

PROPOSED AMENDMENT OF MRPC 7.2 [LAW FIRM ADVERTISING]

Issue

Should the Representative Assembly recommend adoption of the following amendment to Rule 7.2 of the Michigan Rules of Professional Conduct:

Rule 7.2 Advertising

- (a) Subject to the provisions of these rules, a lawyer may advertise.
- (b) A copy or recording of an advertisement or communication shall be kept for two years after its last dissemination along with a record of when and where it was used.
- (c) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may:
 - (i) pay the reasonable costs of advertisements or communications permitted by this rule;
 - (ii) participate in, and pay the usual charges of, a not-for-profit lawyer referral service or other legal service organization that satisfies the requirements of Rule 6.3(b); and
 - (iii) pay for a law practice in accordance with Rule 1.17.
- (d) Any communication made pursuant to this rule shall prominently include the name of an active member in good standing of the State Bar of Michigan who is responsible for its content, using the name provided to the State Bar of Michigan.

Synopsis

The current version of MRPC 7.1 mandates that attorney communications with the public not be “false, fraudulent, misleading, or deceptive.” MRPC 7.2 specifies the manner in which attorney advertising is ethically proper. The proposal seeks to add a requirement that each advertisement prominently display the name of an active Michigan attorney as responsible for the advertisement.

Background

On October 1, 2012 the chair of the Civil Procedure & Courts Committee received a letter from Board of Commissioners member Jules B. Olsman suggesting the revision of the MRPC to address the issue of attorneys advertising using a phone number or slogan to solicit business without adequately disclosing the name of the actual attorneys or their firm. For example:







The concern is that consumers could be confused or misled as to the location of the subject lawyers and otherwise be deprived of information necessary for investigation of the location, reputation and standing of the attorneys.

Many jurisdictions have a much more robust rule regarding the contents of attorney advertising. See, e.g., New York Rule of Professional Responsibility 7.1 (<http://www.nysba.org/Content/NavigationMenu/ForAttorneys/ProfessionalStandardsforAttorneys/NYRulesofProfessionalConduct4109.pdf>) and NY DR 2-101 and 2-102 (http://www.law.cornell.edu/ethics/ny/code/NY_CODE.HTM). Most of those more thorough rules include a requirement that the name of the attorney or firm be included. E.g.:

- NY Rule 7.1(H): “All advertisements shall include the name, principal law office address and telephone number of the lawyer or law firm whose services are being offered.”)
- Kentucky Supreme Court Rules SCR 3.130(7.01–7.60), which includes numerous provisions, including the following (as summarized by the Kentucky State Bar at http://www.kybar.org/documents/obc/aac_faq.pdf): “If you advertise a toll free number, the advertisement must indicate the location of the bona fide office(s) where a substantial amount of the services will be performed. In addition, an advertisement must not include a telephone number in a manner that misrepresents the geographic location of the office where the advertised legal services will be performed. If an advertisement includes a telephone number with an area code for a geographic region in which the lawyer or law firm does not maintain a bona fide office, the advertisement must include a statement that the lawyer or firm does not maintain an office within the area code indicated by the telephone number.”

Furthermore, Model ABA Rule 7.2 provides that “Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.”

In light of these much more comprehensive schemes, the proposal is a modest addition to the rules which simply requires publication of an attorney’s name.

Opposition

None known.

Prior Action by Representative Assembly

The action was postponed at the April 27, 2013 meeting to the September 19, 2013 meeting.

Fiscal and Staffing Impact on State Bar of Michigan

None.

**STATE BAR OF MICHIGAN POSITION
By vote of the Representative Assembly on September 19, 2013**

Should the Representative Assembly adopt the above resolution regarding MRPC 7.2?

(a) Yes

or

(b) No