

**2011 Se1 DRAFTING REQUEST**

**Bill**

Received: **08/16/2011**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Rich Zipperer (608) 266-9174**

By/Representing: **Lucas**

May Contact:

Drafter: **phurley**

Subject: **Courts - costs and fees  
Courts - miscellaneous**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Zipperer@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Reasonableness of attorneys fees

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1	phurley 08/17/2011	chanaman 08/24/2011	rschluet 08/24/2011	_____	ggodwin 08/24/2011		
/P2	phurley 09/12/2011	csicilia 09/13/2011	phenry 09/13/2011	_____	ggodwin 09/13/2011		
/P3	phurley 09/21/2011 phurley 09/27/2011	csicilia 09/26/2011 wjackson 09/27/2011	rschluet 09/26/2011	_____ _____ _____	lparisi 09/26/2011		

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09/27/2011 \_\_\_\_\_

lparisi  
09/27/2011

mbarman  
10/03/2011

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*None*

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*9/27 ph*

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*P3 g's 9/26  
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/?	phurley			_____			

FE Sent For:

<END>

## Hurley, Peggy

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**From:** Vebber, Lucas  
**Sent:** Tuesday, August 16, 2011 1:26 PM  
**To:** Hurley, Peggy  
**Subject:** Email from LRB Website

Dear Ms. Hurley,

Senator Zipperer would like to have a bill drafted:

- When determining reasonable attorney fees under Wisconsin's fee shifting statutes, a court will use the factors outlined in Supreme Court Rule 20:1.5.

As this rule relates to the ethics of an attorney fee that is charged, this bill would require a court to consider these factors when determining a reasonable fee.

Contact the Senator's office with any questions.

Thanks,

**Lucas Vebber**

Office of Senator Rich Zipperer  
33<sup>rd</sup> Senate District  
(608) 266-9174

*E/c to Lucas - don't limit  
it to just fee-shifting cases.  
Make it a general rule whenever  
a ct awards reasonable atty's fees*

SCR 20:1.5

**SCR 20:1.5 Fees.**

SCR 20:1.5(a)

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

SCR 20:1.5(a)(1)

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

SCR 20:1.5(a)(2)

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

SCR 20:1.5(a)(3)

(3) the fee customarily charged in the locality for similar legal services;

SCR 20:1.5(a)(4)

(4) the amount involved and the results obtained;

SCR 20:1.5(a)(5)

(5) the time limitations imposed by the client or by the circumstances;

SCR 20:1.5(a)(6)

(6) the nature and length of the professional relationship with the client;

SCR 20:1.5(a)(7)

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

SCR 20:1.5(a)(8)

(8) whether the fee is fixed or contingent.

SCR 20:1.5(b)

**(b)**

SCR 20:1.5(b)(1)

(1) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate as in the past. If it is reasonably foreseeable that the total cost of representation to the client, including attorney's fees, will be \$1000 or less, the communication may be oral or in writing. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client.

SCR 20:1.5(b)(2)

(2) If the total cost of representation to the client, including attorney's fees, is more than \$1000, the purpose and effect of any retainer or advance fee that is paid to the lawyer shall be communicated in writing.

SCR 20:1.5(b)(3)

(3) A lawyer shall promptly respond to a client's request for information concerning fees and expenses.

SCR 20:1.5(c)

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by par. (d) or other law. A contingent fee agreement shall be in a writing signed by the client, and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and if there is a recovery, showing the remittance to the client and the method of its determination.

SCR 20:1.5(d)

(d) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee:

SCR 20:1.5(d)(1)

(1) in any action affecting the family, including but not limited to divorce, legal separation, annulment, determination of paternity, setting of support and maintenance, setting of custody and physical placement, property division, partition of marital property, termination of parental rights and adoption, provided that nothing herein shall prohibit a contingent fee for the collection of past due amounts of support or maintenance or property division.

