

1 THE STATE BAR OF CALIFORNIA  
2 STANDING COMMITTEE ON  
3 PROFESSIONAL RESPONSIBILITY AND CONDUCT  
4 PROPOSED FORMAL OPINION INTERIM NO. 20-0005  
5 CONTINGENCY FEE AGREEMENTS AND EARNING AN HOURLY RATE WHEN TERMINATED  
6  
7

8 **ISSUES:** Under what circumstances, if any, are “conversion clauses” in contingent  
9 fee agreements ethically permissible?  
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11 **DIGEST:**  
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14 **AUTHORITIES**

15 **INTERPRETED:** Rules of Professional Conduct 1.2, 1.5, 1.16 of the Rules of Professional  
16 Conduct of the State Bar of California.<sup>1</sup>  
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18 **QUESTIONS/ISSUES FOR COMMITTEE:**  
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- 20 • The drafting team is leaning toward the view that no conversion clause that would  
21 entitle an attorney to more than quantum meruit is permissible. How does the  
22 Committee view this? Can anyone present an example of a conversion clause entitling  
23 a terminated attorney to more than quantum meruit which is permissible?  
24
- 25 • We are leaning toward view that any conversion clause in a contingent fee agreement  
26 which entitles attorney to guaranteed payment is not really a contingent fee at all,  
27 and is not permissible. We want the full Committee’s thoughts on this, and whether  
28 the full committee can envision an example where such guaranteed payment is ok;  
29
- 30 • We are wondering if the opinion is more useful as simply a statement of law and  
31 ethics, without scenarios. Should we remove the examples?  
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33  
34

35 **INTRODUCTION AND SCOPE**

36 This opinion addresses the ethical permissibility of conversion clauses in contingent fee  
37 agreements. For purposes of this opinion, where an attorney-client fee agreement provides for  
38 the attorney to be paid a contingent fee (the “primary contingent fee”) a conversion clause is a  
39 contractual provision that, if triggered, converts the fee due to a lawyer from that primary  
40 contingent fee to an alternate fee arrangement. Conversion clauses may be drafted so as to be  
triggered by any type of event, but in practice they are typically triggered upon (1) the

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<sup>1</sup> Unless otherwise indicated, all references to “rules” in this opinion will be to the Rules of Professional Conduct of the State Bar of California.

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41 termination of the attorney-client relationship, or (2) the client's failure to follow the lawyer's  
42 recommendation regarding whether to accept a settlement proposal.

43 It is the view of the Committee that conversions clauses are not ethically prohibited *per se*, but  
44 whether a conversion clause is ethically permissible must be carefully evaluated on a case-by-  
45 case basis. Conversion clauses are ethically permissible only where they do not interfere with  
46 the client's right to discharge the lawyer or the client's right to determine whether to settle,  
47 and where they would not result in an unconscionable fee. Therefore, the circumstances of  
48 each representation, as well as the precise terms of the fee arrangement and conversion  
49 clause, should be carefully scrutinized to ensure that neither the client's right to discharge  
50 counsel nor the client's right to decide whether or not to settle (and on what terms) are  
51 burdened, and also to ensure that the conversion clause would not result in an unconscionable  
52 fee.<sup>2</sup>

## DISCUSSION

54 Conversion clauses require careful ethical scrutiny because their use may improperly interfere  
55 with important client rights and may violate an attorney's ethical duties. These considerations  
56 include a client's right to discharge counsel, a client's right to determine the objectives of a  
57 representation (especially with regard to settlement), and the attorney's duty not to seek or  
58 collect an unconscionable fee. Because conversion clauses are often complex in their operation,  
59 the sophistication of the client is also an important consideration.

