

Code of Professional Responsibility

PRE-TRIAL PRACTICE

CODE OF PROFESSIONAL RESPONSIBILITY

CONTINGENT-FEE AGREEMENTS

On July 17, 1978, the Arkansas Supreme Court adopted the following amendment to the Code of Professional Responsibility of the American Bar Association.

Disciplinary Rule 2-106, is amended to read, in its entirety, follows: Fees for Legal Services:

A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides 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.
- (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.
- (8) Whether the fee is fixed or contingent.

A lawyer shall not enter into an agreement for, charge, or collect a contingent fee for representing a defendant in a criminal case.

Illinois Code of Professional Responsibility Requirements For Contingent-Fee Agreements

Rule 2-106 of Canon 2 of the Illinois Code of Professional Responsibility (Illinois Supreme Court Rule 771, is amended, Article VIII), subsection (c), defines contingent- requirements and sets forth certain requirements in connection with the use of such fee arrangements: Rule Contingent-Fee Agreements states:

- (1) For purposes of this rule a contingent-fee agreement shall be deemed to be any agreement for the provision of legal services by a lawyer under which the amount of the lawyer's compensation is contingent in whole or in part upon the successful accomplishment (by settlement or litigation) of the subject matter of the agreement, regardless of whether the fee is established by formula or in fixed amount.
- (2) Any contingent-fee agreement shall be in writing. The original and each copy shall be signed by the lawyer and by each client. One signed copy shall be provided to each client at the time of making the agreement, and one shall be retained by the lawyer. Any contingent-fee agreement shall set forth the precise method by which the fee is to be determined, including the percentage, or percentages, if any, to be applied in the event of settlement, trial or appeal, whether expenses are to be deducted before or after the contingent fee is calculated and any other factors relevant to the fee arrangement.

(3) Upon final disposition of any action by settlement, trial or otherwise, a lawyer who has entered into a contingent-fee agreement shall prepare a closing statement setting forth in detail all information necessary to present a definitive statement of the application of the contingent-fee agreement in the action. One copy of the closing statement signed by the lawyer shall be provided to each party represented by him within a reasonable time after receipt by the lawyer of any sum or sums to which the contingent-fee agreement is applicable.

(4) No contingent-fee agreement shall be made in respect of the representation of a defendant in a criminal case. Contingent-fee arrangements concerning the collection of commercial accounts and of insurance company subrogation claims made in accordance with usual practices in respect of such cases shall not be subject to paragraphs (2) or (3) of this rule.

Three proposed forms of a contingent-fee agreement are set forth below and are considered to comply in all respects with the requirements of R. 2-106(c)(2). Rule 2-106(c)(3) requires a closing statement be prepared and provided by the lawyer to each party represented by him in regard to the legal matter covered by the contingent-fee agreement. Two sample closing statements are set forth below.

Attorneys should note that Rule 9-102(a) requires that all funds of clients paid to a lawyer or law firm, including funds belonging in part to a client and in part presently or potentially to the lawyer or law firm, shall be deposited in one or more separate identifiable trust bank accounts maintained in the state where the law office is located. Rule 9-102(b) provides for the withdrawal of the portion of funds (deposited and required under 9-102(a) belonging to the lawyer or law firm after reasonable notice to the client of an intention to withdraw. If the right of the lawyer or law firm to receive such funds is disputed by the client, the disputed portion of the funds shall not be withdrawn until the dispute is finally resolved.

Rule 9-102. Preserving Identity of Funds and Property of a Client.

(a) Other than advances for costs and expenses, all funds of clients paid to a lawyer or law firm, including funds belonging in part to a client and in part presently or potentially to the lawyer or law firm, shall be deposited in one or more separate identifiable trust bank accounts maintained in the State in which the law office is situated.

(b) The portion of funds deposited in accounts described in Rule 9-102(a) belonging to the lawyer or law firm may be withdrawn when due, after reasonable notice to the client of an intention to withdraw, unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(c) A lawyer shall

(1) promptly notify a client of the receipt of his funds, securities, or other properties;

(2) identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them; and

(4) promptly pay or deliver to the client as requested by a client, the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

(The following form has been provided by an attorney employed by a professional corporation in Illinois which frequently represents clients in regard to taxation matters involving the Internal Revenue Service.)

(CORPORATION)

This contract for legal services, made this _____ day of _____, 19____, between _____ Corporation, Attorney at Law, _____, Illinois, _____, hereinafter called "corporation" and _____, hereinafter called "client."

WITNESSETH:

1. The client hereby retains and employs the corporation or representation before the U.S. Internal Revenue Service, to settle all claims for deficiencies, penalties and interest that may be assessed or proposed by the U.S. Internal Revenue Service with regard to the following tax matters:

2. In consideration for services rendered and to be rendered, client agrees to pay said corporation the sum of \$_____ as a retainer, and in addition thereto ___% of whatever may be saved in negotiations or appeal by said corporation. Provided further, in the event a second trial or an appeal from the Tax Court of the United States or a United States District Court becomes necessary, client agrees to pay said corporation ___% of whatever may be saved in such second trial or appeal. The "amount saved" shall be the difference between the total, penalties and interest proposed _____ and the amount of taxes, penalties and interest as finally agreed upon and settled with the Internal Revenue Service.