SCR 20:1.5(d)(2)

(2) for representing a defendant in a criminal case or any proceeding that could result in deprivation of liberty.

SCR 20:1.5(e)

(e) A division of a fee between lawyers who are not in the same firm may be made only if the total fee is reasonable and:

SCR 20:1.5(e)(1)

(1) the division is based on the services performed by each lawyer, and the client is advised of and does not object to the participation of all the lawyers involved and is informed if the fee will increase as a result of their involvement; or

SCR 20:1.5(e)(2)

(2) the lawyers formerly practiced together and the payment to one lawyer is pursuant to a separation or retirement agreement between them; or

SCR 20:1.5(e)(3)

(3) pursuant to the referral of a matter between the lawyers, each lawyer assumes the same ethical responsibility for the representation as if the lawyers were partners in the same firm, the client is informed of the terms of the referral arrangement, including the share each lawyer will receive and whether the overall fee will increase, and the client consents in a writing signed by the client.

SCR 20:1.5 - ANNOT.

**History:** *Sup. Ct. Order No. 04-07, 2007 WI 4, 293 Wis. 2d xv.*

SCR 20:1.5 - ANNOT.

**Case Notes:** *Section 20:1.5 (e) does not apply to division of fees in concluding the affairs of a partnership because until that process is complete the lawyers remain in the same firm. Gull v. Van Epps, 185 Wis. 2d 609, 517 N.W.2d 531 (Ct. App. 1994).*

SCR 20:1.5 - ANNOT.

*A "lodestar" methodology to determine what constitutes reasonable compensation is adopted. The so-called "lodestar" figure is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate, which provides an objective basis on which to make an initial estimate of the value of a lawyer's services. A court may adjust this lodestar figure up or down to account for any remaining listed factors not embodied in the lodestar calculation. Kohupar v. Wilde Pontiac Cadillac, 2004 WI 112, 275 Wis. 2d 1, 683 N.W.2d 58, 02-1915.*

SCR 20:1.5 - ANNOT.

**NOTE:** **The above annotations cite to SCR 20 as it existed prior to the adoption of Sup. Ct. Order No. 04-07.**

SCR 20:1.5 - ANNOT.

*Not all of the SCR 20:1.5 (a) factors must be considered when a court reviews a contingent fee agreement as long as the court reviews all the circumstances of the case to determine whether the contingency fee amount is a just and reasonable figure. In this case only review of 1) the time and labor involved, 2) the amount of money involved, and 3) the attendant risks involved was necessary. Maynard Steel Casting Co. v. Sheedy, 2008 WI App 27, 307 Wis. 2d 653, 746 N.W.2d 816, 06-3149.*

SCR 20:1.5 - ANNOT.

*New Rules Detail Required Info in client Engagement Letters. Dietrich. Wis. Law. Apr. 2007.*

SCR 20:1.5 - ANNOT.

*New Trust Account Rules: Lawyer Fees and Fee Arrangements. Pierce. Wis. Law. June 2007.*

SCR 20:1.5 - ANNOT.

*Exceptions to the Client Confidentiality Rule. Dietrich. Wis. Law. Oct. 2007.*

SCR 20:1.5 - ANNOT.

*Communicating Attorney Fees and Expenses. Ethics opinion E-09-03. Wis. Law. Aug. 2009.*

SCR 20:1.5 - ANNOT.

**Wisconsin Committee Comment:** *Paragraph (b) differs from the Model Rule in requiring that fee and expense information usually must be communicated to the client in writing, unless the total cost of representation will be \$1000 or less. In instances when a lawyer has regularly represented a client, any changes in the basis or rate of the fee or expenses may be communicated in writing to the client by a proper reference on the periodic billing statement provided to the client within a reasonable time after the basis or rate of the fee or expenses has been changed. The communication to the client through the billing statement should clearly indicate that a change in the basis or rate of the fee or expenses has occurred along with an indication of the new basis or rate of the fee or expenses. A lawyer should advise the client at the time of commencement of representation of the likelihood of a periodic change in the basis or rate of the fee or expenses that will be charged to the client.*

SCR 20:1.5 - ANNOT.