### A. The Client's Right to Discharge Counsel.

61 Both the rules and California decisional law confirm a client's absolute right to discharge his or  
62 her attorney. Rule 1.16(a)(4); *Fracasse v. Brent* (1972) 6 Cal. App. 3d 784; *Kroff v. Larson* (1985)  
63 167 Cal. App. 3d 857, 860 (client has absolute right at any time to discharge an attorney, with or  
64 without cause). Conversion clauses must be scrutinized to ensure that they do not directly or  
65 indirectly interfere with this right. For example, conversion clauses which purport to entitle a  
66 lawyer in a contingent fee representation, if terminated, to his or her hourly rate for hours  
67 worked (regardless of whether the contingency occurs, or what amount is recovered) pose a  
68 high risk of interfering with the client's right to discharge counsel. *See, Fracasse, supra*  
69 (improper to burden the client [in contingency cases] with an absolute obligation to pay the  
70 attorney regardless of outcome). Often a client in a contingent fee representation does not  
71 possess the means to pay an hourly fee, and has retained contingent fee counsel for this  
72 reason. A conversion clause that requires the client to pay the lawyer's hourly rate if the  
73 attorney is discharged is likely to impermissibly interfere with the client's absolute right to  
74 discharge the lawyer, and must be carefully scrutinized for this possibility. *See, Colorado State*

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<sup>2</sup> This opinion concerns only the issue of whether conversion clauses are ethically prohibited, not whether or to what extent they are legally enforceable. Additionally, this opinion does not address the propriety or enforceability of attorney's liens resulting from conversion clauses.

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75 *Bar Ethics Opinion 100; Compton v. Killtelson* (2007, Alaska Supreme Court) 171 P.3d 172  
76 (contingent fee agreement which retroactively converted to hourly fee upon discharge of  
77 attorney was unconscionable and violation of Model Rule 1.2); *U.S. Postal Service v. Haselrig*  
78 *Corp* (D. Md. 2004) 349 F. Supp. 2d 955 (agreement that attempted to unlawfully penalize client  
79 for discharge of attorney (by requiring payment of 40% contingency or flat \$35,000) was  
80 “unreasonable at inception”).

81 A conversion clause may not penalize a client who discharges the lawyer. Lawyers often argue  
82 that conversions clauses are necessary to “protect” contingent fee lawyers from bad-faith  
83 termination by wily clients. However, in appropriate circumstances, a contingent fee lawyer is  
84 already protected by the principles of *quantum meruit* to the extent the lawyer has earned and  
85 is entitled to a fee. See, *Rus Miliband & Smith v. Conkle & Olesten* (2003) 113 Cal. App. 4<sup>th</sup> 656;  
86 *Fracasse, supra*, 1013, footnote 8. A conversion clause that operates as a penalty for a client  
87 discharging a lawyer improperly burden’s the client’s right to do so, and is ethically prohibited.

88 The Committee also notes that a lawyer’s contingent fee typically includes a premium for the  
89 risk that the contingency may not occur. A conversion clause that allows a lawyer to effectively  
90 avoid contingent risk likely renders the ostensible “contingent fee” not contingent at all, and  
91 therefore potentially unconscionable. Moreover, whereas a *quantum meruit* fee may not  
92 exceed the contract price<sup>3</sup>, under a conversion clause the hourly rate fee which the lawyer  
93 might claim might contain no such limit and may even exceed the total value of the case. In  
94 light of these considerations, it is the view of the Committee that a conversion clause which  
95 purports to entitle the attorney to *more* than a quantum meruit recovery in the event the  
96 attorney is discharged by the client, should be carefully scrutinized and is likely to be ethically  
97 prohibited. **[DO WE BELIEVE THIS IS EVER PERMISSIBLE? DO WE WANT A STRONGER**  
98 **POSITION?]**

99 Timing of the payment of the alternate fee is also an important factor for analysis. If a  
100 conversion clause entitles a lawyer (upon discharge) to an *immediate* fee, prior to the  
101 occurrence of the contingency, such a clause is likely to interfere with a client’s right to  
102 discharge counsel, and likely to be ethically prohibited. Thus, even an alternate fee that would  
103 not be improper or unconscionable if payment were due at the time of the contingent  
104 recovery, may be ethically prohibited if its timing is such that it interferes with the client’s right  
105 to discharge the lawyer.

