

CLIENT-LAWYER RELATIONSHIP: MRPC
FEES 1.5

BACKGROUND – TYPES OF FEES

- Hourly
- Flat fee for routine matter
- Contingent fee
- On retainer – period contract
- Hybrid fees

RULE 1.5: GENERAL RULE

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

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

RULE 1.5: FACTORS FOR REASONABLENESS

- (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;

RULE 1.5: FACTORS FOR REASONABLENESS CONTINUED...

- (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.

RULE 1.5: SCOPE AND BASIS OF REPRESENTATION

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

RULE 1.5: CONTINGENT FEES

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law.

RULE 1.5 (C) CONTINUED...

A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated.

RULE 1.5 (C) CONTINUED...

The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party.

Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

RULE 1.5 – PROHIBITED CONTINGENT FEES

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

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

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

RULE 1.5: DIVISION OF FEES

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

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

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

RULE 1.5 – COMMENT 1

A lawyer **may seek reimbursement** for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a **reasonable** amount to which the client has **agreed in advance** or by charging an amount that reasonably reflects the **cost** incurred by the lawyer.

RULE 1.5 – COMMENT 2

When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible.

In a **new client-lawyer** relationship, however, an understanding as to fees and expenses **must be promptly established**.

RULE 1.5 – COMMENT 2

Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation.

RULE 1.5 – COMMENT 4

A lawyer may require advance payment of a fee, but is obliged to **return any unearned portion**. See Rule 1.16(d).

A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8 (i).

RULE 1.5 – COMMENT 4

However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest.

For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client.

COMMENT - PROHIBITED CONTINGENT FEES

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

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

RULE 1.5 – COMMENT 7

Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.

A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

RULE 1.5 – COMMENT 8

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

C.I.R. V. BANKS, 543 U.S. 426 (2005)

SUPREME COURT: when a litigant's recovery constitutes taxable income, such income includes portion of recovery paid to litigant's attorney as contingent fee.

ABA FORMAL OP. 16-474

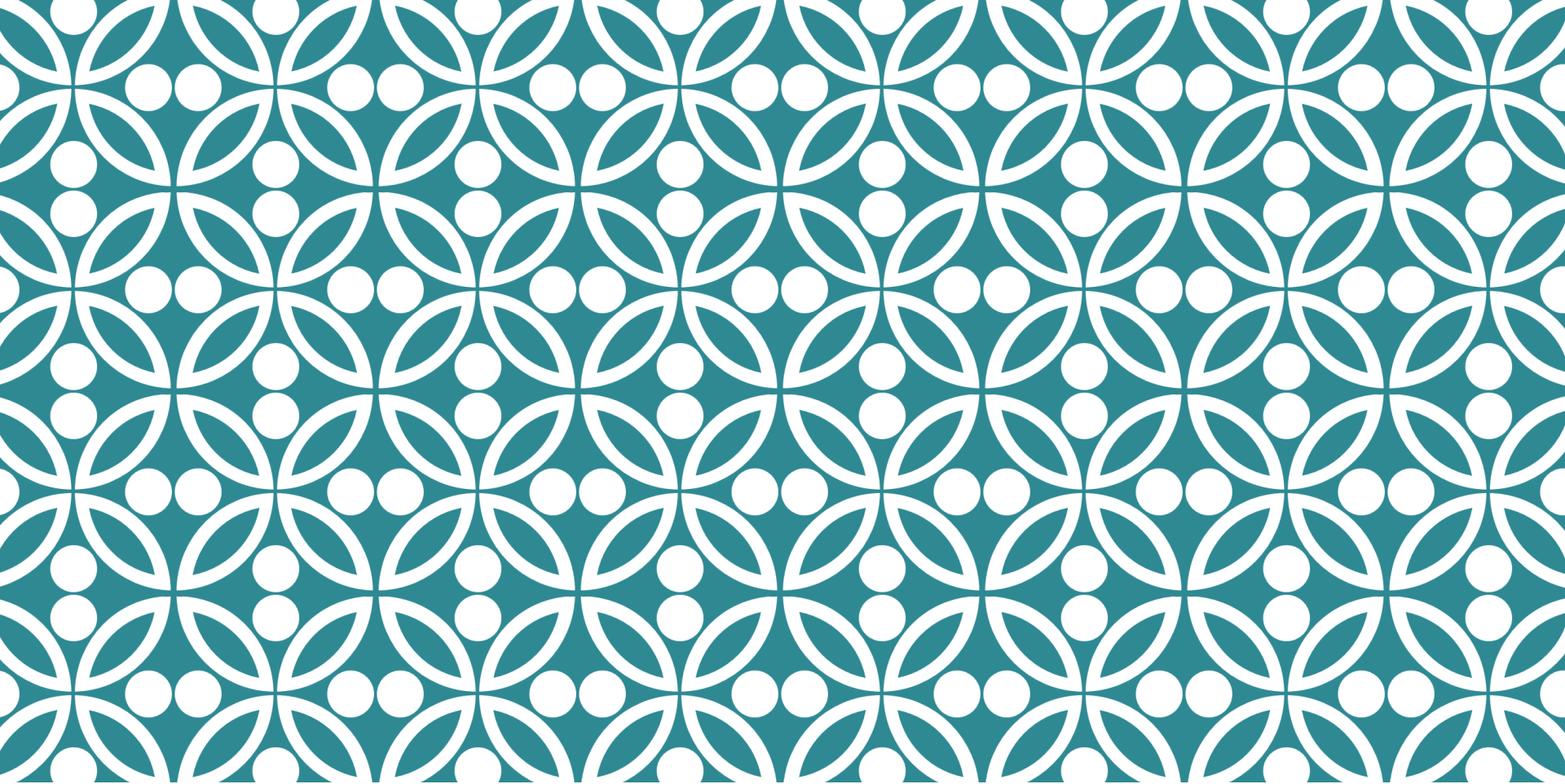
Rule 1.5(e) allows lawyers who are not in the same firm to divide a fee under certain circumstances.

