



IRCP 1.5 & You



4/4/23

Professionalism & Ethics Section CLE

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**Rule 1.5
Why?**

**Fiduciary Relationship
=
Special Scrutiny of Fee
Arrangements**

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I.R.P.C. 1.5(a) Fee The Basic Rule

A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.

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3X Reasonableness Is Assessed

- When Fee Agreement Is Entered
- When You Bill For Services
- When You Attempt To Collect The Fee



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Reasonableness Factors

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;**
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;**
- (3) the fee customarily charged in the locality for similar legal services;**
- (4) the amount involved and the results obtained;**
- (5) the time limitations imposed by the client or by the circumstances;**
- (6) the nature and length of the professional relationship with the client;**
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and**
- (8) whether the fee is fixed or contingent.**

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“The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance.”

Its All About Reasonableness Of The Fee Arrangement In Abstract.

- This Is In Line With The Lawyer's Fiduciary Role
- Like Any Fiduciary You Must Be Ready To Establish Objective Reasonableness.
- Generally-*Who* The Client Is Has No Relevance
-The Focus Is On Your Legal Work

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What Kinds of Fee Agreements Are Allowed?



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Hourly Fees Can Be OK

Contingent Fees Can Be OK (see IRCP 1.5(c))

Flat Fees Can Be OK

Mixed Fees Can Be OK

Nonrefundable Fees or Fees Earned on Receipt -
Present Unique Issues

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The Written Fee Agreement

Only Required in 2 Contexts

Contingency Fees

Multi-Firm Shared Fees

Strongly Recommended in 1 Other Context

Every Time You Represent A Client

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What Must Be Part Of The Fee Agreement?

The Rules Make Your Life Simple

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Communication Required By I.R.P.C. 1.5(b)

- 1. The scope of the representation**
- 2. the basis or rate of the fee and expenses for which the client will be responsible**
- 3. shall be communicated to the client,**
- 4. preferably in writing, *******
- 5. before or within a reasonable time after commencing the representation . . .**

- 6. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.**

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Special Contingent Fee Rules I.R.P.C. 1.5(c)-

1. Contingent Fee OK unless prohibited by 1.5(d)
2. Shall be in a writing signed by the client
3. Shall state how fee is determined:
 - A. Percentages paid the lawyer in the event of settlement, trial or appeal, litigation
 - B. Expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.
4. must clearly notify the client of expenses for which the client will be liable no matter the outcome

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Contingent Fee Two Absolute No-Nos I.R.P.C. 1.5(d)

Domestic relations cases where based on securing a divorce, or the amount of support, or amount of property settlement

Defending in a criminal case

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Fee-Sharing Issues I.R.P.C. 1.5(e)



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Fee-Sharing Issues I.R.P.C. 1.5(e)

Applies To Lawyers Not In The Same Firm

- Total Fee Must Be Reasonable
- Split Must Be Either
In Proportion To Work
Or Joint Responsibility (?)
- Share Terms Must Be In Writing
- Client Must Agree

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I.R.P.C. 1.5(f)

- **Upon Client Request You Must Provide;**
- **Without Charge;**
- **A Detailed And Itemized Accounting For Fees And Costs;**
- **Including Detailed Description Of Work Done**

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