106 Additionally, in appropriate circumstances, a conversion clause must also be scrutinized to  
107 ensure it is not inconsistent with a lawyer’s advertisements or assurances to potential clients.  
108 For example, any conversion clause that would provide for a lawyer to be entitled to non-  
109 contingent alternate fee likely would be ethically impermissible where the lawyer had made a  
110 representation to the client to the effect that no fee would be due unless the client recovers.

111 Related to the issue of unconscionability (addressed in Section C. below) is whether the  
112 conversion clause provides for an alternate fee which would have the effect of improperly

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<sup>3</sup> *Cazares v. Saenz* (1989) 208 Cal. App. 3d. 279.

restricting a client's right to discharge counsel by rendering the representation unreasonably unappealing to potential successor contingency counsel. For example, a conversion clause which claims to entitle the lawyer to a full contingent fee, or nearly a full contingent fee, no matter how much work has been performed or remains to be performed, is likely to make it impossible for the client to secure replacement counsel, and thus likely to impermissibly burden the client's right to discharge counsel.<sup>4</sup>

**B. The Client's Right to Decide Whether or Not to Settle.**

A lawyer is ethically required to abide by a client's decision concerning the objectives of the representation. The rules expressly extend this precept to the decision to accept or reject a settlement offer. "[A] lawyer shall abide by a client's decision whether to settle a matter," rule 1.2(a). Nonetheless, conversion clauses are often designed to "protect" an attorney against a client's unreasonable, or even bad-faith, decisions regarding whether to accept or reject settlement proposals contrary to the lawyer's recommendation.

Such conversion clauses often purport to entitle the lawyer to payment of the lawyer's contingent fee percentage calculated against any settlement offer that the lawyer recommends the client to accept, but which the client rejects. Alternatively, some clauses entitle a lawyer to the lawyer's hourly rates if the client accepts a settlement offer (or walk-away agreement) which the lawyer believes is insufficient.

While ethics committees of other states have approached such settlement-related conversion clauses from a variety of perspectives, all tend to carefully scrutinize such clauses. By way of example only, *see, Wis State Bar Prof'l Ethics Comm. Formal Op. E-82-5* (1982) (a contingent fee agreement that permits charging hourly fees if attorney deems a settlement offer inadequate is overreaching and unethical); *Philadelphia Bar Association Ethics Opinion 2001-1* (majority opinion would permit conversion where there is clear advanced agreement on the goals of representation and agreement as to alternate methods of compensation if the client's goals change; the minority opinion would permit conversion clauses for sophisticated clients, not unsophisticated clients); *Nebraska Ethics Advisory Opinion 95-1* (a provision triggered by a client not following attorney's settlement advice, which allows the attorney to choose between the contingent percentage or full hourly fee, restricts the client's authority to settle a matter).

The Committee agrees that careful scrutiny of settlement-related conversion clauses is warranted, and that settlement-related conversion clauses are ethically permissible only in very limited circumstances where the attorney and client clearly and effectively agree to specific objectives of the representation in advance, and agree to an alternate fee if the client should change her or his mind about those objectives, and where the conversion clause at issue under the specific circumstances presented, does not restrict the client's right to decide whether to

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<sup>4</sup> In addition to impermissibly interfering with a client's right to discharge the lawyer, such a conversion clause likely also seeks an unconscionable fee, and must be appropriately evaluated on that basis as well. *See, In re Van Sickle* (Cal. Bar. Ct. Aug. 24, 2006). *Accord, Colorado Ethics Opinion 100, supra.*

settle, and on what terms.<sup>5</sup> **[QUESTION -WHAT IF THE CIRCUMSTANCES CHANGE THROUGH  
NO FAULT OF THE CLIENT?]**

