

Comments on amendments to Rule 1.5 of the Michigan Rules of Professional Conduct.

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Alternative A provides that “A lawyer shall not enter into an arrangement for, charge, or collect:

- (1) Any fee in a domestic-relations matter, the payment or amount of which is contingent upon the *securing of a divorce* . . . **(Emphasis added)** 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*, **(Emphasis added)** or
- (2) A contingent fee for representing a defendant in a criminal case.

My problem with Alternative A is that it is extremely ambiguous. First, it appears that the rule would bar a Matrimonial attorney who is hired to *secure a divorce* for a client or to respond to a Complaint that is filed for a divorce in a no fault state where a divorce will be granted, from charging a client to take a case to represent the client who comes in to hire them to file their divorce or to represent them to secure a counter complaint for divorce or to respond to a complaint for divorce, if in fact the divorce will be granted.

Second, in domestic relations matters, unless a “flat fee” is charged, we can never know how much time; work, effort or the amount and difficulty of issues will be involved in a case when a client first comes in to hire us. Therefore, it would be impossible to tell a client “up-front” how much a divorce/domestic matter will cost them at the time a client hires the attorney. What can be told is that based on what will incur in the future, such as the amount of time, difficulty of issues, valuation concerns, and results or success in the case, a fee will be based and agreed to between the client and the law firm. I do not see how that does not comply with the language of this Alternative A proposal. This contractual arrangement, if agreed to between an attorney and client and if in writing, sets forth the basis and method by which the fee will be determined, once all the knowledge, not known at the time of hiring, is learned, as the case progresses and is near completion or at completion of the case. The language of this Alternative A is confusing. How does it bar value added or enhanced fees, if the contract clearly sets forth that it is *one of the “basis and or methods by which the fee will be determined?”*

Alternative B allows for a lawyer and a client to enter into a contractual agreement that sets forth their understanding of their fee arrangement.

I favor allowing Parties to enter into agreements, which are clear and unambiguous and to recognize the unique practice of family law and the absurdity of only charging a client by way

of hourly rates, which often causes a conflict of interests between a lawyer and their own client. This occurs when a matter can be resolved quickly and efficiently, but a lawyer needs to prolong a matter and drag out litigation in order to justify a more extensive fee or when a lawyer is not compensated fairly for doing extra ordinary services for a client, which the client is the beneficiary of during the course of their representation. As long as the agreement between the lawyer and the client is in writing, clear and understood, is fair and reasonable under all the circumstances of the case, the agreement should be honored.