



CLASS 12

Professional Responsibility and Legal Ethics

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/or complexity of the issues involved in the case
 - the degree of specialty or special skills required for a representation
 - what is 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 "Business" of Law: Contingency Fees

- **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:**

1. It gives the attorney an incentive to press for the client
2. It allows the client to not have to lose money if the case is lost
3. 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 (cont.)

- **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.



QUIZ TIME!



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 (cont.)

- 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 nonlawyers conduct when 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.