It is the view of the Committee that the requirement imposed by rule 1.2(a) that “a lawyer shall abide by a client’s decision whether to settlement a matter” is clear and unwaivable, and its elimination by contract is simply not permitted under rule 1.2(b). *See*, for example, *Amjadi v. Brown* (2021) 68 Cal App. 5<sup>th</sup> 383, holding that a provision in a fee agreement purporting to grant the lawyer the right to accept a settlement offer on behalf of the client in the lawyer’s “sole discretion” violates the rules and is void;<sup>6</sup> *See also, In the Matter of Guzman* (Review Dept. 2014) 5 Cal. State Bar Ct. Rptr. 308, 314-315 in which the State Bar court held that “[a]ttempts by an attorney to restrict a client’s right to control his or her case are invalid and evidence of overreaching.” A conversion clause that interferes with a client’s right to determine whether to settle is ethically prohibited.<sup>7</sup> Thus, conversion clauses keyed to the acceptance or rejection of settlement offers are ethically prohibited, except in the narrow circumstances where (1) the goals of the representation are clearly agreed-to in advance, (2) the lawyer and client also agree in advance to an alternate payment method that complies with rule 1.5, and, closely related, (3) the client’s informed written consent is obtained.

**C. The Attorney’s Duty Not to Seek or Collect an Unconscionable Fee.**

Rule 1.5 prohibits a lawyer from making an arrangement for, charging, or collecting an unconscionable fee, and sets forth 13 factors to be considered (without limitation) in determining the unconscionability of a fee. Just as any primary contingent fee must comply with rule 1.5, so too must any alternate fee arising from a conversion clause. Conversion clauses can impact an unconscionability analysis in numerous ways, and the determination of whether a conversion clause would result in an unconscionable alternative fee requires analysis of the conversion clause both as it is written, and as it is applied to a specific factual scenario. **[MUST AN HOURLY FEE CONVERSION CLAUSE COMPLY WITH B&P 6148?]**

In evaluating whether a conversion clause is unconscionable and therefore ethically prohibited, important factors include consideration of whether a conversion clause triggers an alternate fee regardless of whether the relationship is terminated by the client or the attorney, and

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<sup>5</sup> For Example, see LACBA Formal Ethics Opinion No. 505 (2000) which approved of an engagement agreement by a public interest law firm which waived all attorney’s fees only so long as the client did not enter into any settlement agreement which required confidentiality. It is the view of this committee that such an arrangement permissibly falls within now exceptions articulated above, and therefor is not prohibited.

<sup>6</sup> *Amjadi* also held that attempts by lawyers to wrest control from clients as to settlement decisions not only violate rule 1.2, but also create a conflict of interest between the lawyer and client under rule 1.7(b) whenever the client and attorney disagree about settlement.

<sup>7</sup> Such conversion clauses also may introduce an improper speculative element in favor of the lawyer: who can know whether the opposing party would or could have actually performed under the rejected agreement against which the lawyer now seeks to determine his or her fee? Such uncertainty is indicia of overreach by a lawyer which further invades the client’s right to determine whether or not to settle.

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176 regardless of the reason for the termination. A conversion clause that purports to entitle a  
177 discharged attorney to more than *quantum meruit* is unlikely to be ethically permissible, as it a  
178 conversion clause that would purport to entitle the contingent fee attorney to any fee, where  
179 the attorney has lost faith in the matter and/or has abandoned the client.

