COLORADO SUPREME COURT STANDING COMMITTEE ON THE COLORADO RULES OF PROFESSIONAL CONDUCT

AGENDA

September 25, 2020, 9:00 a.m.

VIRTUAL MEETING IN RESPONSE TO COVID-19 RESTRICTIONS

Meeting invitation with connection info to arrive via email next week

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1. Approval of minutes for April 3, 2020 meeting [to be distributed separately]
2. Report on Adoption of Proposed Advertising and Contingent Fee Amendments [Eli Wald, pp. 1-7]
3. Report from Diversity Subcommittee [Judge Espinosa]
4. Report from Rule 1.5(b) "scope of representation" Subcommittee [Noah Patterson, pp. 8-61]
5. New Business:
   a. ABA Model Rule 1.8(e) amendment [Marcy Glenn, pp. 62-63]
   b. Proposed amendments to Rule 6.1 [Cindy Covell]
6. Administrative matters:
   a. Select next meeting date
7. Adjournment (before noon)

Marcy G. Glenn, Chair
Holland & Hart LLP
(303) 295-8320
mglenn@hollandhart.com

From: Marcy Glenn
Sent: Friday, September 11, 2020 4:59 AM
To: Alexander Rothrock; Annie Kurtz (Law Clerk/Judge Marquez); April Jones; Boston Stanton; Cecil Morris (cmorris@fwlaw.com); Cori S. Peterson; Cynthia Covell; David Stark; Eli Wald; Fred Yarger; H. Richard Reeve (dreeve.law@gmail.com); Hon. Adam J. Espinosa; Hon. Lino S. Lipinsky de Orlov; Hon. Monica Marquez; Hon. Ruthanne N. Polidori; Hon. William Lucero; Hon. William W. Hood, III; Jamie Sudler; Jennifer Wallace (Staff Attorney); Jessica E. Yates; 'John.Webb@coag.gov'; Julia Martinez; Kathleen O'Riley; Kim Pask (Assistant/Staff Attorney Jessica E. Yates); Lisa Wayne; Marcus Squarrell (msquarrell@comcast.net); Marcy Glenn; Margaret B. Funk ; Margaret Berry (Law Clerk/Judge Hood); Marianne Luu-Chen; Michael Berger; Nancy Cohen; Noah Patterson; PDJ; Thomas E. Downey, Jr.; Tuck Young; Tyrone Glover
Subject: FW: Rule Changes 2020(28) and (29)
Attachments: 2020 Permanent Record.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Good morning. I'm happy to pass along this notice that the Supreme Court has adopted our Committee's recommended amendments to Rules 7.1 through 7.5. (See green highlighting below.) The Court received no comments beyond those that accompanied our recommendations in the Subcommittee's several reports. Therefore, effective immediately, the Colorado advertising and solicitation rules will track the Model Rules, with the limited departures that we suggested to the Court.

I'm still on the east coast but I've been following the fires in Colorado and am thinking of all of you. I hope that everyone is staying safe and healthy, physically and emotionally. This, too, shall pass and I look forward to connecting, as best as we can, on 9/25. I hope to get the packet out, with WebEx info, by 9/18.

Marcy

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From: michaels, kathryn <kathryn.michaels@judicial.state.co.us>
Sent: Thursday, September 10, 2020 2:57 PM
To: 'candace@bradfordpublishing.com' <candace@bradfordpublishing.com>; 'jcoughter@casemakerlegal.com' <jcoughter@casemakerlegal.com>; 'ddemuro@vaughandemuro.com' <ddemuro@vaughandemuro.com>; 'Dennis.Dougherty@lexisnexis.com' <Dennis.Dougherty@lexisnexis.com>; 'Evan@lipsteinlaw.com' <Evan@lipsteinlaw.com>; 'jjennings@cobar.org' <jjennings@cobar.org>; Marcy Glenn <MGlenn@hollandhart.com>; 'hfarbes@bhfs.com' <hfarbes@bhfs.com>; davidson, janice <janice.davidson@judicial.state.co.us>; 'Michele.Brown@state.co.us' <Michele.Brown@state.co.us>; 'nate.carr@state.co.us' <nate.carr@state.co.us>; 'nrmueller@hmflaw.com' <nrmueller@hmflaw.com>; 'pdj@pdj.state.co.us' <pdj@pdj.state.co.us>; 'Richard.Holme@dgslaw.com' <Richard.Holme@dgslaw.com>; morrison, terri <terri.morrison@judicial.state.co.us>; 'Vickie.Collins@LexisNexis.com' <Vickie.Collins@LexisNexis.com>; yacuzzo, karen <karen.yacuzzo@judicial.state.co.us>; walker, leah <leah.walker@judicial.state.co.us>; nicewicz, cecily <cecily.nicewicz@judicial.state.co.us>; 'agawde@casemakerlegal.com' <agawde@casemakerlegal.com>; 'julie.koppinger@thomsonreuters.com' <julie.koppinger@thomsonreuters.com>; 'mary.gray@thomsonreuters.com' <mary.gray@thomsonreuters.com>; Kevin Hanks <k.hanks@csc.state.co.us>; Kristin Huotari <khuotari@cobar.org>; Rachel Rome <rrome@cobar.org>; alarson@cobar.org
Subject: RE: Rule Changes 2020(28) and (29)

External Email

Please note one change:

(28) updates Rules 103 and 403; Forms 26, 27, 28, 29, 32, 33, and New Form Notice to Judgment Debtor of the Colorado Rules of Civil Procedure. It is posted on the court's website and effective October 1, 2020. I've attached an updated permanent record.

Thank you,
Kathryn

From: michaels, kathryn <kathryn.michaels@judicial.state.co.us>
Sent: Thursday, September 10, 2020 2:40 PM
To: 'candace@bradfordpublishing.com' <candace@bradfordpublishing.com>; 'jcoughter@casemakerlegal.com' <jcoughter@casemakerlegal.com>; 'ddemuro@vaughandemuro.com' <ddemuro@vaughandemuro.com>; 'Dennis.Dougherty@lexisnexis.com' <Dennis.Dougherty@lexisnexis.com>; 'Evan@lipsteinlaw.com' <Evan@lipsteinlaw.com>; 'jjennings@cobar.org' <jjennings@cobar.org>; 'mglenn@hollandhart.com' <mglenn@hollandhart.com>; 'hfarbes@bhfs.com' <hfarbes@bhfs.com>; davidson, janice <janice.davidson@judicial.state.co.us>; 'Michele.Brown@state.co.us' <Michele.Brown@state.co.us>; 'nate.carr@state.co.us' <nate.carr@state.co.us>; 'nrmueller@hmflaw.com' <nrmueller@hmflaw.com>; 'pdj@pdj.state.co.us' <pdj@pdj.state.co.us>; 'Richard.Holme@dgslaw.com' <Richard.Holme@dgslaw.com>; morrison, terri <terri.morrison@judicial.state.co.us>; 'Vickie.Collins@LexisNexis.com' <Vickie.Collins@LexisNexis.com>; yacuzzo, karen <karen.yacuzzo@judicial.state.co.us>; walker, leah <leah.walker@judicial.state.co.us>; nicewicz, cecily <cecily.nicewicz@judicial.state.co.us>; 'agawde@casemakerlegal.com' <agawde@casemakerlegal.com>; 'julie.koppinger@thomsonreuters.com' <julie.koppinger@thomsonreuters.com>; 'mary.gray@thomsonreuters.com' <mary.gray@thomsonreuters.com>; Kevin Hanks <k.hanks@csc.state.co.us>; Kristin Huotari <khuotari@cobar.org>; Rachel Rome <rrome@cobar.org>; alarson@cobar.org
Cc: michaels, kathryn <kathryn.michaels@judicial.state.co.us>
Subject: Rule Changes 2020(28) and (29)

Good afternoon,

Rule Changes 2020(28) and (29) have been issued.

(28) updates Rules 103 and 403; Forms 26, 27, 28, 29, 32, 33, and New Form Notice to Judgment Debtor of the Colorado Rules of Civil Procedure. It is posted on the court's website and effective immediately.

(29) updates Rules 7.1, 7.2, 7.3, 7.4, and 7.5 of the Colorado Rules of Professional Conduct. It is posted on the court's website and effective immediately.

Please let me know if you have any questions. The Permanent Record is attached.

Thank you,

Kathryn

Kathryn Michaels
Staff Attorney | Colorado Supreme Court | (720) 625-5105 | kathryn.michaels@judicial.state.co.us
*Please note I am out of the office on Wednesdays

PERMANENT RECORD 2020

Description of Rule Changes
Rules adopted, amended, repealed, and corrected
Through September 10, 2020

RULE CHANGE 2020(29)
COLORADO RULES OF PROFESSIONAL CONDUCT
Rules 7.1, 7.2, 7.3, 7.4, and 7.5
Amended and Adopted by the Court, En Banc, September 10, 2020, effective immediately.

RULE CHANGE 2020(28)
COLORADO RULES OF CIVIL PROCEDURE
Rules 103 and 403; Forms 26, 27, 28, 29, 32, 33, and New Form Notice to Judgment Debtor
Amended and Adopted by the Court, En Banc, September 10, 2020, effective October 1, 2020.

RULE CHANGE 2020(27)
COLORADO PROBATE CODE FORMS
JDF 705, 809, 811, 843, 844, 877, 882, 915, 916, and 922
Amended and Adopted by the Court, En Banc, August 21, 2020, effective September 1, 2020.

RULE CHANGE 2020(26)
COLORADO RULES OF CIVIL PROCEDURE
Rules 26, 106, and 121, §1-14
Amended and Adopted by the Court, En Banc, August 17, 2020, effective immediately.

RULE CHANGE 2020(25)
COLORADO MUNICIPAL COURT RULES OF PROCEDURE
Rule 224
Amended and Adopted by the Court, En Banc, August 5, 2020, effective immediately.

RULE CHANGE 2020(24)
COLORADO RULES OF CRIMINAL PROCEDURE
Rule 24
Amended and Adopted by the Court, En Banc, July 22, 2020, effective immediately.

RULE CHANGE 2020(23)
RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW IN COLORADO
Rule 205.8
Amended and Adopted by the Court, En Banc, July 9, 2020, effective immediately.

RULE CHANGE 2020(22)
UNIFORM LOCALS RULES FOR ALL STATE WATER COURT DIVISIONS
Rule 3
Amended and Adopted by the Court, En Banc, June 25, 2020, effective immediately.

RULE CHANGE 2020(21)
COLORADO WATER COURT FORMS
Forms 240W, 241W, 290W, 296W, 297W, 298Wa, 298Wb, 299W, 300W, 301W, 302W, 303W, 304W, 307W, 308W, 312 Form 2, 319 Form 1, and 320W
Amended and Adopted by the Court, En Banc, June 25, 2020, effective immediately.

RULE CHANGE 2020(20)
COLORADO MUNICIPAL COURT RULES OF PROCEDURE
Rule 224
Amended and Adopted by the Court, En Banc, May 21, 2020, effective immediately.

RULE CHANGE 2020(19)
COLORADO RULES OF PROFESSIONAL CONDUCT
Rules 1.6 and 1.15A
Amended and Adopted by the Court, En Banc, May 14, 2020, effective January 1, 2021.

RULE CHANGE 2020(18)
COLORADO RULES OF CRIMINAL PROCEDURE
Rule 16
Amended and Adopted by the Court, En Banc, May 14, 2020, effective immediately.

RULE CHANGE 2020(17)
COLORADO PROBATE CODE FORMS
JDF 807
Amended and Adopted by the Court, En Banc, April 30, 2020, effective immediately.

RULE CHANGE 2020(16)
COLORADO RULES OF PROBATE PROCEDURE
Rules 91 and 92
Amended and Adopted by the Court, En Banc, April 24, 2020, effective immediately.

RULE CHANGE 2020(15)
RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW IN COLORADO
Rule 205.8
Amended and Adopted by the Court, En Banc, April 23, 2020, effective immediately.

RULE CHANGE 2020(14)
COLORADO PROBATE CODE FORMS
JDF 718
Amended and Adopted by the Court, En Banc, April 23, 2020, effective immediately.

RULE CHANGE 2020(13)
COLORADO RULES OF CIVIL PROCEDURE
Rules 4, 106.5, and 304
Amended and Adopted by the Court, En Banc, April 17, 2020, effective immediately.

RULE CHANGE 2020(12)
COLORADO RULES OF JUVENILE PROCEDURE
Rule 3.5
Amended and Adopted by the Court, En Banc, April 16, 2020, effective immediately.

RULE CHANGE 2020(11)
COLORADO RULES OF PROCEDURE REGARDING ATTORNEY DISCIPLINE AND DISABILITY PROCEEDINGS, COLORADO ATTORNEYS' FUND FOR CLIENT PROTECTION AND MANDATORY CONTINUING LEGAL EDUCATION AND JUDICIAL EDUCATION
Rules 251.2, 254, and 255
Amended and Adopted by the Court, En Banc, April 16, 2020, effective immediately.

RULE CHANGE 2020(10)
UNAUTHORIZED PRACTICE OF LAW RULES
Rule 229
Amended and Adopted by the Court, En Banc, April 16, 2020, effective immediately.

RULE CHANGE 2020(09)
COLORADO RULES OF CRIMINAL PROCEDURE
Rule 35
Amended and Adopted by the Court, En Banc, April 16, 2020, effective immediately.

RULE CHANGE 2020(08)
COLORADO RULES OF CRIMINAL PROCEDURE
Rule 43
Amended and Adopted by the Court, En Banc, April 7, 2020, effective immediately.

