

STATE OF MINNESOTA

IN SUPREME COURT

C8-84-1650 (MRPC)
C1-84-2140 (RLPR)

ORDER FOR HEARING TO CONSIDER PROPOSED
AMENDMENTS TO THE MINNESOTA RULES OF PROFESSIONAL CONDUCT
AND THE RULES ON LAWYERS PROFESSIONAL RESPONSIBILITY

IT IS HEREBY ORDERED that a hearing be held before this Court in Courtroom 300 of the Minnesota Supreme Court, Minnesota Judicial Center, on May 26, 1999 at 1:30 p.m., to consider the petition of the Lawyers Professional Responsibility Board (LPRB) to amend the Minnesota Rules of Professional Conduct and the Rules on Lawyers Professional Responsibility. A copy of the LPRB's report containing the proposed changes is annexed to this order.

IT IS FURTHER ORDERED that:

1. All persons, including members of the Bench and Bar, desiring to present written statements concerning the subject matter of this hearing, but who do not wish to make an oral presentation at the hearing, shall file 12 copies of such statement with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before May 21, 1999, and
2. All persons desiring to make an oral presentation at the hearing shall file 12 copies of the material to be so presented with the Clerk of the Appellate Courts together with 12 copies of a request to make an oral presentation. Such statements and requests shall be filed on or before May 21, 1999.

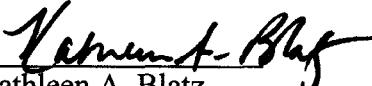
Dated: March 11, 1999

BY THE COURT:

OFFICE OF
APPELLATE COURTS

MAR 11 1999

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Kathleen A. Blatz
Chief Justice

MSBA



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May 21, 1999

Frederick K. Grittner
Clerk of Appellate Courts
305 Minnesota Judicial Center
25 Constitution Ave.
St. Paul, MN 55155

**Re: Joint Petition of the Lawyers Professional
Responsibility Board and Minnesota State Bar
Association for Further Amendment of Rule 1.15,
Minnesota Rules of Professional Conduct
Supreme Court Files C8-84-1650 & C1-84-2140**

Dear Mr. Grittner,

William Wernz will be appearing for the Minnesota State Bar Association at the May 26th hearing in the above-referenced matter.

Thank you for your consideration.

Very truly yours,

Mary G. Grau
MSBA

OFFICE OF
APPELLATE COURTS
MAY 24 1999

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March 26, 1999

Frederick Grittner
Clerk of Appellate-Courts
305 Judicial Center
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St. Paul, MN 55155

OFFICE OF
APPELLATE COURTS

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Re: Proposed Changes in Rules of Professional Responsibility

Dear Mr. Grittner:

The Lawyers Professional Responsibility Board has proposed several changes to the Rules of Professional Responsibility. I would like to propose an additional change that I believe will clarify issues and will, as a whole, serve the legal community. We ask that this proposal be included in the May 26, 1999, hearing.

Competition in legal advertising has become astronomical in the past twenty years. For larger firms, this has merely become a cost of doing business. But for the small firm, or the sole practitioner, it is almost cost prohibitive to advertise. This limits their ability to inform the public that they are available to offer their services and thus limits the consumers' choice of lawyers. It has also resulted in advertising and marketing people taking over, many of whom are not lawyers.

One solution to such a dilemma is permitting lawyers and law firms to pool their resources for cooperative advertising, support or administrative services. Cooperative advertising is beneficial to the lawyers and law firms who participate and gives consumers another resource. Such cooperative groups must charge lawyers to participate in some manner, otherwise the coop would not have any revenues with which to provide the advertising service or administrative services. One option is on the lawyers ability to pay, based upon a percentage of gross revenues or billings. This is extremely beneficial to the attorney, and also very fair, as it allows attorneys to fluctuate their payments for marketing services and other administrative services the coop's organization/corporation may

provide based upon the revenues the lawyer is able to generate. This in no way affects any client or individual cases and thus should not be considered fee-splitting.

I would therefore propose that Rule 1.5 of the Rules of Professional Responsibility be revised to add that such an arrangement is not prohibited and is not fee-splitting.

I would also recommend that Rule 5.4 be amended to state the following which may very well be permissible, anyway, under the rules, but clarification would be helpful:

Nothing in these rules shall prohibit lawyers or law firms from pooling resources or paying a fee based upon a percentage of billings or cash receipts to a lawyer-owned corporation or organization whose purpose is to provide administrative, support, or marketing services to participating lawyers or law firms. Such corporations or organizations shall comply with the Rules of Professional Responsibility and make reasonable disclosures and comply with the requirements set forth in Minn. Stat. §319B.

A copy of the proposed wording for the rule, Rule 5.4, MRPC is attached hereto.

Very truly yours,



John O. Murrin

JOM/jmm

cc. Minnesota Lawyers Professional Responsibility Board

Rule 5.4. Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer the proportion of the total compensation which fairly represents the services rendered by the deceased lawyer; and

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) a lawyer who purchases the practice of a deceased, disabled or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed upon purchase price.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of a lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) Nothing in these rules shall prohibit lawyers or law firms from pooling resources or paying a fee based upon a percentage of billings or cash receipts to a lawyer-owed corporation or organization whose purpose is to provide administrative, support, or marketing services to participating lawyers or law firms. Such corporations or organizations shall comply with the Rules of Professional Responsibility and make reasonable disclosures and comply with the requirements set forth in Minn. Stat. §319B.

Rule 1.5. Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

and

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) 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 or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) A division of fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;

(2) the client is advised of the share that each lawyer is to receive and does not object to the

participation of all the lawyers involved; and

(3) the total fee is reasonable.

(f) This Rule does not prohibit payment to a former partner or associate pursuant to a separation agreement.

(g) This Rule does not prohibit payment of a percentage of gross revenues to an organization or corporation that pools funds of other lawyers and law firms for the purposes of providing participating lawyers and law firms with cooperative advertising, marketing, billing or other administrative services.