

# GOODMAN ACKER

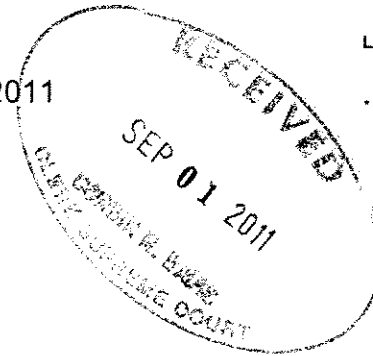
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August 30, 2011



Supreme Court Clerk  
P.O. Box 30052  
Lansing, MI 48909

Re: ADM File No. 2010-07  
Proposed Amendment of Rule 1.5 of the Michigan Rules of Professional  
Conduct (MRPC)

Dear Supreme Court Clerk:

Goodman Acker, PC opposes the Proposed Amendment of Rule 1.5 of the Michigan Rules of Professional Conduct, and urges the Supreme Court to reject this change. Goodman Acker, PC agrees with, and adopts, the objections and comments submitted by the Negligence Law Section Council of the Michigan State Bar Association and the Michigan Association for Justice, but write separately to highlight and add a few points and emphasis one simple question: Why fix something that is not broken?

Goodman Acker, PC consists of attorneys who have a practice in which we are occasionally paying referral fees and at other times receiving referral fees. This has been true for many years, and over those years the current rule has served us as well as our clients, without any problems such that we would support any change to the current rule. In fact, we do not believe that this proposed change would serve the interests of the legal consumer. It is more likely that the change will limit the legal consumer's access to information and to referrals to the better qualified specialists. Referrals occur because there are times when specific lawyers can assist or provide superior services, which is in the interest of the public, the law firm and the judicial system.

As emphasized in both the State Bar Negligence Section and the Michigan Association for Justice comments, the vast majority of Michigan attorneys who practice contingency work and pay or receive referrals fees practice as small businesses. The Michigan Supreme Court has long recognized and enforced the ability of individuals and businesses to freely enter into contracts on whatever terms they choose. In *Terrien v Zwit*, 467 Mich. 56, 648 N.W.2d 602 (2002), the Court, citing previous decisions, stated that "[t]he general rule [of contracts] is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts," citing *Twin City Pipe Line Co. v Harding Glass Co.*, 283 U.S. 353, 356, 51 S.Ct. 476, 476, (1931); see also *Port Huron Ed. Ass'n v. Port Huron Area School Dist.*, 452 Mich 309, 319, 550 N.W. 2d 228 (1996), quoting *Dep't. of*

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*Navy v. Federal Labor Relations Authority*, 295 U.S. App DC 239, 248, 962 F.2d 48 (1992) (discussing the "fundamental policy of freedom of contract" under which "parties are generally free to agree to whatever specific rules they like").

There is no harm to the client by way of Rule 1.5 in its present form. It requires attorneys to inform the client of the fee arrangement between lawyers who are not in the same firm and give them an opportunity to object. This gives the requisite knowledge to the client concerning the fee structure of their case. To require a client to approve the amount or percentage will add more confusion because clients will now believe that their recovery is somehow limited by the percentage they are approving to be shared between the respective attorneys. It will also create unneeded work and, ultimately could cost the client more in attorney fees because there will have to now be numerous calls and appointments regarding referral fee approval by the client, which cost time and money.

The amendment proposes to limit the amount a referring attorney can receive as compensation, without explaining the reasoning behind such a provision. Rule 1.5, in its present form, does not limit or take away the amount a client is to recover in their lawsuit. It simply takes away from the fee that the representing attorney would receive as successful representation of that client. Further, amending Rule 1.5 might have a downward spiral effect to attorneys who are charging an hourly fee to raise their rates to ensure that the referring attorney gets reasonable compensation for their referral, as well as to compensate for the amount of monies they will be losing on their referrals. The Rule, as written, simply allows for professional courtesy and for those inexperienced attorneys to defer to attorneys who have more experience in that area of law.

If the Supreme Court adopts this amendment, it will be creating more situations where attorneys will directly violate another Michigan Rule of Professional Conduct, that being Rule 1.1. That rule prohibits a lawyer from handling legal matters which the lawyer knows or should know that the lawyer is not competent to handle. Limiting the amount of referral fees to 25% of the amount recovered will force incompetent lawyers to handle matters that they once referred out. This will also have a negative effect on first year attorneys, who generally lack the experience and knowledge, to refer cases to more experienced attorneys for the sole purpose of collecting a referral fee.

Further, Rule 1.5, in its present form, allows new attorneys to get their "feet wet" with overload work that law firms are currently faced with. The current state of Michigan's economy finds newly admitted lawyers without jobs, or clients. For many, their only source of income is to try and get on the exhaustive list of county court appointed attorneys, as well as rely on overflow work from law firms. If there is a limit to the amount a referring attorney can receive, it will deter attorneys from referring simple

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matters to new lawyers who need to learn the structure and fundamentals of the judicial system.

Rule 1.5, in its present form, presents a "win, win" for all. It allows the client to receive the expertise that they deserve in their legal endeavor, while allowing the referring attorney benefits for not taking a case that is over their head and to defer those matters to attorneys who are more qualified. Further, if the proposed amendment is accepted, it will create "under the table" deals between some attorneys, therefore jeopardizing the integrity of not only the judicial system, but the legal profession as a whole.

For the reasons set forth above, as well as the reasons contained in the responses submitted by the State Bar Negligence Section and the Michigan Association for Justice, we urge this Court to maintain Rule 1.5 in its present form.

Very truly yours,

GOODMAN ACKER, P.C.

  
Tim Sulolli

TS/bp