A lawyer who refers a matter to another lawyer outside of the first lawyer's firm and divides a fee from the matter with the lawyer to whom the matter has been referred, **has undertaken representation of the client.**

ABA FORMAL OP. 16-474

Fee arrangements under Model Rule 1.5(e) are subject to Rule 1.7.

Unless a client gives informed consent confirmed in writing, a lawyer **may not accept a fee** when the lawyer has a conflict of interest that prohibits the lawyer from either performing legal services in connection with or assuming joint responsibility for the matter.



**CLIENT-LAWYER RELATIONSHIP:
DECLINING OR TERMINATING
REPRESENTATION**

**MRPC
1.16**

RULE 1.16: LAWYER **MUST** WITHDRAW

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (1) Representation will result in violation of the rules of professional conduct or other law;
- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; **OR**
- (3) the lawyer is discharged.

RULE 1.16: LAWYER **MAY** WITHDRAW CONTINUED...

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

- (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

RULE 1.16: LAWYER MAY WITHDRAW

- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

RULE 1.16: LAWYER *MAY* WITHDRAW CONTINUED...

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
(7) other good cause for withdrawal exists.

RULE 1.16: NOTICE REQUIREMENT

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

RULE 1.16: TERMINATION OF REPRESENTATION

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, **such as**

- giving reasonable notice to the client,
- allowing time for employment of other counsel,
- surrendering papers and property to which the client is entitled **AND**
- refunding any advance payment of fee or expense that has not been earned or incurred.

RULE 1.16: CLIENT'S PAPER EXCEPTION

The lawyer may retain papers relating to the client to the extent permitted by other law.

1.16 COMMENTS: MANDATORY WITHDRAWAL

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law.

The lawyer is **not obliged to decline or withdraw** simply because the client **suggests** such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

1.16 COMMENTS: WITHDRAWAL FROM APPOINTED REPRESENTATION

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority.

Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct.

1.16 COMMENTS: EXPLANATION FOR WITHDRAWAL

The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation.

The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient.

1.16 COMMENTS: CLIENT'S RIGHT TO DISCHARGE

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services.

Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

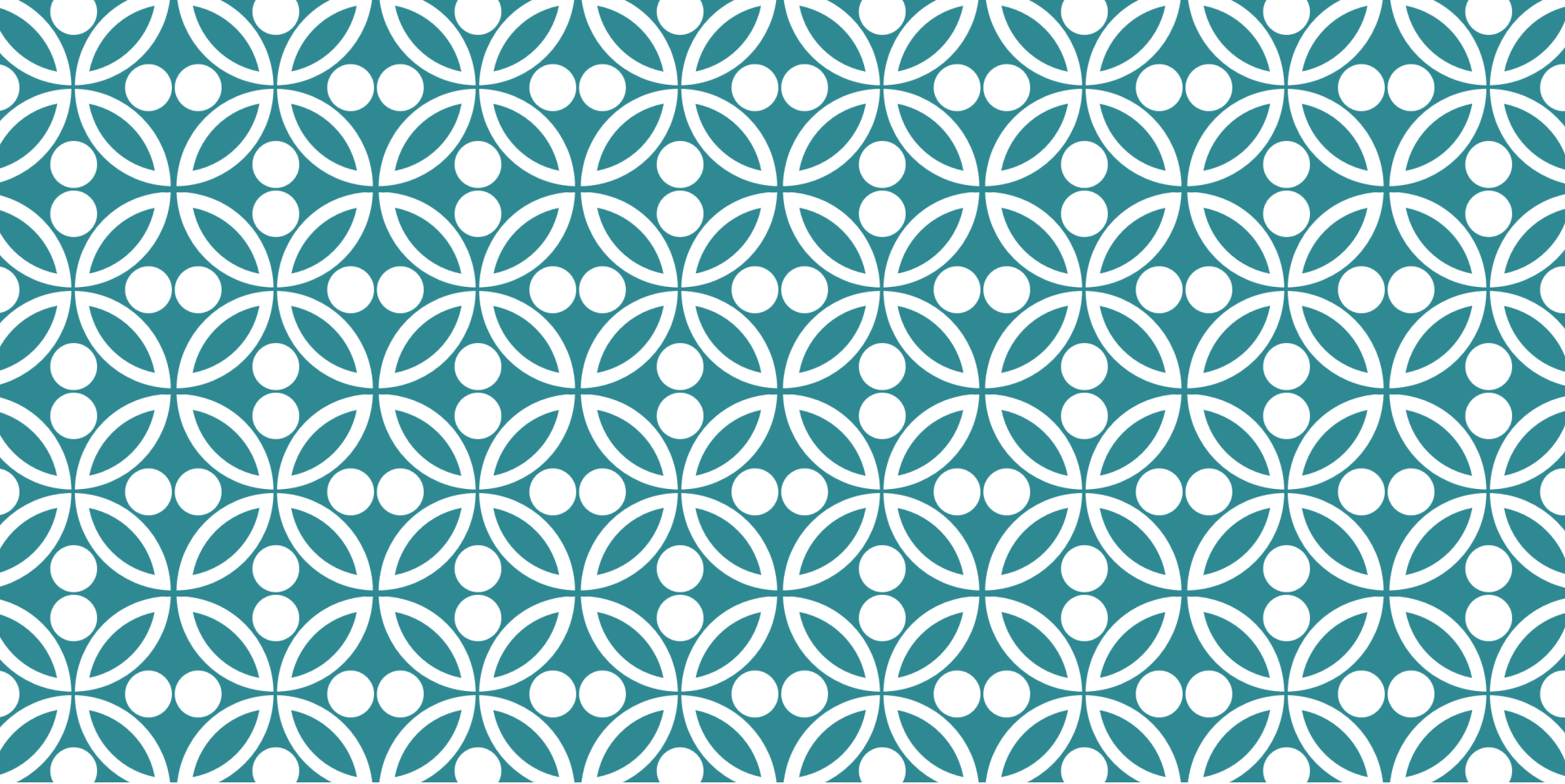
1.16 COMMENTS: CLIENT RIGHT TO DISCHARGE APPOINTED COUNSEL

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences.

1.16 ASSISTING THE CLIENT UPON WITHDRAWAL

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client.

The lawyer may retain papers as security for a fee only to the extent permitted by law.



DUTIES TO PROSPECTIVE CLIENTS | MRPC 1.18

RULE 1.18 — PROSPECTIVE CLIENTS

(a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

RULE 1.18 — PROSPECTIVE CLIENTS

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d).

RULE 1.18 — PROSPECTIVE CLIENTS

(c) continued...

If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

RULE 1.18 — PROSPECTIVE CLIENTS

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

RULE 1.18 — PROSPECTIVE CLIENTS

- (d)(2) OR - the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and
- (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
 - (ii) written notice is promptly given to the prospective client.