

RULES OF THE COMMITTEE

Rule 1. JURISDICTION.

- A. The Committee may recommend amendments to the Michigan Rules of Professional Conduct and other standards of professional conduct for appropriate approval, and may review proposed amendments.
- B. The Committee may express its written opinion concerning the propriety of professional conduct of lawyers.
- C. The Committee shall not resolve questions of law.
- D. Verbal responses of the Committee, a member of the Committee, or a member of the Committee's staff are not binding on the Committee.

Rule 2. COMPOSITION.

The membership of the Committee shall include lawyers. The Committee may have more than 15 members.

Rule 3. RECOMMENDING AMENDMENTS.

- A. The Committee may draft proposed amendments to the Michigan Rules of Professional Conduct and other standards of professional conduct upon its own motion or the request of any person.
- B. The Chairperson or the Chairperson's designee shall present proposed amendments to the Representative Assembly or Board of Commissioners in appropriate form.
- C. Amendments approved by the Representative Assembly or the Board of Commissioners shall be forwarded by the Executive Director to the Supreme Court with a recommendation for adoption.

Rule 4. REQUESTING AN OPINION.

- A. The Committee may draft opinions concerning lawyer ethics.
- B. The Committee may express its written opinion when requested to do so by the State Bar President, Board of Commissioners, Representative Assembly, Attorney Discipline Board, Attorney Grievance Commission, Executive Director, or individual members of the State Bar inquiring about their own contemplated conduct. The Committee shall not render opinions in response to inquiries from individual members concerning conduct that has already taken place.
- C. The Chairperson and the Committee may initiate opinion requests on matters of interest to the bar or which Committee research has shown need clarification or resolution.

Rule 5. FORM OF OPINION REQUEST.

A. Requests for opinions shall be submitted to Committee Counsel in writing, and shall identify the inquirer by name, "P" number, address, and phone number.

B. Every opinion request shall include as a minimum:

1. A complete statement of the facts surrounding the subject of the inquiry.

2. A clear and concise statement of the ethical question(s) for which an opinion is being sought.

3. A summary of the rules, opinions, caselaw and other authority that the inquirer has already consulted concerning the question(s) raised.

C. If the Chairperson and Counsel concur that adequate authority exists to answer the inquiry posed, the inquirer will be advised of the applicable authority and no opinion will be issued.

D. Upon request of inquirer, Counsel shall withhold the inquirer's identity from the Committee.

Rule 6. CONFIDENTIALITY.

A. In order to encourage members to seek Committee guidance on ethics issues and to facilitate open deliberation of issues among Committee members, identities of inquirers, specific facts of particular opinion requests, and circulated drafts that have not been approved by the Committee are considered confidential and should not be released to persons outside the Committee.

B. A Committee member may seek input from sources outside the Committee regarding the legal issues or general factual background involved in an inquiry when doing so will assist the member in drafting or commenting on an opinion.

C. The Chairperson or Counsel may publicly confirm or deny that a particular ethics issue is the subject of a pending ethics inquiry.

Rule 7. SCOPE AND EFFECT OF OPINIONS.

A. The scope of an opinion is limited to the facts stated in the opinion. The Committee is not a fact-finding body and has no obligation to investigate inquiries beyond the information presented for the Committee's review by the inquirer. The Committee is not required to address all of the facts presented, but may limit the scope of an opinion to those facts necessary to resolve the particular inquiry.

B. Opinions of the Committee do not have the force and effect of law and may not be relied upon as an absolute defense to a charge of ethical misconduct.

C. An opinion shall reference the rules, cases and other authorities that bear upon the result reached in the opinion. The Committee does not resolve

questions of law; however, opinions may cite to relevant legal authorities that clarify the history, philosophy or application of ethical rules.

Rule 8. FORMAL AND INFORMAL OPINIONS.

A. An informal opinion is prepared and issued by the Committee after it has been circulated and approved by not less than two-thirds of the Committee membership. Informal opinions generally deal with situations of limited and individual interest or application. Informal opinions shall bear the designation "I" for "informal" and the opinion number.

B. Formal opinions are prepared by the Committee and, upon approval by not less than two-thirds of the Committee membership, submitted to the Board of Commissioners for approval. Formal opinions deal with matters of general and substantial interest to the public, address situations which affect a significant number of members of the Bar, or modify or reverse prior formal opinions.

C. The Board of Commissioners shall consider each referral from the Committee and may take the following action:

1. Approve or modify the opinion and direct the Committee to release the opinion as approved or modified to the inquirer as an informal opinion; or
2. Approve or modify the opinion and direct the Committee to release the opinion as approved or modified as a formal opinion of the Board.
3. Reject the opinion and direct that no opinion be issued in the matter.

D. Any opinion that modifies or reverses a prior formal opinion must be submitted to the Board of Commissioners for approval.

Rule 9. RECONSIDERATION.

A. The Committee may on its own motion or upon written request of any member of the bar reconsider any formal or informal opinion. A request for reconsideration by a member of the bar shall state at a minimum:

1. the number of the opinion to be reconsidered;
2. the reasons for requesting reconsideration and any additional facts or authorities not cited in the opinion.

B. If the Committee determines reconsideration of an informal opinion is appropriate, a new informal opinion shall be drafted incorporating distinguishing material and approved by not less than two-thirds of the Committee membership. If the Committee determines reconsideration is not appropriate, the Chairperson shall so notify the inquirer.

C. If the Committee determines reconsideration of a formal opinion is appropriate, a new formal opinion shall be drafted incorporating distinguishing material and the new formal opinion, if approved by not less than two-thirds of the Committee, shall be submitted to the Board of Commissioners for approval. If the Committee determines reconsideration of a formal opinion is not appropriate, the Chairperson shall so notify the inquirer, who may appeal the decision of the Committee to the Board of Commissioners by sending a written request to the attention of the Executive Director no later than 30 days after being notified of the Committee's declination to reconsider the formal opinion.

Rule 10. PUBLICATION.

A. The text of all formal opinions and the syllabi of all informal opinions shall be published in the Michigan Bar Journal as soon as practicable after release.

B. A subject matter index of ethics opinions shall be published periodically.

Rule 11. FILE RETENTION.

A. Once an ethics opinion has been issued, or a determination has been made that an opinion will not be issued in a matter, the opinion file shall be closed. In closing an opinion file, legal reference materials shall be removed and catalogued as appropriate and the remaining contents shall be reordered by date of correspondence.

B. A closed opinion file shall be maintained for six months after the date of publication of the opinion in the Michigan Bar Journal, or six months from the date of the determination not to issue an opinion.

C. After six months, the initial inquiry pertaining to each opinion issued shall be retained as a confidential permanent record, and the remainder of the opinion file may be destroyed.

Rule 12. MEETINGS.

A simple majority of the Committee membership shall constitute a quorum for the purpose of conducting business other than taking action on opinions. A vote of two-thirds of the Committee membership is required in order for an opinion to be adopted, approved as a formal opinion, reconsidered, modified, or withdrawn.