

Disciplinary Rules and Procedures Committee  
Meeting of June 3, 2022  
Hybrid meeting

MINUTES

Chair Michael Bagley called the meeting to order at 2:00 p.m.

**Attendance:**

Committee members: Michael Bagley, R. Gary Spencer, Erin H. Gerstenzang (virtual), Mazie Lynn Guertin, John G. Haubenreich, Patrick H. Head (virtual), Seth D. Kirschenbaum (virtual), Catherin Koura (virtual), Edward B. Krugman, David N. Lefkowitz (virtual), David S. Lipscomb, Patrick E. Longan (virtual), David O’Neal (virtual), Jabu M. Sengova (virtual), Patrick Wheale (virtual), and Hon. Paige Reese Whitaker.

Staff: Paula J. Frederick, Jenny K. Mittelman (virtual), William D. NeSmith, III, Mercedes Ball, Billy Hearnburg, and Kathya S. Jackson (virtual)

Guests: Supreme Court Justice Peterson

**Approval of Minutes:**

The Committee approved the Minutes from the April 1, 2022 meeting. Once the OGC receives the draft of ABA Rule 8.4(g) from the group of lawyers requesting the changes it will be included in the agenda.

**Action Items:**

**Formal Advisory Opinion Board request:**

By unanimous vote, the Committee voted to adopt the proposed changes to Rules 1.5 and 1.8 to address the propriety of entering an agreement with a client requiring arbitration of fee disputes and/or malpractice claims. A copy of the Rules as adopted appears at the end of these minutes.

**Rule 1.8**

The Committee reviewed the previously approved (at its 1/7/22 meeting) draft of Rule 1.8 along with the proposed revisions by the FAOB. The Committee voted to revise e(3) to read: “a lawyer representing an indigent client pro bono, a lawyer representing an indigent client through a nonprofit legal services or public interest organization pro bono, or a lawyer representing an indigent client through a law school clinical or pro bono program may provide modest gifts to the client for food, rent, transportation, medicine, and other basic living expenses.”

The Committee voted to revise comment 6 to read: “Paragraph (e)(3) provides another exception. A lawyer representing an indigent client without fee, a lawyer representing an indigent client through a nonprofit legal services or public interest organization and a lawyer representing an indigent client through a law school clinical or pro bono program may give the client modest gifts...”

Garry Spencer opposed.

A copy of the Rule as revised (previously approved changes in green, approved FAOB changes in red, and current changes in blue) appear at the end of these minutes.

### **ITILS/Rule 1.2 Comment 9**

David Lipscomb raised concerns about the proposed comment and the use of the words “knowledge” and “wilful blindness.” After discussion, the motion to adopt ITILS’s revised draft failed.

Justice Peterson suggested that Patrick Longan and David Lipscomb meet with ITILS members to draft a revised version of Rule 1.2. They will report at the Committee’s next meeting.

### **Discussion Item:**

#### **Proposed changes to Part VII**

The Committee discussed comments received from the Georgia Association of Criminal Defense Lawyers. The Committee decided to review the comments again (including Justice Peterson’s comment and supporting case) and vote on the proposed revisions at its next meeting.

### **Informational Item:**

#### **Report:**

Paula Frederick provided the Committee with a report regarding the status of previously amended rules.

The next meeting will be in August at Bar Headquarters.

The meeting adjourned at 3:21 p.m.

1 RULE 1.5 FEES

2 (a) A lawyer shall not make an agreement for, charge, or collect an  
3 unreasonable fee or an unreasonable amount for expenses. The factors  
4 to be considered in determining the reasonableness of a fee include the  
5 following:

6 (1) the time and labor required, the novelty and difficulty of the  
7 questions involved, and the skill requisite to perform the legal  
8 service properly;

9 (2) the likelihood that the acceptance of the particular  
10 employment will preclude other employment by the lawyer;

11 (3) the fee customarily charged in the locality for similar legal  
12 services;

13 (4) the amount involved and the results obtained;

14 (5) the time limitations imposed by the client or by the  
15 circumstances;

16 (6) the nature and length of the professional relationship with the  
17 client;

18 (7) the experience, reputation, and ability of the lawyer or lawyers  
19 performing the services; and

20 (8) whether the fee is fixed or contingent.

