

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday, the 16th day of May, 2025.

On March 6, 2025, came the Virginia State Bar, by Michael MacKager York, its President, and Cameron M. Rountree, its Executive Director and Chief Operating Officer, and presented to the Court a petition, approved by the Council of the Virginia State Bar, praying that Rule 1.5, Part Six, Section II of the Rules of Court, be amended. The petition is approved and Rule 1.5 is amended to read as follows:

Rule 1.5. Fees.

(a) A lawyer's fee shall be reasonable. 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 lawyer's fee shall be adequately explained to the client. When the lawyer has not regularly represented the client, the amount, basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(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 state in writing 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. 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 a contingent fee:

- (1) in a domestic relations matter, except in rare instances; or
- (2) for representing a defendant in a criminal case.

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

- (1) the client is advised of and consents to the participation of all the lawyers involved;
- (2) the terms of the division of the fee are disclosed to the client and the client consents

thereto;

- (3) the total fee is reasonable; and

(4) the division of fees and the client's consent is obtained in advance of the rendering of legal services, preferably in writing.

(f) Paragraph (e) does not prohibit or regulate the division of fees between attorneys who were previously associated in a law firm or between any successive attorneys in the same matter. In any such instance, the total fee must be reasonable.

(g) Nonrefundable advanced legal fees are prohibited.

COMMENT

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Nonrefundable Fee

[10] A nonrefundable advanced legal fee compromises the client's unqualified right to terminate the lawyer-client relationship because the right to terminate the representation would be negatively affected if the client would still risk paying for services not provided. Further, retaining a nonrefundable fee after being discharged by the client before the fee is earned violates the lawyer's responsibility to refund any unearned fee upon termination of the

representation. An unearned fee is per se unreasonable and therefore charging an unearned nonrefundable fee violates Rule 1.5(a). *See* LEO 1606.

[11] A retainer paid to ensure the lawyer's availability for future legal services and/or as consideration for the lawyer's unavailability to a potential adverse party is not an advanced legal fee and is earned when paid. The retainer must be charged solely for these purposes and not as prepayment for legal services to be rendered in the future.

Upon consideration whereof, it is ordered that the Rules for Integration of the Virginia State Bar, Part Six of the Rules of Court, be and the same hereby are amended in accordance with the prayer of the petition aforesaid, effective July 15, 2025.

A Copy,

Teste:


Clerk