*In addition, paragraph (b) differs from the Model Rule in requiring that the purpose and effect of any retainer or advance fee paid to the lawyer shall be communicated in writing and that a lawyer shall promptly respond to a client's request for information concerning fees and expenses. The lawyer should inform the client of the purpose and effect of any retainer or advance fee. Specifically, the lawyer should identify whether any portion, and if so what portion, of the fee is a retainer. A retainer is a fee that a lawyer charges the client not for specific services to be performed but to ensure the lawyer's availability whenever the client may need legal services. These fees become the property of the lawyer when received and may not be deposited into the lawyer's trust account. In addition, they are subject to SCR 20:1.15 and SCR 20:1.16. Retainers are to be distinguished from an "advanced fee" which is paid for future services and earned only as services are performed. Advanced fees are subject to SCR 20:1.5, SCR 20:1.15, and SCR 20:1.16. See also State Bar of Wis. Comm. on Prof'l Ethics, Formal Op. E-93-4 (1993).*

SCR 20:1.5 - ANNOT.

*Paragraph (d) preserves the more explicit statement of limitations on contingent fees that has been part of Wisconsin law since the original adoption of the Rules of Professional Conduct in the state.*



SCR 20:1.5 - ANNOT.

*Paragraph (e) differs from the Model Rule in several respects. The division of a fee "based on" rather than "in proportion to" the services performed clarifies that fee divisions need not consist of a percentage calculation. The rule also recognizes that lawyers who formerly practiced together may divide a fee pursuant to a separation or retirement agreement between them. In addition, the standards governing referral arrangements are made more explicit.*

SCR 20:1.5 - ANNOT.

**Dispute Over Fees.** *Arbitration provides an expeditious, inexpensive method for lawyers and clients to resolve disputes regarding fees. It also avoids litigation that might further exacerbate the relationship. If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. See also ABA Comment [9].*

SCR 20:1.5 - ANNOT.

**Fee Estimates.** *Compliance with the following guidelines is a desirable practice: (a) the lawyer providing to the client, no later than a reasonable time after commencing the representation, a written estimate of the fees that the lawyer will charge the client as a result of the representation; (b) if, at any time and from time to time during the course of the representation, the fee estimate originally provided becomes substantially inaccurate, the lawyer timely providing a revised written estimate or revised written estimates to the client; (c) the client accepting the representation following provision of the estimate or estimates; and (d) the lawyer charging fees reasonably consistent with the estimate or estimates given.*

SCR 20:1.5 - ANNOT.

**ABA Comment: Reasonableness of Fee and Expenses.** *[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.*

SCR 20:1.5 - ANNOT.

**Basis or Rate of Fee.** *[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the course of the representation. A written statement*

*concerning the terms of the engagement reduces the possibility of misunderstanding.*

SCR 20:1.5 - ANNOT.

*[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.*

SCR 20:1.5 - ANNOT.

**Terms of Payment.** *[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16 (d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8 (i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8 (a) because such fees often have the essential qualities of a business transaction with the client.*

SCR 20:1.5 - ANNOT.

*[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.*

SCR 20:1.5 - ANNOT.

**Prohibited Contingent Fees.** *[6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns.*

SCR 20:1.5 - ANNOT.

**Division of Fee.** *[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion*

*of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.*

SCR 20:1.5 - ANNOT.

*[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.*

SCR 20:1.5 - ANNOT.

**Disputes over Fees.** *[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.*



*cmh*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*8-17-11*

1 AN ACT <sup>*1 gen law*</sup> relating to: factors for determining the reasonableness of attorney  
2 fees.

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***Analysis by the Legislative Reference Bureau***

Under current law, in certain civil actions a court may grant reasonable attorney fees to a prevailing party or may be asked to determine whether attorney fees sought by a party are reasonable. Under this ~~draft~~ <sup>*bill*</sup>, in order to determine whether attorney fees are reasonable, the court must consider several factors set forth by a rule established by the supreme court.

