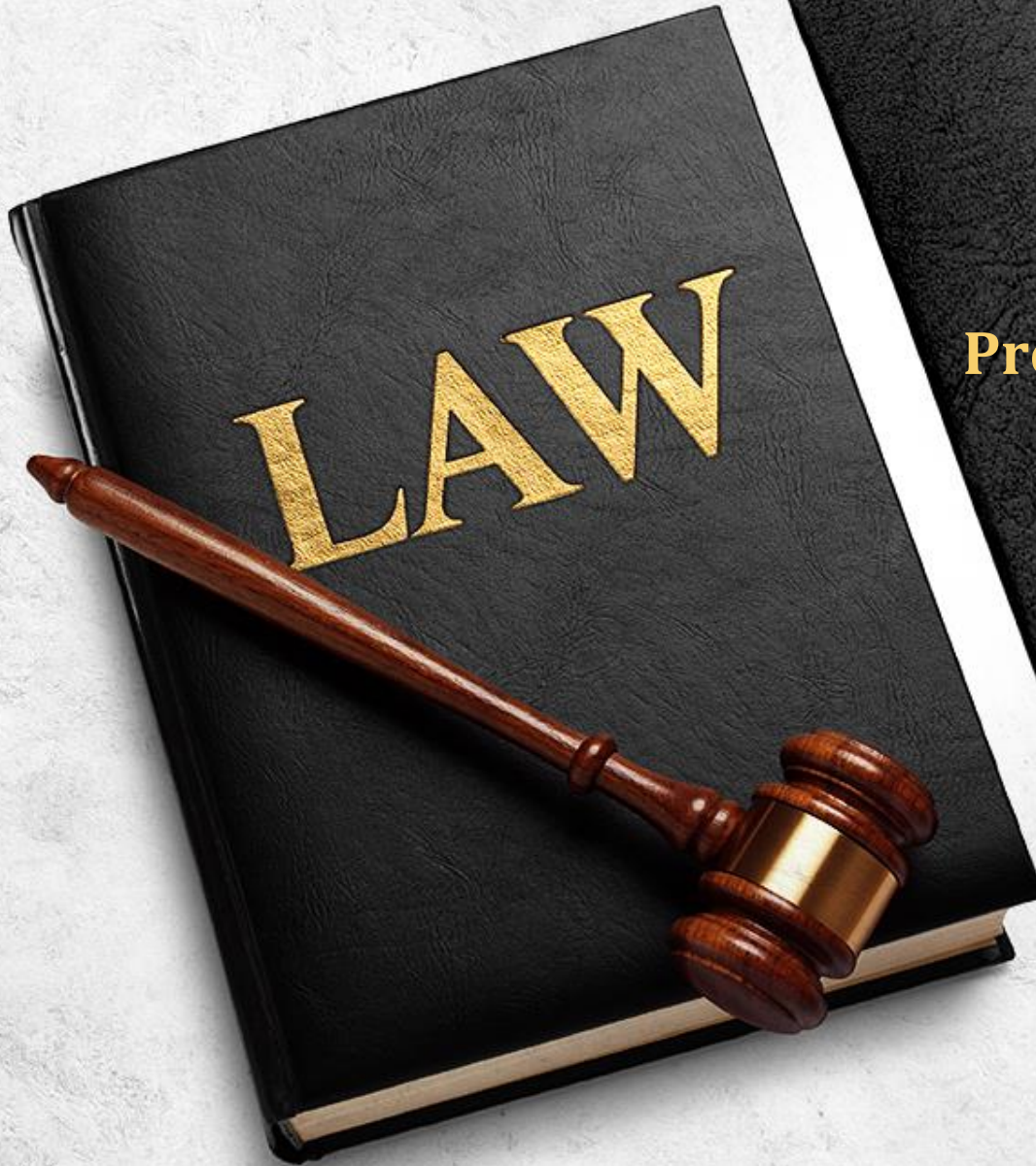


Legal Ethics

Lecture 12

Prof. Marvin Longabaugh

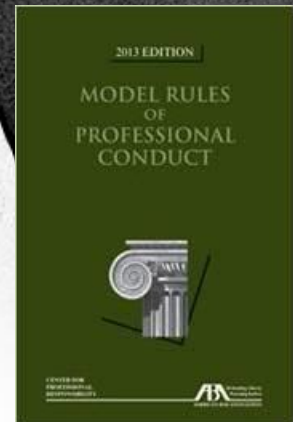
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MRPC 1.5

Fees

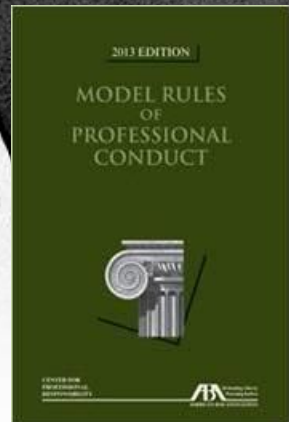
- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
 - (1) the time and labor required, the novelty and difficulty of the questions 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.



