

# Order

Michigan Supreme Court  
Lansing, Michigan

July 19, 2011

ADM File No. 2002-24

Rescission of Amendment  
of Rule 7.3 of the Michigan  
Rules of Professional Conduct  
and Proposed Amendment of  
Rule 7.3 of the Michigan  
Rules of Professional Conduct

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Robert P. Young, Jr.,  
Chief Justice

Michael F. Cavanagh  
Marilyn Kelly  
Stephen J. Markman  
Diane M. Hathaway  
Mary Beth Kelly  
Brian K. Zahra,  
Justices

On order of the Court, and in light of concern expressed regarding the amendments adopted in this file by order of the Court dated May 19, 2011, the order that entered on that date is rescinded, effective immediately, and the proposed language below is published for comment.

Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [www.courts.michigan.gov/supremecourt/resources/administrative/ph.htm](http://www.courts.michigan.gov/supremecourt/resources/administrative/ph.htm).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated by underlining and deletions are indicated by strikeover.]

## Rule 7.3 Direct Contact With Prospective Clients

- (a) Except as otherwise allowed under this rule, ~~a~~A lawyer shall not solicit professional employment from a prospective client with whom the lawyer has no family or prior professional relationship when a significant motive for doing so is the lawyer's pecuniary gain.
- (b) Prohibited methods of communication. For purposes of this rule, ~~T~~the term "solicit" includes contact that is directed to a specific recipient:
- (1) in person, or
  - (2) by telephone or telegraph, or

- (3) by letter or other writing, or
  - (4) by other communication, ~~directed to a specific recipient, but does not include~~
- (c) Allowable forms of communication. With the exception of those circumstances absolutely prohibited in subsection (d), for purposes of this rule, the term “solicit” does not include:
- (1) letters addressed or advertising circulars distributed generally to persons who are not known to need legal services of the kind provided by the lawyer in a particular matter, but who are so situated that they might in general find such services useful, ~~nor does the term solicit include “sending or~~
  - (2) “[t]ruthful and nondeceptive letters to potential clients known to face particular legal problems,” as elucidated in *Shapiro v Kentucky Bar Ass’n*, 486 US 466 (1988). If the written solicitation concerns an action, or potential claim, that pertains to the person to whom a communication is directed, or a relative of such person, the communication shall not be transmitted less than 30 days after the injury, death, or accident occurred that has given rise to the action or potential claim.
  - (3) Every written communication from a lawyer described in subsections (1) and (2) shall include the words “Advertising Material” on the outside envelope, if any, and at the beginning and ending of any written communication, unless the lawyer has a family or prior professional relationship with the recipient. If a written communication is in the form of a self-mailing brochure, pamphlet, or postcard, the words “Advertising Material” shall appear on the address panel of the brochure, pamphlet, or postcard. The requirement to include the words “Advertising Material” shall apply regardless whether the written communication is transmitted by regular United States mail, private carrier, electronically, or in any other manner.
- ~~(b)~~(d) A lawyer shall not solicit professional employment from a prospective client by written or recorded communication or by in-person or telephone contact even when not otherwise prohibited by paragraph (a), if:

- (1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or
- (2) the solicitation involves coercion, duress or harassment.

Staff Comment: Under the proposed amendments, MRPC 7.3 would be reformatted and would describe the general prohibition regarding a lawyer's solicitation, and also would describe the types of communication that are allowed, including a lawyer's general advertising, and a lawyer's targeted communications to potential clients who are facing legal problems (as protected by *Shapiro v Kentucky Bar Ass'n*, 486 US 466 [1988]). The proposed amendments of MRPC 7.3 would require that inclusion of the designation "Advertising Material" on general advertising and targeted communications applies only to written materials, including e-mailed communications, but not to television or radio advertisements. The amendment also requires a 30-day period to pass before an attorney may contact a potential client after a death, injury, or accident.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Supreme Court Clerk in writing or electronically by November 1, 2011, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). When filing a comment, please refer to ADM File No. 2002-24. Your comments and the comments of others will be posted at [www.courts.mi.gov/supremecourt/resources/administrative/index.htm](http://www.courts.mi.gov/supremecourt/resources/administrative/index.htm).



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

July 19, 2011

*Corbin R. Davis*

Clerk