21 (b) The scope of the representation and the basis or rate of the fee and  
22 expenses for which the client will be responsible shall be

23 communicated to the client, preferably in writing, before or within a  
24 reasonable time after commencing the representation, except when  
25 the lawyer will charge a regularly represented client on the same basis  
26 or rate. Any changes in the basis or rate of the fee or expenses shall  
27 also be communicated to the client. To the extent that agreements to  
28 arbitrate disputes over fees or expenses are enforceable, a lawyer may  
29 enter into such an agreement with a client or prospective client if the  
30 client or prospective client gives informed consent in a writing signed  
31 by the client or prospective client. The agreement to arbitrate and the  
32 attorney's disclosures regarding arbitration must be set out in a  
33 separate paragraph, written in a font size at least as large as the rest of  
34 the contract, and separately initialed by the client and the lawyer.

35 (c)

36 (1) A fee may be contingent on the outcome of the matter for  
37 which the service is rendered, except in a matter in which a  
38 contingent fee is prohibited by paragraph (d) or other law. A  
39 contingent fee agreement shall be in writing and shall state the  
40 method by which the fee is to be determined, including the  
41 percentage or percentages that shall accrue to the lawyer in the  
42 event of settlement, trial or appeal, litigation and other expenses  
43 to be deducted from the recovery, and whether such expenses

44 are to be deducted before or after the contingent fee is  
45 calculated.

46 (2) Upon conclusion of a contingent fee matter, the lawyer shall  
47 provide the client with a written statement stating the following:

48 (i) the outcome of the matter; and,

49 (ii) if there is a recovery showing:

50 (A) the remittance to the client;

51 (B) the method of its determination;

52 (C) the amount of the attorney fee; and

53 (D) if the attorney's fee is divided with another lawyer  
54 who is not a partner in or an associate of the lawyer's  
55 firm or law office, the amount of fee received by each  
56 and the manner in which the division is determined.

57 (d) A lawyer shall not enter into an arrangement for, charge, or collect:

58 (1) any fee in a domestic relations matter, the payment or amount  
59 of which is contingent upon the securing of a divorce or upon the  
60 amount of alimony or support, or property settlement in lieu  
61 thereof; or

62 (2) a contingent fee for representing a defendant in a criminal  
63 case.

64 (e) A division of a fee between lawyers who are not in the same firm  
65 may be made only if:

- 66 (1) the division is in proportion to the services performed by each  
67 lawyer or, by written agreement with the client, each lawyer  
68 assumes joint responsibility for the representation;
- 69 (2) the client is advised of the share that each lawyer is to receive  
70 and does not object to the participation of all the lawyers  
71 involved; and
- 72 (3) the total fee is reasonable.

73 The maximum penalty for a violation of this rule is a public reprimand.

#### 74 Comment

#### 75 Reasonableness of Fee and Expenses

76 [1] Paragraph (a) requires that lawyers charge fees that are reasonable  
77 under the circumstances. The factors specified in (1) through (8) are not  
78 exclusive. Nor will each factor be relevant in each instance. Paragraph  
79 (a) also requires that expenses for which the client will be charged must  
80 be reasonable. A lawyer may seek reimbursement for the cost of  
81 services performed in-house, such as copying, or for other expenses  
82 incurred in-house, such as telephone charges, either by charging a  
83 reasonable amount to which the client has agreed in advance or by  
84 charging an amount that reasonably reflects the cost incurred by the  
85 lawyer.

86 [1A] A fee can also be unreasonable if it is illegal. Examples of illegal  
87 fees are those taken without required court approval, those that

88 exceed the amount allowed by court order or statute, or those where  
89 acceptance of the fee would be unlawful, e.g., accepting controlled  
90 substances or sexual favors as payment.

