

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 licensed paralegal practitioner may not enter into a contingent fee agreement with
40 a client.

41 (f) Before providing any services, a licensed paralegal practitioner must provide the
42 client with a written agreement that:

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

45 (2) identifies the services to be performed;

46 (3) identifies the rate or fee for the services to be performed and whether and to
47 what extent the client will be responsible for any costs, expenses or

48 disbursements in the course of the representation;

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

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

55 (6) describes the document to be prepared;

56 (7) describes the purpose of the document;

57 (8) describes the process to be followed in preparing the document;

58 (9) states whether the licensed paralegal practitioner will be filing the document
59 on the client's behalf; and

60 (10) states the approximate time necessary to complete the task.

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

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66 **Comment**

67 **Reasonableness of Fee and Expenses**

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

76 **Basis or Rate of Fee**

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

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

97 **Terms of Payment**

98 [4] A lawyer may require advance payment of a fee but is obligated to return any
99 unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for
100 services, such as an ownership interest in an enterprise, providing this does not
101 involve acquisition of a proprietary interest in the cause of action or subject
102 matter of the litigation contrary to Rule 1.8(i). However, a fee paid in property

103 instead of money may be subject to the requirements of Rule 1.8(a) because such
104 fees often have the essential qualities of a business transaction with the client.

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

115 **Prohibited Contingent Fees**

116 [6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic
117 relations matter when payment is contingent upon the securing of a divorce or
118 upon the amount of alimony or support or property settlement to be obtained.
119 This provision does not preclude a contract for a contingent fee for legal
120 representation in connection with the recovery of post-judgment balances due
121 under support, alimony or other financial orders because such contracts do not
122 implicate the same policy concerns.

123 **Disputes over Fees**

124 [7] If a procedure has been established for resolution of fee disputes, such as an
125 arbitration or mediation procedure established by the Bar, the lawyer must
126 comply with the procedure when it is mandatory, and, even when it is voluntary,
127 the lawyer should conscientiously consider submitting to it. Law may prescribe a
128 procedure for determining a lawyer's fee, for example, in representation of an
129 executor or administrator, a class or a person entitled to a reasonable fee as part

130 of the measure of damages. The lawyer entitled to such a fee and a lawyer
131 representing another party concerned with the fee should comply with the
132 prescribed procedure.

133 [8] This rule differs from the ABA model rule.

134 [8a] This rule differs from the ABA Model Rule by including certain restrictions
135 on licensed paralegal practitioners.

136 Effective August 14, 2020