RULE CHANGE 2020(07)
COLORADO RULES OF CRIMINAL PROCEDURE
Rule 24
Amended and Adopted by the Court, En Banc, April 7, 2020, effective immediately.

RULE CHANGE 2020(06)
COLORADO RULES OF CRIMINAL PROCEDURE
Rule 43
Amended and Adopted by the Court, En Banc, March 30, 2020, effective immediately.

RULE CHANGE 2020(05)
COLORADO RULES OF CRIMINAL PROCEDURE
Rule 43
Amended and Adopted by the Court, En Banc, March 23, 2020, effective immediately.

RULE CHANGE 2020(04)
COLORADO RULES OF CRIMINAL PROCEDURE

Rule 43
Amended and Adopted by the Court, En Banc, March 19, 2020, effective immediately.

RULE CHANGE 2020(03)
COLORADO PROBATE CODE FORMS
JDF 999
Amended and Adopted by the Court, En Banc, March 5, 2020, effective immediately.

RULE CHANGE 2020(02)
RULES OF PROCEDURE FOR JUDICIAL BYPASS OF PARENTAL NOTIFICATION REQUIREMENTS
Rules 1, 2, and 3 and JDF 11
Amended and Adopted by the Court, En Banc, March 5, 2020, effective immediately.

RULE CHANGE 2020(01)
COLORADO RULES OF CIVIL PROCEDURE
Rules 8, 16.2, 65.1, 103, 108, 121, § 1-23, 121, § 1-24, 403, 408, and 509
Amended and Adopted by the Court, En Banc, March 5, 2020, effective immediately.

Colorado Supreme Court Standing Committee for the Rules of Professional Conduct

Rule 1.5(b) Subcommittee Report
September 16, 2020

I. Introduction

In 2019, John Lebsack suggested that the Colorado Supreme Court Standing Committee for the Rules of Professional Conduct ("the Committee") consider revising Rule 1.5(b) of the Colorado Rules of Professional Conduct to add the concept of "scope of representation" to the rule that a lawyer generally must communicate to the client in writing at the start of the representation.[1] That phrase was added to ABA Model Rule 1.5(b) as part of the ABA's Ethics 2000 project. In December 2005, when the Committee proposed extensive changes to the Colorado Rules in response to the Ethics 2000 project, the Committee did not recommend adding "scope of representation" language to Colorado Rule 1.5(b). Based on the available information, it does not appear that the Committee's Ethics 2000 Subcommittee or the Committee as a whole even considered adding such language to Colorado Rule 1.5(b). If either that subcommittee or the full Committee *did* consider that possibility, the reason it did not recommend including "scope of representation" language to the Supreme Court is unknown.

In April 2020, the Rule 1.5(b) Subcommittee ("Subcommittee") was formed to review the requested change and report back to the Committee. Noah Patterson chairs the Subcommittee. Cynthia Covell, the Honorable Adam Espinosa, Marcy Glenn, John Lebsack, Alec Rothrock, and Jessica Yates serve on the Subcommittee.

The Subcommittee's work included review of current Colorado Rule 1.5(b) and its comments, the history of that rule, ABA Model Rule 1.5(b) and its comments,[2] and versions of Rule 1.5(b) enacted in other States and their comments. The Subcommittee held multiple meetings and reached consensus on proposed amendments. The Subcommittee will initially present its recommendations to the Committee at its meeting on September 25, 2020.

The Subcommittee recommends adding "scope of representation" language to Colorado Rule 1.5(b) for the same reasons that the ABA added this language to Model Rule 1.5(b) as part of the Ethics 2000 project:

> As a practical matter, a statement about fees is rarely complete without a corresponding statement of what the lawyer is expected to do for the

[1] John Lebsack's November 6, 2019 letter to the Committee requesting this revision is attached as Exhibit A.

[2] ABA Model Rule 1.5 and its comments are attached as Exhibit B and are also available at https://tinyurl.com/y4pdhq7t (last visited August 16, 2020).

> fee. Further, the Commission believes that issues about expenses are often at least as controversial as those about fees. Indeed, clients often do not distinguish between fees and expenses. Thus, proposed paragraph (b) includes statements about the scope of the representation and client responsibility for expenses as well as fees in the requirement of a written agreement. Changes in the basis or rate of the fee or expenses must also be communicated in writing but not changes in the scope of the representation, which may change frequently over the course of the representation.

Reporter's Explanation of Changes to Model Rule 1.5 ("Reporter's Explanation"), at 4, *available at* https://tinyurl.com/y29zzpf2 (last visited August 16, 2020).[3]

Having carefully reviewed Model Rule 1.5(b) as well as versions of that rule and its comments adopted in other States, the Subcommittee generally finds the Model Rule compelling and recommends revising Colorado's Rule 1.5(b) to conform to the Model Rule, with two exceptions. The recommended amendments and exceptions are highlighted and explained below. The Subcommittee also recommends revising Comment [2] to Colorado Rule 1.5(b) to reflect the proposed changes to Rule 1.5(b) and to improve the comment's clarity and readability.

II. Description of the Recommended Changes

A. Proposed changes to Rule 1.5(b)

The Subcommittee recommends the following redlined changes to Colorado Rule 1.5(b):

> (b) ~~When the lawyer has not regularly represented the client,~~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. Any changes in the basis or rate of the fee or expenses shall also be promptly communicated to the client, in writing.

[3] The Reporter's Explanation states that "[c]hanges in the basis or rate of the fee or expenses must also be communicated in writing…." However, Model Rule 1.5(b) does not require the communication of those changes in writing. It appears the Reporter's Explanation concerned an earlier draft of the Model Rule which required changes to be communicated in writing.

A clean version of Rule 1.5(b) as revised is attached as Exhibit C. The Subcommittee recommends the above changes for the following reasons:

- Delete "When the lawyer has not regularly represented the client" to be consistent with the Model Rule. This concept would be communicated by the insertion at the end of the first sentence.

- Insert the phrase "The scope of the representation and" at the beginning of the first sentence and the phrase "for which the client will be responsible" after "expenses" in the first sentence. Both of these phrases are taken from the ABA Model Rule 1.5(b) and are added to make Colorado Rule 1.5(b) more consistent with the Model Rule. Further, as John Lebsack explained in his letter attached as Exhibit A, "In forming the lawyer-client relationship, the scope of representation is just as important as the basis of the fee. In my experience, differences over the scope of representation are one of the most common disputes that arise between lawyer and client." *Exhibit A, p. 2.* So, adding the scope of representation concept to Colorado Rule 1.5(b) may assist lawyers in avoiding disputes with clients.

- Insert the phrase ", except when the lawyer will charge a regularly represented client on the same basis or rate" at the end of the first sentence to be consistent with the Model Rule and to communicate the concept deleted at the beginning of this sentence (*i.e.*, that lawyers representing regularly represented clients on the same basis or rate are not required to communicate either the scope of the representation or the basis or rate of the fee).

The Subcommittee recommends that two exceptions be made to the general recommendation of conformity to Model Rule 1.5(b):

- The Subcommittee recommends retention of "in writing" in both the first and second sentences of Colorado Rule 1.5(b). The Model Rule states that the scope of the representation and the basis or rate of the fee and expenses shall be communicated "preferably in writing," whereas the Colorado rule has long required that the communication be in writing. The Model Rule's second sentence does not mention "in writing" but instead appears to allow changes in the basis or rate of the fee or expenses to be communicated orally. Requiring both the initial communication and any changes to be made in writing has long been the rule in Colorado and the Subcommittee does not think that this should be changed.

- The Subcommittee recommends that the word "promptly" be retained in the second sentence of Colorado's Rule 1.5(b). The Model Rule does not include "promptly," but if Colorado were to remove it from Rule 1.5(b), this removal

could indicate that lawyers need not communicate changes "promptly" to the client, which would likely be inconsistent with the intent behind Rule 1.5(b).

B. Proposed changes to Comment 2

Consistent with the recommended changes to the text of Colorado Rule 1.5(b) and to make the comment clearer, the Subcommittee recommends the following changes to Comment [2]:

> [2] In a new client-lawyer relationship, the scope of the representation and the basis or rate of the fee and expenses must be promptly communicated in writing to the client, but the communication need not take the form of a formal engagement letter or agreement, and it need not be signed by the client. ~~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, but when there has been a change from their previous understanding the basis or rate of the fee should be promptly communicated in writing. In a new client-lawyer relationship, the basis or rate of the fee must be promptly communicated in writing to the client, but the communication need not take the form of a formal engagement letter or agreement, and it need not be signed by the client. Moreover, i~~It is not necessary to recite all the factors that underlie the basis or rate of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, to identify the factors that may be taken into account in finally fixing the fee, or to furnish the client with a simple memorandum or the lawyer's customary fee schedule. 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~~, but when there has been a change from their previous understanding the basis or rate of the fee should be promptly communicated in writing~~.~~ Whether the client-lawyer relationship is new or one where the lawyer has regularly represented the client, any changes in the basis or rate of the fee or expenses must be communicated in writing. Changes in the scope of the representation may occur frequently over the course of the representation and are not required to be communicated in writing; however, communicating such changes in writing may help avoid misunderstandings between clients and lawyers. When other developments occur during the representation that render an earlier communication substantially inaccurate or inadequate, a subsequent ~~revised~~ written communication ~~should be provided to the client~~may help avoid misunderstandings between clients and lawyers. ~~All flat fee arrangements must be in writing and must comply with paragraph (h)~~

~~of this Rule. All contingent fee arrangements must be in writing, regardless of whether the client-lawyer relationship is new or established. See C.R.C.P., Ch. 23.3, Rule 1.~~

A clean version of Comment [2] as revised is attached as Exhibit D. The Subcommittee recommends the above changes for the following reasons:

- Proposed changes in the first sentence of the revised comment:
  - This sentence is the second sentence in the current comment. Putting this sentence first reflects the organization of the proposed revisions to the rule (which begins by discussing new client-lawyer relationships).
  - Insert the phrase "the scope of the representation and" after "In a new client-lawyer relationship, …." This proposed change reflects the addition of the "scope of representation" language to the rule.
  - Add the phrase "and expenses" after "basis or rate of the fee." This proposed change reflects the current text of the rule, which requires that the basis or rate of both the fee and expenses be communicated in writing (in a new client-lawyer relationship).

- Proposed changes in the second sentence of the revised comment:
  - Delete "Moreover" to accommodate the rearranging of the sentence structure in the revised comment.
  - Add the phrase "or rate" after "it is not necessary to recite all the factors that underlie the basis…." This change reflects the current language of the rule.

- Proposed changes in the fourth sentence of the revised comment:
  - This sentence is the first sentence in the current comment. Moving this sentence reflects the organization of the proposed revisions to the rule and improves the comment's readability.
  - Delete ", but when there has been a change from their previous understanding the basis or rate of the fee should be promptly communicated in writing." This concept is communicated in the fifth sentence of the revised comment.

- Proposed changes in the fifth sentence of the revised comment: This sentence communicates the concept that was previously in the fourth sentence of the revised comment, but revises it to make clear that lawyers must communicate in writing to regularly represented as well as new clients any changes to the basis or rate of the fee or expenses.

- Proposed changes in the sixth sentence of the revised comment: This sentence is new. It reads: "Changes in the scope of the representation may occur frequently over the course of the representation and are not required to be communicated in writing; however, communicating such changes in writing

may help avoid misunderstandings between clients and lawyers." The concept in the first clause of this new sentence appears in the Reporter's Explanation for the Ethics 2000 changes to the Model Rule 1.5 (available at https://tinyurl.com/y29zzpf2) (last visited August 16, 2020). The second clause conveys that while changes in the scope of representation are not required to be communicated in writing, such written communication can be a best practice and help avoid misunderstandings.

- Proposed changes in the seventh sentence of the revised comment: This sentence exists in the current comment, however the Subcommittee proposes several changes:
  - The word "other" is inserted before "developments" to indicate that these are developments that are separate from changes in the scope of representation (which is what the previous sentence concerns).
  - The phrase "or inadequate" is added to make clear that it is often a best practice to address communications rendered incorrect or inadequate with a subsequent written communication.
  - The word "revised" is replaced with "subsequent" because the prior communication could have been either oral or written (stating "revised written" indicates that the previous communication was in writing). The Subcommittee recommends adding "subsequent" to make clear that the communication referenced in this comment is a second communication after the now inadequate or incorrect initial communication.
  - The use of the phrase "should be provided to the client" in the current comment makes it unclear whether this part of the comment is required by the rule or is instead a best practice not necessarily required by the rule. The Subcommittee has substituted the language "may help avoid misunderstandings between clients and lawyers" to explain that this sentence is a best practice, which the Subcommittee believes the rule does not necessarily require. For example, a case could have an unexpected change in size or complexity. While such a change would not necessarily require a written communication under Rule 1.5(b), it could be a best practice to inform the client of the change in writing to avoid any potential misunderstanding.

- Proposed deletion of the last two sentences in the current comment: The Subcommittee proposes deletion of the last two sentences in the current Comment [2] regarding flat fee and contingent fee agreements because these sentences do not appear to clarify anything in Rule 1.5(b) or other applicable rules.

