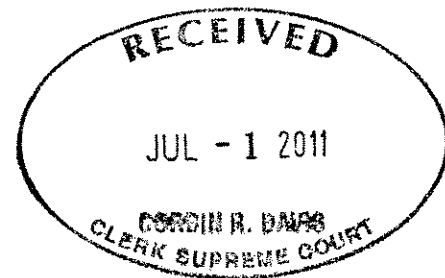


WILLIAM B. DUNN
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June 28, 2011

Michigan Supreme Court
c/o Corbin R. Davis, Clerk
P.O. Box 30052
Lansing, Michigan 48909



Re: ADM File No. 2011-05
Proposed Amendments of Rules of Professional Conduct

Honorable Justices:

Although I am perplexed by the overall effort evidenced by ADM 2011-05 of attempting to adapt concepts intended as guides to interpretation as black-letter rules, with attendant uncertainty and ambiguity, I must express specific opposition to two published changes.

I. The published change to Rule 1.13(a) would impose a rule of conduct for Michigan lawyers that is contrary to, and in violation of, duties of a lawyer under more recently developed standards of lawyer conduct (see, e.g., the Model Rules of Professional Conduct) as well as federal legislation (see, e.g., Sarbanes - Oxley). The sentence proposed to be added appears in comment as a general truism, followed, in the same comment, by noting that the principle is limited, and transcended by the lawyer's duty to the entity. This proposed change states the contrary. It is simply bad law.

The implications of the proposed Rule 1.13(b) are troubling. As Comment [9] to the Model Rule wisely notes, describing obligations of corporate lawyers in the context of governmental entities is *beyond the scope of the Rules*. A different level of confidentiality for government lawyers is not supported by Rule 1.6, and a suggestion that a government lawyer needs to be more secretive about or subservient to renegade government officials than a lawyer for another entity is unacceptable substantive as well as disciplinary law.

The Court should adopt the text of present Model Rule 1.13 and its Comments as a preferred solution.

II. The order publishes a proposed change to Rule 4.1 to include a sentence extracted from Comment. While there is some truth to the principle that silence may be fraud,

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assertion that mere silence is misrepresentation is legally incorrect. The Court should consider that the sentence it has extracted from Comment and placed in the rule is in a section of the Comment captioned "Fraud by Client". The Michigan Comment follows the extracted sentence by: "**Thus**, where the lawyer has made a statement that the lawyer believed to be true when made but later discovers that the statement was not true, in some circumstances failure to correct the statement may be equivalent to making a statement that is false." (emphasis added) Obviously silence *in this context* may be wrong, but the context is necessary to understand the limitation of the principle. Extracting the sentence and putting it in black letter disconnects the two thoughts entirely, and purports to provide a rule that is not supported in law.

Model Rule 4.1 solves the problem addressed by the Michigan Comment more forthrightly by stating that a lawyer shall not knowingly fail to disclose a material fact "when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6." If you think a Rule change is needed to state this principle, adopt the Model Rule text. The proposed change is overbroad and mostly wrong. Silence is generally required by the Rules. There should be no bald statement that there is - or may be -- an overall duty not to be silent. The published change is misleading at best. At worst, it creates risk that any time a lawyer does not reveal something useful to a third person, a grievance can be filed - and prosecuted, without any reliable standard of duty. That is a proposition that the Court should find unacceptable.

Respectfully,

A handwritten signature in black ink, appearing to read "William B. De" followed by a long horizontal flourish.

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