

Proposal Re: Attorney Solicitation

Issue

Should the State Bar of Michigan adopt the following resolution submitted by the Family Law Council on behalf of the Family Law Section of the State Bar of Michigan calling for an Amendment to **either** the Michigan Rules of Professional Conduct **or** the Michigan Court Rules regarding the solicitation of potential Family Law clients by attorneys?

RESOLVED, that the State Bar of Michigan supports an Amendment to **either** the Michigan Rules of Professional Conduct (MRPC) **or** the Michigan Court Rules regarding the solicitation of potential Family Law clients by attorneys.

FURTHER RESOLVED that the State Bar of Michigan proposes either an Amendment to the Michigan Rules of Professional Conduct, §7.3 (adding a new section “c”) or an addition to the Michigan Court Rules §8.xxxx, Administrative Rules of Court the following:

“In any matter involving a family law case in a Michigan trial court, a lawyer may not contact or solicit a party for purposes of establishing a client-lawyer relationship, where the party and lawyer had no pre-existing family or client-lawyer relationship, until the first to occur of the following: service of process upon the party or fourteen (14) days has elapsed from the date of filing of the particular case.”

Synopsis

Family Law cases involve unique risks to vulnerable parties, as well as innocent children, not present in other areas of our jurisprudence. There are no current restrictions preventing attorneys from soliciting legal representation of parties who may engage in Domestic Violence **prior to** being served with Personal Protection Orders or Ex Parte Orders intended to safeguard the parties’ physical safety and preserve the financial *status quo* between litigants in a Family Law case. This proposal is limited to Family Law cases, insofar as general civil litigation cases do not customarily involve high conflict disputes associated with threats of physical or emotional harm, or dissipation of assets associated with the filing of a case.

Information regarding case filings is readily available to attorneys through personal inspection of public filings, newspapers, and the Internet. There is an alarming incidence of attorneys soliciting prospective representations before a party even knows that an action has been filed, as well as prior to *ex parte* Orders having been entered by the Court, received by the attorney and served upon the other party. Courts do not routinely issue Injunctions or *ex parte* Orders the same day the Family Law case is filed, and there may be a delay between the date of the filing of the case, and the time of issuance or receipt of the *ex parte* Orders by the attorney. This narrow 14 day restriction on solicitation is designed to permit Service of the pleadings prior to a party receiving “notice” via a 3rd party attorney solicitation.

The Family Law Council, on behalf of the Family Law Section, has been working on this issue for a year and a half, and is unanimous in its support for the proposal. In contrast with the initial proposal, the current Resolution is specifically limited to Family Law cases, and the period of restriction is shortened to a bare minimum period of time: fourteen (14) days. The framing of the proposal as either a MRPC Amendment or a Court Rule Amendment is specifically designed to provide maximum flexibility to the Supreme Court in its consideration of these issues.

Background

While the Family Law Council commenced work on this issue in 2008, after lengthy discussion and debate, Council unanimously voted 18-0 on July 30, 2009 to submit a proposed Amendment for consideration by the Representative Assembly at the September 17, 2009 meeting of the Representative Assembly. The initial "information proposal" had been presented at the April, 2009 meeting of the Representative Assembly. At the September 17, 2009 meeting the proposal was "tabled" until the next meeting of the Representative Assembly on March 27, 2010.

The Family Law Council views the issues as of such paramount importance that it recommends that **either** an Amendment to the Michigan Rules or Professional Conduct **or** an Amendment to the Michigan Court Rules address this problem. The Family Law Council does not believe that the "form" of the proposed Amendment (as either a MRPC or Court Rule Amendment) is nearly as important as the critical importance of it being enacted. The proposal "in the alternative" is intended to communicate the flexibility of the Council on the issue.

The current proposal involves far narrower restrictions upon solicitation by attorneys than submitted at the April, 2009 meeting in at least the following respects: (1) the proposal would only apply to Family Law matters, and (2) the *de minimis* restrictions has been reduced from twenty-one (21) days to fourteen (14) days.

Council is convinced that there is a compelling interest in prohibiting a party from evading the specific terms of *ex parte* Orders involving Domestic Violence & Personal Protection, or Restraining Orders prohibiting illegal transfers of assets, during the period of time from presentation of an Order to the Court, and service upon a Party.

There is also a particular vulnerability to parties receiving initial notice of the filing of a Family Law action from a third party solicitation for legal representation, in contrast with traditional service of a Summons & Complaint and customary legal pleadings. The Family Law Council has grave concern over the nature of the third party solicitations which are occurring with increasing frequency.

The "Case Codes" to which this proposal would apply involve the following specific actions: DC; DM; DO; DP; DS; DZ; NA; PJ; PH; PP; or VP. The application to these particular Case Codes is targeted toward application of this narrow restriction to Family Law cases only, and not apply to the remainder of our civil or criminal cases.