III. Revisions/Additions to the Rule and Comment that the Subcommittee Considered and Rejected

A. Rejected Rule revisions

The Subcommittee considered proposing a revision to the rule that would require communication in writing of changes to the scope of representation. This change would be inconsistent with Model Rule 1.5(b). New York appears to be the only state that requires the communication of changes in the scope of representation (although not necessarily in writing). *Exhibit E, pp. 27–29*. The Subcommittee found persuasive that the ABA considered but decided against requiring communication of changes to the scope of representation. *See Reporter's Explanation*, at 4, *available at* https://tinyurl.com/y29zzpf2 (last visited August 16, 2020) (explaining that changes in the scope of the representation need not be communicated because the scope may change frequently over the course of the representation). As a result, the Subcommittee decided not to propose requiring changes to the scope of representation to be communicated in writing based on (1) the preference towards conformity with the Model Rules absent strong reasons for departure, and (2) the frequency with which changes in the scope of representation could occur, which could make a written communication requirement unduly burdensome on the attorney and client.

The Subcommittee also considered proposing changes to the phrase "on the same basis or rate." The Subcommittee discussed two issues with this phrase: (1) that the use of "or" instead of "and" could imply that lawyers need to communicate only the basis *or* the rate of the fee (but not both); and (2) that "on the same basis or rate" reads strangely, especially given that "on the same rate" is not a commonly-used expression. Jessica Yates and others stated that they rarely encounter issues regarding the phrase "basis or rate." The Subcommittee decided that for this phrase, consistency with the Model Rule matters more than syntax or grammatical precision, especially given the lack of issues regarding this phrasing. So, the Subcommittee decided not to propose any changes to "on the same basis or rate."

The final revision to the rule that the Subcommittee considered and rejected was changing the word "shall" in the current rule to "must." Recent commentary suggests that "must" should be used instead of "shall" to impose requirements. *See, e.g.*, Bryan A. Garner, *Shall We Abandon Shall?*, ABA JOURNAL (August 1, 2012), https://tinyurl.com/y4rtwz5t; *but see People v. Dist. Court*, 713 P.2d 918, 921 (Colo. 1986) ("[T]his court has consistently held that the use of the word 'shall' in a statute is usually deemed to involve a mandatory connotation."). While changing "shall" to "must" may have merit, the Subcommittee decided not to make this change because "shall" is used throughout Colorado Rule 1.5, not only in 1.5(b).

B. Rejected Comment revisions

The Subcommittee considered adding proposed commentary regarding the meaning of the phrase "scope of the representation" in Comment [2]. However, the Subcommittee could not find any relevant commentary in any other state's

comments to Rule 1.5 (and the Model Rule does not contain such commentary). Additionally, Jessica Yates stated that, from her perspective, the proposed "scope of representation" requirement in Rule 1.5 should be straightforward for lawyers and the Office of Attorney Regulation Counsel to apply without a clarifying comment. For these reasons, the Subcommittee decided not to propose adding commentary regarding "scope of the representation" in Comment [2].

The Subcommittee also considered proposing the addition of the following statement, which occurs in the ABA Model Rule comment: "A written statement concerning the terms of the engagement reduces the possibility of misunderstanding." Unlike the ABA Model Rule, which states that covered communications shall be "preferably in writing," Colorado Rule 1.5(b), with the proposed amendments, would require an initial written communication regarding both the basis or rate of the fee and the scope of the representation, Therefore, the Subcommittee viewed this Model Rule commentary as unnecessary.

Finally, the Subcommittee considered adding language regarding the meaning of the phrase "basis or rate" in Comment [2]. A technical reading of this phrase appears to allow a fee agreement stating the "basis" (for example, that an attorney will work on an "hourly basis") without stating the alternative ("or") "fee" (for example, the attorney's hourly rate). However, as mentioned above, Subcommittee members have not encountered issues regarding the meaning of "basis or rate" in practice. Additionally, the Subcommittee performed a fifty-state survey regarding the discussion of "basis or rate" in comments to Rule 1.5 (or its equivalent). Although several other states have comments that include some discussion of the meaning of "basis or rate," that discussion parallels the existing discussion in current Colorado Comment [2]. For these reasons, the Subcommittee does not propose adding commentary regarding the meaning of "basis or rate."

IV. Conclusion

For the reasons set forth above, the Subcommittee recommends the revision of Rule 1.5(b) and its Comment [2] consistent with the redlines above.

V. Exhibits

A. November 6, 2019 Correspondence from John Lebsack to the Committee
B. ABA Model Rule 1.5 and Comments
C. Clean Version of Proposed Revisions to Colorado Rule 1.5(b)
D. Clean Version of Proposed Revisions to Comment [2] to Colorado Rule 1.5(b)
E. State Variations on Model Rule 1.5 as of December 11, 2018

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MICHAEL J. DAUGHERTY
ROBERT H. COATE
MONTY L. BARNETT
KEITH R. OLIVERA
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November 6, 2019

Marcy Glenn
Chair, Rules of Professional Conduct Standing Committee
Sent by email to MGlenn@hollandhart.com

Re: Revision of Colo. RPC 1.5(b)

Dear Marcy:

I am writing to suggest that the Standing Committee look into revising Colo. RPC 1.5(b) to add language from ABA Model Rule 1.5(b) regarding the scope of representation. The addition would require lawyers to communicate to clients, in writing, the scope of representation as well as the basis of the fee.

ABA Model Rule 1.5(b) states:

> (b) 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, preferably 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. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

The topic of "scope of representation" is not included in Colo. RPC 1.5(b), which states:

> (b) When the lawyer has not regularly represented the client, the basis or rate of the fee and expenses shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation. Any changes in the basis or rate of the fee or expenses shall also be promptly communicated to the client, in writing.

The Colorado rule differs from the Model Rule in two key respects:

- Colorado requires the basis of the fee to be communicated in writing, while the Model Rule states this as a preference but not a requirement. Colorado added this requirement in

2000 by deleting the word "preferably" from Rule 1.5(b); explanatory langue was added to the comment. *See Rule Change #2000(10)*.[1]

- Colorado requires only the basis or rate of the fee to be communicated, while the Model Rule requires not only that but also the "scope of the representation."

From my review of the Standing Committee's report about whether to adopt the rule changes in the ABA's Ethics 2000 project, it appears the "scope of representation" phrase was part of revised ABA Model Rule 1.5(b), but the Standing Committee did not include that in its recommendations to the Colorado Supreme Court. Reasons were not stated. *See pp. 7, 30-32, Report and Recommendations Concerning the American Bar Association Ethics 2000 Model Rules of Professional Conduct, December 30, 2005*.

I believe "scope of representation" should be added to Colo. RPC 1.5(b). In forming the lawyer-client relationship, the scope of representation is just as important as the basis of the fee. In my experience, differences over the scope of representation are one of the most common disputes that arise between lawyer and client. I have seen this issue arise in many attorney discipline and legal malpractice cases.

Consideration of this issue involves two steps: first, should there be a requirement to communicate the scope of representation at the outset; second, must that communication be in writing. On the first issue, the ABA Ethics 2000 Commission noted: "As a practical matter, a statement about fees is rarely complete without a corresponding statement of what the lawyer is expected to do for the fee." [2]

On the second issue (in writing), adding that requirement would not be a burdensome addition the current mandatory writing concerning the basis of the fee. Both lawyer and client would benefit from written confirmation of the scope.

Curiously, Model Rule 1.5(b) addresses changes to the *fee* during the representation, but not changes to the *scope*. The first sentence of Model Rule 1.5(b) states the requirement for communication of both scope and fee; the second sentence addresses changes but only as to the fee: "Any changes in the basis or rate of the fee or expenses shall also be communicated to the

[1] The ABA Ethics 2000 Commission recommended deleting "preferably" but the House of Delegates rejected that recommendation
https://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/e2k_rule15/
https://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/e2k_rule15h/ (*last accessed 10/31/2019*)

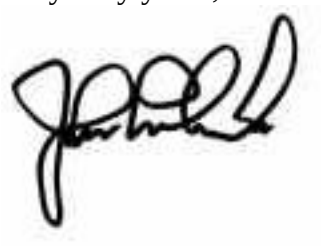
[2]https://www.americanbar.org/groups/professional_responsibility/policy/ethics_2000_commission/e2k_rule15rem/ (*last accessed 10/31/2019*).

client."[3] The rationale for not addressing changes to the scope is not clear, since changes to the scope are at least as common as changes to the fee. It would be better to require the lawyer to communicate changes to either the scope or the fee, in writing.

In conclusion, I respectfully ask the Standing Committee to consider revising Colo. RPC 1.5(b) by adding the words in bold:

> (b) When the lawyer has not regularly represented the client, **the scope of the representation and** the basis or rate of the fee and expenses shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation. Any changes in **the scope of the representation or** the basis or rate of the fee or expenses shall also be promptly communicated to the client, in writing.

Very truly yours,



John Lebsack

[3] The last sentence of Colo. RPC 1.5(b) is similar: "Any changes in the basis or rate of the fee or expenses shall also be *promptly* communicated to the client, *in writing*." (Italics shows words added to the Model Rule.)

April 14, 2020

Rule 1.5: Fees

Client-Lawyer Relationship

(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:

(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.

(b) 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, preferably 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. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(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 paragraph (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.

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

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

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

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

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Clean Version of Colorado Rule 1.5(b) Incorporating the Proposed Revisions

(b) 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. Any changes in the basis or rate of the fee or expenses shall also be promptly communicated to the client, in writing.

Clean Version of Comment [2] to Colorado Rule 1.5(b) Incorporating the Proposed Revisions

[2] In a new client-lawyer relationship, the scope of the representation and the basis or rate of the fee and expenses must be promptly communicated in writing to the client, but the communication need not take the form of a formal engagement letter or agreement, and it need not be signed by the client. It is not necessary to recite all the factors that underlie the basis or rate of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, to identify the factors that may be taken into account in finally fixing the fee, or to furnish the client with a simple memorandum or the lawyer's customary fee schedule. 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. Whether the client-lawyer relationship is new or one where the lawyer has regularly represented the client, any changes in the basis or rate of the fee or expenses must be communicated in writing. Changes in the scope of the representation may occur frequently over the course of the representation and are not required to be communicated in writing; however, communicating such changes in writing may help avoid misunderstandings between clients and lawyers. When other developments occur during the representation that render an earlier communication substantially inaccurate or inadequate, a subsequent written communication may help avoid misunderstandings between clients and lawyers.

American Bar Association
CPR Policy Implementation Committee

Variations of the ABA Model Rules of Professional Conduct

RULE 1.5: FEES

(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:

(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.

(b) 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, preferably 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. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(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 paragraph (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. **(d) A lawyer shall not enter into an arrangement for, charge, or collect:** **(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or** **(2) a contingent fee for representing a defendant in a criminal case.** **(e) A division of a fee between lawyers who are not in the same firm may be made only if:** **(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;** **(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and** **(3) the total fee is reasonable.** Variations from ABA Model Rule are noted. Based on reports of state committees reviewing recent changes to the model rules. For information on individual state committee reports, see http://www.abanet.org/cpr/jclr/home.html. Comments not included. *Current links to state Rules of Professional conduct can be found on the ABA website: http://www.abanet.org/cpr/links.html*
AL Effective 2/19/09	(a) Equivalent to MR but changes wording to: *A lawyer shall not enter into an agreement for, or charge, or collect a clearly excessive fee. In determining whether a fee is excessive the factors to be considered are the following* Adds (a)(8): *where there is a written fee agreement signed by the client* Replaces (b) with: *(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.* (c) Deletes sentence beginning with, "The agreement must clearly;" (e)(1) First part of paragraph is similar to first part of MR (e)(1); adds: *or (b) written agreement with the client, each lawyer assumes joint responsibility for the representation, or (c) in a contingency fee case, the*

	division is between the referring or forwarding lawyer and the receiving lawyer. *(2) the client is advised of and does not object to the participation of all the lawyers involved;* *(3) the client is advised that a division of fee will occur; and* (4) is equivalent to MR (3) but with different wording: *The total fee is not clearly excessive*. Adds (f): *Without prior notification to and prior approval of the appointing court, no lawyer appointed to represent an indigent criminal defendant shall accept any fee in the matter from the defendant or anyone on the defendant's behalf. A lawyer appointed to represent an indigent criminal defendant may separately hold property or funds received from the defendant or on the defendant's behalf which are intended as a fee for the representation, as provided for by Rule 1.15, only if the lawyer promptly notifies the appointing court and promptly seeks its approval for accepting the property or funds as a fee.*
AK Effective 4/15/09	(a)(2) Deletes "if apparent to the client;" Replaces (b) with: *(b) If a fee will exceed $1000, the basis or rate of the fee shall be communicated to the client in a written fee agreement before or within a reasonable time after commencing the representation. This written fee agreement shall describe the scope of the representation and shall include the disclosure required under Rule 1.4(c). In a case involving litigation, the lawyer shall notify the client in the written fee agreement that the client may be liable for the opposing party's costs, fees, or expenses if the client is not the prevailing party.* (c) Replaces clause beginning with "A contingent fee agreement" with: *"A fee agreement that is in whole or part contingent shall be in writing 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;"* Deletes sentence: "The agreement…prevailing party;" Replaces (e)(1) and (e)(2) with: *(1) the division is in proportion to the contribution of each firm or, by written agreement with the client, each firm assumes joint responsibility for the representation;* *(2) the client agrees to the participation of each firm, including the share each firm will receive, and the participation is confirmed to the client in writing; and*
AZ *Amendment Effective 1/1/16	(a)(8): "the degree of risk assumed by the lawyer." (b): writing is required, not preferable; and changes in the basis or rate of the fee or expenses must also be communicated in writing. Adds (d)(3): "a fee denominated as "earned upon receipt," "nonrefundable" or in similar terms unless the client is simultaneously advised in writing that the client may nevertheless discharge the lawyer

	at any time and in that event may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to paragraph (a).” (e)(2): the client agrees, in a writing signed by the client, to the participation of all the lawyers involved and the division of the fees and responsibilities between the lawyers; and
AR Effective 5/1/05	(a): adds to beginning: A lawyer's fee shall be reasonable. (c): writing does not have to be signed by client. (d)(1), adds to end: Provided, however, after a final order or decree is entered a lawyer may enter into a contingent fee contract for collection of payments which are due pursuant to such decree or order. (e)(1): adds after “or:” by written agreement with the client. (e)(2) reads: the client is advised of and does not object to the participation of all the lawyers involved; and.
CA Effective 11/1/2018	Title: adds “for Legal Services” after “Fees” (a) changes language after collect to “an unconscionable or illegal fee” (b) Unconscionability of a fee shall be determined on the basis of all the facts and circumstances existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. The factors to be considered in determining the unconscionability of a fee include without limitation the following: (1) whether the lawyer engaged in fraud or overreaching in negotiating or setting the fee; (2) whether the lawyer has failed to disclose material facts; (3) the amount of the fee in proportion to the value of the services performed (4) the relative sophistication of the lawyer and the client; (5) the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (6) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (7) the amount involved and the results obtained; (8) the time limitations imposed by the client or by 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 service; (11) whether the fee is fixed or contingent; (12) the time and labor required; and (13) whether the client gave informed consent to the fee. (c) A lawyer shall not make an agreement for, charge, or collect: (1) any fee in a family law matter, the payment or amount of which is contingent upon the securing of a dissolution or declaration of nullity of a marriage or upon the amount of spousal or child support, or property settlement in lieu thereof; or (2) a contingent fee for representing a defendant in a criminal case.

