Illinois Rule 8.4(j) states: “No charge of professional misconduct may be brought pursuant to this paragraph until a court or administrative agency of competent jurisdiction has found that the lawyer has engaged in an unlawful discriminatory act, and the finding of the court or administrative agency has become final and enforceable and any right of judicial review has been exhausted.” The Subcommittee’s proposed language lacks this protection.

e. Bar disciplinary proceedings themselves are ill-suited to determine whether unlawful discrimination has occurred. Bar officials in California and Pennsylvania have

expressed serious concerns as to whether state bars have the resources to become the tribunal of first resort for employment or other discrimination claims against attorneys and law firms.

A memorandum outlining Pennsylvania's Proposed Rule 8.4(g) identified the first defect of ABA Model Rule 8.4(g) to be its "potential for Pennsylvania's lawyer disciplinary authority to become the tribunal of first resort for workplace harassment or discrimination claims against lawyers." The Memorandum concluded, "after careful review and consideration . . . the breadth of ABA Model Rule 8.4(g) will pose difficulties for already resource-strapped disciplinary authorities." <http://www.pabulletin.com/secure/data/vol46/46-49/2062.html>.

California State Bar authorities voiced serious concerns when considering whether to modify their disciplinary rule to something more akin to the ABA Model Rule 8.4(g). California's current Rule 2-400 requires that a separate judicial or administrative tribunal have found that a lawyer committed unlawful discrimination before disciplinary charges can be brought. According to Justice Lee Smalley Edmon, the presiding justice of the Second District, Division Three of the California Courts of Appeals and the Chair of the State Bar's Second Commission for the revision of the Rules of Professional Conduct, "[t]he proposed elimination of current Rule 2-400(C)'s pre-discipline adjudication requirement has raised concerns among some members of the commission and the Board of Trustees concerning due process, the increased demands on State Bar resources that may result, and questions regarding any evidentiary or preclusive effects a State Bar Court decision may have in other proceedings." <http://www.calbarjournal.com/August2016/Opinion/LeeSmalleyEdmon.aspx>.

An official for the California State Bar Court noted that the Commission should seriously reflect upon the differences between the State Bar Court's adjudicatory process and the adjudicatory processes of the state civil courts. In the words of a State Bar Court official, "the unique nature of the State Bar Court and its own Rules of Procedure differ significantly from Superior Court civil proceedings." First, discovery is significantly more limited. Second, the rules of evidence differ. Any relevant evidence must be admitted, and hearsay evidence may be used. Third, "[i]n disciplinary proceedings, attorneys are not entitled to a jury trial." <http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000016945.pdf>. The California Commission Provisional Report noted other concerns raised by removing the pre-discipline adjudication requirement:

Eliminating current rule 2-400's threshold requirement that a court of competent jurisdiction has found that the alleged unlawful conduct had occurred raises substantial concerns, including due process, . . . lack of [the State Bar's Office of Chief Trial Counsel] resources and expertise to prosecute the charge effectively, *and the potential that disciplinary proceedings would be used as the testing ground for new theories of*

discrimination, or as leverage in otherwise unrelated civil disputes between lawyers and former clients. Id. at 16 (emphasis added).

4. Who determines what speech qualifies as “legitimate advocacy”? The Subcommittee’s proposed language regarding “legitimate advocacy” does not alleviate legitimate concerns about the proposed rule’s impact on attorneys’ First Amendment rights for two reasons. First, it is foreseeable that “legitimate advocacy” may be interpreted to protect only advocacy in a judicial forum and not advocacy in blogs, classrooms, CLE presentations, etc. Second, *who* decides what advocacy is legitimate? By what standards? It is not good for the profession -- or for a robust civil society -- for lawyers to be potentially subject to disciplinary action every time they speak or write on a topic that may cause someone to disagree and file a disciplinary complaint to silence the attorney.

E. The Subcommittee’s proposed language adopts a negligence standard rather than a knowledge/intent requirement.

In its report, the Subcommittee acknowledges that “[i]t is not difficult to imagine some situations where a lawyer, in connection with the practice of law, might unknowingly and/or unintentionally engage in conduct that others would perceive as rising to the level of discrimination. . . . [T]he lawyer’s lack of knowledge and intent suggests that such conduct should not be deemed ethical misconduct worthy of professional discipline. In short, conduct which is unintentional may evidence a regrettable lack of professionalism, but likely would not rise to the level of sanctionable ethical misconduct.” Rep. 8. The Subcommittee “recommends that the knowledge/intent component endorsed by the ABA in its current version of ABA Model Rule 8.4(g) should also be incorporated into the Louisiana rule.”

But the ABA Model Rule does not have a knowledge/intent requirement. Instead, it incorporates a negligence standard. As Professor Ciolino explained on his blog *Louisiana Legal Ethics*:

[ABA Model Rule 8.4(g)] subjects to discipline not only a lawyer who *knowingly* engages in harassment or discrimination, but also a lawyer who *negligently* utters a derogatory or demeaning comment. So, a lawyer who did not *know* that a comment was offensive will be disciplined if the lawyer *should have known* that it was. It will be interesting to see how the ‘objectively reasonable lawyer’ will be constructed for purposes of making this determination.

Prof. Dane S. Ciolino, “LSBA Seeks Public Comment on Proposed Anti-Discrimination Rule of Professional Conduct,” *Louisiana Legal Ethics*, Aug. 6, 2017, <https://lalegaethics.org/lsba-seeks-public-comment-on-proposed-anti-discrimination-rule-of-professional-conduct/> (original emphasis).

F. The Subcommittee’s proposed language to preserve a lawyer’s ability to accept, decline, or withdraw from a representation in accordance with Rule 1.16 has been shown to be inadequate.

The only state to have adopted ABA Model Rule 8.4(g), Vermont, included its assurance that the rule “does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 1.16.” But the Vermont Supreme Court explained in its accompanying Comment 4 that “[t]he optional grounds for withdrawal set out in Rule 1.16(b) must also be understood in light of Rule 8.4(g). They cannot be based on discriminatory or harassing intent without violating that rule.” It also explained that, under the mandatory withdrawal provision of Rule 1.16(a), “a lawyer should withdraw if she or he concludes that she or he cannot avoid violating Rule 8.4(g).”

<https://www.vermontjudiciary.org/sites/default/files/documents/PROMULGATEDVRPrP8.4%28g%29.pdf>.

The Subcommittee’s proposed language is essentially the same as that adopted by the Vermont Supreme Court. The Vermont Supreme Court’s interpretation of that language in its Comment 4 creates reasonable doubt that Rule 1.16 provides adequate protection for attorneys’ ability to accept, decline, or withdraw from a representation.

Conclusion

The threat of losing one’s license to practice law is a heavy penalty and demands a process in which the enforcement standards provide a carefully crafted balance between prevention of discrimination and respect for attorneys’ First Amendment and due process rights. Because adoption of a new Louisiana Rule 8.4(h) would have a chilling effect on attorneys’ First Amendment rights, it should not be adopted. Attorneys must remain free to engage in speech, religious exercise, and assembly in their work and the public square. Because no state has implemented ABA Model Rule 8.4(g), it has no track record. Nor is there any empirical evidence showing a need to adopt the newly proposed Louisiana Rule 8.4(h).

For all of these reasons, we urge that newly proposed Louisiana Rule 8.4(h) not be adopted. Thank you for your consideration of these comments.

Respectfully submitted,

/s/ David Nammo

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