

BAR ASSOCIATION OF ERIE COUNTY

COMMITTEE ON PROFESSIONAL ETHICS

Opinion No. 09-02	Topic:	Charging Expenses in Contingent Fee Matters
	Digest:	Whether it is proper to charge \$250 as the expense of closing a file in a contingent fee matter, following termination by the client, depends on the circumstances, including the terms stated in the written engagement letter.
	Rule:	1.5(c) of the New York Rules of Professional Conduct (22 NYCRR Part 1200)

QUESTION

Is it proper for a lawyer to charge the client \$250 for closing the file after the lawyer has been discharged by the client in a contingent fee matter?

OPINION

Rule 1.5(c) of the New York Rules of Professional Conduct (22 NYCRR Part 1200), provides in part as follows:

Promptly after a lawyer has been employed in a contingent fee matter, the lawyer shall provide the client with a writing stating 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, if not prohibited by statute or court rule, after the contingent fee is calculated. The writing must clearly notify the client of any expenses for which the client will be liable regardless of whether the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a writing stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

The engagement letter involved in this inquiry states that "our fee for recovery on this matter would be 1/3 of any funds recovered" but is silent with regard to charging expenses to the client. As a result, that engagement letter provides an insufficient basis for billing file closing expenses to the client and does not authorize the lawyer to charge, as an internal expense, \$250 to close the file.

However, in the event that the lawyer is discharged without cause in a contingent fee matter, he or she is permitted to charge a *quantum meruit* fee for the fair and reasonable value of his or her services. See Campagnola v. Mulholland, Minion & Roe, 76 N.Y.2d 38 (1990). When disputes between the lawyer and the client arise concerning the actual value of the services, such disputes can be submitted to an appropriate court or alternative dispute resolution mechanism.

CONCLUSION

In a contingent fee matter, a lawyer must comply with Rule 1.5(c) of the New York Rules of Professional Conduct and may not impose on the client a file closing expense in the absence of an agreement permitting the lawyer to do so.