September 29, 2026

Elizabeth C. Kingston-Miller
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

RE: ADM File No. 2022-19: Proposed Amendments of Rules 1.5, 1.15, and 1.15A, and Proposed Additions of Rules 1.15B and 1.15C of the Michigan Rules of Professional Conduct

Dear Clerk Kingston-Miller:

SBM's Executive Committee considered ADM File No. 2022-19 at its September 2, 2026 meeting and voted to support the proposal as published. When compared to the existing rules, it provides clearer guidance to attorneys regarding advance fees, flat fees, and classic retainers. It promotes appropriate trust-account practices, protects client choice of counsel, and better aligns Michigan's rules with the principle that lawyers may retain only fees that are earned and not excessive.

As the State Bar of Michigan ("SBM") noted in our comment on an earlier iteration of ADM File No. 2022-19, we have a long history of supporting this particular set of proposed amendments to the Michigan Rules of Professional Conduct ("MRPC"). In April 2022, SBM's Representative Assembly overwhelmingly voted to propose amendments to the MRPC—recommended unanimously by the Bar's Professional Ethics Committee ("PEC")—regarding safekeeping of client and third-party property and the management of client trust accounts. The Board of Commissioners voted unanimously to support the first iteration of this proposal published by the Court in 2023.

When the Court opted to republish an amended version of ADM File No. 2022-19 in 2024, SBM's Executive Committee voted unanimously to support this second iteration with further amendments, including a suggestion that the issue of nonrefundable fees be considered separately. The Bar's rationale was that there had been insufficient time to ensure that the issued received the focus and attention it required.

When the Court issued the third iteration of ADM File No. 2022-19 in June of this year, it was reviewed by the PEC, which voted to support it as published for comment. The PEC provided supportive feedback on the issue of nonrefundable fees specifically:

> This Committee supports the proposed amendments as written and provides the following as it relates to non-refundable fees.
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> The Court addressed non-refundable fees in *Grievance Administrator v Cooper*, 482 Mich 1079 (2008). However, the Opinion is brief and does not address the many practical circumstances in which a representation terminates early, including lawyer neglect, a breakdown in the attorney-client relationship, incapacity, death, or discipline. For that

reason, the clearer prospective rule language is preferable to continued reliance on fee labels that invite misunderstanding and inconsistent application. Therefore, State Bar of Michigan ethics counsel, via the Helpline and Ethics Seminars, encourage members to utilize the types of fee agreements provided in this proposal and avoid "non-refundable" fee agreements.

The ABA in Formal Opinion 505, issued May 3, 2023, provides a helpful overview of advance fees, purported non-refundable fees, and the ethical problems created when lawyers attempt to convert advance payments into immediately earned funds by label alone. The opinion concludes that a lawyer may not sidestep the duty to safeguard client funds by calling an advance fee "non-refundable" or "earned upon receipt," and that such a fee may become unreasonable if little or no work is performed.

That reasoning supports the Committee's view that a lawyer must always be able to demonstrate that any fee retained is earned and not excessive. If the lawyer cannot do so, or if the representation ends before the contemplated services are completed, the lawyer may be required to return all or part of the funds in accordance with the governing professional rules.

However, SBM recognizes that there are those within the Bar with other views on these proposed amendments. The Bylaws of the State Bar of Michigan generally prohibit a section of the Bar from advocating public policy positions that are inconsistent with State Bar policy. Nevertheless, in order to ensure that the Court has a full picture of the diversity of viewpoints on this matter, SBM has authorized State Bar sections to submit any and all positions on ADM File No. 2022-19.

SBM thanks the Court for its continued, thoughtful consideration of these proposed amendments to the Michigan Rules of Professional Conduct over the last several years and urges the Court to adopt this iteration of ADM File No. 2022-19.

Sincerely,



Peter Cunningham
Executive Director

cc: Sarah Roth, Administrative Counsel, Michigan Supreme Court
Erika L. Bryant, President