*bill* Under the ~~draft~~, the factors that the court must consider are the time and labor required by the attorney, the novelty and difficulty of the questions involved, and the skills needed to perform the legal service properly; the likelihood that the acceptance of the particular case will or did prevent the attorney from accepting other work; the fee customarily charged in the locality for similar legal services; the amount involved in the legal dispute and the results obtained; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the attorney performing the services; and whether the fee is fixed or contingent.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

3 SECTION 1. 814.045 of the statutes is created to read:

1           **814.045 Attorney fees; reasonableness.** In any action involving the award  
2 of attorney fees that are not governed by s. 814.04 (1) or involving a dispute over the  
3 reasonableness of attorney fees, the court shall, in determining whether the fees are  
4 reasonable, consider all of the factors set forth in SCR 20:1.5 (a).

5

(END)

**Hurley, Peggy****From:** Godwin, Gigi**Sent:** Monday, September 12, 2011 9:44 AM**To:** Hurley, Peggy**Subject:** FW: Draft review: LRB 11-2670/P1 Topic: Reasonableness of attorneys fees

Good morning, Peggy. I hope you and yours had a nice weekend. I believe this message is for you.  
Thanks, Gigi

Gigi Godwin, Program Assistant  
State of Wisconsin - Legislative Reference Bureau  
1 East Main Street, Suite 200  
Madison, WI 53703  
(608) 266-3561  
Gigi.Godwin@legis.wisconsin.gov

**From:** Sen.Zipperer**Sent:** Monday, September 12, 2011 9:41 AM**To:** Godwin, Gigi**Subject:** RE: Draft review: LRB 11-2670/P1 Topic: Reasonableness of attorneys fees

Please amend this draft with the following:

Rather than link the statute to the Supreme Court rule, the bill should list the factors. Those factors should be:

- (1) the time and labor required;
- (2) the novelty and difficulty of the legal issues involved;
- (3) the skill requisite to perform the legal service properly;
- (4) the likelihood that the acceptance of the particular case precluded other employment by the attorney;
- (5) the fee customarily charged in the locality for similar legal services;
- (6) the amount involved;
- (7) the results obtained;
- (8) the time limitations imposed under the circumstances;
- (9) the nature and length of the professional relationship with the client;
- (10) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- (11) whether the fee is fixed or contingent;
- (12) the complexity of the case;
- (13) awards in similar cases;
- (14) the legitimacy or strength of any defenses or affirmative defenses asserted by the other party to the claim or claims; and
- (15) any other factor or factors that the trial court deems important or necessary to consider, under the circumstances of the case, and that the trial court, in its discretion, may decide not to award any fees or costs based upon all factors considered herein.

Thank you for your time and assistance, contact Senator Zipperer's office with any questions.

**Lucas Vebber**

Office of Senator Rich Zipperer

33<sup>rd</sup> Senate District

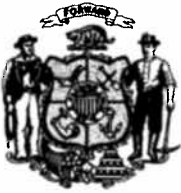
(608) 266-9174

9/12/2011

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**From:** Godwin, Gigi  
**Sent:** Wednesday, August 24, 2011 10:23 AM  
**To:** Sen.Zipperer  
**Subject:** Draft review: LRB 11-2670/P1 Topic: Reasonableness of attorneys fees

**Following is the PDF version of draft LRB 11-2670/P1.**



Handwritten initials and notes: "E.P.D.", "P.J.H.", "C.M.H./F.R.S.", and "djs".