#### 91 Basis or Rate of Fee

92 [2] When the lawyer has regularly represented a client, they ordinarily  
93 will have evolved an understanding concerning the basis or rate of the  
94 fee. In a new client-lawyer relationship, however, an understanding as  
95 to the fee should be promptly established. It is not necessary to recite  
96 all the factors that underlie the basis of the fee, but only those that are  
97 directly involved in its computation. It is sufficient, for example, to state  
98 that the basic rate is an hourly charge or a fixed amount or an  
99 estimated amount, or to identify the factors that may be taken into  
100 account in finally fixing the fee. When developments occur during the  
101 representation that render an earlier estimate substantially inaccurate,  
102 a revised estimate should be provided to the client. A written  
103 statement concerning the fee reduces the possibility of  
104 misunderstanding. Furnishing the client with a simple memorandum or  
105 a copy of the lawyer's customary fee schedule is sufficient if the basis or  
106 rate of the fee is set forth.

107 [3] Contingent fees, like any other fees, are subject to the  
108 reasonableness standard of paragraph (a) of this rule. In determining  
109 whether a particular contingent fee is reasonable, or whether it is

110 reasonable to charge any form of contingent fee, a lawyer must  
111 consider the factors that are relevant under the circumstances.

## 112 Terms of Payment

113 [4] A lawyer may require advance payment of a fee, but is obliged to  
114 return any unearned portion. See Rule 1.16 (d). A lawyer may accept  
115 property in payment for services, such as an ownership interest in an  
116 enterprise, providing this does not involve acquisition of a proprietary  
117 interest in the cause of action or subject matter of the litigation  
118 contrary to Rule 1.8 (j). However, a fee paid in property instead of  
119 money may be subject to the requirements of Rule 1.8 (a) because such  
120 fees often have the essential qualities of a business transaction with the  
121 client.

122 [5] An agreement may not be made, the terms of which might induce  
123 the lawyer improperly to curtail services for the client or perform them  
124 in a way contrary to the client's interest. For example, a lawyer should  
125 not enter into an agreement whereby services are to be provided only  
126 up to a stated amount when it is foreseeable that more extensive  
127 services probably will be required, unless the situation is adequately  
128 explained to the client. Otherwise, the client might have to bargain for  
129 further assistance in the midst of a proceeding or transaction. However,  
130 it is proper to define the extent of services in light of the client's ability

131 to pay. A lawyer should not exploit a fee arrangement based primarily  
132 on hourly charges by using wasteful procedures.

133 [5A] Paragraph (b) requires informed consent to an agreement to  
134 arbitrate disputes over fees and expenses. See Rule 1.0(l). In obtaining  
135 such informed consent, the lawyer should reveal to the client or  
136 prospective client the following: (1) in an arbitration, the client or  
137 prospective client waives the right to a jury trial because the dispute  
138 will be resolved by an individual arbitrator or a panel of arbitrators; (2)  
139 generally, there is no right to an appeal from an arbitration decision; (3)  
140 arbitration may not permit the broad discovery that would be available  
141 in civil litigation; (4) how the costs of arbitration compare to the costs  
142 of litigation in a public court, including the requirement that the  
143 arbitrator or arbitrators be compensated; and (5) who will bear the  
144 costs of arbitration. The lawyer should also inform the client or  
145 prospective client regarding the existence and operation of the State  
146 Bar of Georgia's Fee Arbitration Program, regardless of whether the  
147 attorney seeks an agreement to submit any future fee disputes to that  
148 program. The lawyer should also inform the client or prospective client  
149 that an agreement to arbitrate a dispute over fees and expenses is not  
150 a waiver of the right to make a disciplinary complaint regarding the  
151 lawyer.

152 Prohibited Contingent Fees

153 [6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a  
154 domestic relations matter when payment is contingent upon the  
155 securing of a divorce or upon the amount of alimony or support or  
156 property settlement to be obtained. This provision does not preclude a  
157 contract for a contingent fee for legal representation in connection  
158 with the recovery of post-judgment balances due under support,  
159 alimony or other financial orders because such contracts do not  
160 implicate the same policy concerns. See Formal Advisory Opinions 36  
161 and 47.

