

1 **Rule 1.5. Fees.**

2 (a) A lawyer ~~shall~~must not make an agreement for, charge, or collect an unreasonable fee  
3 or 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 involved,  
6 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,  
14 and ability of the lawyer or lawyers performing the  
15 services; and

(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  
17 the client will be responsible ~~shall~~must 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. Any  
20 changes in the basis or rate of the fee or expenses ~~shall~~must also be communicated to the  
21 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~~must be in a writing signed by the client and  
25 ~~shall~~must state the method by which the fee is to be determined, including the percentage  
26 or percentages that will~~shall~~ accrue to the lawyer in the event of settlement, trial,  
27 or appeal; 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 liable

30 whether or not the client is the prevailing party. Upon conclusion of a contingent fee  
31 matter, the lawyer ~~shall~~must 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 and  
33 the method of its determination.

34 (d) A lawyer ~~shall~~must 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 support,  
37 or property settlement in lieu thereof; or

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

39 ~~(e)~~ Fee sharing is permitted as provided in Rules 5.4 and 5.8, and Supreme Court  
40 Standing Order No. 15.

41 ~~(f)~~ge A licensed paralegal practitioner may not enter into a contingent fee agreement with  
42 a client.

43 ~~(g)~~hf Before providing any services, a licensed paralegal practitioner must provide the  
44 client with a written agreement that:

45 (1) states the purpose for which the licensed paralegal practitioner has been retained;

46 (2) identifies the services to be performed;

47 (3) identifies the rate or fee for the services to be performed and whether and to what  
48 extent the client will be responsible for any costs, expenses or disbursements in the  
49 course of the representation;

50 (4) includes a statement printed in 12-point boldface type that the licensed paralegal  
51 practitioner is not an attorney and is limited to practice in only those areas in which  
52 the licensed paralegal practitioner is licensed;

53 (5) includes a provision stating that the client may report complaints relating to a  
54 licensed paralegal practitioner or the unauthorized practice of law to the Office of  
55 Professional Conduct, including a toll-free number and Internet website;

56 (6) describes the document to be prepared;

57 (7) describes the purpose of the document;

- 58 (8) describes the process to be followed in preparing the document;
- 59 (9) states whether the licensed paralegal practitioner will be filing the document on  
60 the client's behalf; and
- 61 (10) states the approximate time necessary to complete the task.

62 (~~hig~~) A licensed paralegal practitioner may not make an oral or written statement  
63 guaranteeing or promising an outcome, unless the licensed paralegal practitioner has  
64 some basis in fact for making the guarantee or promise.

65 **Comment**

66 **Reasonableness of Fee and Expenses**

67 [1] Paragraph (a) requires that lawyers charge fees that are reasonable under the  
68 circumstances. The factors specified in (a)(1) through (a)(8) are not exclusive. Nor will  
69 each factor be relevant in each instance. Paragraph (a) also requires that expenses for  
70 which the client will be charged must be reasonable. A lawyer may seek reimbursement  
71 for the cost of services performed in-house, such as copying, or for other expenses  
72 incurred in-house, such as telephone charges, either by charging a reasonable amount to  
73 which the client has agreed in advance or by charging an amount that reasonably reflects  
74 the cost incurred by the lawyer.

75 **Basis or Rate of Fee**

76 [2] When the lawyer has regularly represented a client, they ordinarily will have evolved  
77 an understanding concerning the basis or rate of the fee and the expenses for which the  
78 client will be responsible. In a new client-lawyer relationship, however, an  
79 understanding as to fees and expenses must be promptly established. Generally, it is  
80 desirable to furnish the client with at least a simple memorandum or copy of the lawyer's  
81 customary fee arrangements that states the general nature of the legal services to be  
82 provided, the basis, rate or total amount of the fee, and whether and to what extent the  
83 client will be responsible for any costs, expenses, or disbursements in the course of the  
84 representation. A written statement concerning the terms of the engagement reduces the  
85 possibility of misunderstanding.

86 [3] Contingent fees, like any other fees, are subject to the reasonableness standard of  
87 paragraph (a) of this Rule. In determining whether a particular contingent fee is  
88 reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer  
89 must consider the factors that are relevant under the circumstances. Applicable law may  
90 impose limitations on contingent fees, such as a ceiling on the percentage allowable, or  
91 may require a lawyer to offer clients an alternative basis for the fee. Applicable law also  
92 may apply to situations other than a contingent fee, for example, government regulations  
93 regarding fees in certain tax matters.

#### 94 **Terms of Payment**

95 [4] A lawyer may require advance payment of a fee but is obligated to return any  
96 unearned portion. See [Rule 1.16\(d\)](#). A lawyer may accept property in payment for  
97 services, such as an ownership interest in an enterprise, providing this does not involve  
98 acquisition of a proprietary interest in the cause of action or subject matter of the litigation  
99 contrary to [Rule 1.8\(i\)](#). However, a fee paid in property instead of money may be subject  
100 to the requirements of [Rule 1.8\(a\)](#) because such fees often have the essential qualities of a  
101 business transaction with the client.

102 [5] An agreement may not be made whose terms might induce the lawyer improperly to  
103 curtail services for the client or perform them in a way contrary to the client's interest.  
104 For example, a lawyer should not enter into an agreement whereby services are to be  
105 provided only up to a stated amount when it is foreseeable that more extensive services  
106 probably will be required, unless the situation is adequately explained to the client.  
107 Otherwise, the client might have to bargain for further assistance in the midst of a  
108 proceeding or transaction. However, it is proper to define the extent of services in light  
109 of the client's ability to pay. A lawyer should not exploit a fee arrangement based  
110 primarily on hourly charges by using wasteful procedures.

#### 111 **Prohibited Contingent Fees**

112 [6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic  
113 relations matter when payment is contingent upon the securing of a divorce or upon the  
114 amount of alimony or support or property settlement to be obtained. This provision does

115 not preclude a contract for a contingent fee for legal representation in connection with  
116 the recovery of post-judgment balances due under support, alimony, or other financial  
117 orders because such contracts do not implicate the same policy concerns.

### 118 **Fee Sharing**

119 [7] Fee sharing between lawyers and non-lawyers is permitted only in accordance with  
120 Rules 5.4 and 5.8, and Supreme Court Standing Order No. 15.

### 121 **Disputes over Fees**

122 [87] If a procedure has been established for resolution of fee disputes, such as an  
123 arbitration or mediation procedure established by the Bar, the lawyer must comply with  
124 the procedure when it is mandatory, and, even when it is voluntary, the lawyer should  
125 conscientiously consider submitting to it. Law may prescribe a procedure for determining  
126 a lawyer's fee, for example, in representation of an executor or administrator, a class, or  
127 a person entitled to a reasonable fee as part of the measure of damages. The lawyer  
128 entitled to such a fee and a lawyer representing another party concerned with the fee  
129 should comply with the prescribed procedure.

130 [98] This rule differs from the ABA ~~M~~odel ~~R~~ule.

131 [98a] This rule differs from the ABA Model Rule by including certain restrictions on  
132 licensed paralegal practitioners.

133 *Effective date: 05/01/2021*