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

By 9-15-11

Gen Cat

attorney to award fees and whether they

1 AN ACT to create 814.045 of the statutes; relating to: factors for determining  
2 the reasonableness of attorney fees.

and the complexity of the case;

**Analysis by the Legislative Reference Bureau**

Under current law, in certain civil actions a court may grant reasonable attorney fees to a prevailing party or may be asked to determine whether attorney fees sought by a party are reasonable. Under this bill, to determine whether attorney fees are reasonable, the court must consider several factors ~~set forth by a rule established by the supreme court.~~

Under the bill, the factors that the court must consider ~~are~~ the time and labor required by the attorney, the novelty and difficulty of the questions involved, ~~and~~ the skills needed to perform the legal service properly; the likelihood that the acceptance of the particular case ~~will or did~~ prevent the attorney from accepting other work; the fee customarily charged in the locality for similar legal services; the amount involved in the legal dispute and the results obtained; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the attorney performing the services; ~~and~~ whether the fee is fixed or contingent.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 814.045 of the statutes is created to read:

; and the legitimacy of any defenses raised in the case;

The fees granted in similar cases;

include  
keep comma



SECTION 1

Whether to award attorney fees and in determining

1           **814.045 Attorney fees; reasonableness.** In any action involving the award  
2 of attorney fees that are not governed by s. 814.04 (1) or involving a dispute over the  
3 reasonableness of attorney fees, the court shall, in determining whether the fees are  
4 reasonable, consider all of the factors set forth in SCR 2015 (a) following: a torn

5           Insert 2.4

(END)

2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2670/P1ins  
PJH:cmh:rs

INSERT 2.4:

- (1) The time and labor required by the attorney.
- (2) The novelty and difficulty of the questions involved in the action.
- (3) The skill requisite to perform the legal service properly.
- (4) The likelihood that the acceptance of the particular case precluded other employment by the attorney.
- (5) The fee customarily charged in the locality for similar legal services.
- (6) The amount involved in the action. *of damages*
- (7) The results obtained in the action.
- (8) The time limitations imposed by the client or by the circumstances of the action.
- (9) The nature and length of the attorney's professional relationship with his or her client.
- (10) The experience, reputation, and ability of the attorney.
- (11) Whether the fee is fixed or contingent.
- (12) The complexity of the case.
- (13) Awards of costs and fees in similar cases.
- (14) The legitimacy or strength of any defenses or affirmative defenses asserted in the action.
- (15) Other factors the court deems important or necessary to consider under the circumstances of the case.

**Hurley, Peggy**

---

**From:** Vebber, Lucas

**Sent:** Tuesday, September 20, 2011 12:04 PM

**To:** Hurley, Peggy

**Subject:** RE: Draft review: LRB 11-2670/P2 Topic: Reasonableness of attorneys fees

Peggy,

(A) subject to (B), consider:

Please add a provision that a reasonable fee must be no more than three times the amount in controversy in the case.

(B)

Thank you,

**Lucas Vebber**

Office of Senator Rich Zipperer  
33<sup>rd</sup> Senate District  
(608) 266-9174

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**From:** Godwin, Gigi

**Sent:** Tuesday, September 13, 2011 9:26 AM

**To:** Sen.Zipperer

**Subject:** Draft review: LRB 11-2670/P2 Topic: Reasonableness of attorneys fees

**Following is the PDF version of draft LRB 11-2670/P2.**

## Hurley, Peggy

---

**From:** Vebber, Lucas  
**Sent:** Tuesday, September 20, 2011 12:39 PM  
**To:** Hurley, Peggy  
**Subject:** RE: Draft review: LRB 11-2670/P2 Topic: Reasonableness of attorneys fees

Yes, except that the language should be clear that for situations in which both monetary and non-monetary damages are sought, the court should start with a presumption that attorney fees may not exceed 3x the amount awarded in compensatory damages, and this presumption may be set aside if, after considering the factors, the court determines that it would be reasonable.