#### 162 Division of Fee

163 [7] A division of fee is a single billing to a client covering the fee of two  
164 or more lawyers who are not in the same firm. A division of fee  
165 facilitates association of more than one lawyer in a matter in which  
166 neither alone could serve the client as well. Joint responsibility for the  
167 representation entails financial and ethical responsibility for the  
168 representation.

169 [8] Paragraph (e) does not prohibit or regulate division of fees to be  
170 received in the future for work done when lawyers were previously  
171 associated in a law firm.

#### 172 Disputes over Fees

173 [9] If a procedure has been established for resolution of fee disputes,  
174 such as an arbitration or mediation procedure established by the State

175 Bar of Georgia, the lawyer should conscientiously consider submitting  
176 to it. Law may prescribe a procedure for determining a lawyer's fee, for  
177 example, in representation of an executor or administrator, a class or a  
178 person entitled to a reasonable fee as part of the measure of damages.  
179 The lawyer entitled to such a fee and a lawyer representing another  
180 party concerned with the fee should comply with the prescribed  
181 procedure.

1 **RULE 1.8 CONFLICT OF INTEREST: PROHIBITED TRANSACTIONS**

2 a. A lawyer shall neither enter into a business transaction with a client if the  
3 client expects the lawyer to exercise the lawyer's professional judgment  
4 therein for the protection of the client, nor shall the lawyer knowingly  
5 acquire an ownership, possessory, security or other pecuniary interest  
6 adverse to a client unless:

- 7 1. the transaction and terms on which the lawyer acquires the interest are  
8 fair and reasonable to the client and are fully disclosed and  
9 transmitted in writing to the client in a manner which can be  
10 reasonably understood by the client;
- 11 2. the client is advised in writing of the desirability of seeking and is  
12 given a reasonable opportunity to seek the advice of independent  
13 counsel in the transaction; and
- 14 3. the client gives informed consent, in a writing signed by the client, to  
15 the essential terms of the transaction and the lawyer's role in the  
16 transaction, including whether the lawyer is representing the client in  
17 the transaction.

18 b. A lawyer shall not use information gained in the professional relationship  
19 with a client to the disadvantage of the client unless the client gives  
20 informed consent, except as permitted or required by these rules.

- 21 c. A lawyer shall not prepare an instrument giving the lawyer or a person  
22 related to the lawyer as parent, grandparent, child, grandchild, sibling, or  
23 spouse any substantial gift from a client, including a testamentary gift,  
24 except where the client is related to the donee.
- 25 d. Prior to the conclusion of representation of a client, a lawyer shall not make  
26 or negotiate an agreement giving the lawyer literary or media rights to a  
27 portrayal or account based in substantial part on information relating to the  
28 representation.
- 29 e. A lawyer shall not provide financial assistance to a client in connection with  
30 pending or contemplated litigation, except that:
- 31 1. a lawyer may advance court costs and expenses of litigation, the  
32 repayment of which may be contingent on the outcome of the matter;  
33 ~~or~~
  - 34 2. a lawyer representing a client unable to pay court costs and expenses  
35 of litigation may pay those costs and expenses on behalf of the client;  
36 or
  - 37 3. a lawyer representing an indigent client pro bono, a lawyer  
38 representing an indigent client ~~pro bono~~ through a nonprofit legal  
39 services or public interest organization pro bono, or a lawyer representing  
40 an indigent client ~~pro bono~~ through a law school clinical or pro bono

41 program may provide modest gifts to the client for food, rent,  
42 transportation, medicine, and other basic living expenses. The lawyer:

- 43 i. may not promise, assure or imply the availability of such  
44 gifts prior to retention or as an inducement to continue the  
45 client-lawyer relationship after retention;
- 46 ii. may not seek or accept reimbursement from the client, a  
47 relative of the client or anyone affiliated with the client; and
- 48 iii. may not publicize or advertise a willingness to provide such  
49 gifts to prospective clients.

50 Financial assistance under this Rule may be provided even if the representation is  
51 eligible for fees under a fee shifting statute.

