

# Order

Michigan Supreme Court  
Lansing, Michigan

March 25, 2015

Robert P. Young, Jr.,  
Chief Justice

ADM File No. 2013-38

Stephen J. Markman  
Mary Beth Kelly

Proposed Amendment of  
Rule 1.5 of the  
Michigan Rules of  
Professional Conduct

Brian K. Zahra  
Bridget M. McCormack  
David F. Viviano  
Richard H. Bernstein,  
Justices

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On order of the Court, this is to advise that the Court is considering alternative amendments of Rule 1.5 of the Michigan Rules of Professional Conduct. Before determining whether either of the alternative proposals should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposals or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [Administrative Matters & Court Rules page](#).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions to the text are indicated in underlining and deleted text is shown by strikeover.]

Alternative A: Would Prohibit “Results Obtained” or “Value Added” Fees  
in Divorce Cases

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 would 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.

#### Alternative B: Would Allow “Results Obtained” or “Value Added” Fees in Divorce Cases

#### 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. An attorney and client may consent in writing to an “enhanced fee” in a case, which may take into consideration the results obtained for a client, provided that such a fee is “reasonable” considering all the factors set forth in MRPC 1.5(a) and is agreed to by attorney and client.

(e) [Unchanged.]

*Staff Comment:* In *In Re Fryhoff*, 495 Mich 890 (2013), the Michigan Supreme Court invited the Attorney Grievance Commission, the State Bar of Michigan Family Law Section and the State Bar of Michigan Standing Committee on Professional Ethics

to submit proposed language that would clarify the Michigan Rules of Professional Conduct with regard to whether it should be permissible for an attorney to charge a “results obtained” or “value added” fee in addition to the customary hourly or other fee a client pays for services. The AGC and the SBM’s Committee on Professional Ethics submitted similar language that would prohibit the charging of such a fee. The SBM’s Family Law Section submitted a proposal that would explicitly allow such a fee to be charged, with the understanding that the fee must still meet the “reasonable” standard for all fees described in MRPC 1.5(a) and with the agreement of the client.

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.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on the proposal may be sent to the Office of Administrative Counsel in writing or electronically by July 1, 2015, at P.O. Box 30052, Lansing, MI 48909, or [ADMcomment@courts.mi.gov](mailto:ADMcomment@courts.mi.gov). When filing a comment, please refer to ADM File No. 2013-38. Your comments and the comments of others will be posted under the chapter affected by this proposal at [Proposed & Recently Adopted Orders on Admin Matters page](#).



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.

March 25, 2015

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk