



You Have a Voice!

Whether long ago or recently, we all took the Lawyers Oath and solemnly swore to the following:

I will in all other respects conduct myself personally and professionally in conformity with the high standards of conduct imposed on members of the bar as conditions for the privilege to practice law in this state.

[Revised] Michigan Rules of Professional Conduct

This portion of the Lawyers Oath refers to our obligation to comply with the Michigan Rules of Professional Conduct (MRPC or Rules) adopted in 1988 and provided in our annual *Bar Journal* Directory. Some of these rules are about to change... and if you are currently practicing law, those changes will have a significant impact on you and your practice, whether you know about them or not.

You may be wondering why the MRPC are about to change. In 1997, the American Bar Association formed the Commission on the Evaluation of the [Model] Rules of Professional Conduct (also known as Ethics 2000). The Ethics 2000 Commission amendments to the Model Rules were adopted by the ABA in 2001 and 2002. The Michigan Supreme Court requested the Ethics Committee of the State Bar of Michigan to review the Model Rules and propose revised Rules specific to Michigan, which they did in 2003. With regard to some rules, the committee did not recommend any changes. With regard to others, the committee recommended new language consistent with the Model Rules. In November 2003, the Representative Assembly debated numerous Proposals and made 23 recommendations to the Supreme Court regarding the MRPC. The Supreme Court reviewed the committee and Assembly rec-

ommendations and in July 2004, published for comment Proposed (revised) MRPC.

[New] Michigan Standards for Imposing Lawyer Sanctions

MRPC 1.0(b) provides that, “[f]ailure to comply with an obligation or prohibition imposed by a rule is a basis for invoking the disciplinary process.” I presume that the vast majority of us do not envision ourselves violating any ethical rules, although I must caution you that “lack of knowledge” of a rule or its violation is not a defense in a disciplinary proceeding. Hence, the importance of understanding how these Rules are about to change.

If you have the unfortunate circumstance to find yourself in the disciplinary system, you may ultimately be subject to sanctions. Since 1986, Michigan has used “Standards for Imposing Lawyer Sanctions” created by the American Bar Association, along with case law from Michigan and other jurisdictions. In 2000, the Michigan Supreme Court asked the Attorney Discipline Board (ADB) to propose Standards specific to Michigan, which they did in 2002. At the same time, Donald D. Campbell, a former prosecutor for the Attorney Grievance Commission, presented his own set of proposed Standards to the Supreme Court. The ADB version is very consistent with the ABA Standards. The Campbell version strays significantly from the ABA Standards, in structure, terminology, and recommended sanctions. The Supreme

Court reviewed both versions and in 2003, published for comment Proposed Michigan Standards for Imposing Lawyer Sanctions (MSILS or Standards).

Representative Assembly

A significant aspect of this process is that the Supreme Court expressly “welcomes the views of all” to “afford interested persons the opportunity to comment on the form or merits” of both the Proposed Rules and Standards. ADM File No 2003-62 (MRPC) and ADM File No. 2002-29 (MSILS). With regard to the MRPC ultimately published for comment, the Supreme Court incorporated 19 of the 23 recommendations made by the Assembly. With regard to the MSILS published for comment, the Supreme Court incorporated language from both the ADB and Campbell versions. Clearly, the Supreme Court is reviewing and considering all submitted commentary.

At its January 22, 2005 meeting, the Representative Assembly was scheduled to debate four new MRPC Proposals and fifteen MSILS Proposals. Due to blizzard conditions, the Assembly deferred those Proposals to its April 16 meeting and requested the Supreme Court to allow it to submit formal comments after expiration of the Court’s comment period. The Assembly also requested that the Court conclude its deliberations on the MRPC before taking action on the MSILS, since the Standards will need to be compatible with the revised Rules. The Supreme Court promptly extended the comment

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period to June 1 and confirmed that “the MRPC will be finalized prior to the publication of a final order regarding the MSILS.”

You Have a Voice

On April 16, the Representative Assembly will gather in Lansing to debate and comment on the MRPC and MSILS. The Assembly consists of approximately 150 lawyers from around the state who represent *you*. We welcome your input and encourage you to share your wisdom and experience. We created a website that allows everyone to view the significant issues and submit commentary for the Assembly’s consideration. (RA Discussion Board: <http://repasssembly.michbar.org>) The Proposals before the Assembly are also located at the State Bar website (<http://www.michbar.org/generalinfo/assembly>) along with numerous links to the Supreme Court website and reports from the ADB, Campbell, and the State Bar Grievance Committee.

You may be wondering why you should speak up. The answer is simply that you have practical experience regarding how these Rules will affect the practice of law. You have the opportunity to give input on the Rules and Standards *before* they are established by the Court. In April, the Assembly will debate MRPC Proposals and comment on written informed consent requirements, duties to prospective clients, ownership of lawyer’s files and records, communications with parties represented by counsel, fee agreements/non-refundable retainers, and transition provisions for the new Rules. MSILS Proposals before the Assembly involve the use of admonitions, isolated acts of negligence, failure to hold property in trust or to avoid conflicts of interest, definitions of knowledge and injury, the use of injury/harm, etc.

Take a few minutes to review the issues. Think about submitting comments to the Assembly or directly to the Supreme Court. Submit a comment to be posted on the RA Discussion Board. Remember that you will be bound by the Rules and possibly subjected to the Standards whether you know them or not. You can’t complain about the result if you have the opportunity and choose not to be a part of the process. You have the opportunity; we look forward to hearing from you! ♦