	(d) A lawyer may make an agreement for, charge, or collect a fee that is denominated as "earned on receipt" or "non-refundable," or in similar terms, only if the fee is a true retainer and the client agrees in writing after disclosure that the client will not be entitled to a refund of all or part of the fee charged. A true retainer is a fee that a client pays to a lawyer to ensure the lawyer's availability to the client during a specified period or on a specified matter, but not to any extent as compensation for legal services performed or to be performed. (e) A lawyer may make an agreement for, charge, or collect a flat fee for specified legal services. A flat fee is a fixed amount that constitutes complete payment for the performance of described services regardless of the amount of work ultimately involved, and which may be paid in whole or in part in advance of the lawyer providing those services.
CO *Amendment effective April 6, 2016	Replaces (b) with: ***(b) When the lawyer has not regularly represented the client, the basis or rate of the fee and expenses shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation. Except as provided in a written fee agreement, any material changes to the basis or rate of the fee or expenses are subject to the provisions of Rule 1.8(a).*** **(c) Replaces "prohibited…law" with "otherwise prohibited;"** **Replaces everything after "A contingent fee agreement shall" with:** ***"meet all of the requirements of Chapter 23.3 of the Colorado Rules of Civil Procedure, "Rules Governing Contingent Fees;"*** **Replaces MR (d) and (e) with:** *(d) Other than in connection with the sale of a law practice pursuant to Rule 1.17, a division of a fee between lawyers who are not in the same firm may be made only if:* *(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;* *(2) the client agrees to the arrangement, including the basis upon which the division of fees shall be made, and the client's agreement is confirmed in writing; and* *(3) the total fee is reasonable.* *(e) Referral fees are prohibited.* *(f) Fees are not earned until the lawyer confers a benefit on the client or performs a legal service for the client. Advances of unearned fees are the property of the client and shall be deposited in the lawyer's trust account pursuant to Rule 1.15 B(a)(1) until earned. If advances of unearned fees are in the form of property other than funds, then the lawyer shall hold such property separate from the lawyer's own property pursuant to Rule 1.15 A(a).* *(g) Nonrefundable fees and nonrefundable retainers are prohibited. Any agreement that purports to restrict a client's*

	right to terminate the representation, or that unreasonably restricts a client's right to obtain a refund of unearned or unreasonable fees, is prohibited.
CT *Amendments effective 1/1/2014	(a)(2): replaces "apparent" with "made known" (b): deletes "preferably" in first sentence; After "communicated to the client" adds to end: "in writing before the fees or expenses to be billed at higher rates are actually incurred. In any representation in which the lawyer and the client agree that the lawyer will file a limited appearance, the limited appearance engagement agreement shall also include the following: identification of the proceeding in which the lawyer will file the limited appearance; identification of the court events for which the lawyer will appear on behalf of the client; and notification to the client that after the limited appearance services have been completed, the lawyer will file a Certificate of Completion of Limited Appearance with the Court, which will serve to terminate the lawyer's obligation to the client in the matter, and as to which the client will have no right to object. Any change in the scope of the representation requires the client's informed consent, shall be confirmed to the client in writing, and shall require the lawyer to file a new limited appearance with the court reflecting the change(s) in the scope of representation. This subsection shall not apply to public defenders or in situations where the lawyer will be paid by the court or a state agency." (c): in second sentence adds "of the recovery" after "percentages" and "as a fee" after "accrue to the lawyer," replaces "litigation and other expenses to be deducted from the recovery" with "whether and to what extent the client will be responsible for any court costs and expenses of litigation" (d): replaces "divorce" with "dissolution of marriage or civil union" Does not have MR (e)(1) (e)(1) The client is advised in writing of the compensation sharing agreement and of the participation of all the lawyers involved, and does not object; and (e)(2): same as MR (e)(3)
DE Effective 7/1/03	Division of Fee deletes (e)(1) 1.5(e)(2) keeps the old wording of the provision but adds "in writing": "the client is advised in writing of and does not object to the participation of all the lawyers involved." Does not require disclosure of the share each lawyer is to receive. (f): retains DE existing rule on advance fees: "A lawyer may require the client to pay some or all of the fee in advance of the lawyer undertaking the representation, provided that: (1) The lawyer shall provide the client with a written statement that the fee is refundable if it is not earned, (2) The written statement shall state the basis under which the fees shall be considered to have been earned, whether in whole or in part, and (3) All unearned fees shall be retained in the lawyer's trust account, with

	statement of the fees earned provided to the client at the time such funds are withdrawn from the trust account."
District of Columbia Effective 2/1/07	(a): same as former MR (a)(5): deletes "time" (b): same as former MR but adds "the scope of the lawyer's representation, and the expenses for which the client will be responsible" before "shall" and deletes "preferably" (c): same as former MR but adds "and whether the client will be liable for expenses regardless of the outcome of the matter" after "calculated" (d): combines MR (d) and (d)(2) Does not have MR (d)(1) (e)(2) The client is advised, in writing, of the identity of the lawyers who will participate in the representation, of the contemplated division of responsibility, and of the effect of the association of lawyers outside the firm on the fee to be charged; (e)(3) The client gives informed consent to the arrangement; and (e)(4): same as MR (e)(3) Adds (f) Any fee that is prohibited by paragraph (d) above or by law is *per se* unreasonable.
FL Effective 5/22/06	Title: adds "and Costs for Legal Services" (a) Illegal, Prohibited, or Clearly Excessive Fees and Costs. An attorney shall not enter into an agreement for, charge, or collect an illegal, prohibited, or clearly excessive fee or cost, or a fee generated by employment that was obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar. A fee or cost is clearly excessive when: (1) after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or the cost exceeds a reasonable fee or cost for services provided to such a degree as to constitute clear overreaching or an unconscionable demand by the attorney; or (2) the fee or cost is sought or secured by the attorney by means of intentional misrepresentation or fraud upon the client, a nonclient party, or any court, as to either entitlement to, or amount of, the fee. Adds: (b) Factors to Be Considered in Determining Reasonable Fees and Costs. (1) Factors to be considered as guides in determining a reasonable fee include: (A): same as MR (a)(1) but adds "complexity" after "novelty" (B): same as MR (a)(2) but deletes "if apparent to the client" (C): same as MR (a)(3) but adds "or rate of fee" after "fee" and replaces "similar legal services" with "legal services of a comparable or similar nature" (D) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the

	results obtained; (E): same as MR (a)(5) but adds to end "and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;" (F): same as MR (a)(6) (G): same as MR (a)(7) but adds "diligence" after "reputation" and adds "and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and" to end (H): same as MR (a)(8) but adds "and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation" to end Adds: (2) Factors to be considered as guides in determining reasonable costs include: (A) the nature and extent of the disclosure made to the client about the costs; (B) whether a specific agreement exists between the lawyer and client as to the costs a client is expected to pay and how a cost is calculated that is charged to a client; (C) the actual amount charged by third party providers of services to the attorney; (D) whether specific costs can be identified and allocated to an individual client or a reasonable basis exists to estimate the costs charged; (E) the reasonable charges for providing in-house service to a client if the cost is an in-house charge for services; and (F) the relationship and past course of conduct between the lawyer and the client. All costs are subject to the test of reasonableness set forth in subdivision (a) above. When the parties have a written contract in which the method is established for charging costs, the costs charged thereunder shall be presumed reasonable. Adds: (c) Consideration of All Factors. In determining a reasonable fee, the time devoted to the representation and customary rate of fee need not be the sole or controlling factors. All factors set forth in this rule should be considered, and may be applied, in justification of a fee higher or lower than that which would result from application of only the time and rate factors. Adds: (d) Enforceability of Fee Contracts. Contracts or agreements for attorney's fees between attorney and client will ordinarily be enforceable according to the terms of such contracts or agreements, unless found to be illegal, obtained through advertising or solicitation not in compliance with the Rules Regulating The Florida Bar, prohibited by this rule, or clearly excessive as defined by this rule. Adds (e): ***Duty to Communicate Basis or Rate of Fee or Costs to Client.*** *When the lawyer has not regularly represented the client, the basis or rate of the fee and costs shall be communicated to the client,*

	preferably in writing, before or within a reasonable time after commencing the representation. A fee for legal services that is nonrefundable in any part shall be confirmed in writing and shall explain the intent of the parties as to the nature and amount of the nonrefundable fee. The test of reasonableness found in subdivision (b), above, applies to all fees for legal services without regard to their characterization by the parties. The fact that a contract may not be in accord with these rules is an issue between the attorney and client and a matter of professional ethics, but is not the proper basis for an action or defense by an opposing party when fee-shifting litigation is involved. Adds: (f) Contingent Fees. As to contingent fees: (1): same as MR (c) except replaces "other" with "by" in first sentence, does not require signed writing, does not include third sentence Adds: (2) Every lawyer who accepts a retainer or enters into an agreement, express or implied, for compensation for services rendered or to be rendered in any action, claim, or proceeding whereby the lawyer's compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall do so only where such fee arrangement is reduced to a written contract, signed by the client, and by a lawyer for the lawyer or for the law firm representing the client. No lawyer or firm may participate in the fee without the consent of the client in writing. Each participating lawyer or law firm shall sign the contract with the client and shall agree to assume joint legal responsibility to the client for the performance of the services in question as if each were partners of the other lawyer or law firm involved. The client shall be furnished with a copy of the signed contract and any subsequent notices or consents. All provisions of this rule shall apply to such fee contracts. (3) and (3)(A) and (B): same as MR (d) and (d)(1) and (2) Adds: (4) A lawyer who enters into an arrangement for, charges, or collects any fee in an action or claim for personal injury or for property damages or for death or loss of services resulting from personal injuries based upon tortious conduct of another, including products liability claims, whereby the compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall do so only under the following requirements: (A) The contract shall contain the following provisions: (i) "The undersigned client has, before signing this contract, received and read the statement of client's rights and understands each of the rights set forth therein. The undersigned client has signed the statement and received a signed copy to refer to while being represented by the undersigned attorney(s)." (ii) "This contract may be cancelled by written notification to the attorney at any time within 3 business days of the date the contract was signed, as shown below, and if cancelled the client shall not be obligated to pay any fees to the attorney for the work performed during that time.

