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To: Comments Mailbox
Subject: Comment on Attorney Retention of Website Pages -RPC 7.2(b)

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May 2, 2018

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on RPCs and Attorney Retention of Website Pages
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey, 08625-0037

Dear Judge Grant:

Please accept this letter in response to the recommendation of the Committee on Attorney Advertising (CAA) and the Advisory Committee on Professional Ethics (ACPE) that Rule of Professional Conduct 7.2(b) be amended to require lawyers to capture all material on their websites in the form of an electronic backup on at least a monthly basis. For the following reasons, I respectfully oppose such amendment:

1. The proposed amendment will be unduly burdensome for sole practitioners and small firms. Sole practitioners and small firm lawyers already must spend a substantial portion of their work day on administrative matters, just to comply with existing ethical and regulatory requirements. They generally do not have sufficient administrative staff to handle these matters. Imposing additional administrative burdens on already overworked lawyers is not equitable, absent a clear and pressing need to prevent manifest unethical conduct. I respectfully submit that such clear and pressing need is lacking here.
2. Imposing an additional regulatory burden on sole practitioners and small firm lawyers can only detract from the quality of such attorneys' representation of their clients. There are only so many hours in the day. Time spent on administrative matters is time that cannot be spent on the zealous representation of our clients, which, after all, is our primary responsibility.
3. Even if, *arguendo*, there is a clear and pressing need to impose this new requirement, the burden that the proposed new rule imposes is outweighed by its lack of benefit. My (admittedly cursory) research indicates that prior versions of websites can already be easily ascertained by anyone who wants to, without any need to obtain a backup of the subject website. See, e.g., <https://www.wikihow.com/Browse-an-Old-Version-of-a-Website> ; or <http://smallbusiness.chron.com/look-older-versions-pages-47362.html> .

Accordingly, I respectfully oppose the proposed amendment.

In the alternative, if Rule of Professional Conduct 7.2(b) must be amended, I respectfully submit that any amendment simply proscribe an attorney from taking affirmative steps to prevent prior versions of the attorney's website (less than three years old) from being discovered by the common methods referenced in the web articles cited in number 3 above, or by any comparable method.

Respectfully submitted,

Marc S. Berman