

May 7, 2015

Justices, Michigan Supreme Court
Office of Administrative Counsel
Hall of Justice
P.O. Box 30052
Lansing, MI 48909

Received

MAY 29 2015

State Court Administrative Office

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

Dear Justices of the Michigan Supreme Court:

The right to enter into a contract is an inherent right. It is an inherent right that inures to all citizens of this state irrespective of whether one of those citizens is a party to a divorce case or an attorney representing a party in a divorce case.

Lawyers and their clients have the right to enter into a contract to govern the economics of their relationship. This is true in family law, as it is true in all areas of our profession. To that end, a lawyer and client may enter into a fee agreement at the beginning of the case where they establish economic terms based on each of their speculations as to how difficult the case may be, how much time may be involved, the potential complexity of the case, how much skill may be involved, the amount involved, the results that might be obtained, and a myriad of other factors. When such an agreement is in the form of a flat fee, both the lawyer and the client are utilizing a degree of speculation as to what might be a fair fee for services that have not yet been rendered. When such an agreement is in the form of hourly charges, neither the lawyer nor the client can precisely project how much time may be involved in bringing a client's matter to a conclusion, nor how much time may be reasonable to spend in bringing a client's matter to a conclusion. In contrast, when such an agreement is based in part on the results obtained, the lawyer and the client discuss and agree at the end of the case what is a fair and reasonable fee based on the results obtained, along with the consideration of the other factors referenced above.

Results obtained fees, which are recognized by MRPC 1.5, have long been utilized in Michigan cases ranging from bankruptcy cases, to real estate cases, to business cases, to family law cases. In none of those cases were the clients in a worse or compromised position by discussing and agreeing to a fair and reasonable fee at the end of the case, rather than at the beginning of the case.

Contrary to that which the proponents of Alternative A advocate, clients are not in a different position at the end of a case than at the beginning of a case to discuss fees. Moreover, contrary to that which the proponents of Alternative A advocate, it has not been overrun by grievances on this subject matter, nor are domestic relations clients any different than any other client. To the extent a client is competent to discuss a fee with his/her lawyer at the beginning of the case, certainly that same client is equally competent to discuss a fee with his/her lawyer at the end of the case, especially when he/she has the benefit of perfect hindsight.

Contrary to that which the proponents of Alternative A advocate, results obtained fees are not unilaterally imposed on clients, rather they are discussed and agreed to between the attorney and the client based on the results obtained, the time and labor required, the complexity of the questions involved, the skill required to perform the service properly, the time limitations imposed by the client or the circumstances, the fee customarily charged for similar services, and the experience and reputation of the lawyers. Consideration of all of the foregoing factors mitigates against the possible risk of an hourly fee or flat fee being disproportionate to the results obtained.

Contrary to that which the proponents of Alternative A advocate, results obtained fees are not contingent fees. Contingent fees guarantee a lawyer a fee based on a randomly selected percentage of the recovery, whereas results obtained fees are essentially fees based on *quantum meruit* that focus on the content of the result and the extent to which the result met the client's objectives.

Contrary to that which the proponents of Alternative A advocate, results obtained fees, which have been upheld by the Michigan Court of Appeals and other states' appellate courts, give a voice to the consumer. Abolishing results obtained fees in family law cases is detrimental to a client's right to negotiate a fair fee for the services provided. We agree with the Family Law Section and the American Academy of Matrimonial Lawyers, and we urge this Court to either (i) reject Alternative A and leave MRPC 1.5 as is, or (ii) adopt Alternative B.

Respectfully,



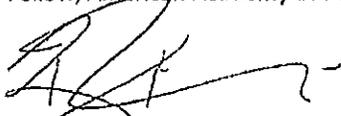
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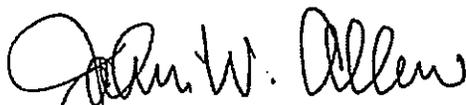
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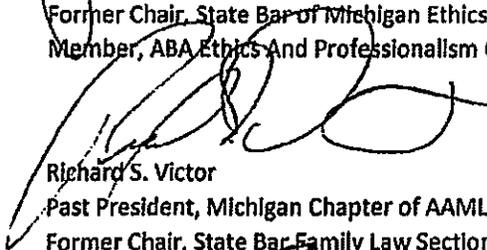
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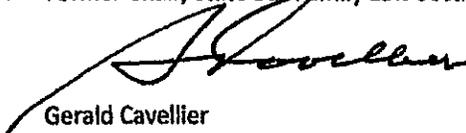
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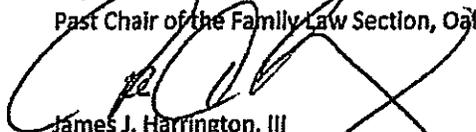
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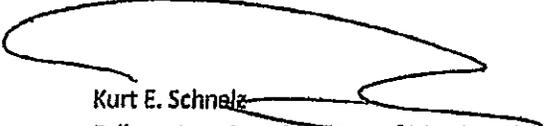
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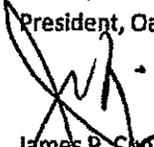
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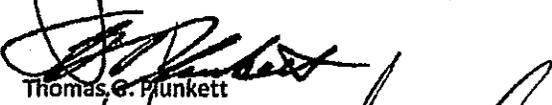
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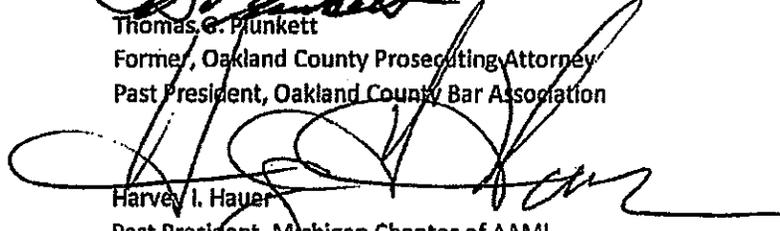
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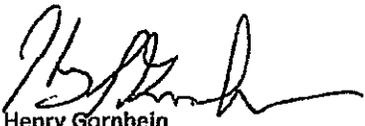
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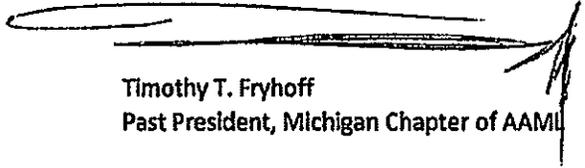
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