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Justices of the Michigan Supreme Court
Office of Administrative Counsel
925 W. Ottawa St.
P.O. Box 30048
Lansing, MI 48909

Re: ADM File No. 2013-38
Proposed Amendment to MRPC 1.5(d)

Dear Chief Justice Robert Young and Esteemed Justices of the Court:

It is common knowledge that the legal profession, as a whole, is slow to accept innovation. The ubiquitous fax machine, for example, is routinely used in law office environments, despite being discarded to the trash heap of history in most other segments of the economy. Lawyers are trained to be cautious, after all. Courts, for their part, rely upon appellate decisions dating back more than a century. The legal system does not offer the most fertile ground to sow the seeds of change.

But times are changing nevertheless, and lawyers are beset on all sides from new forms of competition, both from within the profession and outside of it. Family law attorneys compete with web sites purporting to eliminate any need for the involvement of a lawyer. These "do it yourself" web sites have proliferated, which is not beneficial to lawyers, the public, or the overburdened court system. Companies are outsourcing non-litigation matters to overseas "firms."

In the family law context, the billable hour has been the standard measure of the value of an attorney's services. As it is impossible at the outset of a domestic relations case to determine the amount of professional time required to bring the case to a conclusion, the total fee is completely unknown (and unknowable). Some legal consumers believe that the hourly rate fee agreement is the equivalent of a blank check. The risk of the cost of extended litigation falls on the client. Rightfully so perhaps, as it is the client, not the attorney, who makes the ultimate settlement decisions.

Critics of the straight billable hour standard suggest that the attorney does not have an incentive to efficiently bring about the resolution of a case, and that flat fees are more appropriate. The flat fee model has its place in the legal services market, but it merely flip-flops the risk and the incentives. Just as the hourly rate fee could, in some unfortunate instances, lead to delayed outcomes, the flat

fee approach provides the reverse incentive: to settle the case as quickly as possible, even at the expense of the rights of the client. In addition, the risk of extended litigation falls on the attorney, who must then build that risk into the amount of the flat fee in all cases to receive fair compensation.

The "results obtained" method, while not new to the practice of law (or family law), is as an alternative to address some of the perceived deficiencies of the hourly fee and flat fee paradigms. Using a "results obtained" fee agreement, at the end the case the lawyer and client discuss and agree upon a final fee based on the numerous factors outlined in MPRC 1.5, including the results obtained. Such a fee may be more or less than what the fee would have been using only an hourly rate multiplied by the number of hours expended. The risk to both the client and the attorney is limited, and the standard of value is efficiency. As with any fee, the agreed upon fee must be reasonable, considering the professional standing and experience of the attorney, the skill involved, the amount in question, and the difficulty of the case.

All of these three methods for determining fees are equally dependant upon the integrity of the individual lawyer, and of roughly 42,000 state bar members, there are comparatively few issues that arise.

The call for a paternalistic ban on results obtained fees (only in domestic relations cases), fails to consider whirlwind changes in the marketplace for legal services. Much of it seems to be based on the notion that "we've never done it this way." The market demands that we explore ways to give prospective clients an array of options to meet their needs and expectations.

For these reasons, and many others, I concur with the public policy position taken by the Family Law Section of the State Bar of Michigan in 2010, and again in 2014, in support of continuing to allow the results obtained fee to be a permissible option in domestic relations matters (Alternative B).

Thank you for the opportunity to comment on this matter.

Respectfully yours,

DEBRINCAT, PADGETT, KOBLISKA & ZICK

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MK/lm