3. The client agrees that in addition to the above corporation's fee, all costs and expenses directly incurred in the investigation or litigation of this matter shall be paid by the client. The term "costs" shall include an accountant's charges. The agreed accountant shall be _____.

4. The corporation agrees to make no charge for services, except for the above retainer, unless savings are had in the above matter, and to make no settlement without consent of client.

5. The corporation hereby retains the right to designate the individual attorney or employee to perform the services under this agreement.

6. CLIENT agrees to pay all bills within 10 days after billing. All statements for professional legal services rendered which are delinquent more than 30 days are subject to an 18% per annum interest charge.

Client

Client

ATTEST:

_____ (SEAL)
Secretary

_____ CORPORATION

BY _____

(This is an agreement which has been submitted by an attorney who is a member of a partnership in

Illinois.)

RETAINER AGREEMENT
(PARTNERSHIP)

I HEREBY RETAIN AND EMPLOY the law offices of ____ (Partnership) _____ as my attorney, to bring suit upon and/or to represent me in the prosecution and recovery or settlement of my claim for _____ sustained by me as a result of _____ against _____ of _____.

I AGREE TO COOPERATE with my attorney as re-quested in locating any witnesses, securing testimony and in other matters as desired by him.

POINTERS TO CONSIDER

by

C. Bailey

ATTORNEY FEES

You should always bear in mind that a client's agreement to pay a reason-able fee for legal services constitutes an integral part of the Attorney-Client relationship. It is as much a part of this relationship as is Your obligation to perform the legal services.

GENERAL RETAINER

A retainer, it has been said, serves the purpose of obligating the attorney to represent the client as well as preventing him from taking a fee on tie other side.

Pointers:

It is suggested that in considering a retainer you bear in mind that litigation involves much more than the trial of an action, and your retainer agreement, if it is to include litigation, should be specific as to coverage of (1) investigation and discovery; (2) preparation of pleadings; (3) motions and pre-trial conferences; (4) the trial; (5) post-trial motions; (6) appeals; (7) retrials; (8) enforcement of judgments; (9) collateral suits, cross-claims, counterclaims, and third party actions; (10) travel and associated expenses; (11) Court costs. This is especially important, since the retainer agreement, if ambiguous, will be construed most strongly against the attorney drafting it. Prudent practice indicates that you should have your agreement with your client so plain as not to require construction.

REQUIRING A DEPOSIT FOR LITIGATION EXPENSES

In entering into a retainer agreement which will cover litigation, you will be well advised to require a deposit for expenses from the client. Litigation expenses can amount up to sizeable sums, very quickly. If you do not have such a deposit fund, you will find yourself in the money-lending business, without the benefit of getting interest on your money.

GUIDES FOR ATTORNEYS IN FIXING A REASONABLE FEE

Familiarity with the factors which the courts have considered in deter-mining the reasonable value of an attorney's services is of value for the following purposes:

"(1) to enlighten the conscience and to guide the judgment of the lawyer (before any controversy arises and to forestall any dispute) when he comes to fix the amount that he will charge for his services, and to help him avoid both the injustice of exorbitant fees and the

opprobrium connected with the reputation of a 'cheap lawyer';"

(2) to fortify the position of the attorney when he seeks an allowance from the Court or brings suit to recover for his services;

(3) to assist expert witnesses in arriving at a proper appraisal of the services of a colleague;

(4) "to aid the courts in determining how much to award as attorneys' fees under any given circumstances;" and

(5) "to facilitate the task of the appellate courts, and of the counsel interested in the appeals, in deciding whether or not the sum awarded in the trial court comes within the extremes tolerated by the authorities."

The Courts are agreed that in the absence of a contract, statute or Court rule fixing the amount of compensation a lawyer performing legal services for his client is entitled to recover the reasonable value of those services. It is generally recognized that the determination of such reasonable value involves a question of fact to be answered in the light of the peculiar circumstances of each individual case.

However, it has been recognized that there are several factors, more or less constant in the cases which may properly be considered in passing upon the amount to be allowed as a reasonable compensation to an attorney. These factors have been well summarized in Disciplinary Rule 2-106 of the Code of Professional Responsibility of the American Bar Association. (See attached*)

Also Ethical Consideration 2-18 of the Code of Professional Responsibility of the American Bar Association. (See attached**)

RETAINER AGREEMENT FOR DIVORCE IN
CLIEBERMAN CASE

THIS AGREEMENT made this 6th day of September, 1978, by and between Clieberman Associates, PA, hereinafter called the attorney, and Mr. Mark X, hereinafter called the client, WITNESSETH:

1. The client hereby retains and employs the attorney to represent, appear, and act for the client in obtaining a divorce from Anita X, and to commence and maintain any necessary action for that purpose in any court of competent Jurisdiction.