MRPC 1.5

Fees

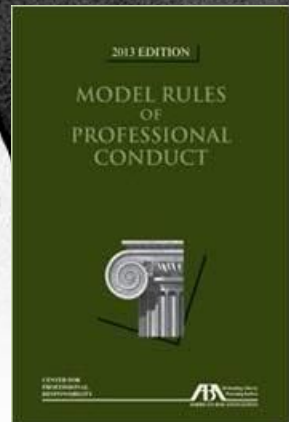
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; 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. 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.



MRPC 1.5

Fees

- (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 a fee between lawyers who are not in the same firm may be made only if:
 - (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
 - (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
 - (3) the total fee is reasonable.



The “Business” of Law: Fees and the Reasonability Rule

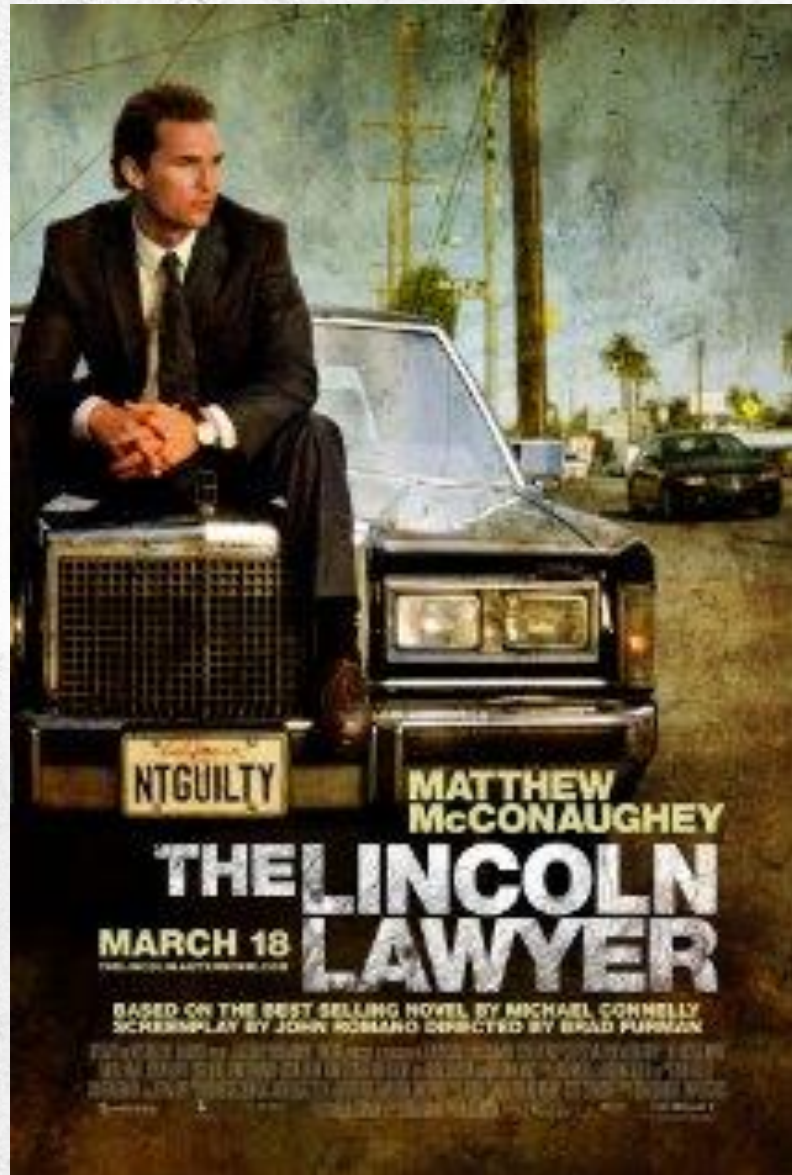
- **Ethical Rules require fees to be “reasonable”**
- **Reasonableness takes into account:**
 - Amount of work involved in a case (must refund money if work turns out to be less than expected)
 - The novelty and complexity of the issues involved in the case
 - The degree of specialty or special skills required
 - The “going rate” for legal services of that type in that area
 - The stakes of the case
 - The experience, skill and reputation of the firm involved
 - The relationship between the firm and the client
 - The pressure and time constraints of the representation
- **Factor that may not be considered:**
 - The actual outcome of the case (except in contingency fee arrangements)
 - Reason: *That would be just too much of an incentive to “cheat” and try to obfuscate the search for the truth*