	If the attorney has advanced funds to others in representation of the client, the attorney is entitled to be reimbursed for such amounts as the attorney has reasonably advanced on behalf of the client." (B) The contract for representation of a client in a matter set forth in subdivision (f)(4) may provide for a contingent fee arrangement as agreed upon by the client and the lawyer, except as limited by the following provisions: (i) Without prior court approval as specified below, any contingent fee that exceeds the following standards shall be presumed, unless rebutted, to be clearly excessive: a. Before the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action: 1. 33 1/3% of any recovery up to $1 million; plus 2. 30% of any portion of the recovery between $1 million and $2 million; plus 3. 20% of any portion of the recovery exceeding $2 million. b. After the filing of an answer or the demand for appointment of arbitrators or, if no answer is filed or no demand for appointment of arbitrators is made, the expiration of the time period provided for such action, through the entry of judgment: 1. 40% of any recovery up to $1 million; plus 2. 30% of any portion of the recovery between $1 million and $2 million; plus 3. 20% of any portion of the recovery exceeding $2 million. c. If all defendants admit liability at the time of filing their answers and request a trial only on damages: 1. 33 1/3% of any recovery up to $1 million; plus 2. 20% of any portion of the recovery between $1 million and $2 million; plus 3. 15% of any portion of the recovery exceeding $2 million. d. An additional 5% of any recovery after institution of any appellate proceeding is filed or post-judgment relief or action is required for recovery on the judgment. (ii) If any client is unable to obtain an attorney of the client's choice because of the limitations set forth in subdivision (f)(4)(B)(i), the client may petition the court in which the matter would be filed, if litigation is necessary, or if such court will not accept jurisdiction for the fee division, the circuit court wherein the cause of action arose, for approval of any fee contract between the client and an attorney of the client's choosing. Such authorization shall be given if the court determines the client has a complete understanding of the client's rights and the terms of the proposed contract. The application for authorization of such a contract can be filed as a separate proceeding before suit or simultaneously with the filing of a complaint. Proceedings thereon may

	occur before service on the defendant and this aspect of the file may be sealed. A petition under this subdivision shall contain a certificate showing service on the client and, if the petition is denied, a copy of the petition and order denying the petition shall be served on The Florida Bar in Tallahassee by the member of the bar who filed the petition. Authorization of such a contract shall not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive under subdivisions (a) and (b). (iii) Subject to the provisions of 4-1.5(f)(4)(B)(i) and (ii) a lawyer who enters into an arrangement for, charges, or collects any fee in an action or claim for medical liability whereby the compensation is dependent or contingent in whole or in part upon the successful prosecution or settlement thereof shall provide the language of article I, section 26 of the Florida Constitution to the client in writing and shall orally inform the client that: a. Unless waived, in any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first $250,000.00 of all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement, or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of $250,000.00, exclusive of reasonable and customary costs and regardless of the number of defendants. b. If a lawyer chooses not to accept the representation of a client under the terms of article I, section 26 of the Florida Constitution, the lawyer shall advise the client, both orally and in writing of alternative terms, if any, under which the lawyer would accept the representation of the client, as well as the client's right to seek representation by another lawyer willing to accept the representation under the terms of article I, section 26 of the Florida Constitution, or a lawyer willing to accept the representation on a fee basis that is not contingent. c. If any client desires to waive any rights under article I, section 26 of the Florida Constitution in order to obtain a lawyer of the client's choice, a client may do so by waiving such rights in writing, under oath, and in the form provided in this rule. The lawyer shall provide each client a copy of the written waiver and shall afford each client a full and complete opportunity to understand the rights being waived as set forth in the waiver. A copy of the waiver, signed by each client and lawyer, shall be given to each client to retain, and the lawyer shall keep a copy in the lawyer's file pertaining to the client. The waiver shall be retained by the lawyer with the written fee contract and closing statement under the same conditions and requirements provided in 4-1.5(f)(5). WAIVER OF THE CONSTITUTIONAL RIGHT PROVIDED IN ARTICLE I, SECTION 26 OF THE FLORIDA CONSTITUTION On November 2, 2004, voters in the State of Florida approved The Medical Liability Claimant's Compensation Amendment that was

	identified as Amendment 3 on the ballot. The amendment is set forth below: The Florida Constitution Article I, Section 26 is created to read "Claimant's right to fair compensation." In any medical liability claim involving a contingency fee, the claimant is entitled to receive no less than 70% of the first $250,000 in all damages received by the claimant, exclusive of reasonable and customary costs, whether received by judgment, settlement or otherwise, and regardless of the number of defendants. The claimant is entitled to 90% of all damages in excess of $250,000, exclusive of reasonable and customary costs and regardless of the number of defendants. This provision is self-executing and does not require implementing legislation. The undersigned client understands and acknowledges that (initial each provision): _____ I have been advised that signing this waiver releases an important constitutional right; and _____ I have been advised that I may consult with separate counsel before signing this waiver; and that I may request a hearing before a judge to further explain this waiver; and _____ By signing this waiver I agree to an increase in the attorney fee that might otherwise be owed if the constitutional provision listed above is not waived. Without prior court approval, the increased fee that I agree to may be up to the maximum contingency fee percentages set forth in Rule Regulating The Florida Bar 4-1.5(f)(4)(B)(i). Depending on the circumstances of my case, the maximum agreed upon fee may range from 33 1/3% to 40% of any recovery up to $1 million; plus 20% to 30% of any portion of the recovery between $1 million and $2 million; plus 15% to 20% of any recovery exceeding $2 million; and _____ I have three (3) business days following execution of this waiver in which to cancel this waiver; and _____ I wish to engage the legal services of the lawyers or law firms listed below in an action or claim for medical liability the fee for which is contingent in whole or in part upon the successful prosecution or settlement thereof, but I am unable to do so because of the provisions of the constitutional limitation set forth above. In consideration of the lawyers' or law firms' agreements to represent me and my desire to employ the lawyers or law firms listed below, I hereby knowingly, willingly, and voluntarily waive any and all rights and privileges that I may have under the constitutional provision set forth above, as apply to the contingency fee agreement only. Specifically, I waive the percentage restrictions that are the subject of the constitutional provision and confirm the fee percentages set forth in the contingency fee agreement; and _____ I have selected the lawyers or law firms listed below as my counsel of choice in this matter and would not be able to engage their

	services without this waiver; and I expressly state that this waiver is made freely and voluntarily, with full knowledge of its terms, and that all questions have been answered to my satisfaction. ACKNOWLEDGMENT BY CLIENT FOR PRESENTATION TO THE COURT The undersigned client hereby acknowledges, under oath, the following: I have read and understand this entire waiver of my rights under the constitutional provision set forth above. I am not under the influence of any substance, drug, or condition (physical, mental, or emotional) that interferes with my understanding of this entire waiver in which I am entering and all the consequences thereof. I have entered into and signed this waiver freely and voluntarily. I authorize my lawyers or law firms listed below to present this waiver to the appropriate court, if required for purposes of approval of the contingency fee agreement. Unless the court requires my attendance at a hearing for that purpose, my lawyers or law firms are authorized to provide this waiver to the court for its consideration without my presence. DATED this _____ day of _____, ____. By: _____ CLIENT Sworn to and subscribed before me this _____ day of _____, _____ by _____, who is personally known to me, or has produced the following identification: _____. _____ Notary Public My Commission Expires: Dated this _____ day of _____, ____. By: _____ ATTORNEY (C) Before a lawyer enters into a contingent fee contract for representation of a client in a matter set forth in this rule, the lawyer shall provide the client with a copy of the statement of client's rights and shall afford the client a full and complete opportunity to understand each of the rights as set forth therein. A copy of the statement, signed by both the client and the lawyer, shall be given to the client to retain and the lawyer shall keep a copy in the client's file. The statement shall be retained by the lawyer with the written fee contract and closing statement under the same conditions and requirements as subdivision (f)(5). (D) As to lawyers not in the same firm, a division of any fee within subdivision (f)(4) shall be on the following basis: (i) To the lawyer assuming primary responsibility for the legal services on behalf of the client, a minimum of 75% of the total fee.

	(ii) To the lawyer assuming secondary responsibility for the legal services on behalf of the client, a maximum of 25% of the total fee. Any fee in excess of 25% shall be presumed to be clearly excessive. (iii) The 25% limitation shall not apply to those cases in which 2 or more lawyers or firms accept substantially equal active participation in the providing of legal services. In such circumstances counsel shall apply to the court in which the matter would be filed, if litigation is necessary, or if such court will not accept jurisdiction for the fee division, the circuit court wherein the cause of action arose, for authorization of the fee division in excess of 25%, based upon a sworn petition signed by all counsel that shall disclose in detail those services to be performed. The application for authorization of such a contract may be filed as a separate proceeding before suit or simultaneously with the filing of a complaint, or within 10 days of execution of a contract for division of fees when new counsel is engaged. Proceedings thereon may occur before service of process on any party and this aspect of the file may be sealed. Authorization of such contract shall not bar subsequent inquiry as to whether the fee actually claimed or charged is clearly excessive. An application under this subdivision shall contain a certificate showing service on the client and, if the application is denied, a copy of the petition and order denying the petition shall be served on The Florida Bar in Tallahassee by the member of the bar who filed the petition. Counsel may proceed with representation of the client pending court approval. (iv) The percentages required by this subdivision shall be applicable after deduction of any fee payable to separate counsel retained especially for appellate purposes. (5) In the event there is a recovery, upon the conclusion of the representation, the lawyer shall prepare a closing statement reflecting an itemization of all costs and expenses, together with the amount of fee received by each participating lawyer or law firm. A copy of the closing statement shall be executed by all participating lawyers, as well as the client, and each shall receive a copy. Each participating lawyer shall retain a copy of the written fee contract and closing statement for 6 years after execution of the closing statement. Any contingent fee contract and closing statement shall be available for inspection at reasonable times by the client, by any other person upon judicial order, or by the appropriate disciplinary agency. (6) In cases in which the client is to receive a recovery that will be paid to the client on a future structured or periodic basis, the contingent fee percentage shall be calculated only on the cost of the structured verdict or settlement or, if the cost is unknown, on the present money value of the structured verdict or settlement, whichever is less. If the damages and the fee are to be paid out over the long term future schedule, this limitation does not apply. No attorney may negotiate separately with the defendant for that attorney's fee in a structured verdict or settlement

	when separate negotiations would place the attorney in a position of conflict. (g): same as MR (e) but adds to beginning "Division of Fees Between Lawyers in Different Firms. Subject to the provisions of subdivision (f)(4)(D)," and "the total fee is reasonable and" to end (1): same as MR (e)(1) but deletes language after "performed by each lawyer" Adds: (2) by written agreement with the client: (A) each lawyer assumes joint legal responsibility for the representation and agrees to be available for consultation with the client; and (B) the agreement fully discloses that a division of fees will be made and the basis upon which the division of fees will be made. Does not have MR (e)(2) and (3) Adds: (h) Credit Plans. A lawyer or law firm may accept payment under a credit plan. No higher fee shall be charged and no additional charge shall be imposed by reason of a lawyer's or law firm's participation in a credit plan. Adds (i) Arbitration Clauses. A lawyer shall not make an agreement with a potential client prospectively providing for mandatory arbitration of fee disputes without first advising that person in writing that the potential client should consider obtaining independent legal advice as to the advisability of entering into an agreement containing such mandatory arbitration provisions. A lawyer shall not make an agreement containing such mandatory arbitration provisions unless the agreement contains the following language in bold print: NOTICE: This agreement contains provisions requiring arbitration of fee disputes. Before you sign this agreement you should consider consulting with another lawyer about the advisability of making an agreement with mandatory arbitration requirements. Arbitration proceedings are ways to resolve disputes without use of the court system. By entering into agreements that require arbitration as the way to resolve fee disputes, you give up (waive) your right to go to court to resolve those disputes by a judge or jury. These are important rights that should not be given up without careful consideration. Adds STATEMENT OF CLIENT'S RIGHTS FOR CONTINGENCY FEES Before you, the prospective client, arrange a contingent fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights: 1. There is no legal requirement that a lawyer charge a client a set fee or a percentage of money recovered in a case. You, the client, have the right to talk with your lawyer about the proposed fee and to bargain about the rate or percentage as in any other contract. If you do not reach an agreement with 1 lawyer you may talk with other lawyers.

	2. Any contingent fee contract must be in writing and you have 3 business days to reconsider the contract. You may cancel the contract without any reason if you notify your lawyer in writing within 3 business days of signing the contract. If you withdraw from the contract within the first 3 business days, you do not owe the lawyer a fee although you may be responsible for the lawyer's actual costs during that time. If your lawyer begins to represent you, your lawyer may not withdraw from the case without giving you notice, delivering necessary papers to you, and allowing you time to employ another lawyer. Often, your lawyer must obtain court approval before withdrawing from a case. If you discharge your lawyer without good cause after the 3-day period, you may have to pay a fee for work the lawyer has done. 3. Before hiring a lawyer, you, the client, have the right to know about the lawyer's education, training, and experience. If you ask, the lawyer should tell you specifically about the lawyer's actual experience dealing with cases similar to yours. If you ask, the lawyer should provide information about special training or knowledge and give you this information in writing if you request it. 4. Before signing a contingent fee contract with you, a lawyer must advise you whether the lawyer intends to handle your case alone or whether other lawyers will be helping with the case. If your lawyer intends to refer the case to other lawyers, the lawyer should tell you what kind of fee sharing arrangement will be made with the other lawyers. If lawyers from different law firms will represent you, at least 1 lawyer from each law firm must sign the contingent fee contract. 5. If your lawyer intends to refer your case to another lawyer or counsel with other lawyers, your lawyer should tell you about that at the beginning. If your lawyer takes the case and later decides to refer it to another lawyer or to associate with other lawyers, you should sign a new contract that includes the new lawyers. You, the client, also have the right to consult with each lawyer working on your case and each lawyer is legally responsible to represent your interests and is legally responsible for the acts of the other lawyers involved in the case. 6. You, the client, have the right to know in advance how you will need to pay the expenses and the legal fees at the end of the case. If you pay a deposit in advance for costs, you may ask reasonable questions about how the money will be or has been spent and how much of it remains unspent. Your lawyer should give a reasonable estimate about future necessary costs. If your lawyer agrees to lend or advance you money to prepare or research the case, you have the right to know periodically how much money your lawyer has spent on your behalf. You also have the right to decide, after consulting with your lawyer, how much money is to be spent to prepare a case. If you pay the expenses, you have the right to decide how much to spend. Your lawyer should also inform you whether the fee will be based on the gross amount recovered or on the amount recovered minus the costs.

