

## In The News

# *New York Law Journal*: Akerman Partner David Bayne Cautions Lawyers on City's New Professional Conduct Rule

July 22, 2022

David Bayne, co-chair of the Professional Liability Practice, authored an article for the *New York Law Journal* that opined on the future of New York's new Professional Conduct Rule 8.4(g), based on similar rules moving through the Pennsylvania and Colorado courts. In June, New York's four Appellate Division departments issued a joint order adopting a variation of ABA Model Rule of Professional Conduct, broadly prohibiting discrimination and harassment in the practice of law. It differs substantially from the state's prior, and much more limited rule, which focused on unlawful discrimination in the workplace. Although the model rule initially won praise for its intent, it became controversial because of complaints that it infringed First Amendment rights and was both vague and overbroad. Given the mixed results in Pennsylvania and Colorado so far, Bayne predicts the rule will likely end up in the courts.

Bayne wrote, "Given the mixed results in Pennsylvania and Colorado, it is likely that New York's new Rule 8.4(g) will end up in the hands of a New York federal judge, and even the Second Circuit, someday. Currently, Connecticut's newly adopted version of Rule 8.4(g), which is very similar to Pennsylvania's amended Rule, is subject to a constitutional challenge in that state's federal court and *Greenberg II* is being appealed to the Third

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David F. Bayne

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Circuit. *Cerame v. Bowler*, U.S. District Court for the District of Connecticut... The result of those challenges may well shape the outcome in New York and could potentially create a conflict that ultimately may have to be resolved by the U.S. Supreme Court.”

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