Clearly, attorney solicitation issues involve "Commercial Free Speech". However, *Shapero v Kentucky Bar Association* which is referenced in current MRPC 7.3 does **not** preclude all restrictions on attorney solicitation. In fact, *Shapero* affirms that restrictions upon commercial Free Speech are permissible.

Attached is supporting documentation regarding the proposal.

Opposition

None known.

Prior Action by Representative Assembly

This issue was presented to the Representative Assembly as an information item at the April, 2009 meeting. This issue was tabled at the September, 2009 Representative Assembly meeting.

Fiscal and Staffing Impact on State Bar of Michigan

None known.

STATE BAR OF MICHIGAN POSITION By vote of the Representative Assembly on March 27, 2010

Should the Representative Assembly adopt the above resolution?

(a) Yes

or

(b) No

THE CONSTITUTIONAL CASE FOR CONTROLLING "TROLLING"

BY JAMES J. HARRINGTON, III

The Family Law Council has become extremely concerned over the *clear and present danger* associated with solicitation of potential divorce clients with information obtained from search and review of County records involving new Divorce filings. This practice is widely referred to a "trolling" and raises serious issues for Family Law practitioners.

Personal Protection Orders and *ex parte* Orders cannot be issued by the Court without specific factual allegations of *irreparable harm*, and the Court being satisfied that the statutory mandates have been met. Accordingly, entry of an *ex parte* Personal Protection Order or issuance of an *ex parte* Order represents a threshold determination by the Court that the potential for serious physical or economic injury exists.

These Court Orders may be frustrated when the first communication to the opposing party in a Divorce case is not the Summons and Complaint and Ex Parte Orders but a direct, targeted solicitation from a unknown attorney. The Defendant may not know that they are the subject of a Personal Protection Order, or that a Judge is determining whether or not to issue an Ex Parte Order preserving the *status quo*, or preventing Domestic Violence, or precluding removal of the children from the State of Michigan.

Other serious issues can arise from a party cleaning out bank accounts, cancelling beneficiary designations, and irreparably altering the *status quo* in a Divorce case prior to being served with the Summons, Complaint, and *ex parte* Orders.

A major impetus behind efforts to address this problem was the impassioned presentation to the Family Law Council in 2008 by the Hon. John Hammond, retired judge, Berrien County Circuit Court. Judge Hammond words that "one dead Plaintiff" is "one too many" may well be prophetic. The Family Law Council has been proactively involved in these issues for a year and a half; it recognizes its obligation to make the public and the State Bar aware of the dangers associated with *trolling*.

The Family Law Section has proposed a simple, pragmatic, and effective means of dealing with this problem: Attorneys may not solicit client representation in Family Law cases until the first to occur of (a) fourteen (14) days from the filing of the Complaint or Family Law action; or, (b) the filing of a Proof of Service with the Court.

MRPC '7.3(a) is confusing, contradictory, and does not preclude trolling.

At first blush, the practice of *trolling* would appear to be prohibited pursuant to the Michigan Rules of Professional Conduct, specifically '7.3 (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 the lawyer's doing so is the lawyer's professional gain".

However, the very same MRPC undermines this admonition at the conclusion of '7.3(a):

... nor does the term "solicit" include sending truthful and non-deceptive letters to potential clients known to face particular legal problems" as elucidated in Shapero v Kentucky Bar Assn., 496 U.S. 466, 468; 100 L. Ed. 2d 475 (1988).

A detailed review of the Commentary to MRPC '7.3(a) fails to resolve the evident inconsistency between these two positions. This invites a review of the *Shapero* case for further guidance.

Shapero v Kentucky Bar Association did not involve restrictions on lawyer trolling.

Any plain reading of *Shapero* makes clear that the United States Supreme Court was concerned about a "total ban" upon lawyer solicitation:



"But merely because targeted, direct mail solicitation presents lawyers with opportunities for isolated abuses or mistakes does not justify a total ban² on that mode of protected speech.^{3"}

Clearly, the fourteen (14) day restriction period is the opposite of a "total ban". Significantly, *Shapero* does not preclude state regulation of lawyer solicitation; the Supreme Court specifically set forth one mechanism of approved State regulation⁴ in the form of requiring the lawyer to submit any solicitation letter with the State.

In contrast with *Shapero*, the proposal of the Family Law Council is limited to Family Law cases, and for a minimal fourteen (14) day period or actual filing of a proof of service, whichever comes first.

Minimal restrictions on lawyer solicitation meet the four prong Commercial Free Speech test.

