

IRCP 1.5 & You



4/4/23

Professionalism & Ethics Section CLE

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Rule 1.5 Why?

Fiduciary Relationship

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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 4

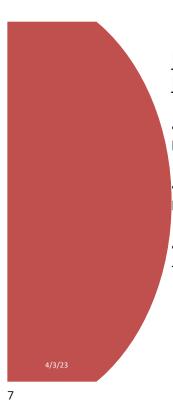
Reasonableness Factors

- (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."

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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.

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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Applies To Lawyers Not In The Same Firm

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

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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