180 Similarly, If the conversion clause entitles the lawyer to an alternate fee determined by the  
181 lodestar method (hours times rates) which would exceed the primary contingent fee, the fee is  
182 likely to be unconscionable, and therefore ethically prohibited. **[DO WE TAKE A STRONGER**  
183 **POSITION?]** This is especially true where the fee agreement allows conversion to be subject to  
184 manipulation by the lawyer, for example, by allowing the lawyer to claim the higher fee where  
185 it is the lawyer who causes the termination of the attorney-client relationship. A conversion  
186 clause of this type could encourage lawyers terminate a representation (and even to abandon  
187 the client) when it is to the lawyer's economic advantage to terminate a representation in order  
188 to trigger an alternate fee. Conversion clauses which would permit and incentivize such divided  
189 loyalty and overreach are not ethically permissible. Thus, depending on the circumstances, the  
190 higher alternative fee may be unconscionable.

191 A conversion clause which calls for payment of an alternate contingent fee *prior* to, or  
192 *regardless* of, the occurrence of the contingency, is functionally not a contingent fee at all, and  
193 is unlikely survive an unconscionability determination if its amount would typically reflect a risk  
194 premium where such risk is not in fact present. *See* rule 1.5 (b) (1), (2) (concerning over-reach,  
195 fraud, and failure to disclose material facts).

196 In any unconscionability analysis, the sophistication of the client is a relevant consideration.  
197 *See*, rule. 1.5 (b)(4), *Cotchette, Pitre & McCarthy v. Universal Paragon Group* (2010) 187 Cal.  
198 App. 4<sup>th</sup> 1405. Conversion clauses can be complex in construction and effect, and difficult to  
199 understand. Thus, the client's level of sophistication as a consumer of legal services may be  
200 considered.

201 Similarly, a conversion clause which requires payment of a pre-determined contingent fee to a  
202 discharged lawyer, regardless of the work actually performed or amount of work remaining in  
203 the matter, may not survive an unconscionability analysis, particularly if triggered early in a  
204 representation. *See* rule 1.5 (b)(3), (7), (12); *Matter of Scapa & Brown* (Rev. Dept. 1993)  
205 (attorney's fee contract requiring payment of a "minimum" fee if client discharged attorney  
206 regardless of work performed constitutes an attempt to charge an unconscionable fee).

207 Established law already provides for payment to discharged contingent fee counsel on a  
208 *quantum meruit* basis where appropriate. A conversion clause which converts a contingent fee  
209 to the attorney's hourly rate upon termination of the attorney-client relationship must be  
210 evaluated for unconscionability, especially where, because a representation began primarily as

a contingent fee representation, the lawyer may or may not have incurred excessive or unreasonable hours on the matter.<sup>8</sup>

## FACTUAL SCENARIOS AND ANALYSIS OF EACH

**Scenario No. 1:** Fee agreement for a litigation matter provides that Lawyer will be paid a contingent fee of 35% of the recovery, but if Lawyer is discharged by the client prior to recovery, Client agrees to immediately pay Lawyer at Lawyer’s hourly rate for all time expended. Client has never engaged a lawyer before.

**Analysis of Scenario No. 1:** California law permits a discharged attorney to seek a *quantum meruit* fee. Thus, the effect of this fee agreement is to replace Lawyer’s pre-existing right to seek *quantum meruit*, with a contractual entitlement to immediate payment of Lawyer’s hourly rates, regardless of outcome, results obtained, or the reasonableness of Lawyer’s rate or hours expended. Coupled with the unsophistication of the client here, the conversion to hourly fees without regard to the occurrence of the contingency, and the immediate obligation to pay same, impermissibly interferes with Client’s right to discharge Lawyer. Further, replacement of Lawyer’s *quantum meruit* rights with a contractual entitlement to hourly fees regardless of rate or number of hours could lead to an unconscionable fee being sought or obtained – (although from the limited facts presented it cannot be determined that the fee set forth in the agreement is *per se* unconscionable). Because it interferes with Client’s right to discharge Lawyer, this conversion clause is ethically prohibited.