	7. You, the client, have the right to be told by your lawyer about possible adverse consequences if you lose the case. Those adverse consequences might include money that you might have to pay to your lawyer for costs and liability you might have for attorney's fees, costs, and expenses to the other side. 8. You, the client, have the right to receive and approve a closing statement at the end of the case before you pay any money. The statement must list all of the financial details of the entire case, including the amount recovered, all expenses, and a precise statement of your lawyer's fee. Until you approve the closing statement your lawyer cannot pay any money to anyone, including you, without an appropriate order of the court. You also have the right to have every lawyer or law firm working on your case sign this closing statement. 9. You, the client, have the right to ask your lawyer at reasonable intervals how the case is progressing and to have these questions answered to the best of your lawyer's ability. 10. You, the client, have the right to make the final decision regarding settlement of a case. Your lawyer must notify you of all offers of settlement before and after the trial. Offers during the trial must be immediately communicated and you should consult with your lawyer regarding whether to accept a settlement. However, you must make the final decision to accept or reject a settlement. 11. If at any time you, the client, believe that your lawyer has charged an excessive or illegal fee, you have the right to report the matter to The Florida Bar, the agency that oversees the practice and behavior of all lawyers in Florida. For information on how to reach The Florida Bar, call 850/561-5600, or contact the local bar association. Any disagreement between you and your lawyer about a fee can be taken to court and you may wish to hire another lawyer to help you resolve this disagreement. Usually fee disputes must be handled in a separate lawsuit, unless your fee contract provides for arbitration. You can request, but may not require, that a provision for arbitration (under Chapter 682, Florida Statutes, or under the fee arbitration rule of the Rules Regulating The Florida Bar) be included in your fee contract. _____ _____ Client Signature Attorney Signature _____ _____ Date Date
GA Effective 1/1/01	(c): Deletes sentence "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." Adds (c)(2), which is similar to last sentence of MR (c), but replaces language after "statement" with: "stating the following:" (i) the outcome of the matter; and, (ii) if there is a recovery, showing: (A) the remittance to the client;

	(B) the method of its determination; (C) the amount of the attorney fee; and (D) if the attorney's fee is divided with another lawyer who is not a partner in or an associate of the lawyer's firm or law office, the amount of fee received by each and the manner in which the division is determined. Adds to end of Rule: "The maximum penalty for a violation of this Rule is a public reprimand."
HI Effective 1/1/19	(a) Adds title "Reasonableness of Fee." (a)(8): Adds "and in contingency fee cases the risk of no recovery and the conscionability of the fee in light of the net recovery to the client" after "contingent" to end. (b) Adds title "Manner in which Fees are Earned." (b) Adds two additional sentences to (b): "Fee payments received by a lawyer before legal services have been rendered are presumed to be unearned and shall be held in a trust account pursuant to Rule 1.15 of these Rules. Fee agreements may not describe any fee as non-refundable or earned upon receipt." Creates new (c) that reads: (c) Special Duties Regarding Flat Fees. A lawyer may charge a flat fee for specified legal services, which constitutes complete payment for such services. If a lawyer charges a flat fee, the lawyer shall create a written fee agreement, signed by the client (or the person paying the lawyer to render services for another), that provides notice of the following: (1) the nature and scope of the services to be provided; (2) the total amount of the fee and the terms of payment; (3) the basis or rate at which the flat fee may be incrementally earned before completion of the representation, either by reference to milestones in the contemplated representation or expressed as a specific hourly rate; (4) that the fee will be held in a trust account until earned; (5) the client is entitled, upon request, to an accounting of the tasks performed by the lawyer during the course of the representation; and (6) if the engagement is terminated before completion of the representation, the client will be entitled to a refund of the unearned portion of the flat fee, if any, in accordance with the terms of the written

	fee agreement. In accordance with the written fee agreement, upon attainment of a discrete milestone of the representation or when a certain portion of the flat fee has been earned on an hourly basis, the lawyer shall withdraw the earned amount, make reasonable effort to notify the client of the disbursement, and, if requested by the client, provide an accounting. Adopts MR (c), renumbered (d) and adds title "Contingency Fees; Requirements." Adopts MR (d), renumbered (e) and adds title 'When Contingency Fees are Prohibited" Adopts MR (e), renumbered (f) and (f) (2) reads "the client is advised of and does not object to the participation of all the lawyers involved; and" Adds (g) which reads: "Termination and Accounting. Whenever a client-lawyer relationship is terminated before a fee is fully earned, the lawyer shall provide the client an accounting, upon request, and shall refund to the client the unearned portion of the fee. If a client disputes the amount of the fee that has been earned, the lawyer shall take reasonable and prompt action to resolve the dispute." Add (h) Inapplicability of This Rule. "This Rule does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement."
ID Effective 7/1/04	Adds (f): Upon reasonable request by the client, a lawyer shall provide, without charge, an accounting for fees and costs claimed or previously colleted. Such an accounting shall include at least the following information: (1) Itemization of all hourly charges, costs, interest assessments, and past due balances. (2) For hourly rate charges, a description of the services performed and a notation of the person who performed those services. The description shall be of sufficient detail to generally apprise the client of the nature of the work performed.
IL Effective 1/1/2010	(e)(1) Adds: "if the primary service performed by one lawyer is the referral of the client to another lawyer and" after "performed by each lawyer, or;" Also changes "joint responsibility" to "joint financial responsibility."
IN Effective 1/1/05	(d)(1): adds: "or obtaining the custody of a child" Adds at the end of d: This provision does not preclude a contract for a contingent fee for legal representation in a domestic relations post-judgment collection action, provided the attorney clearly advises his or her client in writing of the alternative measures available for the

	collection of such debt and, in all other particulars, complies with *Prof.Cond.R.* 1.5(c).
IA Effective 7/1/05	(a): adds after "unreasonable amount for expenses," "or violate any restrictions imposed by law."
KS Effective 7/1/07	(a) Replaces first part of paragraph with: "A lawyer's fee shall be reasonable;" Adds (b) and (c): *(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.* *(c) A lawyer's fee shall be reasonable but a court determination that a fee is not reasonable shall not be presumptive evidence of a violation that requires discipline of the attorney.* (d) is similar to MR (c) but: changes reference to paragraph (f) in first sentence; deletes "signed by the client;" adds "and the" before "litigation and other expenses;" ends sentence after "from the recovery;" changes clause: "and whether such expenses…calculated" to "All such expenses shall be deducted before the contingent fee is calculated;" changes "the remittance to the client" to "share and amount;" adds to end of paragraph: *"The statement shall advise the client of the right to have the fee reviewed as provided in subsection (e);"* Adds (e): *(e) Upon application by the client, all fee contracts shall be subject to review and approval by the appropriate court having jurisdiction of the matter and the court shall have the authority to determine whether the contract is reasonable. If the court finds the contract is not reasonable, it shall set and allow a reasonable fee.* (f) is the same as MR (d); (f)(1) deletes "in lieu thereof" from MR (d)(1); Adds (f)(g): *(3) a contingent fee in any other matter in which such a fee is precluded by statute.* Adds (g) and (h): *(g) A division of fee, which may include a portion designated for referral of a matter, between or among lawyers who are not in the same firm may be made if the total fee is reasonable and the client is advised of and does not object to the division.* *(h) This rule does not prohibit payments to former partners or associates or their estates pursuant to a separation or retirement agreement.* Does not adopt MR (e).

KY Effective 7/15/09	(a)(2) Deletes "if apparent to the client;" (c) Adds after sentence ending with "or other law:" "Such a fee must meet the requirements of Rule 1.5(a);" (d)(1) Changes "alimony or support" to "alimony, maintenance, support, or property settlement;" Adds to end of paragraph, "provided this does not apply to liquidated sums in arrearage; or;" (e)(2) Deletes "including…receive;" Adds (f): *(f) A fee may be designated as a non-refundable retainer. A non-refundable retainer fee agreement shall be in a writing signed by the client evidencing the client's informed consent, and shall state the dollar amount of the retainer, its application to the scope of the representation and the time frame in which the agreement will exist.*
LA Effective 3/1/04	(c): Second sentence ends after "signed by the client." Adds "A copy or duplicate original of the executed agreement shall be given to the client at the time of execution of the agreement," as third sentence. Fourth sentence is remainder of second sentence of MR. Division of Fee (e)(1) - (3) differ from the MR: "(1) the client agrees in writing to the representation by all of the lawyers involved, and is advised in writing as to the share of the fee that each lawyer will receive; (2) the total fee is reasonable and (3) each lawyer renders meaningful legal services for the client in the matter." adds (f)(1) - (5) regarding payment of advance fees. (f) Payment of fees in advance of services shall be subject to the following rules: (1) When the client pays the lawyer a fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation, the funds become the property of the lawyer when paid and may be placed in the lawyer's operating account. (2) When the client pays the lawyer all or part of a fixed fee or of a minimum fee for particular representation with services to be rendered in the future, the funds become the property of the lawyer when paid, subject to the provisions of Rule 1.5(f)(5). Such funds need not be placed in the lawyer's trust account, but may be placed in the lawyer's operating account. (3) When the client pays the lawyer an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis, the funds remain the property of the client and must be placed in the lawyer's trust account. The lawyer may transfer these funds as fees are earned from the trust account to the operating account, without further authorization from the client for each transfer, but must render a periodic accounting for these funds as is reasonable under the circumstances. (4) When the client pays the lawyer an advance deposit to be used for costs and expenses, the funds remain the property of the client and

	must be placed in the lawyer's trust account. The lawyer may expend these funds as costs and expenses accrue, without further authorization from the client for each expenditure, but must render a periodic accounting for these funds as is reasonable under the circumstances. (5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.
ME Effective 8/1/09	(a) Adds middle sentence: *A fee or charge for expenses is unreasonable when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee or expense is in excess of a reasonable fee or expense.* (a)(4) Adds to beginning of paragraph, "the responsibility assumed;" Adds (a)(9) and (10): *(9) whether the client has given informed consent as to the fee arrangement; and* *(10) whether the fee agreement is in writing.* (c) Adds to end of paragraph, "A general form of Contingent Fee Agreement is attached to the comments to this rule;" Adds (d)(3): *(3) any fee to administer an estate in probate, the amount of which is based on a percentage of the value of the estate.* Does not adopt MR (e); Adds (e), (f), and (g): *(e) A lawyer shall not divide a fee for legal services with another lawyer who is not a partner in or associate of the lawyer's law firm or office unless:* *(1) after full disclosure, the client consents to the employment of the other lawyer and to the terms for the division of the fees, confirmed in writing; and* *(2) the total fee of the lawyers does not exceed reasonable compensation for all legal services they rendered to the client.* *(f) A lawyer may accept payment by credit card for legal*

	services. *(g) A lawyer practicing in this State shall submit, upon the request of the client, the resolution of any fee dispute in accordance with Rule 9.*
MD Effective 7/1/05	(c): 3rd sentence: changes "liable" to "responsible" (d)(1): adds "or custody of a child" after "divorce"; deletes "in lieu thereof" after "property settlement;" adds at the end: "or upon the amount of an award pursuant to Sections 8-201 through 213 of Family Law Article, Annotated Code of Maryland" (e)(2): changes "arrangement" to "joint representation"; deletes "including the share each lawyer will receive"
MA Amended effective 1/1/13	(a) Replaces language after "charge" with "or collect an illegal or clearly excessive fee;" Does not adopt MR (b) but instead : (b)(1) Except as provided in paragraph (b)(2), the scope of the presentation 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. Any changes in the basis or rate of the fee or expenses shall also be communicated in writing to the client. (2) The requirement of a writing shall not apply to a single-session consultation or where the lawyer reasonably expects the total fee to be charged to the client to be less than $500. Where an indigent representation fee is imposed by a court, no fee agreement has been entered into between the lawyer and client, and a writing is not required. (c) Replaces "A contingent fee…prevailing party" with *"Except for contingent fee arrangements concerning the collection of commercial accounts and of insurance company subrogation claims, a contingent fee agreement shall be in writing and signed in duplicate by both the lawyer and the client within a reasonable time after the making of the agreement. One such copy (and proof that the duplicate copy has been delivered or mailed to the client) shall be retained by the lawyer for a period of seven years after the conclusion of the contingent fee matter. The writing shall state:* *(1) the name and address of each client;* *(2) the name and address of the lawyer or lawyers to be retained;* *(3) the nature of the claim, controversy, and other matters with reference to which the services are to be performed;* *(4) the contingency upon which compensation to be paid, and whether and to what extent the client is to be liable to pay compensation otherwise than from amounts collected for him or her by the lawyer;* *(5) the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer out of*

	amounts collected, and unless the parties otherwise agree in writing, that the lawyer shall be entitled to the greater of (i) the amount of any attorney's fees awarded by the court or included in the settlement or (ii) the percentage or other formula applied to the recovery amount not including such attorney's fees; and *(6) the method by which litigation and other expenses are to be deducted from the recovery and whether such expenses are to be deducted before or after the contingent fee is calculated.* Adds clause after "contingent fee matter" in last sentence: "for which a writing is required under this paragraph;" (e) Adds to end, "after informing the client that a division of fees will be made, the client consents to the joint participation and the total fee is reasonable. This limitation does not prohibit payment to a former partner or associate pursuant to a separation or retirement agreement;" Does not adopt MR (e)(1) through (3); Adds: *(f) The following form of contingent fee agreement may be used to satisfy the requirements of paragraph (c). The authorization of this form shall not prevent the use of other forms consistent with this rule.*
MI *Amendment effective May 1, 2017	(a) Replaces first sentence with: "A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee;" (b) Replaces language with: *(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.* (c) Deletes "including the percentage…prevailing party;" (d) "a lawyer shall not enter into an arrangement for, charge, or collect: (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof, the lawyer's success, results obtained, value added, or any factor to be applied that leaves the client unable to discern the basis or rate of the fee or the method by which the fee is to be determined, or (2) a contingent fee for representing a defendant in a criminal case." (e) Does not have MR (e)(1) or (2) but adds instead: *(1) the client is advised of and does not object to the participation of all lawyers involved; and*
MN Effective 10/1/05	(b): adds at the end: *All agreements for the advance payment of nonrefundable fees to secure a lawyer's availability for a specific period of time or a specific service shall be reasonable in amount and clearly communicated in a*