Clearly, commercial speech is entitled to Constitutional protection pursuant to *Shapero, supra*. Notwithstanding, State regulation of commercial speech is permissible pursuant to a four prong test: (1) If the advertising is not accurate it can be suppressed. (2) If the Government has a *substantial interest* in the restrictions, speech can be restricted. (3) A showing that the restriction is something more than "ineffective" or "remote support" for the asserted purpose. (4) If the restriction could be the subject of a more limited restriction, it may be subject to challenge.⁵

Subsequent to the *Central Hudson Gas* case the United States Supreme Court loosened this test, and set forth the requirement that there be a "reasonable fit" between the goals and the restriction.⁶

The primary purpose of the "14 Day period" is permit sufficient opportunity for issuance of *Ex Parte Orders*⁷, obtaining entry of the Orders, and service upon the other party. A seven (7) day period would be totally inadequate under these circumstances; fourteen (14) days is a rational, limited period of time.

Significantly, the proposed restriction does **not** preclude the attorney from examining and inspecting public files and records, nor does it prohibit the direct solicitation of the prospective client. What it does do is impose the absolute minimal period of time prior an attorney being able to forward the solicitation. This "waiting period" of fourteen (14) days will be even shorter if the attorney for the Plaintiff files a Proof of Service, further reducing the impact of the restriction.

Our Michigan Court Rules intuitively recognize the problem with advance "notice"; a justification for issuance of an *ex parte Order* pursuant to MCR 3.207(B) is the fact that "notice" in and of itself might "precipitate adverse action before an order can be issued."

Suppressing all family law cases is neither reasonable nor cost effective.

The possibility of physical assault, kidnaping, or pillaging the marital estate is real. However, is the best alternative "suppressing" all Family Law cases? While this preemptive approach might address the problems here in Michigan, this is not a panacea: (1) Not all, most of, or very many Divorce cases will benefit from suppression. (2) It is inconceivable that Michigan County Clerks would embrace the additional cost and person-power required to effectuate this suppression. (3) File suppression directly impacts what we intuitively recognize as the "public right to know".

Conclusion: A fourteen (14) day waiting period is a narrow restriction in support of a compelling public interest.

Family law cases involve unique considerations not present in other civil matters. Personal injury cases do not normally involve assaults between family members, threats of bodily harm, pillaging of bank accounts, and the waste of the marital estate. Family law attorneys deal with these unique issues on a daily basis.

A compelling argument can be made that the *standard of care* for Family Law attorneys mandates injunctive or *ex parte* relief at the commencement of every high conflict Divorce case. However, this remedy can be totally frustrated if the Defendant who is the subject of the Personal Protection Order or the Injunction is made aware of the pendency of the action prior to being formally served.

Is the proposal of the Family Law Council *bullet-proof*? Hardly. However, the fact that someone other than an attorney, or a newspaper, or a friend or relative may also be able to check public filings, does **not** alter the fact that Attorneys are subject to a stricter code than the public⁸, and attorneys should not be actively participating in a course of conduct which will frustrate valid Court Orders and the public policy underlying Personal Protection Orders and Injunctions.

The suggestion that lawyer *trolling* "causes" assaults or kidnaping or depletions of the marital estate mis-states the issue. A *Personal Protection Order* or an *Ex Parte Order* is a piece of paper, and many violent actions occur subsequent to issuance and service of these pieces of paper.

The fact that these incidents occur is neither a barometer nor a head count on the number of assaults which are avoided because of their issuance and timely service of process. The Michigan Statutes enabling PPOs and Injunctions mirror the public policy of the State of Michigan mandated that certain conduct must be deterred through valid Court Orders.



The Family Law Council overwhelmingly supports the adoption of a narrow window of time to obtain and serve Personal Protection Orders, Injunctions, and ex parte Orders without the "advance notice" served by *trolling* attorneys being the trigger for irreparable harm. A fourteen (14) day pause in *trolling* is a minimal restriction upon Family Law attorneys who have the privilege of practicing law in Michigan.

This proposal is narrowly drawn, and specifically geared to addressing potential violation of valid Court Orders prior to Defendants being served with legal process. Judge Hammond "got it right" when he issued the clarion call for controlling *trolling*.

