

**BAR ASSOCIATION OF ERIE COUNTY
COMMITTEE ON PROFESSIONAL ETHICS**

Opinion No. 12-04

Topic:	Discounted attorney hourly rate.
Digest:	A lawyer may discount lawyer's legal fee under such provisions under Rule 1.5 and specifically 1.5(d)
Rules:	1.5 inclusive specifically 1.5(b) and 1.5(d)(2)

QUESTION

May a retainer statement contain a provision granting a discounted hourly rate for retainer money paid in advance?

OPINION

This inquiry seeks an opinion as to the propriety of a written retainer which contains a provision discounting the hourly rate of an attorney from his regular hourly rate as against any retainer money paid in advance. Rule 1.5 of the New York Rules of Professional Conduct, states that a lawyer shall communicate among other things the basis or rate of the fee and expenses for which the client will be responsible. Since the retainer agreement specifically indicates when and how the discount will be applied as to the client's legal fee, such provision does not violate Rule 1.5(d)(2).

We also concur with the New York State Bar Association opinion which stated:

“... that it is not per se improper to offer a discount from customary fees so long as customary fees are reasonably ascertainable. At the very least, for a fee to be customary, it must be the fee charged by the lawyer for most of his engagements involving similar work. The Committee hesitates to establish a specific percentage of cases that the lawyer must handle at the full fee for it to be deemed customary and rather leaves it to the members of the bar to apply a good faith interpretation to the term ‘customary’. It is something substantially more than a majority of similar cases handled”. New York State Bar Association Opinion #563 (10-1-1984).

However, this opinion does not pass or make comment as to such a financial arrangement as relates to all Rules of the Court which is beyond this Committee, and specifically, fees prohibited under Rule 1.5(d)(5) involving fees in a domestic relations matter.