

Order

Michigan Supreme Court
Lansing, Michigan

May 3, 2011

Robert P. Young, Jr.,
Chief Justice

ADM File No. 2010-07

Michael F. Cavanagh
Marilyn Kelly

Proposed Amendment of
Rule 1.5 of the Michigan
Rules of Professional Conduct

Stephen J. Markman
Diane M. Hathaway
Mary Beth Kelly
Brian K. Zahra,
Justices

On order of the Court, this is to advise that the Court is considering an amendment of Rule 1.5 of the Michigan Rules of Professional Conduct. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal or to suggest alternatives. The Court welcomes the views of all. This matter will be considered at a public hearing. The notices and agendas for public hearings are posted at: www.courts.michigan.gov/supremecourt/resources/administrative/ph.htm.

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Rule 1.5 Fees

(a)-(b) [Unchanged.]

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or by other law. A contingent-fee agreement shall be in writing and shall state the method by which the fee is to be determined. The agreement also shall state the amount or percentage of fees to be divided or shared among or between lawyers who are not in the same firm. Upon conclusion of a contingent-fee matter, the lawyer shall provide the client with a written statement of the outcome of the matter and, if there is a recovery, show the remittance to the client and the method of its determination. See also MCR 8.121 for additional requirements applicable to some contingent-fee agreements.

- (d) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee in a domestic relations matter or in a criminal matter.
- (e) A division of a fee between lawyers who are not in the same firm may be made only if:
- (1) the client is advised of and does not object to the participation of all the lawyers involved, and approves the amount or percentage of fees to be divided or shared among the lawyers; and
 - (2) the total fee is reasonable.
- (f) Except as otherwise allowed under this rule, a lawyer who refers a case to another lawyer in exchange for a portion of any award under subsection (e) is limited to a maximum referral fee of 25 percent of the amount recovered. However, if the referring attorney participates in the case to an extent that a greater percentage of the amount recovered should be allowed as a reflection of the referring attorney's substantial input of time or cost, or assumption of risk, the referring attorney's share of fees may exceed the maximum referral fee as agreed by the receiving attorney and as approved by the court in which the proceeding takes place.

Staff Comment: The proposed amendment of MRPC 1.5 generally would limit a referral fee to 25 percent of the amount recovered in a case subject to a contingent fee agreement. The maximum fee could be increased if the referring attorney provides substantial input that merits such increased percentage.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by September 1, 2011, at P.O. Box 30052, Lansing, MI 48909, or MSC_clerk@courts.mi.gov. When filing a comment, please refer to ADM File No. 2010-07. Your comments and the comments of others will be posted at www.courts.mi.gov/supremecourt/resources/administrative/index.htm.



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

May 3, 2011

Corbin R. Davis
Clerk