- 52 f. A lawyer shall not accept compensation for representing a client from one  
53 other than the client unless:
  - 54 1. the client gives informed consent;
  - 55 2. there is no interference with the lawyer's independence of professional  
56 judgment or with the client-lawyer relationship; and
  - 57 3. information relating to representation of a client is protected as  
58 required by Rule 1.6.
- 59 g. A lawyer who represents two or more clients shall not participate in making  
60 an aggregate settlement of the claims for or against the clients, nor in a

61 criminal case an aggregated agreement as to guilty or nolo contendere pleas,  
62 unless each client gives informed consent, in a writing signed by the client.

63 The lawyers disclosure shall include the existence and nature of all claims or  
64 pleas involved and of the participation of each person in the settlement.

65 h. A lawyer shall not make an agreement prospectively limiting the lawyer's  
66 liability to a client for malpractice unless permitted by law and the client is  
67 independently represented by counsel in making the agreement, or settle a  
68 claim for such liability with an unrepresented client or former client without  
69 first advising that person in writing that independent representation is  
70 appropriate in connection therewith. To the extent that agreements to  
71 arbitrate disputes over a lawyer's liability for malpractice are enforceable, a  
72 lawyer may enter into such an agreement with a client or a prospective client  
73 if the client or prospective client gives informed consent in a writing signed  
74 by the client or prospective client. The agreement to arbitrate and the  
75 attorney's disclosures regarding arbitration must be set out in a separate  
76 paragraph, written in a font size at least as large as the rest of the contract,  
77 and separately initialed by the client and the lawyer.

78 i. A lawyer related to another lawyer as parent, grandparent, child, grandchild,  
79 sibling or spouse shall not represent a client in a representation directly  
80 adverse to a person whom the lawyer has actual knowledge is represented by

81 the other lawyer unless his or her client gives informed consent regarding  
82 the relationship. The disqualification stated in this paragraph is personal and  
83 is not imputed to members of firms with whom the lawyers are associated.

84 j. A lawyer shall not acquire a proprietary interest in the cause of action or  
85 subject matter of litigation the lawyer is conducting for a client, except that  
86 the lawyer may:

- 87 1. acquire a lien granted by law to secure the lawyer's fees or expenses  
88 as long as the exercise of the lien is not prejudicial to the client with  
89 respect to the subject of the representation; and
- 90 2. contract with a client for a reasonable contingent fee in a civil case,  
91 except as prohibited by Rule 1.5.

92 The maximum penalty for a violation of Rule 1.8 (b) is disbarment. The maximum  
93 penalty for a violation of Rule 1.8 (a) and 1.8 (c)-(j) is a public reprimand.

94

95 Comment

96 Transactions Between Client and Lawyer

97 [1A] As a general principle, all transactions between client and lawyer should be  
98 fair and reasonable to the client. The client should be fully informed of the true  
99 nature of the lawyer's interest or lack of interest in all aspects of the transaction. In  
100 such transactions a review by independent counsel on behalf of the client is often

101 advisable. Furthermore, a lawyer may not exploit information relating to the  
102 representation to the client's disadvantage. For example, a lawyer who has learned  
103 that the client is investing in specific real estate may not, without the client's  
104 informed consent, seek to acquire nearby property where doing so would adversely  
105 affect the client's plan for investment. Paragraph (a) does not, however, apply to  
106 standard commercial transactions between the lawyer and the client for products or  
107 services that the client generally markets to others, for example, banking or  
108 brokerage services, medical services, products manufactured or distributed by the  
109 client, and utilities' services. In such transactions, the lawyer has no advantage in  
110 dealing with the client, and the restrictions in paragraph (a) are unnecessary and  
111 impracticable.

#### 112 Use of Information to the Disadvantage of the Client

113 [1B] It is a general rule that an attorney will not be permitted to make use of  
114 knowledge, or information, acquired by the attorney through the professional  
115 relationship with the client, or in the conduct of the client's business, to the  
116 disadvantage of the client. Paragraph (b) follows this general rule and provides that  
117 the client may waive this prohibition. However, if the waiver is conditional, the  
118 duty is on the attorney to comply with the condition.

