Responsive Law
The Consumer's Voice in the Legal System

Comments on: Proposed Amendments to Rule 1.5 and Rule 6.5 of the Massachusetts Rules of Professional Conduct

Thomas M. Gordon
Legal and Policy Director,
Consumers for a Responsive Legal System

Comments to the

Massachusetts Supreme Judicial Court

March 8, 2012

Consumers for a Responsive Legal System ("Responsive Law") thanks the Court for the opportunity to present its comments on its Proposed Amendments to Rule 1.5 and Rule 6.5 of the Massachusetts Rules of Professional Conduct. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible and accountable to the people. Responsive Law supports these proposed changes and believes they will protect both clients and lawyers while still maintaining the ability of lawyers to serve the underrepresented.

Establishing a requirement that fees be placed in writing brings the legal profession's practices up to the standard that we would ask our clients to insist upon. Any smart lawyer would advise her client to get any business agreement in writing. No smart consumer would buy a car or conduct major home improvements without a written statement containing a precise description of how much she would pay and what services will be provided. In this respect, a contract for legal services is like any other: It should be easily understood by the client and it absolutely should be in writing.

Adopting this rule change would place Massachusetts at the forefront of protecting clients in this manner. However, this provision is not without precedent. The New York Client Bill of Rights (22 NYCRR §1210.1) (hereinafter, "NYCBR"), which is a list of client rights that lawyers in New York state are required to post in their offices, has a similar provision. Item 4 of the NYCBR provides a right "to have your lawyer explain at the outset how the fee will be computed and the manner and frequency of billing." The same item also states, "You are entitled to request and receive a written itemized bill from your attorney at reasonable intervals."

1380 Monroe St NW, #210
Washington, D.C. 20010
tom@responsivelaw.org
(202) 649-0399

We also support the exclusion from this requirement of limited scope representation through court-annexed or non-profit programs. Of course, most of these programs involve no cost to the client, in which case the rule would have no impact. However, even if such cases involve a small fee, the additional burden created by requiring written billing statements would likely discourage lawyers from participating and would certainly divert resources that could better be used in serving clients directly. Given the relatively small amounts of legal fees, if any, involved here, clients would be better served by having more of these programs available than by the marginal protection written billing would provide.

We would like to propose one amendment to these rules that would further benefit consumers of legal services. We recommend that the Court exempt single-session legal consulting where the fees for such sessions are disclosed at the outset of the consultation. Such an exemption would facilitate short consultations by email or phone, where the lawyer charges a set rate for a 15-, 30-, or 60-minute session. As with the "low-bono" model discussed in the previous paragraph, greater availability of affordable unbundled services such as these outweighs the need for a written billing agreement for a short, inexpensive matter.