



THE GOLD
LAW FIRM, PLLC

Lorne B. Gold
gold@goldfamilylaw.com

Edward D. Gold
of counsel
edgold@goldfamilylaw.com

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

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

Dear Chief Justice Young and Honorable Justices:

I write to you to comment upon the proposed amendment to MRPC 1.5. This letter expresses my opinion and not that of The Gold Law Firm or of any organization of which I am a member.

I have been a member of the State Bar of Michigan for upwards of 50 years. I was a founding member of the State Bar Family Law Section and served as its Chairperson and am a recipient of its Lifetime Achievement Award. I was appointed by the Supreme Court to be a member of the initial group of members of the Friend of the Court Advisory Committee and had the privilege of serving as its second Chairperson. I have served as a volunteer investigator for the Attorney Grievance Commission and currently serve as the Chairperson of a hearing panel for the Attorney Discipline Board. I have also been privileged to serve as the President of the Southfield Bar Association as well as the Oakland County Bar Association. I am a member of the American Academy of Matrimonial Lawyers, having served as the President of its Michigan Chapter and a National Vice President. I am also a member of the American College of Family Trial Lawyers, an organization whose membership is limited nationally to 100 family law trial lawyers.

I write to voice my opposition to the proposed amendment supported by the Michigan Attorney Grievance Commission. This is not the first time the Michigan Attorney Grievance Commission has attempted to have MRPC 1.5 amended to bar “results obtained” fees in divorce matters. It’s surprising that this effort is made to apply

only to family law attorneys while lawyers are permitted to charge such fees in Michigan in matters such as bankruptcy, real estate, business and to date in family law cases. In each of these situations, the rules permit clients and attorneys to enter into a contract which governs the economics of their relationship.

A lawyer and client have always had the right to enter into a fee agreement at the beginning of their relationship by which they establish the economic terms of their relationship. There is no reason to believe that clients do not understand a clear and unambiguous written contract setting forth the basis upon which the client will pay and the lawyer will receive fees for the work accomplished on behalf of the client. There is no empirical evidence to the contrary and the Attorney Grievance Commission has not provided any such evidence. Under the present MRPC a lawyer is prohibited, in any matter, from collecting an illegal or clearly excessive fee. This rule has been in effect for decades and it has, over all of those years worked well. The repeated efforts by the Attorney Grievance Commission to change the current rule effecting only family law practitioners shows a clear bias against such practitioners. It calls into question their ethics, without any evidence that there is any reason to do so.

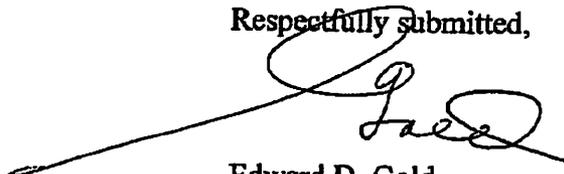
I had the privilege as serving as counsel in the Olson matter. *Olson v Olson*, 256 Mich App 619. Olson specifically approves the enhancement of a base fee in a domestic relations case “pursuant to the ‘value added’ clause of the retainer agreement”, Olson at 637. In Olson the Court specifically upheld the trial court’s findings that the base fee should be enhanced and noted that the Defendant’s own expert and attorneys for both parties established that a value enhancement clause is a common and necessary feature of retainer contracts in “high end” divorce actions. In Olson the Court of Appeals had a direct opportunity to opine on result-oriented fees and chose to affirm such fees.

There should be no misunderstanding regarding the method by which result obtained fees are determined. Such fees are not unilaterally imposed on a client, rather the attorney and the client discuss and agree upon the amount of the fee. This is done by reviewing the time and labor required, the complexity of the questions involved, the skill required to perform the service properly, the time limitation imposed by the client, the experience and reputation of the lawyer and the results accomplished by the lawyer on behalf of the client. In such instances the client (consumer) has a full opportunity to participate in the discussion regarding the fee to be paid to the lawyer. Any effort to abolish this right would clearly be detrimental to the attorney and client reaching agreement with respect to fair compensation. No other area of the law is limited to such fee determinations. Nothing has been demonstrated by the Attorney Grievance Commission which would justify limiting family law attorneys from the opportunity to be compensated on this basis. To change such rules to solely affect the practice of family law is to set that practice apart and to cast aspersions on the ethics of the family law bar. Without any empirical evidence to prove that the right of family law attorneys to receive

result obtained fees should be limited, the adoption of the proposed rule which imposes such a restriction would be clearly discriminatory. The current rules require lawyers to refrain from charging excessive fees. If a lawyer charges an excessive fee the Michigan Attorney Grievance Commission is authorized to issue a complaint for professional discipline. For decades those factors currently in the Michigan Rules of Professional Conduct have worked well to protect clients and the public. There simply is no reason to change the rule. As we have heard on many occasions "If it ain't broke, don't fix it".

Respectfully, I urge the Court to reject the proposed amendment to Michigan Rule of Professional Conduct 1.5.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ed Gold", with a long horizontal line extending to the left.

Edward D. Gold

EDG/caa