#### 119 Gifts from Clients

120 [2] A lawyer may accept a gift from a client, if the transaction meets general

121 standards of fairness. For example, a simple gift such as a present given at a  
122 holiday or as a token of appreciation is permitted. If effectuation of a substantial  
123 gift requires preparing a legal instrument such as a will or conveyance, however,  
124 the client should have the objective advice that another lawyer can provide.  
125 Paragraph (c) recognizes an exception where the client is a relative of the donee or  
126 the gift is not substantial.

### 127 Literary Rights

128 [3] An agreement by which a lawyer acquires literary or media rights concerning  
129 the subject of the representation creates a conflict between the interest of the client  
130 and the personal interest of the lawyer. Measures suitable in the representation of  
131 the client may detract from the publication value of an account of the  
132 representation. Paragraph (d) does not prohibit a lawyer representing a client in a  
133 transaction concerning literary property from agreeing that the lawyer's fee shall  
134 consist of a share in ownership in the property, if the arrangement conforms to  
135 Rule 1.5 and paragraph (j) of this rule.

### 136 Financial Assistance to Clients

137 [4] Paragraph (e) eliminates the former requirement that the client remain  
138 ultimately liable for financial assistance provided by the lawyer. ~~It further limits~~  
139 ~~permitted assistance to court costs and expenses directly related to litigation.~~  
140 ~~Accordingly, permitted expenses would include expenses of investigation, medical~~

141 ~~diagnostic work connected with the matter under litigation and treatment necessary~~  
142 ~~for the diagnosis, and the costs of obtaining and presenting evidence. Permitted~~  
143 ~~expenses would not include living expenses or medical expenses other than those~~  
144 ~~listed above.~~

145 [5] Lawyers may not subsidize lawsuits or administrative proceedings brought on  
146 behalf of their clients, including making or guaranteeing loans to their clients for  
147 living expenses, because to do so would encourage clients to pursue lawsuits that  
148 might not otherwise be brought and because such assistance gives lawyers too  
149 great a financial stake in the litigation. These dangers do not warrant a prohibition  
150 on a lawyer lending a client court costs and litigation expenses, including the  
151 expenses of medical examination and the costs of obtaining and presenting  
152 evidence, because these advances are virtually indistinguishable from contingent  
153 fees and help ensure access to the courts. Similarly, an exception allowing lawyers  
154 representing indigent clients to pay court costs and litigation expenses regardless of  
155 whether these funds will be repaid is warranted.

156 [6] Paragraph (e)(3) provides another exception. A lawyer representing an  
157 indigent client without fee, a lawyer representing an indigent client ~~pro bono~~  
158 through a nonprofit legal services or public interest organization, and a lawyer  
159 representing an indigent client ~~pro bono~~ through a law school clinical or pro bono  
160 program may give the client modest gifts. Gifts permitted under paragraph (e)(3)

161 include modest contributions for food, rent, transportation, medicine and similar  
162 basic necessities of life. If the gift may have consequences for the client, including,  
163 e.g., for receipt of government benefits, social services, or tax liability, the lawyer  
164 should consult with the client about these. See Rule 1.4.

165 [7] The paragraph (e)(3) exception is narrow. Modest gifts are allowed in specific  
166 circumstances where it is unlikely to create conflicts of interest or invite abuse.

167 Paragraph (e)(3) prohibits the lawyer from (i) promising, assuring or implying the  
168 availability of financial assistance prior to retention or as an inducement to  
169 continue the client-lawyer relationship after retention; (ii) seeking or accepting  
170 reimbursement from the client, a relative of the client or anyone affiliated with the  
171 client; and (iii) publicizing or advertising a willingness to provide gifts to  
172 prospective to clients beyond court costs and expenses of litigation in connection  
173 with contemplated or pending litigation or administrative proceedings.

