

RULES CONCERNING THE STATE BAR OF MICHIGAN

(Proposed Rule 20 – New – Confidentiality of State Bar Records)

Confidentiality of State Bar Records

Records maintained by the State Bar of Michigan pertaining to the following programs are confidential in nature and not subject to disclosure, discovery or production, unless ordered to be produced by a court after notice and hearing; provided, however, that disclosure and production can be made in response to a lawfully issued subpoena from a law enforcement agency in connection with a criminal investigation, proceeding or trial:

- a. Ethics Committee and Ethics Hotline programs;
- b. Practice Management Resource Center program;
- c. Unauthorized Practice of Law program;
- d. Client Protection Fund program;
- e. Lawyers and Judges Assistance Program.

“Records” includes letters, memoranda, draft opinions, notes, applications, medical records, psychological and counseling records, and any other document maintained in whatever form that is not otherwise made public by the State Bar of Michigan in conducting its business.

Except as Michigan Rule of Professional Conduct 8.3(c) (2) provides, this rule does not abrogate an attorney’s independent obligation under the Michigan Rules of Professional Conduct to report significant, serious professional misconduct.

MEMORANDUM

TO: The Representative Assembly

FROM: Victoria V. Kremski, Deputy Regulation Counsel

RE: Confidentiality of State Bar programs – Proposed Rule

DATE: April 12, 2005

Historically, certain State Bar of Michigan programs have operated on a confidential basis, and asserted this confidentiality policy when faced with demands from third parties for certain information. However, no specific authority exists stating that the programs are confidential in nature. State Bar programs claiming confidential operations are the Ethics Hotline, the Ethics Committee, the Unauthorized Practice of Law Program, the Client Protection Fund and the Lawyers and Judges Assistance Program.

In the process of developing the new law office management program, the State Bar has learned that to operate an effective law office management program, it is necessary to have a confidentiality provision. As with other bar programs, a grant of limited confidentiality encourages members to contact the bar, seeking guidance and advice regarding remedying situations and modifying behavior to avoid future issues. By providing members with resources where they can turn to when struggling with various issues, these programs strengthen the integrity and quality of the profession.

Confidentiality provisions also assist the public in the Unauthorized Practice of Law and Client Protection Fund programs by encouraging the public to come forward when victimized by individuals practicing law, either authorized or unauthorized. If complaints from the public were subject to discovery by subpoena, the public would be chilled from coming forward to report misconduct out of fear or retribution. This is an acute concern in the unauthorized practice of law area.

Although this proposed revision to the Rules Concerning the State Bar of Michigan is somewhat procedural and “housekeeping” in nature, it is brought to the Representative Assembly for consideration

given the impact these programs have on the State Bar members and the important policy considerations of any determination of the confidentiality question.