Thanks,

**Lucas Vebber**  
Office of Senator Rich Zipperer  
33<sup>rd</sup> Senate District  
(608) 266-9174

---

**From:** Hurley, Peggy  
**Sent:** Tuesday, September 20, 2011 12:35 PM  
**To:** Vebber, Lucas  
**Subject:** RE: Draft review: LRB 11-2670/P2 Topic: Reasonableness of attorneys fees

Thanks. So to make sure I have it right:

In cases where only monetary damages are sought, attorney fees may not exceed 3x the amount awarded in compensatory damages.  
In cases where no monetary damages are sought, there is no cap and any amount may be reasonable if the court considers the factors.  
In cases where both monetary damages and non-monetary damages are sought, attorney fees may exceed 3x the amount awarded in compensatory damages if, after considering the factors, the court decides a higher amount is reasonable.

Is that correct?

---

**From:** Vebber, Lucas  
**Sent:** Tuesday, September 20, 2011 12:30 PM  
**To:** Hurley, Peggy  
**Subject:** RE: Draft review: LRB 11-2670/P2 Topic: Reasonableness of attorneys fees

Peggy,

To address those issues:

- This limit would apply to an amount actually awarded in the case (i.e., a party is awarded \$50,000 in damages, they would be able to receive up to \$150,000 in attorney fees, and the exact amount up to that \$150,000 would be determined using the factors). This amount should not include punitive damages.
- Where there is only non-monetary relief sought (injunctive, declaratory relief), only the factors would apply – the 3x cap would not.
- Where there action seeks both monetary damages and non-monetary relief – 3x the monetary damages would be a presumed cap, but could be exceeded if after considering all the factors, the court determines a higher award is necessary.

Thank you.

9/20/2011

**Lucas Vebber**  
Office of Senator Rich Zipperer  
33<sup>rd</sup> Senate District  
(608) 266-9174

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**From:** Hurley, Peggy  
**Sent:** Tuesday, September 20, 2011 12:13 PM  
**To:** Vebber, Lucas  
**Subject:** RE: Draft review: LRB 11-2670/P2 Topic: Reasonableness of attorneys fees

Hi Lucas,

A couple of things occurred to me. First, what if there is an action for, say, injunctive or declaratory relief, but no damages (or nominal damages) involved? Second, by the amount in controversy, do you mean the amount claimed or the amount actually awarded? It is my understanding that suits are often filed that do not seek specific damages, but seek "fair compensation" (either above or below the small claims threshold). If you want to mean the amount of damages actually awarded, should that include punitive damages?

Peggy

---

**From:** Vebber, Lucas  
**Sent:** Tuesday, September 20, 2011 12:04 PM  
**To:** Hurley, Peggy  
**Subject:** RE: Draft review: LRB 11-2670/P2 Topic: Reasonableness of attorneys fees

Peggy,

Please add a provision that a reasonable fee must be no more than three times the amount in controversy in the case.

Thank you,

**Lucas Vebber**  
Office of Senator Rich Zipperer  
33<sup>rd</sup> Senate District  
(608) 266-9174

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**From:** Godwin, Gigi  
**Sent:** Tuesday, September 13, 2011 9:26 AM  
**To:** Sen.Zipperer  
**Subject:** Draft review: LRB 11-2670/P2 Topic: Reasonableness of attorneys fees

**Following is the PDF version of draft LRB 11-2670/P2.**



State of Wisconsin  
2011 - 2012 LEGISLATURE



LRB-2670/P2  
PJH:cmh&cjs:oh

stays

MR

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

8/1

9-21  
soon  
Gerhart

- 1 AN ACT *to create* 814.045 of the statutes; **relating to:** factors for determining
- 2 the reasonableness of attorney fees.

***Analysis by the Legislative Reference Bureau***

Under current law, in certain civil actions a court may grant reasonable attorney fees to a prevailing party or may be asked to determine whether attorney fees sought by a party are reasonable. Under this bill, to determine whether to award attorney fees and whether the attorney fees are reasonable, the court must consider several factors.

