

Model Article on Fees

08/10/2021

1. Freedom to negotiate fees with client

Unless otherwise provided by applicable standards or regulations, a lawyer and his or her client may freely agree upon the lawyer's fees, expenses and other compensation in accordance with the principles set forth in paragraph 4 below.

This sets out the fundamental principle that a lawyer and their client are free to agree a fee, subject to the principles set forth in paragraph 4.

2. Requirement to determine fees or at least factors to be used in the calculation of the fees before start of rendering legal services

Upon accepting instructions, the lawyer should provide information to the client on the scope of the services to be provided, the amount of his or her fees and any other compensation for providing such services, or at least the factors that will be taken into account to determine such amount. It is recommended that such information should be given in writing or some other recordable form and should be updated if necessary. When applicable, the lawyer shall inform his or her client of the availability of legal aid or insurance coverage of the fees.

This rule confirms that there is a duty to act with transparency so that the client is informed of the factors which will be taken into account to determine the amount of the lawyer's fees and adequate steps are taken to ensure that the client is aware of available legal aid or insurance coverage.

3. Requirement that the lawyer's fee has to be reasonable

A lawyer should only enter into fee agreements with a client that are lawful, and which the lawyer considers to be suitable for the client's needs and take account of the client's best interests.

The client's needs and resources are a factor to be taken into account for the lawyer which may be adapted or modified according to the client's best interests.

It is for the lawyer, acting responsibly, to determine what is in a client's best interests in close cooperation with the client. The test of a client's best interests is a subjective one. This paragraph is not restrictive as, for example, the best interests of a client seeking to defend their reputation or to assert a point of principle may mean that payment of significant fees on a matter compared to the amount at stake. The subjective test may take into account the urgency with which the work is required, the importance or public profile of the person or company for which it is undertaken and the degree of seniority or expertise of the lawyer.

4. Factors which may be taken into consideration in fixing fees

Unless an agreement has been reached with the client on the amount of the fee or the method to calculate it, fees charged by a lawyer shall take into account such factors as the difficulty of the matter, the amount of work required of the lawyer, the expertise and seniority of the lawyer, the importance of the matter to the client, the urgency and nature of the services provided, the value of the matter and such other factors as may be pertinent to establish a fee that is reasonable under the circumstances.

The first part of the provision deals with agreements that provide for a fixed or determinable fee.

This paragraph reflects the scope for a lawyer's fees, charges and compensation to vary dependent upon a range of factors which include those set out in the paragraph but also without limitation: the special requirements and nature of the client; the unusual character of the matter; the risks and obligations assumed; whether the legal services are to be rendered in a single matter or on a regular basis.

5. Court fees and expenses should be borne by the client

A lawyer may pay court fees and expenses on behalf of a client. If they do so, they are entitled to recover those court fees and expenses as they would unpaid fees for legal services.

Lawyers may, but are not obliged to, pay court fees or expenses on behalf of a client. In every case such fees and expenses are recoverable by the lawyer and non-payment or non-refunding of those fees and expenses will give the same rights to the lawyer as he or she would have in the event of non-payment of their legal fees and expenses.

6. Lack of payment as grounds to terminate a mandate

Where a lawyer decides to terminate the relationship with a client for non-payment of fees or expenses, he or she should give notice to the client to enable the client to safeguard his or her interests affected by the termination.

This provision is intended to prevent the client's interests to be prejudiced by the timing of a lawyer's decision to terminate their instructions for non-payment of fees. However, this provision does not prevent the lawyer from terminating their instructions without notice if required or permitted by any other applicable provision.

7. Prohibition of fee-sharing with non-lawyers

A lawyer may not share his or her fees with a person who is not a lawyer except where an association between a lawyer and the other person is permitted by applicable provisions.

This rule specifies that lawyers may not share their fees with non-lawyers, except when the parties sharing those fees would be permitted to be associated together under applicable rules and regulations, whether in a partnership or another format. This requirement would be met if, under applicable rules and regulations, they are allowed to be associated in a multi-disciplinary practice (MDP), an alternative business structure (ABS) or a similar type of association. It is therefore for the national regulators or legislators to determine whether and to what extent the participation of a lawyer in an MDP, an ABS or a similar type of association should be possible.

The rule does not require that the fee sharing parties actually be part of such an association, as long as such an association would be permitted under applicable local rules and regulations.