

GUIDELINE 13: FEES

Introduction

Rule Reference: Rule 5.01 (1)

1. Too often, misunderstandings about fees and disbursements result in disputes over legal bills and complaints from unhappy clients. Since these disputes reflect badly on the paralegal profession and the administration of justice, it is important that a paralegal discuss with his or her client(s) the amount of fees and disbursements that will likely be charged. It will be to the benefit of all concerned if the paralegal ensures that the client has a clear understanding not only of what legal services the paralegal will provide, but how much those services are likely to cost.

Fees and Disbursements

2. Generally, a *fee* refers to the paralegal's wage. Clients pay fees for the legal services provided by the paralegal. Fees may be billed in a variety of ways, including:
 - *An hourly rate*, charging for the actual time spent on the client matter,
 - *A block, fixed or flat fee*, charging a fixed amount for performing a particular task,
 - *Fees by stages*, charging for a matter which is broken down into stages, and an estimate is given as to the fee for each stage or step in the matter, or
 - *Contingency fees*, where part or all of the paralegal's fee depends on the successful completion of the matter, and the amount may be expressed as a percentage of the client's recovery in the matter.
3. The paralegal should consider which method best suits the circumstances and the client.
4. A *disbursement* refers to any expense that the paralegal pays on behalf of the client for which the paralegal is entitled to be reimbursed by the client. Common disbursements include charges for
 - research, such as Quicklaw charges or research conducted by third party professionals,
 - mileage,
 - postage, photocopying, faxing documents or sending documents by courier,
 - long-distance phone calls,
 - expert reports,
 - transcripts or certified documents, and/or
 - tribunal or court filing fees related to the client matter.
5. A paralegal cannot charge more than the actual cost of the disbursement. A paralegal cannot make a profit from disbursements at the client's expense.

Discussing Fees and Disbursements**Rule Reference: Rule 5.01(1)**

6. A paralegal should discuss charges for fees and disbursements at the outset of the retainer. To ensure there is no misunderstanding, this information should be provided or confirmed in writing.
7. The following are steps that will assist a paralegal in meeting his or her obligations under Rule 5.01(1). Whenever possible, a paralegal should provide the client with an estimate of the amount of fees the paralegal expects to charge to complete the matter, or to bring the matter to a certain stage. A paralegal should openly disclose and discuss with clients all items that will be charged as disbursements and how those amounts will be calculated. If an administrative charge forms part of the amount charged as a disbursement, disclosure of such charge should be made to the client(s) in advance. Once disclosure is made, the clients are able to make an informed decision as to whether or not they will accept such an arrangement.
8. In discussing fees and disbursements with clients, it is appropriate for a paralegal to
 - provide a reasonable estimate of the total cost as opposed to an unreasonable estimate designed to garner the client's business, and
 - not manipulate fees and disbursements in a manner as to provide a lower fee estimate.
9. When something happens in the matter that the paralegal or client did not expect, resulting in costs that are higher than the paralegal's original estimate, the paralegal should immediately give the client a revised estimate of cost, and an explanation of why the original estimate has changed. The client can then instruct the paralegal based on the new information. The new understanding should be confirmed in writing.

Fair and Reasonable Fees**Rule Reference: Rule 5.01(2)**

10. In determining the fee to charge a client, a paralegal is encouraged, in appropriate cases, to provide legal services *pro bono* (for the greater good), i.e. for no fee or for a fee that has been reduced. When a client or prospective client of limited means is unable to obtain legal services, a paralegal should consider reducing or waiving the fees he or she would normally charge.

Hidden Fees**Rule Reference: Rule 5.01(3)**

11. The relationship between paralegal and client is based on trust. The client must be able to rely on the paralegal's honesty and ability to act in the client's best interests. This means that the paralegal cannot hide from the client any financial dealings in his or her matter.

Fee Splitting and Referral Fees

Rule Reference: Rule 5.01(11), (12) & (13)

By-Law 7 (Multi-discipline Practices)

12. *Fee splitting* occurs when a paralegal shares or divides his or her fee with another person. Where a client consents, a paralegal and another paralegal or lawyer who are not at the same firm may divide between them the fees for a matter, so long as the fees are split relative to the work done and the responsibility assumed by each paralegal and/or lawyer. Multi-discipline practices are exempt from the prohibition against fee-splitting in certain circumstances.
13. A *referral fee* is
 - a fee paid by a paralegal to another paralegal or lawyer for referring a client to the paralegal, or
 - a fee paid to the paralegal by another paralegal or lawyer for his or her referral of a person to another paralegal or lawyer.
14. The *Rules* do not prohibit an arrangement respecting the purchase and sale of a professional business when the consideration payable includes a percentage of revenues from the practice sold.

The Statement of Account

Rule Reference: Rule 5.01(4)

15. In addition to detailing fees and disbursements, the *statement of account* or bill delivered to the client by the paralegal should detail clearly and separately the amount the paralegal has charged for Harmonized Sales Tax (HST). The HST applies to fees and some disbursements, as outlined by the Canada Revenue Agency (CRA) guidelines. The paralegal should review and sign the statement of account before it is sent to the client.
16. Should a dispute arise about the statement of account, the paralegal should discuss the matter openly and calmly with the client in an effort to resolve the matter. Civility and professionalism must govern all discussions, including discussions relating to fee disputes with clients.

Contingency Fees

Rule Reference: Rule 5.01(6) – (8)

17. A *contingency fee* is a fee that is paid when and if a particular result is achieved in a client's matter.
18. Rule 5.01(7) outlines the factors to be considered in determining the appropriate percentage (or other basis) of the contingency fee agreement. Regardless of which factors are used to determine the fee and the other terms of the contingency fee agreement, the ultimate fee must still be fair and reasonable.

19. The contingency fee agreement should be clear about how the fee will be calculated.
20. It may be helpful for a paralegal to refer to *Regulation 195/04* to the *Solicitor's Act* (which applies to contingency fees for lawyers) for guidance as to what terms should be included in a paralegal contingency fee agreement.