

ADM File No. 2010-07

August 25, 2011

I write to express my stern opposition to the Proposed Amendment to Rule 1.5 of the Michigan Rules of Professional Conduct. The proposal is unprecedented, interferes with the freedom to contract between two sophisticated parties, attempts to “solve” a problem that does not exist, and will only hurt clients and smaller law practices that rely upon referral sources for matters in varying practice areas.

MRPC 1.5 is based on upon ABA Model Rule 1.5, which has been adopted in some form by every state in this country. The ABA version contains no such cap or limit on the amount of a referral fee. In fact, no where in Model Rule 1.5 is there anything approaching the language found in proposed subsection (f). Furthermore, my own research finds no state that imposes any type of cap or limit on referral fees between attorneys.

Why the need for change here in Michigan? Surely it can't be because of attorney advertising. Attorney advertising is prevalent in virtually every single state. In these states, legal practitioners are free to contract their referral fee arrangements. Further, Michigan is fortunate the in-state law firms who do advertise are staffed with legal professionals that meet with clients and work their own case files every single day.

I think the silence in the ABA Model Rule as well all other states speaks volumes. For a long time now the MRPC has respected the ability of sophisticated parties (attorneys) to contract and handle referral fee splits. Attorneys voluntarily undertake an arms-length transaction when deciding upon a referral fee split. We understand, better than anyone in fact, the complexity of the work involved. This general understanding has been explicitly endorsed by the ABA. In addition, and most importantly, the current rule helps the client achieve the best result possible while doing nothing to diminish the eventual award the client receives.

Regulating what has been the explicit domain of legal professionals runs contrary to the Court's long-standing support of granting individuals parties the freedom to contract.

Moreover, I don't see the point in fixing something that's not broken. The current rule already provides important protections for clients. It already provides for the disclosure of a fee between two lawyers who are not in the same firm and allows clients to object if they feel the division is not in their best interest. Frankly, the current rule structure has worked fine for decades, allowing clients to receive honest, competent legal representation while allowing attorneys flexibility in their approach to a matter.

In addition, the proposed changes to MRPC 1.5 will provide a financial disincentive to

refer cases. The unintended results will be obvious. The larger firms who normally refer out specialized cases will keep those files in-house, thereby depriving smaller firms and solo practitioners from work they otherwise would have had. The rich get richer while the little guy loses out. In certain practice areas, the formation of a legal caste system is very real.

Most importantly, the obvious financial incentive to keep rather than refer specialized cases will only hurt the client. In a contingency fee context, an attorney who accepts a referral has a financial incentive to obtain the highest award possible. But this incentive only increases as the amount of the referral fee award increases. This financial incentive benefits the client, the most important party in every case. By placing an artificial 25% limit on referral fees, an attorney with a file may feel more inclined to settle the claim at less than full value. Again, the client is the big loser here. I can't imagine this is what our Bar here in Michigan wants.

Last, I find the proposed amendments will only add confusion. What happens if an attorney consults with an outside attorney on an issue, needs help with brief writing, or assistance with coverage on a motion call? Do we have to ask for and obtain consent from the client or disclose the fee paid for such work each and every time?

Such regulation over attorney-to-attorney case management is again unprecedented and does nothing to advance client representation.

Thank you for your time and allowing me to comment on my opposition to the proposed rule changes.

Eric Steinberg, P69668
The Law Offices of Lee B. Steinberg, P.C.
30500 Northwestern Hwy., Suite 400
Farmington Hills, MI 48334
Ph: (248) 352-7777
Fax: (248) 352-6254
eric@leefree.net
www.leefree.net