

MICHIGAN SUPREME COURT



Office of Public Information

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FOR IMMEDIATE RELEASE

PROPOSED ATTORNEY ETHICS RULE CHANGES ON AGENDA OF MICHIGAN SUPREME COURT'S SEPTEMBER 28 PUBLIC ADMINISTRATIVE HEARING **Cap on attorney referral fees, pro bono requirements among proposed changes**

LANSING, MI, September 8, 2011 – A proposed rule aimed at capping attorney referral fees in contingent fee cases is on the agenda of the [Michigan Supreme Court's](#) September 28 public hearing.

The rule would apply to cases where the attorney's compensation is an agreed-upon share of the case award or settlement. Under the proposed amendment of Michigan Rule of Professional Conduct 1.5 ([ADM File No. 2010-07](#)), an attorney who refers a contingent fee case to another attorney could receive a referral fee, but the fee would be capped at "25 percent of the amount recovered." The rule change is aimed at discouraging attorneys from operating as brokering services and directing clients to lawyers who pay the highest referral fees. A referring attorney who also contributes a "substantial input of time or cost, or assumption of risk" could receive a larger fee if the other attorney agrees and if the court approves.

Other proposed attorney ethics rule changes ([ADM File No. 2011-05](#)) would amend MRPC 1.1 ("Competence"), 1.2 ("Scope of Representation"), 1.3 ("Diligence"), 1.4 ("Communication"), 1.5 ("Fees"), 1.6 ("Confidentiality of Information"), 1.7 ("Conflict of Interest: General Rule"), 1.9 ("Conflict of Interest: Former Client"), 1.13 ("Organization as Client"), 1.14 ("Client Under a Disability"), 1.15 ("Safekeeping Property"), 1.16 ("Declining or Terminating Representation"), 1.17 ("Sale of a Law Practice"), 3.2 ("Expediting Litigation"), 4.1 ("Truthfulness in Statements to Others"), 4.3 ("Dealing with An Unrepresented Person"), 5.2 ("Responsibilities of a Subordinate Lawyer"), and 8.4 ("Misconduct"). For example, MRPC 1.15 would be amended to add that "A lawyer shall not delay remittance of funds received from third persons as a way to coerce a client to accept a lawyer's statement of payable fees and expenses."

The Michigan Supreme Court periodically holds administrative hearings to allow interested persons to comment on proposed court rule changes and other administrative matters on the Court's agenda. Speakers will be allotted three minutes each to present their views, after which they may be questioned by the Justices. To reserve a place on the agenda, please contact the Office of the Clerk of the Court in writing at P.O. Box 30052, Lansing, Michigan 48909, or by e-mail at MSC_clerk@courts.mi.gov, no later than Monday, September 26, 2011. Requests to speak should include the ADM file numbers for the agenda items the speaker wishes to discuss.

The September 28 hearing will be held in the Supreme Court courtroom on the sixth floor of the Michigan Hall of Justice, 925 W. Ottawa Street, Lansing, Michigan 48915, starting at 9:30 a.m.

Also on the Court's agenda:

- [ADM File No. 2010-11](#), Proposed Amendment of Michigan Court Rule (MCR) 2.511. At issue is whether the Court should amend the rule to provide that a juror who by law is not qualified to serve on a jury (e.g., because he or she is a convicted felon) must be discharged when the court discovers that the juror is unqualified. The amendment is aimed at foreclosing the possibility that unqualified jurors could serve because attorneys did not challenge them.
- [ADM File No. 2010-17](#), Proposed Amendment of MCR 3.707, which applies to modification, termination, or extension of personal protection orders. The court rule would be amended to provide that the respondent in a PPO action may file a motion to modify or terminate the order that the complainant obtained at an ex parte hearing. (While most legal hearings cannot take place without adequate notice to all concerned parties, in some cases a party would be endangered if the opposing party had notice. In such cases, the threatened party or parties may obtain an ex parte court hearing to request temporary judicial relief without notice to, and outside the presence of, other persons affected by the hearing.) The current rule permits respondents to file such motions regardless of whether the complainant obtained the PPO ex parte or after a hearing with notice to all parties.
- [ADM File No. 2010-36](#), Amendment of MCR 3.705, “Issuance of Personal Protection Orders.” The Court will consider whether to retain this amendment, which went into effect on February 1, 2011. MCL 600.2950a(4) requires that a respondent who wants to introduce evidence covered by the rape-shield provision of MCL 750.520j must submit notice and offer of proof at least 24 hours before the hearing. The current court rule provides for one day’s notice of hearing, which would not provide 24 hours’ notice in which to submit the offer of proof. The State Bar of Michigan Domestic Violence Committee recommended amending the rule to provide for two days’ notice of hearing for a sexual assault PPO.
- [ADM File No. 2011-04](#), Amendment of MCR 3.911, “Jury,” and MCR 3.915, “Assistance of Attorney,” both of which apply in juvenile delinquency and child protective proceedings. The proposed amendment of MCR 3.911 would eliminate the 14-day time frame for making a demand for jury trial. Under the amended rule, parties would be required to demand a jury within 21 days of trial, although the court could excuse a late demand “in the interest of justice.” MCR 3.915 provides that, in child protective proceedings, the court must appoint an attorney to represent the parent at the parent’s request, if the court finds that the parent cannot afford to hire an attorney. The proposed change to this rule would clarify that the court must appoint an attorney for the parent even at the preliminary hearing stage.

The Court will also discuss whether to adopt one of two alternative proposals regarding an attorney’s ethical obligation to provide pro bono services ([ADM File No. 2010-18](#); proposed amendments to of MRPC 6.1). Alternative A would clarify that attorneys are not subject to disciplinary proceedings to enforce the pro bono rule. Alternative B would require Michigan attorneys to donate 30 hours of professional time or handle three pro bono cases per year, and/or contribute \$300 or \$500 per year to programs that provide legal services to the poor.

More information, including comments about these proposals, is online at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/index.htm#proposed>.