The Lincoln Lawyer (2011)

M_LincolnLaw_02

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Billing for Legal Services

Requirement That a Lawyer Charge Only a *Reasonable Fee*

- **May a lawyer properly consider the client's ability to pay in setting a "reasonable" fee? Assume the lawyer would be charging some clients more than others for the same kind of work. Should that be permitted?**
- Comment 3 of Rule 1.5 says: "It is proper to define the extent of services in light of the client's ability to pay."
- BUT that doesn't mean that a rich client may be charged more than a "reasonable" fee.
- What is the definition of reasonable?
 - It is typically in the eyes of the client. If the client deems it reasonable when retaining the lawyer, a disinterested observer would probably agree.



Billing for Legal Services

The Fee Agreement Between Lawyer and Client

- **Must a lawyer's fee agreement be in writing?**
- The ABA has not made fee agreements a formal requirement, except in the case of contingent fees.
 - Rule 1.5 (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.



Billing for Legal Services

Special Rules Applicable to Contingent Fees

- **Are there cases in which a contingent fee should not be proper?**
- There are traditionally two kinds of cases in which contingent fees are seen to be improper:
 - Divorce / Domestic Relations
 - Rule 1.5(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
 - Criminal Cases
 - (2) a contingent fee for representing a defendant in a criminal case.



The “Business” of Law: Contingency Fees

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- **Definition**

- Plaintiff's Attorney/ Firm only gets paid when and if the client receives money from the lawsuit. The fee is a percentage of the recovery, such as 33%.

- **This is common in civil cases, because:**

- It gives the attorney an incentive to press for the client
- It allows the client to not have to lose money if the case is lost
- It ensures that attorneys are careful not to take frivolous cases (because they will not get paid if they lose)



The “Business” of Law: Contingency Fees

- **Issues to watch out for:**

- Contingency Fee arrangements must be in writing; an oral agreement is unethical. Also, the client must fully understand and agree to the arrangements
- Contingency Fees are not allowed in many types of Family Law cases, such as divorce cases, because the law does not want to encourage the attorneys to fight hard to get a divorce to go through
- Contingency Fees are not allowed in criminal cases (on either side)
- If the relationship ends during the representations, the contingency fee arrangement can be eliminated and the firm will be confined to the reasonable value of their work to that point (note that they get this money even if the case is eventually lost)



The “Business” of Law:

Other Points Regarding Fees

- “Referral” fees are unethical, especially if paid to a non-lawyer
- “Fee-Splitting” with a non-lawyer is unethical (because, in essence, the client is paying legal fees for legal representation to a non-lawyer)
 - So, profit sharing arrangements between a law firm and paralegal employees are unethical
- Exceptions
 - The estate of a deceased lawyer entitled to fees from the lawyer’s firm, partners, or associates may be paid over a reasonable period of time after the lawyer’s death.
 - A lawyer purchasing the legal practice of a deceased, disabled, or disappeared lawyer may pay a lawyer’s estate.
 - Non-lawyer employees in a firm may be included in a compensation or retirement plan, even if the plan is funded by a profit-sharing arrangement.



The “Business” of Law: Other Points Regarding Fees

- Fee splitting, even between attorneys, is only ethical if:
 - The client consents
 - The split is proportionate to the work done
 - Each attorney sharing the fee assumes responsibility for the case
 - A lawyer may advance, but may not pay, legal costs of the representation, except in pro bono cases
 - Pro Bono representations are encouraged, though not required



Referral Fee Issues

- Illinois State Bar Association Opinion No. 97-05
 - Improper for a lawyer to participate in a lawyer referral program operated by a for profit organization.
 - Prohibits a lawyer assisting non-lawyers in conduct where lawyer knows it would be prohibited
- Kentucky Bar Association Ethics Opinion KBA E-366:
 - Lawyers may split fees in proportion to services performed by each lawyer,
 - Or they may split them without regard to work performed, so long as:
 - The referring lawyer assumes responsibility for the work performed, there is written agreement with and consent of the client to the representation of the particular lawyers and the total fee is reasonable.



Quick Quiz



End Of Class Review Quiz

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**THE
BIG
QUIZ**



The End