Amended as of 07/1/2011	*writing signed by the client. Except as provided below, fee payments received by a lawyer before legal services have been rendered are presumed to be unearned and shall be held in a trust account pursuant to Rule 1.15.* *(1) A lawyer may charge a flat fee for specified legal services, which constitutes complete payment for those services and may be paid in whole or in part in advance of the lawyer providing the services. If agreed to in advance in a written fee agreement signed by the client, a flat fee shall be considered to be the lawyer's property upon payment of the fee, subject to refund as described in Rule 1.5(b)(3). Such a written fee agreement shall notify the client:* *(i) of the nature and scope of the services to be provided;* *(ii) of the total amount of the fee and the terms of payment;* *(iii) that the fee will not be held in a trust account until earned;* *(iv) that the client has the right to terminate the client-lawyer relationship; and* *(v) that the client will be entitled to a refund of all or a portion of the fee if the agreed-upon legal services are not provided.* *(2) A lawyer may charge a fee to ensure the lawyer's availability to the client during a specified period or on a specified matter in addition to and apart from any compensation for legal services performed. Such as availability fee shall be reasonable in amount and communicated in a writing signed by the client. The writing shall clearly state that the fee is for availability only and that fees for legal services will be charged separately. An availability fee may be considered to be the lawyer's property upon payment of the fee, subject to refund in whole or in part should the lawyer not be available as promised.* *(3) Fee agreements may not describe any fee as nonrefundable or unearned upon receipt but may describe the advance fee payment as the lawyer's property subject to refund. Whenever a client has paid a flat fee or an availability fee pursuant to Rule 1.5(b)(1) or (2) and the lawyer-client relationship is terminated before the fee is fully earned, the lawyer shall refund to the client the unearned portion of the fee. If a client disputes the amount of the fee that has been earned, the lawyer shall take reasonable and prompt action to resolve the dispute.*
MS Effective 11/3/05	Retains former MR
MO Effective 7/1/07	(d)(1) Adds "or dissolution of the marriage" after "of a divorce;" adds "maintenance" before "alimony or support;" (e)(2) Replaces "the arrangement…will receive" with "the association."
MT Effective 4/1/04	Has (b) as proposed by Ethics 2000 in 8/01. (d)(1): uses "maintenance" in place of "alimony"
NE	Adds as (f): Upon reasonable and timely request by the client, a lawyer

Effective 9/1/05	shall provide, without charge, an accounting for fees and costs claimed or previously collected. Such an accounting shall include at least the following information: (1) Itemization of all hourly charges, costs, interest assessments, and past due balances. (2) For hourly rate charges, a description of the services performed and a notation of the person who performed those services. The description shall be of sufficient detail to generally apprise the client of the nature of the work performed.
NV Effective 5/1/06	(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 paragraph (d) or other law. A contingent fee agreement shall be in writing, signed by the client, and shall state, in boldface type that is at least as large as the largest type used in the contingent fee agreement: (1) 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; (2) Whether litigation and other expenses are to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated; (3) Whether the client is liable for expenses regardless of outcome; (4) That, in the event of a loss, the client may be liable for the opposing party's attorney fees, and will be liable for the opposing party's costs as required by law; and (5) That a suit brought solely to harass or to coerce a settlement may result in liability for malicious prosecution or abuse of process. 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. Did not adopt (e)(1).
NH Effective 1/1/08	(a) Changes "make an agreement" to "enter into an agreement;" adds "illegal or" before "unreasonable;" Replaces MR (b) with: *(b) When the lawyer has not regularly represented the client, 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, preferably in writing, before or within a reasonable time after commencing the representation.* (c) Changes "paragraph…law" to "law or these rules;" changes "to be deducted from the recovery" to "for which the client will be liable whether or not the client is the prevailing party;" deletes entire sentence: "The agreement…party;" (d)(1) Combines MR (d) and first part of (d)(1), up until "relations matter," and adds: "*which is contingent on:*

	a. securing a divorce; *b. establishing or modifying a child support, alimony, property division, or other financial order; or* *c. obtaining any specific non-financial relief."* Does not adopt (d)(2) or (e); (f)(1) is equivalent to MR but changes wording to: *(1) the division is made either:* *a. in reasonable proportion to the services performed or responsibility or risks assumed by each, or* *b. based on an agreement with the referring lawyer;* (f)(2) is equivalent to MR but changes wording to: *(2) in either case above, the client agrees in a writing signed by the client to the division of fees;* (f)(3) is equivalent to MR but changes wording to: *(3) in either case, the total fee charged by all lawyers is not increased by the division of fees and is reasonable.*
NJ Effective 1/1/04	Did not change (a); kept old MR. (b): the writing is required, not preferable. [this is not a change for NJ] (e): adds as subparagraph (2) an additional provision that "the client is notified of the fee division." (e)(3) (redlined to former MR (e)(2)): the client ~~is advised of and does not object~~ consents to the participation of all the lawyers involved; and
NM *Amendment effective 12/31/2015	Changed to Rule 16-105; (a) Renamed "**A. Determination of reasonableness**;" (b) Renamed "**B. Basis or rate of fees**;" Adds "**C. Short-term limited legal services**": The requirement of a writing shall not apply to legal services provided under Rule 16-605 NMRA. Where an indigent representation fee is imposed by a court, no fee agreement has been entered into between the lawyer and client, and a writing is not required. (d) Renamed "**D. Contingency fees.**" (e) Renamed **"E. Prohibited fee arrangements**." (f) Renamed "**F. Fee splitting."**
NY Effective 4/1/09	(a) Changes "unreasonable…expenses" to "excessive or illegal fee or expense;" Adds middle sentence: "*A fee is excessive when, after a review of the facts, a reasonable lawyer would be left with a definite and firm conviction that the fee is excessive;"* changes "the reasonableness of a fee include" to "whether a fee is excessive may include;" (a)(2) Adds "or made known" after "apparent;" Replaces (b) with: *(b) A lawyer shall communicate to a client the scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible. This information shall be communicated to the client before or within a reasonable time after commencement of the representation and shall be in writing where required by statute or court rule. This provision shall not*

	apply when the lawyer will charge a regularly represented client on the same basis or rate and perform services that are of the same general kind as previously rendered to and paid for by the client. Any changes in the scope of the representation or the basis or rate of the fee or expenses shall also be communicated to the client. (c) Replaces entire sentence beginning with "A contingent fee agreement" with: *Promptly after a lawyer has been employed in a contingent fee matter, the lawyer shall provide the client with a writing stating 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, if not prohibited by statute or court rule, after the contingent fee is calculated;* Changes "The agreement must clearly" to "The writing must clearly;" deletes "or not" after "whether;" replaces "a written statement" with "a writing;" (d)(1) is the same as MR (d)(2); does not adopt MR (d)(1); adds subparagraphs: *(2) a fee prohibited by law or rule of court;* *(3) a fee based on fraudulent billing;* *(4) a nonrefundable retainer fee; provided that a lawyer may enter into a retainer agreement with a client containing a reasonable minimum fee clause if it defines in plain language and sets forth the circumstances under which such fee may be incurred and how it will be calculated; or* *(5) any fee in a domestic relations matter if:* *(i) the payment or amount of the fee is contingent upon the securing of a divorce or of obtaining child custody or visitation or is in any way determined by reference to the amount of maintenance, support, equitable distribution, or property settlement;* *(ii) a written retainer agreement has not been signed by the lawyer and client setting forth in plain language the nature of the relationship and the details of the fee arrangement; or* *(iii) the written retainer agreement includes a security interest, confession of judgment or other lien without prior notice being provided to the client in a signed retainer agreement and approval from a tribunal after notice to the adversary. A lawyer shall not foreclose on a mortgage placed on the marital residence while the spouse who consents to the mortgage remains the titleholder and the residence remains the spouse's*

	primary residence. Adds paragraphs (e) and (f): *(e) In domestic relations matters, a lawyer shall provide a prospective client with a Statement of Client's Rights and Responsibilities at the initial conference and prior to the signing of a written retainer agreement.* *(f) Where applicable, a lawyer shall resolve fee disputes by arbitration at the election of the client pursuant to a fee arbitration program established by* (g) is similar to MR (e) but changes wording to: "A lawyer shall not divide a fee for legal services with another lawyer who is not associated in the same law firm unless;" (g)(1) is similar to MR (e)(1) but adds clause, "by a writing given to the client," before "each lawyer assumes;" (g)(2) is similar to MR (e)(2), but changes wording to: *(2) the client agrees to employment of the other lawyer after a full disclosure that a division of fees will be made, including the share each lawyer will receive, and the client's agreement is confirmed in writing; and* (g)(3) is similar MR (e)(3) but changes "reasonable" to "not excessive;" Adds (h): *(h) Rule 1.5(g) does not prohibit payment to a lawyer formerly associated in a law firm pursuant to a separation or retirement agreement.*
NC Effective 3/1/03	(a): substituted "an illegal or clearly excessive fee" and "a clearly excessive amount for expenses for "an unreasonable fee" and "an unreasonable amount for expenses." (b): begins with "When the lawyer has not regularly represented the client" rather than putting that idea at the end of the first sentence. Deleted the last sentence regarding changes in the basis or rate. (d)(1) and (2): order reversed. In (d)(1), regarding a criminal defendant, added "..; however, a lawyer may charge and collect a contingent fee for representation in a criminal or civil asset forfeiture proceeding if not otherwise prohibited by law." (d)(2), instead of referring to domestic relations matters, has this provision: "a contingent fee in a civil case in which such a fee is prohibited by law." Added new (f): Any lawyer having a dispute with a client regarding a fee for legal services must: (1) make reasonable efforts to advise his or her client of the existence of the North Carolina State Bar's program of fee dispute resolution at least 30 days prior to initiating legal proceedings to collect the disputed fee; and (2) participate in good faith in the fee dispute resolution process if the client submits a proper request.
ND Effective	(b) When the lawyer has not regularly represented the client, the basis, rate, or amount of the fee and expenses for which the client will be

8/1/06	responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. (c), third sentence: replaces "clearly notify the client of" with "identify;" last sentence: adds "including itemization of expenses" to end (e)(1): adds "by written agreement" after "or each lawyer" (e)(2) after consultation, the client consents in writing to the participation of all the lawyers involved; and Adds: (f) A lawyer may charge for work performed by a legal assistant. Adds: (g) A lawyer may not split legal fees with a legal assistant nor pay a legal assistant for the referral of legal business. A lawyer may compensate a legal assistant based on the quantity and quality of the legal assistant's work and value of that work to a law practice. The legal assistant's compensation may not be contingent, by advance agreement, upon the outcome of a case or upon the profitability of the lawyer's practice.
OH Effective 2/1/07	Title: adds "and Expenses" (a): first sentence, replaces language after "collect an" with "illegal or clearly excessive fee." Adds new second sentence "A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee." (b): first sentence, adds "nature and" before "scope;" replaces language after "commencing the representation" with "unless the lawyer will charge a client whom the lawyer has regularly represented on the same basis as previously charged" Second sentence, replaces material after "expenses" with "is subject to division (a) of this rule and shall promptly be communicated to the client, preferably in writing" (c): moves second and third sentences to new paragraph (c)(1), replacing "A" with "each," adding "and the lawyer" after "signed by the client," and replacing "must" with "shall" "before "clearly notify" Replaces last sentence with: (c)(2) If the lawyer becomes entitled to compensation under the contingent fee agreement and the lawyer will be disbursing funds, the lawyer shall prepare a closing statement and shall provide the client with that statement at the time of or prior to the receipt of compensation under the agreement. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyer's fees with a lawyer not in the same firm, as required in division (e)(3) of this rule. The closing statement shall be signed by the client and lawyer. (d): adds to end "any of the following" (d)(1): replaces "alimony or" with "spousal or child" Adds (d)(3) a fee denominated as "earned upon receipt," "nonrefundable," or in any similar terms, unless the client is

	simultaneously advised in writing that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to division (a) of this rule. (e) Lawyers who are not in the same firm may divide fees only if all of the following apply: (e)(1): adds "of fees" after "division" and "and agrees to be available for consultation with the client" to end (e)(2) the client has given written consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation; Adds (e)(3) except where court approval of the fee division is obtained, the written closing statement in a case involving a contingent fee shall be signed by the client and each lawyer and shall comply with the terms of division (c)(2) of this rule; (e)(4): same as MR (e)(3) Adds (f) In cases of a dispute between lawyers arising under this rule, fees shall be divided in accordance with the mediation or arbitration provided by a local bar association. When a local bar association is not available or does not have procedures to resolve fee disputes between lawyers, the dispute shall be referred to the Ohio State Bar Association for mediation or arbitration.
OK Effective 1/1/08	(e)(2) Deletes clause, "including the share each lawyer will receive."
OR Effective 12/1/06	(a): uses the phrase "an illegal or clearly excessive fee or a clearly excessive amount for expenses." Moves the factors to a new (b). (b): A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following: <factors are the same> no provision similar to MR (b) on scope and fee no provision similar to MR (c) on contingent fees (c)(1) (MR d1), end reads: "spousal or child support or a property settlement." (d) (MR e): A division of a fee between lawyers who are not in the same firm may be made only if: (1) the client gives informed consent to the fact that there will be a division of fees, and (2) the total fee of the lawyers for all legal services they rendered the client is not clearly excessive. Adds (e): Paragraph (d) does not prohibit payments to a former firm member pursuant to a separation or retirement agreement, or payments

