January 31, 2018

Via Electronic Mail

American Bar Association
Standing Committee on Ethics and Professional Responsibility
321 North Clark Street
Chicago, Illinois  60654

Re: Proposed change to ABA MRPC 1.0(f)

Dear Committee Members:

The purpose of this letter is to express concern regarding the proposed change to the definition of “solicitation” in Model Rule 1.0(f). Regrettably, I am unable to attend your public forum in Vancouver. I spoke with my long-time friend and colleague, Elizabeth Tarbert, about this matter and she graciously provided me with your contact information.

I urge the Committee not to pursue adoption of this proposed rule change. The current rule prohibits lawyers from initiating any in-person, telephone, or real-time electronic communication with prospective clients (with limited exceptions for pro bono representation or contacts with other lawyers, family, close personal friends, and former clients). The proposed rule would continue that prohibition only if the lawyer contacts “a specific person reasonably believed to need legal services in a particular matter.”

The proposed change essentially would allow lawyers to “cold call” prospective clients. There are several reasons why this is not a good idea:

- As the Supreme Court has recognized, lawyers are advocates trained in the art of persuasion. See Edenfield v. Fane, 507 U.S. 761 (1993); Ohralik v. Ohio State Bar Ass’n, 436 U.S. 447 (1978).

- A lawyer might cold call someone who, unknown to the lawyer, actually is in need of legal services.
The proposed change will create uncertainty for lawyers in the disciplinary process. The current rule is a bright line that is easily understood and enforced. In contrast, what a lawyer “reasonably believed” in a particular situation is far less clear. The proposed change will introduce needless ambiguity and unnecessarily expose lawyers to disciplinary danger.

The public perception of lawyers and the legal system is not likely to be positively affected by making in-person solicitation more prevalent.

My comments are my own and are informed by more than thirty years of experience in legal ethics, including service as: Florida Bar Ethics Director; professor teaching legal ethics as ABA-approved law schools; lawyer representing attorneys in ethics matters; expert witness in professional responsibility cases; and chair or member of state bar ethics committees in Florida, Alabama, and Tennessee.

Thank you for the important work that you do, and for your consideration of these comments.

Sincerely,

Timothy P. Chinaris
Associate Dean for Academic Affairs
Professor of Law