Endnotes

1. The proposed waiting period would not apply to Civil litigation generally and be specifically limited to Family Law cases including Divorce, Personal Protective Order, Paternity and other related matters.
2. Emphasis added to *Shapero* excerpt.
3. *Shapero*, *supra*, citing *In Re MJ*, 455 U.S. at 203.
4. "The State can regulate such abuses and minimize mistakes through far less restrictive and more precise means, the most obvious of which is to require the lawyer to file any solicitation letter with a state agency." *In Re MJ*, 455 U.S. at 206"
5. *Central Hudson Gas & Electric v Public Service Commission*, 447 U.S. 557, 564, 568-69 (1980).
6. *Board of Trustees v Fox*, 492 U.S. 469,480 (1989); prior decisions such as *Central Hudson Gas* have never required that the restriction be the absolutely least severe; the test is whether there is a "reasonable fit" between the government ends and means. *Posadas de Puerto Rico Associates v Tourism Company of Puerto Rico*, 478 U.S. 328, 340 (1986).
7. In many Michigan Counties, the Family Law Judge will **not** immediately issue Ex Parte Orders, and require a day or longer to review the pleadings, Affidavits, and consider the scope of the injunction. Likewise, many Ex Parte Orders have to be mailed to the attorney for service, which likewise takes a couple of days for delivery; then the party must be personally served with the Summons & Complaint and Ex Parte Orders.
8. The permission to practice law "may rightly be regarded as a privilege"; *Falk v State Bar of Michigan*, 411 Mich 63,90 (1981). Being an attorney means being subject to many restrictions that the public as a whole is not subject to; examples include but are not limited to: self-reporting of misconduct; IOLTA requirements; free speech regarding pending cases, and countless other limitations on the conduct of attorneys.



Family Law Attorneys Rally to Change Court Rules Regarding Solicitation

By Lisa R. Speaker
lspeaker@speakerlaw.com

Family Law attorneys around the State of Michigan have come together in an attempt to amend the Michigan Court Rules or Michigan Rules of Professional Conduct to prohibit solicitation of clients (also known as "trolling") in domestic relations case for at least 14 days after service of process. The genesis of this movement is the Family Law Section's grave concern that attorneys are soliciting business



Lisa Speaker

from potential clients by notifying them that a divorce action has been filed before that person has been served with process. In the family law context, such early solicitation can have tragic consequences. Oftentimes, the couples are still living under the same roof when the divorce action is filed. The defendant spouse may have a history of domestic violence and have a violent reaction to learning from a third party that his spouse has filed for divorce. One attorney commented that "the moment that an abuser learns that a domestic violence victim is acting to try to end the abuse, is the moment of the greatest danger that the abuser will kill or seriously harm the victim and/or any children." There is also a risk that, before service of process, the defendant spouse could leave the state or the country with the couple's children. Other attorneys have reported that chances of reconciliation have been destroyed by a "trolling" attorney who notifies the defendant spouse of the action. Indeed, family law cases involve unique risks to vulnerable

parties, as well as to innocent children, which are not present in other areas of law.

The Family Law Council, on behalf of the State Bar of Michigan's Family Law Section, has requested the Representative Assembly to adopt the following resolution:

RESOLVED, that the State Bar of Michigan supports an Amendment to either the Michigan Rules of Professional Conduct (MRPC) or the Michigan Court Rules regarding the solicitation of potential Family Law clients by attorneys.

FURTHER RESOLVED that the State Bar of Michigan proposes either an Amendment to the Michigan Rules of Professional Conduct, §7.3 (adding a new section "c") or an addition to the Michigan Court Rules, §§8-3000, Administrative Rules of Court the following:

"In no matter involving a Family Law case filed in Michigan Courts, shall any attorney contact or solicit a prospective party for purposes of establishing an attorney client relationship, where the attorney had no prior or family professional relationship, until the first to occur of the following: fourteen (14) days from the date of the filing of the particular case, or service of process upon the party in the case."

Currently there are no restrictions preventing attorneys from soliciting legal representation of a party before the individual is personally served with divorce process, including Ex Parte orders intended to safeguard a party's physical and financial safety. While information regarding case filings is readily available through personal inspection of public filings, and through the internet, there are alarming incidents of attorneys soliciting defendants in family law matters by mail, before those individuals even know that an action has been filed or orders entered. The Council felt that there is a particular risk to parties, or even minor children, by the receipt of family law actions from third parties' unsolicited mailings, in contrast with the customary service of a summons and complaint and other pleadings. The Council has grave concerns about the consequences of third party solicitations, which are occurring with increasing frequency, and which are offered



Family Law

under the pretense of merely alerting unwitting individuals to the existence of legal proceedings when, in fact, the purpose is for commercial gain. Although many family law practitioners feel that the 14 day limitation is too short (and would like to see a complete ban on solicitation until service of process is effected), the proposed resolution is at least a step in the right direction.