**Scenario No. 2:** Fee Agreement for a litigation matter provides that Lawyer will be paid a contingent fee of 35% of the recovery, but if the attorney-client relationship ends (for any reason) before the recovery is obtained (whether the Lawyer withdraws or is terminated by the Client), Client agrees to pay Lawyer – only if and when the contingency occurs – per Lawyer’s hourly rate for all time expended

**Analysis of Scenario No. 2.** This arrangement is subject to much of the same analysis as Scenario No. 1. It is ethically prohibited for the additional reason that it provides Lawyer with ability to unilaterally convert the contingent fee to a guaranteed hourly fee at Lawyer’s sole discretion, providing Lawyer with the ability to potentially gain a greater fee than the contingent fee. Not only would this arrangement burden Client’s right to discharge attorney as described in the analysis of Scenario No. 1, but it would also provide for Lawyer to obtain unconscionable fee by terminating the representation when it appears profitable. Depending upon the circumstances, the hourly fee claimed by the discharged attorney may also restrict the client’s right to discharge counsel by

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<sup>8</sup> While Rule 1.5 determines unconscionability for purposes of an attorney’s ethical duties, California law requires that attorney fee agreements and billings “must be fair, reasonable and fully explained to the client”. *Bird, Marella, Boxer & Wolpert v. Superior Court* (2003) 106 Cal.App. 4<sup>th</sup> 419, 430-31 (quoting *Altschul v. Syble* (1978) 83 Cal. App. 3d 153, 162). Again, the legal enforceability or unenforceability of conversion clauses is beyond the scope of this opinion.

operating as a penalty for exercise of that right, and by rendering the case unreasonably unappealing to potential successor contingent fee counsel. This conversion clause would also improperly permit a contingent fee lawyer who withdraws from the representation without cause to obtain a fee (in quantum meruit or otherwise) to which the lawyer is not legally entitled. *See, Rus Miliband & Smith v. Conkle & Olesten* (2003) 113 Cal. App. 4<sup>th</sup> 656, addressed *supra*;

**Scenario No. 3:** Contingent fee agreement between attorney and a client who is a sophisticated consumer of legal services entitles the lawyer to a 40% contingent fee. The agreement also expressly notes that the client has the right to discharge the attorney at any time for any reason, but if the client discharges the attorney, the client agrees to pay the attorney's hourly rates for all work legitimately and reasonably performed prior to discharge, with that payment due at the time of recovery in the case. If no recovery is obtained, no such payment will be due.

**Analysis of Scenario No. 3.** While several factors in Scenario No. 3 suggest client protections that weigh in favor of this particular conversion clause it is the view of the Committee that a deeper analysis reveals it is unlikely to be ethically permissible. The factors suggesting it is ethically permissible include the fact that this conversion clause cannot be triggered or manipulated by the attorney choosing to terminate the representation, that the fee agreement expressly affirms and informs the client of the client's absolute right to discharge the attorney, that the only fees for work legitimately and reasonably performed will be paid, and the fact that the alternate fee is only due if the client obtains the recovery in the litigation, thus the client will not owe any fee if the client is not successful in the litigation. However, the effect of this conversion clause, if triggered by the client's exercise of the client's absolute right to terminate counsel, is to replace the terminated lawyer's *quantum meruit* rights with an express agreement to pay for the attorney's time on an hourly basis without any limitation as to total amount. Thus, the discharged lawyer's hourly fee could be grossly disproportionate to the value of the legal services provided or when compared to the value of the entire case, potentially leading to an unconscionable fee. The unlimited hourly fee is also likely to impede client's ability to retain successor contingent counsel, thereby restricting and/or penalizing client's exercise of client's absolute right to discharge counsel. For these reasons, this conversion clause is unlikely to be ethically permissible, despite the sophistication of the client.

**Scenario No. 4:** Contingent fee agreement provides that if (1) a settlement offer is made to client, (2) Lawyer recommends Client accept the offer, (3) Client rejects that settlement offer, and (4) Client ultimately recovers less than that settlement offer, then Lawyer shall be entitled to Lawyer's contingent fee computed as against the amount of the rejected settlement offer.

