

**ANSWER TO QUESTION NO. 13**

**1. Adams is not entitled to a \$40,000.00 fee.** Her fee agreement with Barnes was unethical in that:

(1) it potentially allowed her to receive a fee of greater than 1/3 of the actual net recovery in a personal injury case (as she, in fact, sought to obtain), in violation of MCR 8.121, the maximum share permissible in such cases. The fee agreement and her attempt actually to obtain a fee greater than 1/3 each constituted a violation of MRPC 1.5(a), which prohibits a lawyer from entering into an agreement for, charging or collecting an illegal or clearly excessive fee;

(2) it purported to create a "present value" when the notion of a "present value" as to a pending action is illusory. Cf., e.g., *Walton v Hoover, Bax & Slovacek, LLP*, 149 SW3d 834 (Tex App 204) aff'd in part, rev'd in part, remanded by 206 SW3d 557 (2006), judgment vacated 2007 Tex App Lexis 929. Even where, as here, a specific settlement offer had been made shortly before Barnes terminated Adams' services, a client is entitled to consider factors other than money in determining whether to accept or reject an offer, each of which is an aspect of the "value" of the case. Also, a lawyer is obligated to abide by the client's decision as to accepting a settlement offer. MRPC 1.2(a). (In a personal injury action, for example, a client may wish to accept a lower offer than the lawyer thinks is appropriate in order to minimize stress and risk; in a suit between two businesses, the client may wish to settle for less than might be available in order to preserve the opportunity for future business with the opponent);

(3) it significantly interfered with the client's right to counsel of choice, since the fee-sharing formula of the fee agreement penalized Barnes for terminating the attorney-client relationship by potentially depriving successor counsel of an opportunity to receive any fee, let alone a meaningful fee based on *quantum meruit*. With exceptions not applicable here, a client has the right to terminate the services of their attorney at any time and for any reason, cf. Restatement The Law Governing Lawyers 3d, §32(1), and a fee agreement that penalizes the client for exercising that right is unethical, cf. Restatement, §40(2) (c); and,

(4) it was not in writing, in violation of MRPC 1.5(c), which requires contingent fee agreements to be in writing.

2. Adams is not entitled to any fee. Where an attorney has engaged in misconduct in the course of a representation and the attorney's services are severable, the attorney may not collect (or must refund) the portion of the attorney's fee generated by the misconduct. *Cf. e.g., Polen v Melonakos*, 222 Mich App 20 (1997). Where, however, the conduct is not severable, the attorney is not entitled to any fee. *Evans & Luptak v Lizza*, 251 Mich App 187 (2002) ; *Idalski v Crouse Cartage*, 229 F Supp 2d 730 (ED Mich 2002). In this case, the fee agreement itself violated the rules of professional conduct in multiple respects, and the agreement was void as a matter of public policy and unenforceable. *Id.* In these circumstances, Adams' misconduct would not be deemed to be severable, and she would not be entitled to any fee.