

8/31/2011

Re: ADM File No. 2010-07

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

Dear Supreme Court Clerk:

I am writing in opposition to the proposed amendments to MRPC 1.5. I believe the proposed changes will have a negative impact on the legal profession, and more importantly, for the citizenry of our state.

As a lawyer in private practice for over 40 years, I have been asked to represent people faced with many different types of issues. Through the years, I have come to know many lawyers that have developed specialty practices. I myself have developed a specialty practice which over the past 36 years has evolved and changed dramatically. Ultimately, due to the complexity of certain types of litigation, specialty practices inure to the benefit of the public that we serve as well as to the judiciary. Specialty practices promote judicial economy and a much higher level of expertise required for today's complex litigation. If the proposed amendments are adopted, lawyers in general practice are more likely to take on cases in which they lack significant expertise where they have less financial incentive to refer the case to a specialist. This will likely harm the public interest by leaving many Michigan citizens without the best legal representation.

This Court has a long standing history of honoring contracts entered into in arms length transactions. This freedom to contract is essential to our society. As the Court noted in Rory v Continental Insurance Company, 473 Mich 457, the general rule of contracts is that "competent persons shall have the utmost liberty of contracting and that their agreement voluntarily and fairly made shall be held valid and enforced in the Courts." Id at 468.

The proposed new rule at Sub(e)(f) allows for a higher division of the attorney fee where among other things "the referring attorney participates in the case . . . and as approved by the court in which the proceedings take place." Clearly, this will expend valuable judicial time and resources. If judicial review will now be required in all cases where lawyers share responsibility, the courts will spend an exorbitant amount of time on the approval process. Do the judges in this state really need additional burdens placed on their dockets?

The current version of MRPC 1.5 is derived from the ABA version which has been adopted by every state in the country. Significantly there are no states that have limited referral fees. If, in fact, there was a "case brokering" problem in Michigan because lawyers advertise their services, wouldn't it follow that other states would experience the same "problem" because lawyers advertise their services in every state? The fact that all

other states do not impose such limitations in the face of attorney advertising and fee sharing agreements is the strongest evidence that such a "problem" really doesn't exist.

Sincerely,
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