

Order

Michigan Supreme Court
Lansing, Michigan

July 13, 2010

Marilyn Kelly,
Chief Justice

ADM File No. 2002-24

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

Proposed Amendment of
Rule 7.3 of the Michigan Rules of
Professional Conduct

On order of the Court, this is to advise that the Court is considering an amendment of Rule 7.3 of the Michigan Rules of Professional Conduct. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at www.courts.michigan.gov/supremecourt.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

Rule 7.3 Direct Contact with Prospective Clients

- (a) A lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for doing so is the lawyer's pecuniary gain. The term "solicit" includes contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient, but does not include letters addressed or advertising circulars distributed generally to persons not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful, nor does the term "solicit" include "sending truthful and nondeceptive letters to potential clients known to face particular legal problems" as elucidated in *Shapero v Kentucky Bar Ass'n*, 486 US 466, 468; 108 S Ct 1916; 100 L Ed 2d 475 (1988).
- (b) A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (a), if:

- (1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or
 - (2) the solicitation involves coercion, duress, or harassment.
- (c) Every written, recorded, or electronic communication from a lawyer that seeks professional employment from a prospective client shall include the words “Advertising Material” prominently featured on the outside envelope, if any, and at the beginning and ending of any written, recorded, or electronic communication, unless the lawyer has a family or prior professional relationship with the recipient. If a written communication is in the form of a self-mailing brochure, pamphlet, or postcard, the words “Advertising Material” shall appear on the address panel of the brochure, pamphlet, or postcard.

Staff comment: The proposed addition of subrule (c) of MRPC 7.3 would require a lawyer who seeks professional employment from a prospective client to designate the writing as an advertisement by prominently displaying the words “Advertising Materials” on the outside envelope (or brochure, pamphlet, or postcard) and at the beginning and end of every written, recorded, or electronic communication.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on this proposal may be sent to the Supreme Court Clerk in writing or electronically by November 1, 2010, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2002-24. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 13, 2010

Corbin R. Davis

Clerk