Under the bill, the factors that the court must consider include the time and labor required by the attorney, the novelty and difficulty of the questions involved, and the complexity of the case; the skills needed to perform the legal service properly; the likelihood that the acceptance of the particular case prevented the attorney from accepting other work; the fee customarily charged in the locality for similar legal services; the amount involved in the legal dispute and the results obtained; the fees granted in similar cases; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the attorney performing the services; whether the fee is fixed or contingent; and the legitimacy of any defenses raised in the case.

insert analysis

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

*(B)*  
*(1)* subject to *sub.*  
*(2), in*

SECTION 1. 814.045 of the statutes is created to read:

**814.045 Attorney fees; reasonableness.** ~~in~~ any action involving the award of attorney fees that are not governed by s. 814.04 (1) or involving a dispute over the reasonableness of attorney fees, the court shall, in determining whether to award attorney fees and in determining whether the attorney fees are reasonable, consider all of the following:

*(a)*  
**(1)** The time and labor required by the attorney.

*(b)*  
**(2)** The novelty and difficulty of the questions involved in the action.

*(c)*  
**(3)** The skill requisite to perform the legal service properly.

*(d)*  
**(4)** The likelihood that the acceptance of the particular case precluded other

employment by the attorney. *(e)*

**(5)** The fee customarily charged in the locality for similar legal services.

**(6)** The amount of damages involved in the action. *(f)*

**(7)** The results obtained in the action. *(g)*

**(8)** The time limitations imposed by the client or by the circumstances of the action. *(h)*

**(9)** The nature and length of the attorney's professional relationship with his or her client. *(i)*

**(10)** The experience, reputation, and ability of the attorney. *(j)*

**(11)** Whether the fee is fixed or contingent. *(k)*

**(12)** The complexity of the case. *(l)*

**(13)** Awards of costs and fees in similar cases.

**(14)** The legitimacy or strength of any defenses or affirmative defenses asserted in the action. *(m)*

*(n)*

(P)

1 (15) Other factors the court deems important or necessary to consider under  
2 the circumstances of the case.

3 (END)

Insert 3.2



2011-2012 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-2670/P2ins  
PJH:cmh&cjs:ph

INSERT ANALYSIS:

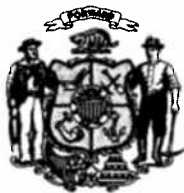
The bill also limits attorney fees to three times the amount of compensatory damages awarded, except in cases where only nonmonetary relief is awarded or in cases involving both compensatory damages and nonmonetary relief. The bill does not place a limit on attorney fees in cases where only nonmonetary relief is awarded, so long as the court considers the factors set forth in the bill. In cases where both compensatory damages and nonmonetary relief is awarded, the bill sets forth a presumption that a reasonable attorney fee is not more than three times the amount of compensatory damages awarded, but allows a court to determine that a greater amount is reasonable if the court considers all of the factors set forth in the bill.

INSERT 3.2:

(2) (a) Except as provided in par. (c), in any action in which compensatory damages are awarded, reasonable attorney fees may not exceed three times the amount of the compensatory damages awarded.

(b) In any action in which compensatory damages are not awarded but injunctive or declaratory relief, rescission or modification, or specific performance is ordered, reasonable attorney fees shall be determined according to the factors set forth in sub. (1). ✓

(c) In any action in which compensatory damages are awarded and injunctive or declaratory relief, rescission or modification, or specific performance is ordered, the court shall presume that reasonable attorney fees do not exceed three times the amount of the compensatory damages awarded, but this presumption may be overcome if the court determines, after considering the factors set forth in sub. (1), that a greater amount is reasonable.



Stops

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

today changes from 1P to 1/1

Regen

1 AN ACT *to create* 814.045 of the statutes; **relating to:** factors for determining  
2 the reasonableness of attorney fees.