2. The client hereby agrees to pay the attorney for the services to be performed by him as herein set forth as follows:

(a) Fifty (50) Dollars per hour, for office time spent on this matter by attorney, including but not limited to telephone and office consultations with client, drafting papers, negotiating with opposing counsel, and for any pre-trial conferences; [only, after the initial advancement of \$2,500 has been exhausted?]

(b) Seventy-Five (75) Dollars per hour, for appearances on motions;

(c) One Hundred (100) Dollars per hour, for trial.

3. Client shall pay all costs and expenses of this matter, including travel and investigation expenses, and has advanced Two Thousand Five Hundred (2,500) Dollars toward said costs and expenses. In addition, said amount is payment toward a future total retainer of Five Thousand (5,000) Dollars to Seven Thousand Five Hundred (7,500) Dollars depending on how much and what kind of time the attorney spends on this case.

4. This retainer does not cover any appeal or post-decree proceedings unless subsequently agreed to by both parties.

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first above written.

Mr. Mark X Mr. Clieberman

Date Date

LONG

? 13. Sample Agreement

Re: People v. ___1___

You have retained the law firm of ___2___ to defend the above defendant on the above charges only in the ___3___ Court.

You have agreed to pay the fee estimated and agreed to by us in the sum of \$___4___. Payment to be made as follows: ___5___. Receipt of \$___6___ is hereby acknowledged.

You have agreed to pay the necessary expenses and disbursements separately as these expenses and disbursements are incurred by us. These expenses and disbursements may include, but shall not be limited to, fees for private investigators, expert witnesses, court reporter transcripts, travel expenses for attorneys and investigators, court fees and any and all other expenses we consider necessary for the proper defense of this case.

It is further understood that we have estimated that the trial or disposition this (these) charge(s) will require no more than ___7___ appearances (___8_ days of trial) in court. In the event that the trial or disposition of this (these) charge(s) shall exceed ___9___ court appearances or ___10___ days of trial, then you will be required to pay an additional fee at the rate of \$___11___ per daily court appearance.

This additional fee shall become due and payable as soon as we advise you that these appearances will be necessary.

In the event our services are terminated for any reason other than by us, the fee paid to us shall be deemed earned and no part thereof shall be returned.

If some unforeseen event shall develop which prevents us from continuing to represent the defendant, we will `return` such portion of the fee paid that exceeds the services rendered by us. The fee for our services shall be based on \$___12___ per hour.

It is further understood that we made no promises to you as to the outcome of this case except that we promised to render our best professional skill possible.

It is further understood that we will make available for every court appearance whenever necessary any one or more of our associate attorneys. We cannot guarantee which particular attorney will appear at any court appearance because of the great demands on the time and services of all our attorneys.

It is further understood that the fee agreed on herein does not include services for an appeal or retrial if such should become necessary. In the event of an appeal or retrial, a new and separate agreement will be made.

It is understood the fee agreed on is for the ___13___ Court only and does not include our services in the event the charge is held for Grand Jury proceedings or trial in the ___14___ Court. In that event, a new and separate agreement will be made.

___15___

By ___16___

I have read the above and the conditions have been carefully explained to me and I agree to all of the terms.

___17___

Client

SHORT

GENERAL CONTRACT FOR LEGAL REPRESENTATION

The undersigned hereby retains and employs _____, attorney at law, to represent undersigned and prosecute and maintain such actions or proceedings as he deems advisable in the matter of:

Undersigned authorizes _____ to file suit, employ counsel at no additional cost to undersigned, compromise or settle any claims, with consent of undersigned, and to do and perform all other acts that, in his judgment, are necessary and proper to enforce and protect the rights of the client.

In consideration for the payment of fees upon proper billing _____, attorney at law, agrees to perform the following legal services:

Undersigned agrees to pay _____, attorney at law, the following fees and costs:

FEES: All appropriate and necessary fees when required.

COSTS: All appropriate and necessary costs when required.

The terms of payment shall be as follows:

Client

Address and Phone No.

Approved by

_____ accepts such employment and agrees to perform such services in a prompt and diligent manner.

Date: _____ By: _____

Contracting Attorney

CLOSING STATEMENT

vs. Case No. _____

_____, client for _____

Monies received: _____

Payable to _____(attorney)_____ and

To be disbursed as follows:

For expenses advanced -- \$ _____
(see attached itemization)

Attorney's fee as agreed -- \$ _____

Settlement payable to:

_____ \$ _____

The monies received as specified above will be deposited in my law firm client trust account at the _____ Bank of _____, Illinois. It is my intention to withdraw the amount for expenses and attorney's fee as shown above on _____, 19____.

Attorney

I hereby acknowledge receipt of a copy of the above closing statement this d of _____, 19____.

Client