Ladies and Gentlemen:

I hope you are well.

I learned only today, through the Christian Legal Society, of the proposed Model Rule 8.4(g) and comments. I have been an ABA member for years and regularly read the ABA Journal and other ABA publications. I have not seen any ABA communication to its members of the proposed rule changes. I am very disturbed that, with respect to such significant changes to an important Model Rule, dealing with very important and sensitive cultural, moral and constitutional matters, there has not been more forthright and specific communication to the ABA’s members.

Today is the deadline for comments on the proposed changes to Model Rule 8.4 (i.e., the proposed Model Rule 8.4(g) and revisions to comments). Had I had more time to review and assess the proposed changes, I may have offered more substantial comments than those offered in this email. Suffice it to say that I oppose the proposed rule and comment changes for two primary reasons:

1. There has been little or no specific communication to the ABA’s general membership about the proposed changes, despite the very significant and impactful changes being proposed. The lack of communication to the ABA’s general membership on this matter appears to be a dereliction of the duties that those in leadership at the ABA have to all of the ABA’s members. I cannot support a rule change when I’ve been given little to no notice of it, or time to assess how it will impact me and other lawyers, our clients, and our nation’s system of justice.

2. I have grave concerns that the proposed rule will have chilling effects on lawyers’ constitutionally protected personal and professional speech and conduct, and, as a result, it will hurt rather than improve the practice of law, lawyers’ ability to provide candid advice and opinions on important matters, and access to legal services. The Christian Legal Society’s comment letter, dated March 10, 2016, does a good job of elaborating on these defects and outlining reasons not to adopt the proposed rule changes. Their comment letter also proposes revisions to those rule changes that should be included if the rule changes are adopted. I agree with their comment letter and urge you to give thorough and serious consideration to it.

I am opposed to invidious discrimination and believe that our legal system should offer equal justice to all, without regard to personal characteristics or circumstances. I do not believe that the proposed rule changes genuinely serve the objectives stated in the ABA’s memorandum of explanation regarding the proposed rule changes, but I do believe that if the proposed changes are adopted, lawyers (of all religious, moral, political and other persuasions) will be left guessing about the scope and effect of the rule - essentially as to what speech and conduct, professional and private, are acceptable - to the detriment of their clients, our legal system, and their own liberty.

I urge you not to adopt the proposed rule changes, but if they are adopted, I urge you to incorporate the revisions outlined by the Christian Legal Society in its comment letter.

Thank you for your kind consideration of my comments.

Sincerely,

Kevin J. Loechl