INTRODUCTION TO SETTING FEES, FEE ARRANGEMENTS AND FEE AGREEMENTS

This information is intended to facilitate a discussion about the importance of setting fees prior to the beginning of the representation of a client, including the use of engagement letters and fee agreements, etc.

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• Share with the New Lawyer a personal example of how failing to communicate clearly with your client about your fees early in the relationship caused problems in the relationship. Conversely, share with the New Lawyer a personal example of how communication with your client about fees prevented/avoided problems that could have resulted in a disciplinary complaint and/or ended the attorney-client relationship.


• Share best ways for communicating with clients, including practices like the following:
  
  o Clarifying reasonable expectations about the representation.
  
  o Clarifying your role and scope of the representation from the outset and as it changes.
  
  o Explaining clearly the fee arrangement.
  
  o Promptly providing detailed billing records to your clients.
  
  o Being respectful to your clients in all communications.
  
  o Respecting clients’ time.
  
  o Making sure your client understands the steps of the process, including what will happen next and the appropriate way to respond. See Rule 1.4 of the Louisiana Rules of Professional Conduct.
• Discuss professional and ethical ways to thank a client. Review and discuss the attached article: Wendy Werner, How to Thank a Client, LAW PRACTICE TODAY, June 2005. See also LSBA Public Ethics Advisory Opinion 07-RPCC-015, Gifts to Clients (12-20-2007). See Rule 7.2(c)(13) of the Louisiana Rules of Professional Conduct.

• Discuss how a lawyer clearly defines the scope of representation in a retainer or engagement letter. See Rule 1.2 of the Louisiana Rules of Professional Conduct.

• Discuss fee agreements.

• Discuss how to talk about and set a fee with your client.

• Discuss why fee agreements should be in writing. Share with the New Lawyer samples of fee agreements and engagement letters that you use in your practice. Or, if mentoring in-house, share with the New Lawyer the fee agreements and engagement letters which are used in your firm.

• Discuss the option of and issues related to accepting credit cards for payment of legal fees and costs. See LSBA Public Ethics Advisory Opinion 12-RPCC-019, Accepting Credit Cards for Payment of Fees and Costs (11-29-2012).

• Explain to the New Lawyer why certain provisions are either included in your fee agreement or excluded from your fee agreement. See Rule 1.5 of the Louisiana Rules of Professional Conduct.
RESOURCES

• LSBA Practice Aid Guide:  
  http://www.lsba.org/NewsAndPublications/PracticeAidGuide.aspx

• Louisiana State Bar Association Ethics Advisory Service and Ethics Counsel:  
  http://www.lsba.org/Members/EthicsAdvisary.aspx

• LSBA Fee Arbitration Program:  
  http://www.lsba.org/Members/DisputeResolutionProgram.aspx

LOUISIANA RULES OF PROFESSIONAL CONDUCT

RULE 1.4. COMMUNICATION

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) The lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

(c) A lawyer who provides any form of financial assistance to a client during the course of a representation shall, prior to providing such financial assistance, inform the client in writing of the terms and conditions under which such financial assistance is made, including but not limited to, repayment obligations, the imposition and rate of interest or other charges, and the scope and limitations imposed upon lawyers providing financial assistance as set forth in Rule 1.8(e).

LOUISIANA RULES OF PROFESSIONAL CONDUCT

RULE 7.2. COMMUNICATIONS CONCERNING A LAWYER’S SERVICES

The following shall apply to any communication conveying information about a lawyer, a lawyer’s services or a law firm’s services:

(c) Prohibitions and General Rules Governing Content of Advertisements and Unsolicited Written Communications.

(13) Payment for Recommendations; Lawyer Referral Service Fees. A lawyer shall not give anything of value to a person for recommending the lawyer’s services,
except that a lawyer may pay the reasonable cost of advertising or written or recorded communication permitted by these Rules, and may pay the usual charges of a lawyer referral service or other legal service organization only as follows:

(A) A lawyer may pay the usual, reasonable and customary charges of a lawyer referral service operated by the Louisiana State Bar Association, any local bar association, or any other not-for-profit organization, provided the lawyer referral service:

(i) refers all persons who request legal services to a participating lawyer;

(ii) prohibits lawyers from increasing their fee to a client to compensate for the referral service charges; and

(iii) fairly and equitably distributes referral cases among the participating lawyers, within their area of practice, by random allotment or by rotation.

LOUISIANA RULES OF PROFESSIONAL CONDUCT

RULE 1.2. SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to the provisions of Rule 1.16 and to paragraphs (c) and (d) of this Rule, a lawyer shall abide by a client’s decisions concerning the objectives of representation, and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer’s representation of a client, including representation by appointment, does not constitute an endorsement of the client’s political, religious, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of
any proposed course of conduct with a client and may counsel or assist a client to make a
good faith effort to determine the validity, scope, meaning or application of the law.

LOUISIANA RULES OF PROFESSIONAL CONDUCT

RULE 1.5. FEES

(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;

(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.

(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.

(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. A
contingent fee agreement shall be in a writing signed by the client. A copy or duplicate
original of the executed agreement shall be given to the client at the time of execution of
the agreement. The contingency fee agreement 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; the litigation and other expenses that are to be
deducted from the recovery; and whether such expenses are to be deducted before or after
the contingent fee is calculated. 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.

(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.

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

(1) the client agrees in writing to the representation by all of the lawyers involved,
and is advised in writing as to the share of the fee that each lawyer will receive;

(2) the total fee is reasonable; and

(3) each lawyer renders meaningful legal services for the client in the matter.

(f) Payment of fees in advance of services shall be subject to the following rules:

(1) When the client pays the lawyer a fee to retain the lawyer’s general availability
to the client and the fee is not related to a particular representation, the funds
become the property of the lawyer when paid and may be placed in the lawyer’s
operating account.

(2) When the client pays the lawyer all or part of a fixed fee or of a minimum fee for
particular representation with services to be rendered in the future, the funds
become the property of the lawyer when paid, subject to the provisions of Rule
1.5(f)(5). Such funds need not be placed in the lawyer’s trust account, but may be
placed in the lawyer’s operating account.

(3) When the client pays the lawyer an advance deposit against fees which are to
accrue in the future on an hourly or other agreed basis, the funds remain the
property of the client and must be placed in the lawyer’s trust account. The lawyer
may transfer these funds as fees are earned from the trust account to the operating
account, without further authorization from the client for each transfer, but must
render a periodic accounting for these funds as is reasonable under the circumstances.
(4) When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and must be placed in the lawyer’s trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances.

(5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer’s contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

LOUISIANA RULES OF PROFESSIONAL CONDUCT

RULE 1.16. DECLINING OR TERMINATING REPRESENTATION

(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) the 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.

(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;

(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;

(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.

(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.

(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. Upon written request by the client, the lawyer shall promptly release to the client or the client’s new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.