

PROBATE & ESTATE PLANNING SECTION

October 31, 2011

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Corbin R. Davis Supreme Court
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Michigan Supreme Court
PO Box 30052
Lansing, MI 48909

Re: ADM File No. 2002-24—Proposed Amendment to Rule 7.3
of the Michigan Rules of Professional Conduct

Dear Clerk Davis:

I am writing as Chair of the Council of the Probate and Estate Planning Section of the State Bar of Michigan regarding the proposed amendments to MRPC 7.3. At our Council meeting on October 22, 2011, we reviewed the proposed changes and I have been asked to communicate to you our concerns regarding the proposal.

It is our impression that the primary purpose of the proposal is to address the matter of solicitation of representation arising out of personal injury and wrongful death tort cases. While those matters are a real concern of the Bar, the broad language of the proposal appears to also cover normal communications that occur commonly, such as those between estate planning counsel and a client's family members or designated fiduciary or a potential client who has been referred by a family member or another client in the event of a death or incapacity.

The communications typically involve counseling the family members or a fiduciary regarding the steps that should be taken either in connection with the post death administration of an estate or trust or the legal management of the incapacitated person's affairs. Families and fiduciaries in such situations often need and seek immediate legal assistance. These communication can be critical to the well-being of the incapacitated person or the estate of the deceased person. The sooner those responsible for health care decisions and the management of assets begin their duties, the better. These communications may involve:

- a. The commencement of the authority of a patient advocate to receive health care information and make health care decisions;
- b. The commencement of the authority of an attorney in fact to act with respect to financial matters;

- c. The appointment of a guardian or conservator;
- d. The qualification of a successor trustee under a revocable trust; and
- e. The commencement of probate proceedings.

A mandatory delay of communications intended to assist families or fiduciaries in dealing with these post death or incapacity issues is not in the public interest.

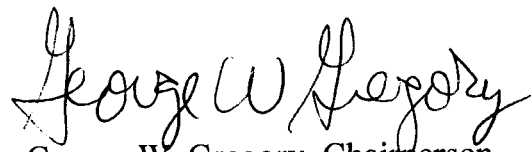
It is the unusual case where there is also a possible tort claim associated with a death or incapacity. Those claims are not the subject of this letter. We note that of the approximately 18 states we have surveyed whose professional conduct rules contain a “no communication” rule similar to the proposal, these states limit the application of the rule to cases involving personal injury or wrongful death tort claims.

We also question the appropriateness of labeling the communications described in this letter as “advertising.” These communications are sent typically to family members or a fiduciary of a client or to a potential client recommended by a family member or another client where a death or incapacity has occurred. We do not believe these communications are advertising or should be so labeled.

We are also concerned that due to timing, announcements about the firm, holiday greetings, general updates about the law, and similar communications might be deemed solicitations.

The Probate and Estate Planning Section appreciates the opportunity to comment on the proposed changes to MRPC 7.3. We request that the proposed changes either be rejected or that they be narrowly limited to cases involving personal injury and wrongful death tort claims.

Very truly yours,


George W. Gregory, Chairperson

cc Probate and Estate Planning Council Members