

## PROPOSED AMENDMENT OF MRPC 7.1 [LAW FIRM ADVERTISING]

### Issue

Should the State Bar of Michigan adopt the following proposal to amend Rule 7.1 of the Michigan Rules of Professional Conduct:

A lawyer may, on the lawyer's own behalf, on behalf of a partner or associate, or on behalf of any other lawyer affiliated with the lawyer or the lawyer's law firm, use or participate in the use of any form of public communication that is not false, fraudulent, misleading, or deceptive. A communication shall not:

- (a) contain a material misrepresentation of fact or law, or omit a fact necessary to make the statement considered as a whole not materially misleading;
- (b) be likely to create an unjustified expectation about results the lawyer can achieve, or state or imply that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; ~~or~~
- (c) compare the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or
- (d) advertise the lawyer's services under the heading of a phone number, image or icon without also prominently including the full name of the lawyer or law firm.

### Synopsis

The current version of MRPC 7.1 mandates that attorney communications with the public not be "false, fraudulent, misleading, or deceptive." The Rule goes on to outline three specific examples of prohibited conduct. The proposal seeks to add a fourth, relating to the use in advertising of a custom phone number, image or icon without also adequately displaying the name of the attorney or law firm.

### 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 MRPC 7.1 to address the issue of attorneys advertising using a phone number to solicit business without adequately disclosing the name of the actual attorneys or their firm. 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](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](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.”

In light of these much more comprehensive schemes, including new rules addressing internet marketing, the proposal is a modest addition to the rules which simply requires publication of the attorney’s name or law firm.

### **Opposition**

None known.

### **Prior Action by Representative Assembly**

None known.

### **Fiscal and Staffing Impact on State Bar of Michigan**

None.

### **STATE BAR OF MICHIGAN POSITION By vote of the Representative Assembly on April 27, 2013**

Should the Representative Assembly adopt the above resolution regarding MRPC 7.1?

(a) Yes

or

(b) No