**Analysis of Scenario No. 4.** The effect of the fee agreement in Scenario No. 4 is to provide significant pressure upon Client to follow Lawyer's advice to accept a settlement by potentially penalizing Client for failing to do so. This arrangement attempts to shift decisional authority from the Client to the Lawyer by exposing the Client to increased



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risk if Client does not do as Lawyer sees fit. This arrangement impermissibly interferes with Client's right to decide whether to settle, and is therefore ethically prohibited, regardless of whether the Client is a sophisticated consumer of legal services. It also likely seeks an unconscionable fee by imposing the attorney's contingent fee percentage against a phantom-recovery that never actually occurred. Additionally, this conversion clause fails to account for legitimate non-monetary goals which the client may have with respect to the representation, further limiting the client's rights under rule 1.2.

**Scenario No. 5:** Fee agreement provides that Lawyer will represent client (a business entity) in the prosecution and defense of claims in litigation where client is both prosecuting its own claims and being sued for \$2,000,000 on primarily a contingent fee of (1) 35% of affirmative recovery and (2) 35% of the amount of any reduction in the amount sought by client's litigation adversaries (the "defensive contingency" will be computed by reducing the \$2,000,000 sought against client by the amount if any that client is ultimately found liable on that claim, and applying the 35% contingent fee to that delta). The fee agreement further provides that in the event that Client chooses to settle the litigation for a walk-away, Lawyer shall be entitled to the greater of (1) the 35% defensive contingent fee, or (2) a *quantum meruit* fee determined by lodestar method per Lawyer's reasonable hours incurred and Lawyer's reasonable hourly rates (set forth in the agreement). Client is an entity that has extensive experience retaining and working with attorneys in both the litigation and transactional contexts, and was represented in the negotiation of the fee agreement by in-house counsel. During the negotiation of the fee agreement, Lawyer and Client (including Client's in-house counsel) discussed Client's strong preference for contingent fee representation for cash-flow reasons, as well as the possibility that, depending on Client's ever-changing business needs, Client might ultimately choose not to pursue its valuable affirmative claims if it can secure resolution, which Client understood could undermine its ability to obtain contingent fee representation. The fee agreement terms were the agreed-upon result of such discussion.

**Analysis of Scenario No. 5.** This arrangement appears, at least facially, to improperly interfere with Client's right to decide whether to settle. However, closer analysis reveals otherwise. The significant sophistication of the client (indeed, represented in negotiation of the fee agreement by in-house counsel) is a material factor, and is important to the analysis. It is also material that the fee agreement negotiations explored the impetus and effect of the alternate fee and that the alternate fee was designed to encourage Lawyer to provide a contingent fee representation (Client's preference) despite the real and disclosed risk that Client may chose not to pursue its valuable affirmative claims to conclusion. Without an arrangement akin to this conversion clause, client was extremely unlikely to be able to secure contingent fee counsel, which was client's preference. Thus, under the specific circumstances presented, the alternate fee neither interferes with Client's decision whether to settle, nor constitutes an unconscionable fee, as described. Therefore, this conversion clause is likely to be ethically permissible.

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## CONCLUSION

326 Conversion clauses are not ethically prohibited *per se*, but must be carefully scrutinized on a  
327 case-by-case basis, including application of the factors identified above. Conversion clauses  
328 that interfere with a client's right (1) to terminate an attorney, or (2) to decide whether to  
329 settle are prohibited, as are conversion clauses that would result in an unconscionable fee,  
330 either facially or as-applied.

331 This opinion is issued by the Standing Committee on Professional Responsibility and Conduct of  
332 the State Bar of California. It is advisory only. It is not binding upon the courts, the State Bar of  
333 California, its Board of Trustees, any persons, or tribunals charged with regulatory  
334 responsibilities, or any member of the State Bar.