174 [8] Financial assistance, including modest gifts pursuant to paragraph (e)(3), may  
175 be provided even if the representation is eligible for fees under a fee-shifting  
176 statute. However, paragraph (e)(3) does not permit lawyers to provide assistance in  
177 other contemplated or pending litigation in which the lawyer may eventually  
178 recover a fee, such as contingent-fee personal injury cases or cases in which fees  
179 may be available under a contractual fee-shifting provision, even if the lawyer does  
180 not eventually receive a fee.

## 181 Payment for a Lawyer's Services from One Other Than The Client

182 [59] Lawyers are frequently asked to represent a client under circumstances in  
183 which a third person will compensate the lawyer, in whole or in part. The third  
184 person might be a relative or friend, an indemnitor (such as a liability insurance  
185 company) or a co-client (such as a corporation sued along with one or more of its  
186 employees). Because third-party payers frequently have interests that differ from  
187 those of the client, including interests in minimizing the amount spent on the  
188 representation and in learning how the representation is progressing, lawyers are  
189 prohibited from accepting or continuing such representations unless the lawyer  
190 determines that there will be no interference with the lawyer's independent  
191 professional judgment and there is informed consent from the client. See also Rule  
192 5.4 (c) (prohibiting interference with a lawyer's professional judgment by one who  
193 recommends, employs or pays the lawyer to render legal services for another).

## 194 Settlement of Aggregated Claims

195 [610] Paragraph (g) requires informed consent. This requirement is not met by a  
196 blanket consent prior to settlement that the majority decision will rule.

## 197 Agreements to Limit Liability

198 [711] A lawyer may not condition an agreement to withdraw or the return of a  
199 client's documents on the client's release of claims. However, this paragraph is not  
200 intended to apply to customary qualifications and limitations in opinions and

201 memoranda.

202 [\[812\]](#) A lawyer should not seek prospectively, by contract or other means, to limit  
203 the lawyer's individual liability to a client for the lawyer's malpractice. A lawyer  
204 who handles the affairs of a client properly has no need to attempt to limit liability  
205 for the lawyer's professional activities and one who does not handle the affairs of  
206 clients properly should not be permitted to do so. A lawyer may, however, practice  
207 law as a partner, member, or shareholder of a limited liability partnership,  
208 professional association, limited liability company, or professional corporation.

209 Family Relationships Between Lawyers

210 [Arbitration](#)

211 [\[12A\] Paragraph \(h\) requires informed consent to an agreement to arbitrate](#)  
212 [malpractice claims. See Rule 1.0\(l\). In obtaining such informed consent, the](#)  
213 [lawyer should reveal to the client or prospective client the following: \(1\) in an](#)  
214 [arbitration the client or prospective client waives the right to a jury because the](#)  
215 [dispute will be resolved by an individual arbitrator or a panel of arbitrators; \(2\)](#)  
216 [generally, there is no right to an appeal from an arbitration decision; \(3\) arbitration](#)  
217 [may not permit the broad discovery that would be available in civil litigation; \(4\)](#)  
218 [how the costs of arbitration compare to the costs of litigation in a public court,](#)  
219 [including the requirement that the arbitrator or arbitrators be compensated; and \(5\)](#)  
220 [who will bear the costs of arbitration. The lawyer should also inform the client or](#)

221 prospective client that an agreement to arbitrate a dispute over fees and expenses is  
222 not a waiver of the right to make a disciplinary complaint regarding the lawyer.

223

224 [913] Paragraph (i) applies to related lawyers who are in different firms. Related  
225 lawyers in the same firm are governed by Rules 1.7, 1.9, and 1.10.

226 Acquisition of Interest in Litigation

227 [~~1014~~] Paragraph (j) states the traditional general rule that lawyers are prohibited  
228 from acquiring a proprietary interest in litigation. This general rule, which has its  
229 basis in the common law prohibition of champerty and maintenance, is subject to  
230 specific exceptions developed in decisional law and continued in these rules, such  
231 as the exception for reasonable contingent fees set forth in Rule 1.5 and the  
232 exception for lawyer's fees and for certain advances of costs of litigation set forth  
233 in paragraph (e).