

**STATE BAR OF SOUTH DAKOTA**

**ETHICS OPINION 2000-5A**

December 6, 2000

- **RULES: 1.5, 1.16**
- **SUBJECT: Flat Fee Agreements in light of Ethics Opinion 2000-5**
- **SUMMARY: Fee agreements for a specific service or case are permissible so long as they allow for a review of the fee upon conclusion of the representation to ensure that the fee is reasonable and allow for a refund of any unearned fees upon the discharge of the attorney.**

**FACTS**

South Dakota Lawyer has asked whether a flat-fee agreement for professional work in cases including divorce, bankruptcies and criminal defense is permissible in light of Ethics Opinion 2000-5.

**DISCUSSION**

As was stated in Ethics Opinion 2000-5, Rule 1.5(a) requires that all fees be reasonable and lists eight factors to be considered in making a determination of reasonableness. These include:

1. the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3. the fee customarily charged in the locality for similar legal services;
4. the amount involved and the results obtained;
5. the time limitations imposed by the client or by the circumstances;
6. the nature and length of the professional relationship with the client;
7. the experience, reputation, and ability of the lawyer or lawyers performing the services; and
8. whether the fee is fixed or contingent.

Further, as stated in Ethics Opinion 2000-5, Rule 1.16(d) provides for a client's right to discharge a lawyer and provides that upon discharge the client is entitled to a refund of "any advanced payment of fee that has not been earned."

Fixed or flat fee agreements are not prohibited by the above rules. However, based upon these rules and Ethics Opinion 2000-5, any fee agreement that would not, under any circumstances, allow for a review of the fee at the conclusion of the representation to ensure that it comports with the above factors would be in violation of the above Rules. Further, any fee agreement that unduly interferes with the client's right to discharge the lawyer would be in violation of the above rules.

*Susan Brunick Simons, Chair  
Ethics Committee*