	to a selling lawyer for the sale of a law practice pursuant to Rule 1.17.
PA Effective 7/1/06	(a): changes first sentence to: "A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee."; moves MR (a)(8) up to the top of the list of factors and renumbers the others. (b), same as old MR language except that communication must be in writing (not preferably in writing). (c), same as old MR. (e.g., doesn't add "signed by the client"; and does not include 2nd to last sentence of MR) (d)(1): does not include "or property settlement in lieu thereof" at the end. (e): "A lawyer shall not divide a fee for legal services with another lawyer who is not in the same firm unless: (1) the client is advised of and does not object to the participation of all the lawyers involved, and (2) the total fee of the lawyers is not illegal or clearly excessive for all legal services they rendered the client."
RI Effective 4/15/07	Same as MR
SC Effective 10/1/05	(a)(2): deletes "if apparent to the client" (b): last sentence is changed to: Any changes in the basis or rate of the fee or expenses shall be communicated to the client, preferably in writing. (c), amends third sentence: The agreement must clearly notify the client of any expenses the client will be expected to pay. (d)(1): adds at the end: ...provided that a lawyer may charge a contingency fee in collection of past due alimony or child support;
SD Effective 1/1/04	Same as MR
TN Effective 1/1/2011	Adds (a)(9) and (10): *prior advertisements or statements by the lawyer with respect to the fees the lawyer charges; and* *(10) whether the fee agreement is in writing.* (d)(1) Deletes "in lieu thereof; or" and adds: "unless the matter relates solely to the collection of arrearages in alimony or child support or the enforcement of an order dividing the marital estate and the fee arrangement is disclosed to the court; or;" (e)(2) Deletes "including the share each lawyer will receive" Adds (f) *A fee that is nonrefundable in whole or in part shall be agreed to in writing, signed by the client, that explains the intent of the parties as to the nature and amount of the nonrefundable fee.*
TX Effective 3/1/05	Texas Rule 1.04 is MR Rule 1.5. (a) Changes "make an agreement" to "enter into an agreement;" changes language after "or collect" to: "an illegal fee or unconscionable fee;" in

	last sentence, changes "unreasonable" to "unconscionable;" (b) is similar to last sentence of MR (a), but adds before "the following:" "but not to the exclusion of other relevant factors;" (b)(8) Adds to end: "on results obtained or uncertainty of collection before the legal services have been rendered;" Does not have MR (b) but adds instead: *(c) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.* (d) is similar to MR (c), but changes reference in first sentence to paragraph (e) instead of (d); In sentence beginning with "A contingent fee," ends sentence after "determined" and adds: "If there is to be a differentiation in the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, the percentage for each shall be stated; Replaces language in sentence beginning with "The agreement" with "shall state the 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;" (e) is MR (d) and (d)(2) combined; does not have MR (d)(1); (f) similar to MR (e) but adds "or arrangement for division" after "A division;" (f)(1) is divided into two subparagraphs: (f)(1)(i) is the same as the first part of (f)(1), and (f)(1)(ii) is similar to second part, but replaces "each lawyer assumes" with "made between lawyers who assume;" (f)(2) is similar to MR (e) but changes language to: *(2) the client consents in writing to the terms of the arrangement prior to the time of the association or referral proposed, including:* *(i) the identity of all lawyers or law firms who will participate in the fee-sharing arrangement, and* *(ii) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation, and* *(iii) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the basis on which the division will be made; and* (f)(3) is equivalent to MR (e)(3) but changes language to: "(3) the aggregate fee does not violate paragraph (a);" Adds to end: *(g) Every agreement that allows a lawyer or law firm to associate other counsel in the representation of a person, or to refer the person to other counsel for such representation, and that results in such an association with or referral to a different law firm or a lawyer in such a different firm, shall be confirmed by an arrangement conforming to paragraph (f). Consent by a client or a prospective client without knowledge of the information specified in subparagraph (f) (2) does not constitute a*

	confirmation within the meaning of this rule. No attorney shall collect or seek to collect fees or expenses in connection with any such agreement that is not confirmed in that way, except for: *(1) the reasonable value of legal services provided to that person; and* *(2) the reasonable and necessary expenses actually incurred on behalf of that person.* *(h) Paragraph (f) of this rule does not apply to payment to a former partner or associate pursuant to a separation or retirement agreement, or to a lawyer referral program certified by the State Bar of Texas in accordance with the Texas Lawyer Referral Service Quality Act, Tex. Occ. Code 952.001 et seq., or any amendments or recodifications thereof.*
UT Effective 11/1/05	Same as MR
VT Amendments Effective 5/9/16	(d)(1) Changes "alimony" to "spousal maintenance;" Adds at end of paragraph: "Contingent fees are not forbidden in domestic relations matters which involve the collection of: (i) spousal maintenance or property division due after a final judgment is entered or (ii) child support and maintenance supplement arrearages due after final judgment, provided that the court approves the reasonableness of the fee agreement." Adds (f): A lawyer may enter into an agreement for a client to pay a nonrefundable fee that is earned before any legal services are rendered. The amount of such an earned fee must be reasonable, like any fee, in light of all relevant circumstances. A lawyer cannot accept a nonrefundable fee, or characterize a fee as nonrefundable, unless the lawyer complies with the following conditions: (1) The lawyer confirms to the client in writing before or within a reasonable time after commencing representation (i) that the funds will not be refundable, and (ii) the scope of availability and/or services the client is entitled to receive in exchange for the nonrefundable fee. (2) A lawyer shall not solicit or make any agreement with a client that prospectively waives the client's right to challenge the reasonableness of a nonrefundable fee, except that a lawyer can enter into an agreement with a client that resolves an existing dispute over the reasonableness of a nonrefundable fee, if the client is separately represented or if the lawyer advises the client in writing of the desirability of seeking independent counsel and the client is given a reasonable opportunity to seek such independent counsel. (3) Where it accurately reflects the terms of the parties' agreement, and where such an arrangement is reasonable under all of the relevant circumstances and otherwise complies with this rule, a fee agreement

	may describe a fee as "nonrefundable," "earned on receipt," a "guaranteed minimum," "payable in guaranteed installments," or other similar description indicating that the funds will be deemed earned regardless of whether the client terminates the representation. Adds (g) A nonrefundable fee that complies with the requirements of (f)(1)–(2) above constitutes property of the lawyer that should not be commingled with client funds in the lawyer's trust account. Any funds received in advance of rendering services that do not meet the requirements of (f)(1)–(3) constitute an advance that must be deposited in the lawyer's trust account in accordance with Rule 1.15(c) until such funds are earned by rendering services.
VA Effective 1/1/04	(a): same as former MR (b): same as former MR but adds "The lawyer's fee shall be adequately explained to the client." to beginning and "amount" before "basis" (c): same as former MR but replaces "be in writing and shall state" with "shall state in writing" (d): adds "a contingent fee" to end (d)(1): deletes "any fee" and replaces all language after "matter" with "except in rare instances; or" (d)(2): deletes "a contingent fee" (e)(1): same as former MR (e)(2) but replace "does not object" with "consents" (e)(2) the terms of the division of the fee are disclosed to the client and the client consents thereto; Adds (e)(4) the division of fees and the client's consent is obtained in advance of the rendering of legal services, preferably in writing. Adds (f) Paragraph (e) does not prohibit or regulate the division of fees between attorneys who were previously associated in a law firm or between any successive attorneys in the same matter. In any such instance, the total fee must be reasonable.
WA Effective 9/1/06	Adds (a)(9): the terms of the fee agreement between the lawyer and the client, including whether the fee agreement or confirming writing demonstrates that the client had received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer's billing practices. (b): adds to end "Upon the request of the client in any matter, the lawyer shall communicate to the client in writing the basis or rate of the fee." (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 paragraph (d) or other law. If a fee is contingent on the outcome of a matter, a lawyer shall comply with the following: (1) A contingent fee agreement shall be in a writing signed by the client; (2) A contingent fee agreement 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; (3) 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; and (4) A contingent fee consisting of a percentage of the monetary amount recovered for a claimant, in which all or part of the recovery is to be paid in the future, shall be paid only (i) by applying the percentage to the amounts recovered as they are received by the client; or (ii) by applying the percentage to the actual cost of the settlement or award to the defendant. (d)(1): replaces "divorce" with "dissolution or annulment of marriage" and "alimony" with "maintenance" (e)(1): replaces "performed" with "provided" (e)(1)(i) – (iii): same as MR (e)(1) – (3) Adds (e)(2): the division is between the lawyer and a duly authorized lawyer referral service of either the Washington State Bar Association or of one of the county bar associations of this state.
WV *Amendment Effective 1/1/2015	(a)(2) Deletes "if apparent to the client" (b) Deletes "preferably" after "client"; Adds "in writing" after "communicated to the client" Deletes (e).
WI Effective 7/1/07	(b)(1): same as MR (b) but deletes "preferably" in first sentence, adds "as in the past" to end of first sentence, adds new second sentence "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." and adds "in writing" after "communicated" in third sentence (same as MR second sentence) Adds (b)(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. Adds (b)(3) A lawyer shall promptly respond to a client's request for information concerning fees and expenses. (d): adds "a contingent fee" to end (d)(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. (d)(2): deletes "a contingent fee" and adds "or any proceeding that could result in deprivation of liberty" to end (e): adds to end "the total fee is reasonable and" (e)(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 (e)(2) the lawyers formerly practiced together and the payment to one lawyer is pursuant to a separation or retirement agreement between them; or (e)(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.
WY *Amendment effective 10/6/14	(b): Adds sentence: "Contingent fee agreements must be in writing and must comply with the provisions of the Rules Governing Contingent Fees for Members of the Wyoming State Bar." (e)(1): replaces "or" with "and" (e)(2): Deletes "the client agrees to the arrangement" and replaces with "the client is informed of the arrangement" Adds: (f) A lawyer shall not pay or receive a fee or commission solely for referring a case to another lawyer.

ADOPTED

RESOLUTION

RESOLVED, That the American Bar Association amends Rule 1.8(e) and related commentary of the ABA Model Rules of Professional Conduct as follows (insertions underlined, deletions ~~struck through~~):

Model Rule 1.8: Current Clients: Specific Rules

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(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; ~~and~~

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

(3) a lawyer representing an indigent client pro bono, a lawyer representing an indigent client pro bono through a nonprofit legal services or public interest organization and a lawyer representing an indigent client pro bono through a law school clinical or pro bono program may provide modest gifts to the client for food, rent, transportation, medicine and other basic living expenses ~~if financial hardship would otherwise prevent the client from instituting or maintaining the proceedings or from withstanding delays that put substantial pressure on the client to settle.~~ The ~~legal services must be delivered at no fee to the indigent client and the~~ lawyer:

(i) may not promise, assure or imply the availability of such gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention;

(ii) may not seek or accept reimbursement from the client, a relative of the client or anyone affiliated with the client; and

(iii) may not publicize or advertise a willingness to provide such ~~financial assistance to~~ gifts to prospective clients.

Financial assistance under this Rule may be provided even if the representation is eligible for fees under a fee-shifting statute.

Comment

Financial Assistance

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[10] Lawyers may not subsidize lawsuits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue lawsuits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

[11] Paragraph (e)(3) provides another exception. A lawyer representing an indigent client without fee, a lawyer representing an indigent client pro bono through a nonprofit legal services or public interest organization and a lawyer representing an indigent client pro bono through a law school clinical or pro bono program may give the client modest gifts ~~if financial hardship would otherwise prevent the client from instituting or maintaining pending or contemplated litigation or administrative proceedings or from withstanding delays that would put substantial pressure on the client to settle.~~ Gifts permitted under paragraph (e)(3) include modest contributions ~~as are reasonably necessary~~ for food, rent, transportation, medicine and similar basic necessities of life. If the gift may have consequences for the client, including, e.g., for receipt of government benefits, social services, or tax liability, the lawyer should consult with the client about these. See Rule 1.4.

[12] The paragraph (e)(3) exception is narrow. Modest gifts are ~~A gift is~~ allowed in specific circumstances where it is unlikely to create conflicts of interest or invite abuse. Paragraph (e)(3) prohibits the lawyer from (i) promising, assuring or implying the availability of financial assistance prior to retention or as an inducement to continue the client-lawyer relationship after retention; (ii) seeking or accepting reimbursement from the client, a relative of the client or anyone affiliated with the client; and (iii) publicizing or advertising a willingness to provide gifts to prospective ~~financial assistance~~ to clients beyond court costs and expenses of litigation in connection with contemplated or pending litigation or administrative proceedings.

[13] Financial assistance, including modest gifts ~~may be provided~~ pursuant to paragraph (e)(3), may be provided even if the representation is eligible for fees under a fee-shifting statute. However, paragraph (e)(3) does not permit lawyers to provide assistance in other contemplated or pending litigation in which the lawyer may eventually recover a fee, such as contingent-fee personal injury cases or cases in which fees may be available under a contractual fee-shifting provision, even if the lawyer does not eventually receive a fee.

[No other changes proposed in the commentary to this Rule except renumbering succeeding paragraphs.]

Deletions struck through; additions underline