

1       **Rule 1.5. Fees.**

2       (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an  
3 unreasonable amount for expenses. The factors to be considered in determining the  
4 reasonableness of a fee include the following:

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

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

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

10          (a)(4) the amount involved and the results obtained;

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

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

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

15          (a)(8) whether the fee is fixed or contingent.

16       (b) The scope of the representation and the basis or rate of the fee and expenses for which the  
17 client will be responsible shall be communicated to the client, preferably in writing, before or  
18 within a reasonable time after commencing the representation, except when the lawyer will  
19 charge a regularly represented client on the same basis or rate. Any changes in the basis or rate  
20 of the fee or expenses shall also be communicated to the client.

21       (c) A fee may be contingent on the outcome of the matter for which the service is rendered,  
22 except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A  
23 contingent fee agreement shall be in a writing signed by the client and shall state the method by  
24 which the fee is to be determined, including the percentage or percentages that shall accrue to the  
25 lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted  
26 from the recovery; and whether such expenses are to be deducted before or after the contingent  
27 fee is calculated. The agreement must clearly notify the client of any expenses for which the  
28 client will be liable whether or not the client is the prevailing party. Upon conclusion of a  
29 contingent fee matter, the lawyer shall provide the client with a written statement stating the  
30 outcome of the matter and, if there is a recovery, showing the remittance to the client and the  
31 method of its determination.

32 | (d) A lawyer shall not enter into an arrangement for, charge, or collect:

33 |       (d)(1) any fee in a domestic relations matter, the payment or amount of which is  
34 | contingent upon the securing of a divorce or upon the amount of alimony or support, or  
35 | property settlement in lieu thereof; or

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

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

38 |       ~~(e)(1) the division is in proportion to the services performed by each lawyer or each~~  
39 | ~~lawyer assumes joint responsibility for the representation;~~

40 |       ~~(e)(2) the client agrees to the arrangement, including the share each lawyer will receive,~~  
41 | ~~and the agreement is confirmed in writing; and (e)(3) the total fee is reasonable.~~

42 | Comment

43 | Reasonableness of Fee and Expenses

44 | [1] Paragraph (a) requires that lawyers charge fees that are reasonable under the  
45 | circumstances. The factors specified in (a)(1) through (a)(8) are not exclusive. Nor will each  
46 | factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client  
47 | will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services  
48 | performed in-house, such as copying, or for other expenses incurred in-house, such as telephone  
49 | charges, either by charging a reasonable amount to which the client has agreed in advance or by  
50 | charging an amount that reasonably reflects the cost incurred by the lawyer.

51 | Basis or Rate of Fee

52 | [2] When the lawyer has regularly represented a client, they ordinarily will have evolved an  
53 | understanding concerning the basis or rate of the fee and the expenses for which the client will  
54 | be responsible. In a new client-lawyer relationship, however, an understanding as to fees and  
55 | expenses must be promptly established. Generally, it is desirable to furnish the client with at  
56 | least a simple memorandum or copy of the lawyer's customary fee arrangements that states the  
57 | general nature of the legal services to be provided, the basis, rate or total amount of the fee and  
58 | whether and to what extent the client will be responsible for any costs, expenses or  
59 | disbursements in the course of the representation. A written statement concerning the terms of  
60 | the engagement reduces the possibility of misunderstanding.

61 | [3] Contingent fees, like any other fees, are subject to the reasonableness standard of  
62 | paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or

63 whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors  
64 that are relevant under the circumstances. Applicable law may impose limitations on contingent  
65 fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an  
66 alternative basis for the fee. Applicable law also may apply to situations other than a contingent  
67 fee, for example, government regulations regarding fees in certain tax matters.

#### 68 Terms of Payment

69 [4] A lawyer may require advance payment of a fee but is obligated to return any unearned  
70 portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an  
71 ownership interest in an enterprise, providing this does not involve acquisition of a proprietary  
72 interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(i). However,  
73 a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a)  
74 because such fees often have the essential qualities of a business transaction with the client.

75 [5] An agreement may not be made whose terms might induce the lawyer improperly to  
76 curtail services for the client or perform them in a way contrary to the client's interest. For  
77 example, a lawyer should not enter into an agreement whereby services are to be provided only  
78 up to a stated amount when it is foreseeable that more extensive services probably will be  
79 required, unless the situation is adequately explained to the client. Otherwise, the client might  
80 have to bargain for further assistance in the midst of a proceeding or transaction. However, it is  
81 proper to define the extent of services in light of the client's ability to pay. A lawyer should not  
82 exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

#### 83 Prohibited Contingent Fees

84 [6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations  
85 matter when payment is contingent upon the securing of a divorce or upon the amount of  
86 alimony or support or property settlement to be obtained. This provision does not preclude a  
87 contract for a contingent fee for legal representation in connection with the recovery of post-  
88 judgment balances due under support, alimony or other financial orders because such contracts  
89 do not implicate the same policy concerns.

#### 90 ~~Division of Fees~~

91 ~~[7] A division of fee is a single billing to a client covering the fee of two or more lawyers~~  
92 ~~who are not in the same firm. A division of fee facilitates association of more than one lawyer in~~  
93 ~~a matter in which neither alone could serve the client as well, and most often is used when the~~

94 ~~fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph~~  
95 ~~(e) permits the lawyers to divide a fee either on the basis of the proportion of services they render~~  
96 ~~or if each lawyer assumes responsibility for the representation as a whole. In addition, the client~~  
97 ~~must agree to the arrangement, including the share that each lawyer is to receive, and the~~  
98 ~~agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed~~  
99 ~~by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for~~  
100 ~~the representation entails financial and ethical responsibility for the representation as if the~~  
101 ~~lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom~~  
102 ~~the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.~~

103 ~~[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for~~  
104 ~~work done when lawyers were previously associated in a law firm.~~

105 Disputes over Fees

106 ~~[9]~~ [7] If a procedure has been established for resolution of fee disputes, such as an  
107 arbitration or mediation procedure established by the Bar, the lawyer must comply with the  
108 procedure when it is mandatory, and, even when it is voluntary, the lawyer should  
109 conscientiously consider submitting to it. Law may prescribe a procedure for determining a  
110 lawyer's fee, for example, in representation of an executor or administrator, a class or a person  
111 entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee  
112 and a lawyer representing another party concerned with the fee should comply with the  
113 prescribed procedure.

114 | [8] This rule differs from the ABA model rule.