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ETHICS ADVISORY PANEL  
OPINION #93-69, REQUEST #408  
Issued September 14, 1993

The inquiring attorney represented a client in a personal injury matter. It was agreed that the inquiring attorney would be paid on a contingency basis and would receive one-third (1/3) of any settlement realized by the client, plus reimbursement for out-of-pocket expenses. The inquiring attorney filed suit in the Superior Court. The case was dismissed two (2) years later as a result of the plaintiff's failure to comply with discovery. The inquiring attorney implies, but does not state, that the involuntary dismissal of the action resulted from the client's refusal to comply with the discovery effort. The inquiring attorney indicates that he/she has expended numerous hours on this matter and asks whether he/she may now bill the client on an hourly rate basis in addition to reimbursement for out-of-pocket expenses.

Rule 1.5(c) permits a lawyer to charge a fee that is contingent on the outcome of a matter and provides that the agreement should be in writing. The agreement should be reduced to writing at the beginning of the lawyer/client relationship to reduce the possibility of misunderstanding and dispute. The inquiring attorney does not state whether the contingent fee agreement was in writing. The Panel cannot condone contingent fee agreements that are not in writing as contemplated by the Rule, nor will it condone the inquiring attorney attempting to avoid and/or restate the terms of the contingent fee agreement at this late date.