#2016-009

May 29, 2018

Carolyn A. Koegler, Advisory Committee on Rules
New Hampshire Supreme Court
One Charles Doe Drive
Concord, NH 03301 Via email: CKoegler@courts.state.nh.us

Dear Ms. Koegler:

I would like to respectfully submit a a comment concerning proposed New Hampshire Rule of Professional Conduct 8.4 (g) (#2016-009). I am a recent law school graduate intending to be admitted to the bar and practice in the State of New Hampshire. I strongly entreat the Court to refrain from adopting these rules. Implementing such sweeping rules onto the entire body of lawyers will confer very little – if any - benefits that do not already exist and exacerbate the very thing it proposes to eliminate.

I will limit my comments to the effect of including the words "sexual orientation" and "gender identity" as they relate to "reasonably should know is harassment or discrimination" - i.e. conduct that "manifests bias or prejudice towards others." Who evaluates if someone's advocacy or social interaction is "biased?" - i.e. unfairly and irreparably disposed. Is religion "discriminatory?" Is public opposition to certain actions and lifestyle choices "harassment?" The substantive law governing anti-discrimination – notably, without exemptions found in Federal law – proposed here is itself unclear and undeveloped, and only applies in narrow situations. This rule is vague at best, and is itself discriminatory at worst. Is it wise to implement sweeping and nebulous speech restrictions on everything from social settings to public advocacy?

I would ask the Court to consider this issue carefully, remembering that an unwise rules have always exacerbated, rather than alleviated, discrimination, intimidation, and baseless bias. Countless examples of rules that furthered societal rift, from the Alien and Sedition Acts to segregation, litter our legal landscape, to our shame.

Even the strongest advocate of LGBTQIA rights can understand and concede that IF a lawyer – IF – a lawyer sincerely believes that LGBTQIA actions and choices deeply harm a person and harm society, that lawyer would understandably refrain from accelerating harm to that person, <u>especially</u> in their legal practice. That lawyer would not be acting out of hatred, bias, or prejudice – rather, they would acting out of the most basic form of concern and love that is common to all human beings. If one truly cares about the other, the most hateful and prejudicial thing one could do is to assist in what one perceives is harming that person.

"But," one may argue, "such opposition misguided. LGBTQIA actions are perfectly normal and healthy to the individual and society."

This may be true. It may not be. Time will certainly tell. If LGBTQIA norms are sustainable, holistic, and beneficial to society, objections will cease, and the objectors will dwindle as society thrives. If not, however, the rules that censored these public conversations will be yet another shameful marker on our history.

We must be careful not to outlaw the unpopular, for it may be the truth. <u>IF</u> people are truly hurting themselves and society with these acts, then rules banning or silencing objectors will only exacerbate the polarization of society. If these objections are baseless, history will leave these naysayers behind. Our current laws already protect the LGBTQIA community from real harassment and discrimination. Invidious

discrimination can never be resolved by more invidious discrimination. Nobody wins, and the trenches are thereafter dug deeper.

In short, Rule 8.4(g) has very little potential to alleviate discrimination and hatred, but has very real potential to broadly quash unpopular social speech, and ignite the very thing it proposes to eliminate.

With this in mind, I respectfully entreat that this rule be rejected.

Christopher Jay