

1 **Rule 1.5. Fees.**

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

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

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

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

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

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

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

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

15 (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  
17 which the client will be responsible shall be communicated to the client, preferably in  
18 writing, before or within a reasonable time after commencing the representation, except  
19 when the lawyer will charge a regularly represented client on the same basis or rate.  
20 Any changes in the basis or rate of the fee or expenses shall also be communicated to  
21 the client.

22 (c) A fee may be contingent on the outcome of the matter for which the service is  
23 rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or  
24 other law. A contingent fee agreement shall be in a writing signed by the client and  
25 shall state the method by which the fee is to be determined, including the percentage or  
26 percentages that shall accrue to the lawyer in the event of settlement, trial or appeal;

27 litigation and other expenses to be deducted from the recovery; and whether such  
28 expenses are to be deducted before or after the contingent fee is calculated. The  
29 agreement must clearly notify the client of any expenses for which the client will be  
30 liable whether or not the client is the prevailing party. Upon conclusion of a contingent  
31 fee matter, the lawyer shall provide the client with a written statement stating the  
32 outcome of the matter and, if there is a recovery, showing the remittance to the client  
33 and the method of its determination.

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

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

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

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

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

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

#### 46 **Comment**

#### 47 **Reasonableness of Fee and Expenses**

48 [1] Paragraph (a) requires that lawyers charge fees that are reasonable under the  
49 circumstances. The factors specified in (a)(1) through (a)(8) are not exclusive. Nor will  
50 each factor be relevant in each instance. Paragraph (a) also requires that expenses for  
51 which the client will be charged must be reasonable. A lawyer may seek reimbursement  
52 for the cost of services performed in-house, such as copying, or for other expenses

53 incurred in-house, such as telephone charges, either by charging a reasonable amount to  
54 which the client has agreed in advance or by charging an amount that reasonably  
55 reflects the cost incurred by the lawyer.

#### 56 **Basis or Rate of Fee**

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

67 [3] Contingent fees, like any other fees, are subject to the reasonableness standard of  
68 paragraph (a) of this Rule. In determining whether a particular contingent fee is  
69 reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer  
70 must consider the factors that are relevant under the circumstances. Applicable law  
71 may impose limitations on contingent fees, such as a ceiling on the percentage  
72 allowable, or may require a lawyer to offer clients an alternative basis for the fee.  
73 Applicable law also may apply to situations other than a contingent fee, for example,  
74 government regulations regarding fees in certain tax matters.

#### 75 **Terms of Payment**

76 [4] A lawyer may require advance payment of a fee but is obligated to return any  
77 unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for  
78 services, such as an ownership interest in an enterprise, providing this does not involve  
79 acquisition of a proprietary interest in the cause of action or subject matter of the  
80 litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may

81 be subject to the requirements of Rule 1.8(a) because such fees often have the essential  
82 qualities of a business transaction with the client.

83 [5] An agreement may not be made whose terms might induce the lawyer improperly to  
84 curtail services for the client or perform them in a way contrary to the client's interest.  
85 For example, a lawyer should not enter into an agreement whereby services are to be  
86 provided only up to a stated amount when it is foreseeable that more extensive services  
87 probably will be required, unless the situation is adequately explained to the client.  
88 Otherwise, the client might have to bargain for further assistance in the midst of a  
89 proceeding or transaction. However, it is proper to define the extent of services in light  
90 of the client's ability to pay. A lawyer should not exploit a fee arrangement based  
91 primarily on hourly charges by using wasteful procedures.

## 92 **Prohibited Contingent Fees**

93 [6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic  
94 relations matter when payment is contingent upon the securing of a divorce or upon the  
95 amount of alimony or support or property settlement to be obtained. This provision  
96 does not preclude a contract for a contingent fee for legal representation in connection  
97 with the recovery of post-judgment balances due under support, alimony or other  
98 financial orders because such contracts do not implicate the same policy concerns.

## 99 ~~Division of Fees~~

100 ~~[7] A division of fee is a single billing to a client covering the fee of two or more lawyers~~  
101 ~~who are not in the same firm. A division of fee facilitates association of more than one~~  
102 ~~lawyer in a matter in which neither alone could serve the client as well, and most often~~  
103 ~~is used when the fee is contingent and the division is between a referring lawyer and a~~  
104 ~~trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of~~  
105 ~~the proportion of services they render or if each lawyer assumes responsibility for the~~  
106 ~~representation as a whole. In addition, the client must agree to the arrangement,~~  
107 ~~including the share that each lawyer is to receive, and the agreement must be confirmed~~

108 ~~in writing. Contingent fee agreements must be in a writing signed by the client and~~  
109 ~~must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the~~  
110 ~~representation entails financial and ethical responsibility for the representation as if the~~  
111 ~~lawyers were associated in a partnership. A lawyer should only refer a matter to a~~  
112 ~~lawyer whom the referring lawyer reasonably believes is competent to handle the~~  
113 ~~matter. See Rule 1.1.~~

114 ~~[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the~~  
115 ~~future for work done when lawyers were previously associated in a law firm.~~

#### 116 **Disputes over Fees**

117 ~~[9]~~ [7] If a procedure has been established for resolution of fee disputes, such as an  
118 arbitration or mediation procedure established by the Bar, the lawyer must comply with  
119 the procedure when it is mandatory, and, even when it is voluntary, the lawyer should  
120 conscientiously consider submitting to it. Law may prescribe a procedure for  
121 determining a lawyer's fee, for example, in representation of an executor or  
122 administrator, a class or a person entitled to a reasonable fee as part of the measure of  
123 damages. The lawyer entitled to such a fee and a lawyer representing another party  
124 concerned with the fee should comply with the prescribed procedure.

125 | [8] This rule differs from the ABA model rule.