

**FAMILY LAW SECTION**

**OFFICERS**

**CHAIR**

Barbara J. Kelly  
Friend of the Court Office  
101 E. Huron St  
P.O. Box 8645  
Ann Arbor, MI 48107-8645

**CHAIR-ELECT**

Amy A. Yu, Farmington Hills

**RECORDING SECRETARY**

James J. Harrington, III, Novi

**CORRESPONDING SECRETARY**

Traci L. Rink, Pontiac

**TREASURER**

Connie R. Thacker, Grand Rapids

**COUNCIL MEMBERS**

Carol F. Breitmeyer, Detroit  
Neil M. Colman, Sterling Heights  
Lorne B. Gold, Bloomfield Hills  
Hon. Richard B. Halloran, Jr.,  
Detroit  
Jules Hanslovsky, E. Lansing  
Elizabeth Kitchen-Troop  
Donna E. Mobilia, Grand Rapids  
Phillip B. Navarre, Jackson  
Antoinette R. Raheem, Bloomfield  
Hills  
Erika Leuffen Salerno, Kalamazoo  
Rebecca E. Shiemke, Ann Arbor  
Todd S. Selin, Lansing  
Liisa R. Speaker, Lansing  
Robert Charles Treat, Jr.,  
Woodhaven

**Ex Officio**

Carlo J. Martina, Plymouth

**COMMISSIONER LIAISON**

Donald E. McGinnis, Jr., Troy

February 24, 2010

Mr. Corbin R. Davis  
Clerk, Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

Re: ADM 2009-06

Dear Mr. Davis:

At its February 6, 2010 meeting the Family Law Council considered the proposed changes to MRPC 1.5 embodied in ADM 2009-06. The vote of the Council followed months of careful study, consideration, and evaluation of the impact of the proposed changes upon our clients and Family Law practice. The Council voted to oppose portions of both Alternative proposals for MRPC 1.5 as written and suggest changes as outlined below.

The vote of the Council was as follows:

(1) Council voted unanimously, 19-0, to **oppose** the proposal of the Attorney Grievance Commission to reverse the Order in the *Cooper* case regarding minimum, non-refundable fees contained in Alternative B. The definition language as drafted allows attorneys to charge a "general retainer" which is non-refundable and earned when paid. However the language does not allow future services to be credited against the retainer and specifically states in section (b) (3) that such retainers are paid "... solely to commit the lawyer to represent the client and not as a fee to be earned by future services." While the Council agrees the retainer is earned when paid and not by future services the language as written does not allow the attorney to credit the charge for future services against the retainer before billing for services, a practice specifically approved by the Supreme Court in *Cooper*, SC: 135053, issued December 12, 2008. Council unanimously adopted and approved addition of the following proposed language in the Definitions section as subparagraph (6) to clarify this point:

*"Minimum non refundable fee" is a fee a lawyer charges for agreeing to provide legal services, but instead of being paid as a general retainer only to secure the Attorney's promise to provide services, is a minimum, non-refundable fee, for future services and expenses incurred. Fees for future services provided by the attorney in the matter may be credited against this "minimum non-refundable fee".*

February 24, 2010

Page 2 of 2

(2) Similarly Council would suggest the addition of language to Alternative A, (e) that would specifically authorize a non-refundable fee agreement which allowed future services to be credited to the non-refundable fee, while clearly stating that in no event would any portion of the fee be returned to the client.

(3) Council voted unanimously, 19-0 to **support** the position of the Attorney Grievance Commission in Alternative B (c) (4) that "A fee agreement shall not give sole discretion to an attorney to enhance a fee."


Council further voted unanimously, 19-0 to **add** the following language to (c) (4): "An attorney and client may consent in writing to an 'enhanced fee' in a case, which may take into consideration the results obtained for a client, provided that such fee is "reasonable" pursuant to all of the factors set forth in MRPC 1.5 (a) and is agreed to by attorney and client."

(4) Council voted unanimously, 19-0 to **strike** the proposed "Commentary" to MRPC 1.5 as proposed by the AGC. Council does not agree that an enhanced fee agreed to by attorney and client is a "contingent fee". Council does not agree with the characterization that "enhanced" fees which take into consideration results obtained on behalf of a client (and is specifically encompassed in MRPC 1.5 ) necessarily results in an impermissible "bonus" or a "contingent fee" arrangement. Council was also concerned that specific Court approval of attorney fees by Trial Courts (for ex. *Olson v Olson*, 256 Mich App 619, 637 (2003)) could be the subject of *after-the-fact* attorney fee attack, and the Trial Court undermined.

(5) Council voted 17-2 to **oppose** the requirement that a client be provided "prior" notice of each and every withdrawal from the client's IOLTA deposit. A reasonable period of thirty (30) days after the IOLTA withdrawal in which to bill a client would avoid the administrative burden of simultaneously notifying a client every time an expense was paid, advanced, or otherwise incurred on behalf of the client.

The Family Law Section would like a representative to testify at any hearings conducted on this proposal.

Sincerely

  
Barbara J. Kelly  
Chair