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August 29, 2011

Corbin R. Davis, Esq.
Clerk of the Michigan Supreme
Court
P.O. Box 30052
Lansing, MI 489009

Re: ADM File No. 2010-07

Dear Mr. Davis:

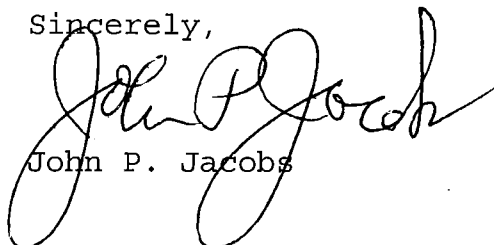
The controversy swirling around the 25% Referral Fee "Cap" is about to get much more complicated, I predict.

As I understand it, a plaintiff's lawyer fed up with the one-third of one-third referral fees' formula (effectively, by custom, about 11.11% of the total "**amount recovered**") has pushed for a proposed rule in MRPC 1.5(f) effectively making the upper limits at "25% of the "**amount recovered**" or, in effect, a maximum of approximately 3%, as probably intended.

The problem is 25% of the "**amount recovered**" is, pragmatically, 25% of the **entire** award. Note MCR 8.121(B) which limits attorneys fees overall to one-third (33.33%) of the "**amount recovered**," a term of art tantamount applicable to the whole magilla, the award, the interest, the sanctions, all of it. While the drafters may have intended to limit referral legal fees to roughly 2.75% of the "**amount recovered**", sloppy draftsmanship has sent referral lawyers a whale of a windfall as the referral lawyer could get 25% of the 33% of the entire award while the real lawyer who tried the case scraps for 8%. Since the *in pari materia* doctrine requires the Supreme Court to translate the "**amount recovered**" of longstanding MCR 8.121(B) over to proposed MRPC 1.5(f) for 25% of the "**amount recovered**", you are talking about fee distribution confusion of epic and epochal proportions.

I guess I am against this zany rule as currently drafted.

Sincerely,



John P. Jacobs