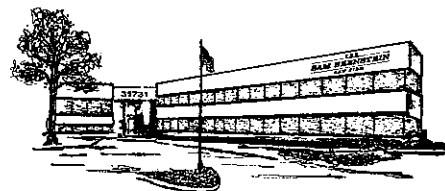


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August 31, 2011

Mr. Corbin Davis
Clerk of the Court
Michigan Supreme Court
P.O. Box 30052
Lansing, MI 48909

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

Dear Clerk Davis,

On behalf of The Sam Bernstein Law Firm, I submit this written comment that addresses the proposed amendment of Rule 1.5 of the Michigan Rules of Professional Conduct (MRPC). Our law firm opposes the proposed amendment of Rule 1.5.

The proposed amendment should be rejected on both the merits and the false assumptions regarding "broker-lawyers" that motivate the proposal. Several stakeholders have thoroughly addressed the merits of the proposal with a focus on five (5) primary arguments:

1. The problematic interference of the Court in a matter of contract between attorneys;
2. The uneventful and effective application of the current rule does not warrant a change;
3. The potential unintended consequences of the proposed amendment may reduce competition among law firms;
4. The deterrent effect that referral fees greater than 25% may have on litigation; and/or

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5. The current rule encourages referrals to experienced, expert litigators.

Our law firm agrees with the reasoning of the individuals and organizations that have communicated these arguments to the Court in opposition to the proposed amendment.

We write separately, however, to specifically address the false assumption that motivates the proposed amendment. Support for the proposed amendment is based upon the false assumption recently articulated by an advocate of the proposed amendment who stated that law firms exist in Michigan “who advertise constantly. They don’t go to court. They never write briefs. They just don’t practice personal injury law. They really are brokers.” *Michigan Lawyers Weekly*, May 16, 2011.

This false assumption represents an uninformed opinion. Indeed, the facts present a completely different picture. Our law firm currently includes twenty-two (22) trial lawyers supported by approximately forty-five (45) non-lawyer staff. These trial lawyers are among the most accomplished and successful in the Michigan plaintiff’s bar. Many of our trial lawyers have over thirty (30) years of experience as litigators and serve on the Negligence Section Council of the State Bar of Michigan, Executive Board of the Michigan Association for Justice (MAJ), Michigan State Bar Foundation, Michigan Attorney Grievance Commission panels, and Case Evaluators in multiple counties. Several of our trial lawyers lecture on torts, mass torts, civil rights, and disability law at the University of Michigan Law School and College of Literature, Science & the Arts, and University of Detroit Mercy School of Law.

We have represented clients in seventy-seven (77) counties across Michigan. For over forty (40) years, our lawyers have engaged in the practice of law in courtrooms and communities throughout our state with distinction. Our trial lawyers have received honors and awards including, most recently, the 2011 Outstanding Attorney Award for significant contributions to the advocacy of the rights of individuals from the Washtenaw Association of Justice.

The unique Public Service division of our law firm litigates cases that involve both public policy and complex litigation issues. Several attorneys and staff are dedicated, full time, to this division, and we have never charged a fee for this important work. Notable victories in cases litigated by this division include claims on behalf of disabled Detroiters to force the city of Detroit to fix broken wheelchair lifts on buses,

Dilworth et al v. City of Detroit, Case No. 04-73152, Paralyzed Veterans of America in an action against the University of Michigan regarding disabled seating in Michigan Stadium, *Michigan Paralyzed Veterans of America v. Univ. of Michigan*, Case No. 07-cv-11702, Oakland County pedestrians and cyclists against the Oakland County Road Commission after “roundabout” traffic circles were built without disabled access, *Gersin et al v. The Road Commission for Oakland County*, Case No. 07-cv-13385, and airline passengers against Northwest/Delta Airlines and the Wayne County Airport Authority to ensure fully accessible terminals at Detroit Metro Airport, *Thomas et al v. Northwest Airlines Corp. & Wayne County Airport Authority*, Case No. 08-cv-11580. The United States Department of Justice joined our firm in several of these landmark cases.

The false assumption regarding “broker lawyers” cannot survive the scrutiny of this Court in light of the Court’s current docket of cases. In the coming months, the Court will hear oral argument involving a case that I tried to a favorable jury verdict in Macomb County Circuit Court that involves multiple issues regarding Michigan No-Fault law (*Frazier v. All State*, SC 142545 & 142547). Surely this litigation does not represent the work of:

“[a] lawyer whose principal purpose in advertising is to solicit clients so they can later sell these personal injury cases to the highest bidder....They perform no legal services in the client’s behalf. They invest no time or money into the case after it’s referred. They take no risks in behalf of such clients.” *Michigan Lawyers Weekly*, June 20, 2011.

In this case, like the thousands of others handled by our law firm, we have performed significant legal work, invested substantial time and money, and assumed major risks on behalf of our client.

To be sure, sometimes we would prefer to avoid the challenges of operating a litigation firm and, instead, function as a so-called “broker-lawyer.” We would be alone in Michigan given the absence of this type of activity in our state. We are aware of no law firms operating in this manner, including those law firms with whom we compete across the state. While this type of activity may exist elsewhere, it is not a feature of legal practice in Michigan. The major advertising firms in our state are all litigation firms with trial lawyers engaged in the active representation of clients.

Like all law firms, we are unable to represent every individual who contacts us for help. In these circumstances, we work to find other law firms and/or organizations that may be able to provide assistance. We know that this benefits these individuals and believe that it is in the best interest of the public.

For the reasons outlined in this comment and those submitted by other stakeholders, we urge the Court to reject the proposed amendment to Rule 1.5 of the MRPC. Additionally, given the fact that no problem exists with the application of the current Rule 1.5, we do not offer an alternative.

We thank the Court for the opportunity to comment on the proposed amendment.

Sincerely,

A handwritten signature in black ink, appearing to read 'MJB', with a long horizontal flourish extending to the right.

Mark J. Bernstein

President

The Sam Bernstein Law Firm, PLLC