The Representative Assembly has expressed concern about the First Amendment consequences of the proposed

The genesis of this movement is the Family Law Section's grave concern that attorneys are soliciting business from potential clients by notifying them that a divorce action has been filed before that person has been served with process. In the family law context, such early solicitation can have tragic consequences.

resolution and want assurance that the harm is not just hypothetical. Consequently, they have asked attorneys or their clients to provide examples of specific instances of problems that have arisen as a result of parties, or children, or others, receiving such mailings. Many family law attorneys firmly believe that the proposed resolution is a narrow time place and manner restriction on a third party's First Amendment rights. If you or anyone you know has a story to share, please contact Lisa R. Speaker so that the story can be included in the presentation to the representative assembly in March 2010.

REPRESENTATIVE ASSEMBLY - MARCH 27, 2010
Family Law Council Proposal
"Family Law Attorneys Rally to Change Court Rules Regarding Attorney Solicitations"
Attachment #2

ATTORNEY FEEDBACK NEEDED!

If you have a story to share about a client's experience with solicitation in a family law matter, including specific instances of problems that have arisen as a result of parties, or children, or others, receiving such mailings, please send your comments to Lisa R. Speaker (lspeaker@speakerlaw.com) so they can be shared with the Representative Assembly at the March 2010 meeting.

Law Office of Amy Yu, P.C.
30300 Northwestern Highway, Suite 114
Farmington Hills, Michigan 48334

Amy A. Yu
Gail M. Towne, Of Counsel
www.amyyulaw.com

(248)932-0100 Office
(248) 932-1734 Fax
ayu@amyyulaw.com

February 5, 2010

To Whom It May Concern:

Re: Trolling

Dear Sir/Madam:

I have encountered several incidences of my clients being contacted by other attorneys prior to being served a complaint for divorce.

1. My client (wife) received a letter advising her that her spouse has filed for a divorce. She had no idea. We found out later that her husband was having second thoughts and was working hard to try to reconcile and rebuild the marriage. When my client found out that he had already filed, she felt betrayed, as he had been "so nice". There was no chance for any reconciliation.

2. My client (husband) filed for a divorce. Immediately after he filed, the parties' son was hit by a car and had a head injury, so my client did not want his wife served until the crisis was over and the son was stable. The wife received two letters from [REDACTED] and [REDACTED] that her husband had sued for a divorce and that she needed representation. This only added more fuel to the crisis fire.

Attorneys that are soliciting clients that they have no relationship with and are trying to directly advertise need to find other ways to get clients. There are potentially dangerous situations that could be precipitated by this type of solicitation:

- If a party has filed, but is trying to get ex parte orders entered, the other side can be alerted and clean out bank accounts and move all assets because they have not yet been served.
- If a party is worried because the spouse has made threats that they will take a child out of state, the spouse is alerted, but not served, and runs with the child, what remedies are available?
- If there are potential domestic violence issues, sometimes we need to make sure that a client and the children are out of the home when the spouse is served so that safety is taken into account.

Sincerely,

Amy Yu, P.C.

By: Amy Yu
AY:wmk

REPRESENTATIVE ASSEMBLY - MARCH 27, 2010
Family Law Council Proposal
Correspondence - Amy Yu, Chair-Elect of Family
Law Council re: dangers of solicitation
Attachment #3

LAW OFFICES OF HENRY S. GORNBEIN

40900 WOODWARD AVENUE, SUITE 111
BLOOMFIELD HILLS, MICHIGAN 48304

TELEPHONE (248) 584-3444 / FAX (248) 584-3222

WEBSITE: <http://www.familylawofmichigan.com>
hgornbein@familylawofmichigan.com

Henry S. Gornbein*

Mary Anne Noonan

*Fellow American Academy of Matrimonial Lawyers

January 14, 2010

MS ELIZABETH A SADOWSKI
ATTORNEY AT LAW
431 6TH STREET
ROCHESTER MI 48307

Dear Liz:

I am writing to follow up on our telephone conversation of yesterday with regard to the issue of solicitation. I find it to be a reprehensible practice and have had it impact upon at least three cases in the last four years. In each of these cases, I was dealing with sensitive situations and all of sudden, out of nowhere, my client or the opposing client was sent a solicitation letter.

Most recently, a client received one where I was accepting service for the wife (the husband had filed), and then the letter came. Enclosed is a copy of the letter from [REDACTED]

To say the least, my client was very offended by this letter as were the clients in the two other cases.

To me it is reprehensible; it gives a very bad connotation to lawyers, and it can be dangerous. Several situations come to mind. The first is where there is domestic violence and everything has to be carefully orchestrated to prevent someone from being injured or even killed. A letter sent to the perpetrator of domestic violence, where everything is being carefully orchestrated, can result in a tragedy.

The second situation we discussed is where someone files for divorce and is waiting for a birthday, holiday, or religious event, or even a wedding, before having the papers served. This can be extremely upsetting and can ruin a family event, to say the least.

A third situation is where someone is filing, but holding onto the papers because of either difficulty in obtaining service or because there may be an issue with regard to custody or even asset removal. Having a letter come in a situation like this can cause horrible consequences.

