

(LES 2851J)

ETHICS ADVISORY PANEL
Opinion #92-42, Request #263
Issued July 23, 1992

An attorney seeks Panel advice as to whether the attorney may enter into a mixed fee arrangement whereby the attorney would receive both a contingency fee and fix fee for services provided in the same litigation.

As a threshold matter, the Panel is not equipped to embark on the task of rendering an opinion as to the reasonableness of attorney's fees and therefore will not give general approval to such.

The Panel agrees that Rule 1.5 "Fees" and the comments thereto provide guidance for this inquiry. Rule 1.5(a) sets forth specific criteria which determines whether a fee is reasonable. Rule 1.5(b) provides that the fee should be communicated to the client and should be in writing. The comments to Rule 1.5 point out that an understanding and consent of the client regarding the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. A written statement regarding the fee reduces the possibility of a misunderstanding and miscommunication between attorney and client. Rule 1.5(c) addresses contingency fee agreements and states that they should be in writing.

The Panel believes that if the attorney's fee arrangements conform with the guidelines established in Rule 1.5 and the comments, then a fixed fee agreement and contingency fee agreement for the same matter is not inconsistent with the Rules of Professional Conduct.