

## Rule 1.5. Fees

(a) - (d) [NO CHANGE]

(e) ~~[Repealed.]Referral fees are prohibited.~~

(f) - (h) [NO CHANGE]

### COMMENT

#### Reasonableness of Fee and Expenses

[1] [NO CHANGE]

#### Basis or Rate of Fee

[2] - [3] [NO CHANGE]

#### Terms of Payment

[4] - [5] [NO CHANGE]

#### Contingent Fees

[6] [NO CHANGE]

#### Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (d) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. 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 refer a matter only to a lawyer who the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1. [Referral fees may be considered a division of fees for purposes of this Rule.](#)

[8] - [18] [NO CHANGE]

## Rule 1.8. Conflict of Interest; Current Clients; Specific Rules

(a) - (b) [NO CHANGE]

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(c.1) Except as permitted by Rule 1.5(d) or Rule 7.2(b), a lawyer shall not receive compensation or anything of value for referring a client to a third party for products or nonlegal services related to the lawyer's representation of a client. A lawyer may receive nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending the third party's products or nonlegal services.

(d) - (k) [NO CHANGE]

### COMMENT

#### Business Transactions Between Client and Lawyer

[1] - [4] [NO CHANGE]

#### Use of Information Related to Representation

[5] [NO CHANGE]

#### Gifts to Lawyers

[6] - [7] [NO CHANGE]

[8] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

#### Fees Paid to Lawyer by Third Parties for Referral of Clients for Nonlegal Services or Products

[8A] Paragraph (c.1) reflects the principle that a lawyer's receipt of a referral fee from a third party tempts the referring lawyer to compromise his or her judgment by referring the client to a third party regardless of whether the third party is the best and most economical source for the third party's products or nonlegal services. The financial incentive for the referral causes potential harm to the client because it compromises the referring lawyer's professional

independence and materially limits the lawyer's ability to represent the best interests of his or her clients. The financial incentive for the referral also creates a financial conflict of interest for the referring lawyer that undermines the referring lawyer's duty of loyalty to his or her client. Although former clients are still likely to value the lawyer's judgment and opinions about the substance of the referral, the referring lawyer's obligation to provide competent representation to a client ends once the representation is terminated. Whether a person or entity is a current or former client is a question of substantive law. Similarly, referrals that are not related to the lawyer's representation of the client are outside of the scope of the lawyer-client relationship and outside the scope of regulation of the ethics rules. Paragraph (c.1) is not intended to regulate the division of a legal fee between lawyers not in the same firm or the payment of compensation for recommending a lawyer's services. It is therefore expressly subordinate to Rule 1.5(d), and Rule 7.2(b), in the event of any inconsistency between them.

#### Literary Rights

[9] [NO CHANGE]

#### Financial Assistance

[10] - [13] [NO CHANGE]

#### Person Paying for a Lawyer's Services

[14] - [15] [NO CHANGE]

#### Aggregate Settlements

[16] [NO CHANGE]

#### Limiting Liability and Settling Malpractice Claims

[17] - [18] [NO CHANGE]

#### Acquiring Proprietary Interest in Litigation

[19] [NO CHANGE]

#### Client-Lawyer Sexual Relationships

[20] - [22] [NO CHANGE]

#### Imputation of Prohibitions

[23] [NO CHANGE]

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