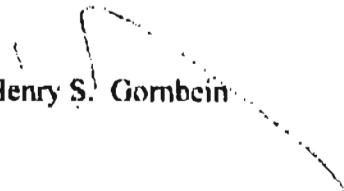
I feel very strongly that this should be totally banned. I understand the free speech argument, but at the very least there should be some type of rule that these letters are not permitted for a minimum of 21 days so that someone can be properly served or a case can be handled in the appropriate manner, especially where there are sensitive issues as I've discussed

REPRESENTATIVE ASSEMBLY - MARCH 27, 2010
Family Law Council Proposal
Correspondence - Henry Gornbein, A.A.M.L.
re: soliciting is "reprehensible" and "can result in
a tragedy", January 14, 2010
Attachment #4

Mr. Elizabeth A. Sadowski
Page Two
January 14, 2010

If there is anything else that I can do, please let me know.

Best regards for the New Year.


Henry S. Gornbein

HSG/wg
Enclosure

REPRESENTATIVE ASSEMBLY - MARCH 27, 2010
Family Law Council Proposal
Correspondence - Henry Gornbein, A.A.M.L.
re: soliciting is "reprehensible" and "can result in
a tragedy", January 14, 2010
Attachment #4

LAW OFFICES OF
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

November 13, 2009

Ruth [REDACTED]
[REDACTED]
Novi, MI 48377

RE: Richard [REDACTED] Hoenle vs. Ruth [REDACTED]
Oakland County Circuit Court

Dear Ms. [REDACTED]

In reviewing certain court records from the Oakland County Circuit Court in Pontiac Michigan, it appears that your spouse has filed divorce proceedings against you as set forth above.

In that regard, I would be interested in representing you in that case. With over 20 years of legal experience, I think we could develop an effective strategy to deal with your case including dealing with issues relating to spousal support, child support, interim orders, custody, property settlement and the like.

I would be happy to discuss your case with you over the phone or in my office **AT NO CHARGE TO YOU**. You should be advised that we accept visa/mc and easy payment plans. In certain cases, we may be able to get your spouse to either pay your attorney fees or get you reimbursed for your fees.

You can call me at 248-224-6696 with any questions you may have or to have a free consultation regarding your case. I usually handle phone consultations every day (Including Saturdays and Sundays) from 7:00 AM until 11:00 PM.

You should know that all consultations, by phone or in office, are strictly confidential and although you may have numerous questions about the case and the ultimate outcome, we can usually answer all questions you may have about the case in less than one hour.

Very truly yours,


[REDACTED]
Attorney at Law

REPRESENTATIVE ASSEMBLY - MARCH 27, 2010
Family Law Council Proposal
Sample Solicitation: November 13, 2009
Attachment #5

* Letter arrived at the marital home Monday
11/16 before the summons was served

LAW OFFICES OF
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

December 11, 2009

Kristine [REDACTED]
[REDACTED]
Waterford, MI 48327

RE: Steven [REDACTED] vs. Kristine [REDACTED]
Oakland County Circuit Court

Dear Ms. [REDACTED]

In reviewing certain court records from the Oakland County Circuit Court in Pontiac Michigan, it appears that your spouse has filed divorce proceedings against you as set forth above.

In that regard, I would be interested in representing you in that case. With over 20 years of legal experience, I think we could develop an effective strategy to deal with your case including dealing with issues relating to spousal support, child support, interim orders, custody, property settlement and the like.

I would be happy to discuss your case with you over the phone or in my office **AT NO CHARGE TO YOU**. You should be advised that we accept visa/mc and easy payment plans. In certain cases, we may be able to get your spouse to either pay your attorney fees or get you reimbursed for your fees.

You can call me at 248-224-6696 with any questions you may have or to have a free consultation regarding your case. I usually handle phone consultations every day (including Saturdays and Sundays) from 7:00 AM until 11:00 PM.

You should know that all consultations, by phone or in office, are strictly confidential and although you may have numerous questions about the case and the ultimate outcome, we can usually answer all questions you may have about the case in less than one hour.

Very truly yours,



[REDACTED]
Attorney at Law

REPRESENTATIVE ASSEMBLY - MARCH 27, 2010
Family Law Council Proposal
Sample Solicitation: December 11, 2009
Attachment #5

From: John Hammond [jhammond@att.net]
Sent: Thursday, December 03, 2009 11:46 PM
To: Elizabeth Sadowski
Subject: R/A presentation

Liz, It is essential, in my opinion, to stress that, the moment that an abuser learns that a domestic violence victim is acting to try to end the abuse, is the moment of the greatest danger that the abuser will kill or seriously harm the victim and/or any children. Well-advised victims plan when they can escape with the least danger to themselves and their children. If a scumbag attorney solicites business from the defendant before the victim can escape - we may well have a homicide result.

