

PROPOSED AMENDMENT OF RULE 8.2 OF THE MICHIGAN RULES OF PROFESSIONAL CONDUCT REGARDING USE OF A RETIRED OR FORMER TITLE FOR LAWYERS WHO ARE RETIRED OR FORMER JUSTICES, JUDGES, REFEREES, AND MAGISTRATES

Issue

Should the State Bar of Michigan support an amendment of Rule 8.2 of the Michigan Rules of Professional Conduct (MRPC) to add subsections (c) – (e) regarding the use of a “retired” or “former” title for lawyers who are retired or former justices, judges, referees, and magistrates?

RESOLVED, that the State Bar of Michigan supports the proposed amendment to MRPC 8.2 to add subsections (c) – (e) regarding the use of a “retired” or “former” title for lawyers who are retired or former justices, judges, referees, and magistrates.

Rule 8.2 Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct as provided under Canon 5.

(c) A lawyer who is a retired or former justice, judge, referee or magistrate may use a title such as “justice,” “judge,” “referee,” or “magistrate,” when the title is preceded by the word “retired” or “former.” A lawyer shall not use the “retired” or “former” title while engaged in the practice of law or in any other manner that violates Rule 7.1.

(d) A lawyer who is a retired or former justice, judge, referee or magistrate shall not state or imply that the lawyer’s former service as a justice, judge, referee or magistrate enables the lawyer to improperly influence any person or entity, including a government agency or official, or to achieve results by means that violate the Michigan Rules of Professional Conduct or other law.

(e) A lawyer who was removed from office or left office in connection with a Judicial Tenure Commission investigation or proceeding shall not use the “retired” or “former” title.

Comments

Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and

to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

It is more common for lawyers who formerly held a judicial office to return to the practice of law or become involved in law-related services, such as serving as arbitrators and mediators. A uniform use of titles, such as “retired judge” or “former judge” offers more guidance for lawyers providing law-related services, such as arbitrators and mediators. Lawyers engaged in the practice of law shall not use such titles as it may create an unjustified expectation about results the lawyer can achieve contrary to Rule 7.2. This rule does not preclude reference to a former judicial office in biographical information.

Synopsis

The MRPC is silent on the use of titles, such as “retired judge” or “former judge” by lawyers who previously held a judicial position. The proposed amendment addresses this issue by adding subsections (c) – (e).

Background

The MRPC do not address the use of a title for lawyers who previously held a judicial position as defined by MCR 9.201(B) to include justices, judges, referees, and magistrates. It is more common for lawyers who formerly held a judicial office to return to the practice of law or become involved in law-related services, such as serving as arbitrators and mediators. A review of communications regarding law-related services offered by lawyers who previously held judicial position indicates inconsistencies regarding this issue that may be contrary to the MRPC. The proposed amendment of Rule 8.2 provides ethical guidance and creates uniformity regarding the use of such titles.

Opposition

None known.

Prior Action by Representative Assembly

None pertaining to the proposed amendment.

January 22, 2000 - Approved recommendation that a subjective test be used to determine “actual malice” under Michigan Rule of Professional Conduct 8.2(a).

Fiscal and Staffing Impact on State Bar of Michigan

None known.

STATE BAR OF MICHIGAN POSITION
By vote of the Representative Assembly on April 22, 2017

Should the Representative Assembly adopt the above resolution to support an amendment of Rule 8.2 of the Michigan Rules of Professional Conduct (MRPC) to add subsections (c) – (e) regarding the use of a “retired” or “former” title for lawyers who are retired or former justices, judges, referees, and magistrates?

The above Resolution should be adopted.

(a) Yes

or

(b) No