

# ETHICS OF FEES AND BILLING

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## I. Contingency Fees

- A. Must be reasonable – DR 5-103(A)(2).
- B. A lawyer retained on a contingency fee basis should prepare a written instrument precisely detailing all terms of the employment contract. *Carmichael v. Iowa State Highway Commission*, 219 N.W.2d 658 (Iowa 1974); *Tom Riley Law Firm, P.C. v. Tang*, 521 N.W.2d 758 (Iowa Ct. App. 1994).
  - 1. EC 2-21 – Reach a clear agreement with the client as to the basis of the fee charges to be made.
  - 2. EC 2-25 – Make effort to avoid controversies over fees with clients.
- C. Factors that determine the fee must have a logical relationship to the value of the service. *Wunschel Law Firm v. Clabaugh*, 291 N.W.2d 331 (Iowa 1980).
- D. Unethical to undertake in a domestic relations case. *Rogers v. Webb*, 558 N.W.2d 155 (Iowa 1997); DR 2-106 (C).
  - 1. Exception: If the gravamen of the litigation involves no domestic issues, but only economic considerations, a contingency fee may be acceptable. *McCullough*, 468 N.W.2d 458 (Iowa 1991) (Action was to void dissolution decree and “the concerns expressed in EC 2-22 simply did not exist.”).
- E. Unethical in a criminal case. DR 2-106 (C)

## II. Hourly fees

- A. DR2-106 (A) – A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.
- B. DR2-106 (B) – Factors to be considered as guides in determining the reasonableness of a fee.
- C. EC 2-20 – Fees of a lawyer will vary according to many factors.

### III. Paying Your Client's Costs

- A. EC 5-7 and 5-8 – Attorney should be free from financial interest in client's case.
- B. DR 5-103(B) – No advances or financial assistance to client except for expense of litigation BUT
- C. Ultimate liability for costs and expenses must be that of client.

### IV. Flat Fees and Retainers

#### A. Flat Fee

- 1. The fee embraces all work to be done
- 2. Advisable to maintain contemporaneous time records (in the event controversy arises later about the reasonableness of the fee). Ethics Opinion No. 01-02 (9-25-01).
- 3. If paid in advance it is either a "general retainer" or a "special retainer".

#### B. General Retainer (defined in *Apland*)

- 1. Fee for agreeing to make legal services available when needed.
- 2. The fee is earned when paid since the attorney is entitled to the money regardless of whether he actually performs any services.
- 3. Need not be placed in trust account.

#### C. Special Retainer (i.e., "advance fee payment") (defined in *Apland*)

- 1. Payment of funds for a specific service to be performed in the future.
- 2. Money must be placed in trust account. *Apland*, 577 N.W.2d 50 (Iowa 1998); DR 9-102(A).
- 3. Attorney depletes the prepayment as services are rendered.
- 4. Advise client when applying money in trust to bill. Ethics Opinion No. 01-02 (9-25-01).
- 5. Attorney is obligated to refund the balance.

IV. Who is Your Client?

A. Bills sent to third party auditors

1. Canon 4: “Preserve the Confidences and Secrets of a Client”,
2. DR 4-101 (C) – Confidences and secrets may be revealed only after full disclosure to client.
3. *In the Matter of the Rules of Professional Conduct and Insurer Imposed Billing Rules and Procedures*, 2 P.3d 806 (Mont. 2000)

B. What is in the best interest of your client vs. what that payor wants

1. EC 5-1 and DR 5-107 (B) – Professional judgment shall be exercised solely for the benefit of the client and free of compromising influences and loyalties.
2. In insurance defense, insured is the client; the insurer is not co-defendant.

VI. Referral Fees

- A. Referral or forwarding fees are improper; generally attorney is paid only for services rendered. DR 2-107 (A); Ethics Opinion No. 76-26 (11-4-76)

Quote: A lawyer starts life giving \$500 worth of law for \$5 and ends giving \$5 worth for \$500.

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