Some very fine Justices, and a significant number of R/A members, may not be aware of these facts, so obvious to domestic law practitioners, and therefore we need to present external studies that will educate our audience. I feel that published studies and/or reports, with a war story or two, would be much more effective than a handful of war stories alone.

I was one of those who urged keeping the "safety period" (or whatever it is called) short because I fear that too long a period would result in rejection of the proposal, and that is the **last** thing we want.

John T. Hammond
Saint Joseph

From: Laurel Fink [laurelfink@comcast.net]
Sent: Thursday, December 03, 2009 8:08 PM
To: 'Elizabeth Sadowski'; 'Family Law Listserv'
Subject: RE: [MI Family Law] Request for your comments: attorney solicitation letters

Liz: I have not had any experience with this situation although I have followed past threads about it with great interest.

Although you have not specifically solicited comments, I must say that 14 days is, based on my experience, inadequate. I can't speak to other counties but long gone are the days when an attorney could walk a complaint through filing, go to the assigned judge's chambers and leave within an hour with signed ex parte orders in Oakland and Wayne counties. In point of fact, both Wayne and Oakland counties have turn-arounds on entry of ex parte orders averaging a week. This being the case, by the time the attorney obtains signed orders, gets the package into the process server's hands and service is accomplished, it can easily be more than two weeks from filing.

I would also point out that it is very common (at least in my practice) for a client to request that I file *but delay service until some event* - often a holiday, vacation, special event for a child, etc. The solicitation should not be permitted (I am so tempted to put a "period" there) until service is accomplished. End of story.

"Not all who wander are lost." *Gandalf*
Laurel Stuart-Fink
(248) 626-5450
www.laurelfink.com
www.laurelfinkphotography.com

REPRESENTATIVE ASSEMBLY - MARCH 27, 2010
Family Law Council Proposal
E-correspondences regarding problems & dangers
of solicitation
Attachment #6

From: Chris Campbell [ccampbell@charterinternet.com]
Sent: Thursday, January 14, 2010 1:22 PM
To: Elizabeth Sadowski
Cc: 'family law list serve'
Subject: Re: [MI Family Law] Anti trolling effort

Elizabeth Sadowski wrote:

We know it is sleazy, and degrades our profession, but we have to live with that sort of thing in a free society. What we don't have to tolerate is the harm it visits on the people we serve.

By "free society," you're making reference to our traditional preference for a relative lack of regulation. We often hear "it's a free country, ain't it?" when somebody is annoyed by regulation that limits their chosen behaviors. A better view is that we should allow uncircumscribed freedoms except when they cause unacceptable harm to others. The other day I was reflecting on how many of the new cars are really well made now. They are durable, efficient, and safe, at least as compared with their predecessors in the bad old unregulated days. In the 1950s, the market offered many vehicles with flashy looks, a tendency to rust away quickly, a fondness for lots of cheap gas, and passenger protections that were no better than when cars usually traveled at 20 mph. Regulation was required to protect us from the clearly demonstrable harms that come from colliding at 70 mph. It was required to protect us from exhaust emissions and gas guzzling.

I tend toward the absolutist end of the free speech spectrum generally, with a couple exceptions. One is for corporate speech, since corporations aren't people and are legal fictions created for specific purposes (limited liability and capital gathering). Another is for commercial speech that has little to do with subjects of common interest or current debate. We regulate defamatory speech because its value, if any, is far below the level of harm it causes. It seems to me that we can regulate lawyer behavior without creating any danger to public debate or good governance. We've regulated lawyer behavior for years, restricting what we can and cannot say, without any apparent harm to the common weal, as it were. I can't reveal my client's confidences. I can't have ex parte discussions with a judge about a case. I can't bring up certain subjects in court proceedings under the rules of evidence or in the face of limiting orders. I don't see any reason why my important liberties will be affected if I can't send letters to people who'll be hearing from the process server soon enough, anyway. And most of us probably have a sense that, more often than not, the ones who are doing this aren't the cream of our crop, anyway.

Chris Campbell
TC

REPRESENTATIVE ASSEMBLY - MARCH 27, 2010
Family Law Council Proposal
E-correspondences regarding problems & dangers
of solicitation
Attachment #6

From: Chris Campbell [clcampbell@charterinternet.com]
Sent: Friday, December 04, 2009 12:49 PM
To: John Hammond
Cc: 'Elizabeth Sadowski'; 'Family Law Listserv'
Subject: Re: [MI Family Law] Request for your comments: attorney solicitation letters

John Hammond wrote:

Liz, It is essential, in my opinion, to stress that, the moment that an abuser learns that a domestic violence victim is acting to try to end the abuse, is the moment of the greatest danger that the abuser will kill or seriously harm the victim and/or any children. Well-advised victims plan when they can escape with the least danger to themselves and their children. If a scumbag attorney solicites business from the defendant before the victim can escape - we may well have a homicide result.