***Analysis by the Legislative Reference Bureau***

Under current law, in certain civil actions a court may grant reasonable attorney fees to a prevailing party or may be asked to determine whether attorney fees sought by a party are reasonable. Under this bill, to determine whether to award attorney fees and whether the attorney fees are reasonable, the court must consider several factors.

Under the bill, the factors that the court must consider include the time and labor required by the attorney, the novelty and difficulty of the questions involved, and the complexity of the case; the skills needed to perform the legal service properly; the likelihood that the acceptance of the particular case prevented the attorney from accepting other work; the fee customarily charged in the locality for similar legal services; the amount involved in the legal dispute and the results obtained; the fees granted in similar cases; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the attorney performing the services; whether the fee is fixed or contingent; and the legitimacy of any defenses raised in the case.

The bill also limits attorney fees to three times the amount of compensatory damages awarded, except in cases where only nonmonetary relief is awarded or in cases involving both compensatory damages and nonmonetary relief. The bill does not place a limit on attorney fees in cases where only nonmonetary relief is awarded,

so long as the court considers the factors set forth in the bill. In cases where both compensatory damages and nonmonetary relief is awarded, the bill sets forth a presumption that a reasonable attorney fee is not more than three times the amount of compensatory damages awarded, but allows a court to determine that a greater amount is reasonable if the court considers all of the factors set forth in the bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 814.045 of the statutes is created to read:

2           **814.045 Attorney fees; reasonableness.** (1) Subject to sub. (2), in any action  
3 involving the award of attorney fees that are not governed by s. 814.04 (1) or  
4 involving a dispute over the reasonableness of attorney fees, the court shall, in  
5 determining whether to award attorney fees and in determining whether the  
6 attorney fees are reasonable, consider all of the following:

7           (a) The time and labor required by the attorney.

8           (b) The novelty and difficulty of the questions involved in the action.

9           (c) The skill requisite to perform the legal service properly.

10          (d) The likelihood that the acceptance of the particular case precluded other  
11 employment by the attorney.

12          (e) The fee customarily charged in the locality for similar legal services.

13          (f) The amount of damages involved in the action.

14          (g) The results obtained in the action.

15          (h) The time limitations imposed by the client or by the circumstances of the  
16 action.

17          (i) The nature and length of the attorney's professional relationship with his  
18 or her client.

19          (j) The experience, reputation, and ability of the attorney.

1 (k) Whether the fee is fixed or contingent.

2 (L) The complexity of the case.

3 (m) Awards of costs and fees in similar cases.

4 (n) The legitimacy or strength of any defenses or affirmative defenses asserted  
5 in the action.

6 (p) Other factors the court deems important or necessary to consider under the  
7 circumstances of the case.

8 **(2)** (a) Except as provided in par. (c), in any action in which compensatory  
9 damages are awarded, reasonable attorney fees may not exceed 3 times the amount  
10 of the compensatory damages awarded.

11 (b) In any action in which compensatory damages are not awarded but  
12 injunctive or declaratory relief, rescission or modification, or specific performance is  
13 ordered, reasonable attorney fees shall be determined according to the factors set  
14 forth in sub. (1).

15 (c) In any action in which compensatory damages are awarded and injunctive  
16 or declaratory relief, rescission or modification, or specific performance is ordered,  
17 the court shall presume that reasonable attorney fees do not exceed 3 times the  
18 amount of the compensatory damages awarded, but this presumption may be  
19 overcome if the court determines, after considering the factors set forth in sub. (1),  
20 that a greater amount is reasonable.

21 (END)

**Barman, Mike**

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**From:** Vebber, Lucas  
**Sent:** Monday, October 03, 2011 9:50 AM  
**To:** LRB.Legal  
**Subject:** Special Session Jacket Request - 11-2670/1

Please Jacket LRB 11-2670/1 as a SPECIAL SESSION BILL for the SENATE.

Thanks,

**Lucas Vebber**  
Office of Senator Rich Zipperer  
33<sup>rd</sup> Senate District  
(608) 266-9174