

Order

Michigan Supreme Court
Lansing, Michigan

April 5, 2017

Stephen J. Markman,
Chief Justice

ADM File No. 2013-38

Robert P. Young, Jr.
Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Joan L. Larsen,
Justices

Amendment of
Rule 1.5 of the
Michigan Rules of
Professional Conduct

On order of the Court, notice of the proposed changes and an opportunity for comment having been provided, and consideration having been given to the comments received, the following amendment of MRPC 1.5 is adopted, effective May 1, 2017.

[The present language is amended as indicated below by underlining for new text and strikeover for text that has been deleted.]

Rule 1.5 Fees

(a)-(c) [Unchanged.]

(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.~~

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof, the lawyer's success, results obtained, value added, or any factor to be applied that leaves the client unable to discern the basis or rate of the fee or the method by which the fee is to be determined, or

(2) a contingent fee for representing a defendant in a criminal case.

(e) [Unchanged.]

[The following paragraph is to be added in the Comment following Rule 1.5, after the comment on “Basis or Rate of Fee.”]

Prohibited Contingent Fees

Paragraph (d) prohibits a lawyer from charging a fee in a domestic relations matter when payment is contingent upon the securing of a divorce, or upon the amount of alimony or support or property settlement to be obtained. The amount of alimony, support or property awarded to a client shall not be used by a lawyer as a basis for enhancing the fee. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of postjudgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns.

Staff Comment: At the invitation of the Supreme Court, the Attorney Grievance Commission, the Family Law Council of the State Bar of Michigan, and the Bar’s Committee on Professional Ethics submitted individual proposals to revise MRPC 1.5(d) related to the ability of an attorney to charge “results obtained” or “value-added fees” in a domestic relations case. Proposals by the AGC and Committee on Professional Ethics were combined for purposes of publication, and that proposal was published along with the Family Law Council’s proposal for comment. The Court adopted the AGC-proposed language that clarifies that a lawyer is prohibited from charging a contingent fee in a domestic relations action based on the “results obtained” or “value added.”

The staff comment is not an authoritative construction by the Court. In addition, adoption of a new rule or amendment in no way reflects a substantive determination by this Court.

Bernstein, J., would adopt the alternative published proposal that would allow an attorney and client to agree in writing to an enhanced fee.



I, Larry S. Royster, 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.

April 5, 2017

Handwritten signature of Larry S. Royster in black ink.

Clerk