Some very fine Justices, and a significant number of R/A members, may not be aware of these facts, so obvious to domestic law practitioners, and therefore we need to present external studies that will educate our audience. I feel that published studies and/or reports, with a war story or two, would be much more effective than a handful of war stories alone.

I was one of those who urged keeping the "safety period" (or whatever it is called) short because I fear that too long a period would result in rejection of the proposal, and that is the last thing we want.

In almost all of my divorce cases, there is some form of abuse and it's usually violent. That's a criterion for case acceptance. But fortunately, I live in a region in which PPOs are readily granted. That is based on three things. First, we have a good statute. It allows prompt relief and also a prompt hearing at the respondent's request so as to provide due process in the rare instances of wrongful issuance. Second, we have an excellent DV shelter organization in most of my counties, and they are very good at helping petitioners organize their factual statements so as to make an effective request. Third, our judges are sensitive to the DV phenomenon and they grant PPOs freely when needed.

Because most of my clients have a PPO by the time the divorce is filed, the abusive situation has already been terminated. This means that the moment of danger may have passed by the time the divorce is filed. But the greater finality of a divorce, as opposed to a PPO, may prompt a violent reaction even after a PPO. Or, on the other hand, it may lessen the shock of the divorce filing to the defendant. I have not seen statistics.

If it is less common elsewhere for PPOs to be in place when divorces are filed in abusive marriages, perhaps the bar ought to be working to make the PPO process more effective in the regions where it is not. The statute has made a huge difference in the lives of protected people where I practice because the protection is available and because violations tend to be prosecuted.

Meanwhile, imposing some sort of protective period for attorney solicitations may be important. Where I practice, for those defendants whom we can't serve with summons & complaint

REPRESENTATIVE ASSEMBLY - MARCH 27, 2010
Family Law Council Proposal
E-correspondences regarding problems & dangers
of solicitation
Attachment #8

promptly, the first notice of the divorce filing is often the letter scheduling a conference with the FOC for temporary custody & support interviews. In really abusive cases, we have asked the FOC to withhold the notice until after service.

Chris Campbell
TC

From: Merry McQuiddy [merry@mcquiddylaw.com]
Sent: Friday, December 04, 2009 5:03 PM
To: 'Elizabeth Sadowski'
Subject: RE: [MI Family Law] Request for your comments: attorney solicitation letters

Ms. Sadowski:

I have heard from more than one of my clients (I cannot now remember which ones) who previously had been solicited (or whose spouses were solicited) within two or three days after the case was filed. Fortunately, none of them were harmed because of the contact. However, having been the Director of Probation at a District Court in Michigan for twelve years handling hundred of domestic violence matters, I thought the potential harm in this practice was obvious. I adjusted my family law practice to include a discussion with every new client about the possibility of their spouse being solicited by an attorney before we have chosen to notify him/her of the divorce action. With those clients subject to possible domestic violence, I simply will not file the case until my client assures me they are safe. In one instance, that waiting time resulted in the abusive spouse absconding with everything the parties' owned.

I am embarrassed on behalf of my profession when I have to explain this problem to new clients – telling them that some attorneys are so void of sensitivity to the possible harm they may cause or so desperate for work that they would behave in such a manner.

Please forward my sentiments to the Section.

Thank you,
Merry McQuiddy, P56537
1985 W. Big Beaver, St. 103
Troy, MI 48084
248 220-1024

From: familylaw-bounces@groups.michbar.org on behalf of Mary G. Falcone, P.C. [marygfalcone@comcast.net]
Sent: Friday, December 04, 2009 2:34 PM
To: Michael H Golob; familylaw@groups.michbar.org
Subject: Re: [MI Family Law] Solicitation of family law cases by trolling(Trolling for dollars)
Attachments: ATT00150.txt

At least twice in 30 years I've seen all chances of reconciliation destroyed by an eager "trolling" attorney notifying the other spouse. In both instances, the divorce action was prompted by a misunderstanding that, had there been no notice, would have been dropped and have resulted in the parties remaining married. The notice of the filing both times drove a wedge in so deep that it could not be saved.

JMO,
Mary G. Falcone
Bingham Farms, MI

REPRESENTATIVE ASSEMBLY - MARCH 27, 2010
Family Law Council Proposal
E-correspondences regarding problems & dangers
of solicitation
Attachment #2
