

LITIGATION SECTION

Respectfully submits the following position on:

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ADM File No. 2002-24

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The Litigation Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Litigation Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter but is authorizing Committee on Professional Ethics to advocate their position.

The total membership of the Litigation Section is 2,180.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 22. The number who voted in favor to this position was 12. The number who voted opposed to this position was 0.

Report on Public Policy Position**Name of section:**

Litigation Section

Contact person:

Thomas F. Cavalier

E-mail:TCavalier@bsdd.com**Proposed Court Rule Amendment:**[2002-24 - Proposed Amendment of Rule 7.3 of the Michigan Rules of Professional Conduct](#)

The proposed addition of subrule (c) of MRPC 7.3 would require a lawyer who seeks professional employment from a prospective client to designate the writing as an advertisement by prominently displaying the words “Advertising Materials” on the outside envelope (or brochure, pamphlet, or postcard) and at the beginning and end of every written, recorded, or electronic communication.

Date position was adopted:

November 17, 2010

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting

Number of members in the decision-making body:

22

Number who voted in favor and opposed to the position:

12 Voted for position

0 Voted against position

10 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

The Litigation Section of the State Bar of Michigan is recommending that the proposed language set forth above NOT be adopted as a revision to MRPC 7.3.

It appears that the revision to the rule is an attempt to dovetail the Michigan Rule with the ABA Model Rules, Rule 7.3. While the proposed paragraph (c) of a revised MRPC 7.3 may be proposed to deal with certain predatory advertising techniques directed at very specific groups who find themselves with a very specific legal problem or need, the Litigation Section believes such predatory advertising is dealt with already by the prohibition on deceptive advertising, or at a minimum, should be dealt with by a modification of the Rule of Professional Conduct that specifically addresses these predatory activities.

As written, the proposed amendment is too broad. It fails to distinguish between sophisticated potential clients and those who are more susceptible to the undue influence of such predatory advertising. This would impose unnecessary costs and burden on lawyers who communicate with businesses and sophisticated potential clients, without adequately addressing the predatory advertising issue directly.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://courts.michigan.gov/supremecourt/Resources/Administrative/2002-24.pdf>