

Rule Change #2000(10)

THE COLORADO RULES OF PROFESSIONAL CONDUCT
CLIENT-LAWYER RELATIONSHIP

Rule 1.4. Communication

Rule 1.5. Fees

Rule 1.4. Communication

(a) - (b) [***NO CHANGE]

COMMENT

The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. In order to avoid misunderstandings and hence to maintain public confidence in law and lawyers, a lawyer should fully and promptly inform the client of material developments in the matters being handled for the client. For example, a lawyer negotiating on behalf of a client should provide the client with facts relevant to the matter, inform the client of communications from another party and take other reasonable steps that permit the client to make a decision regarding a serious offer from another party. A lawyer ought to initiate this decision-making process if the client does not do so. A lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case should promptly inform the client of its substance unless prior discussions with the client have left it clear that the proposal will be unacceptable. See Rule 1.2(a). Even when a client delegates authority to the lawyer, the client should be kept advised of the status of the matter. A lawyer should exert best efforts to insure that decisions of the client are made only after the client has been informed of relevant considerations.

Adequacy of communication depends in part on the kind of advice or assistance involved. A lawyer should advise the client of the possible legal effect of each alternative course of action. For example, in negotiations where there is time to explain a proposal, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that might injure or coerce others. On the other hand, a lawyer ordinarily cannot be expected to describe trial or

negotiation strategy in detail. The guiding principle is that the lawyer would fulfill reasonable client expectations for information consistent with the duty to act in the client's best interest, and the client's overall requirements as to the character of representation.

Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from mental disability. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client. Practical exigency may also require a lawyer to act for a client without prior consultation.

Information Pertaining to Fees Charged, Costs, Expenses, and Disbursements

Information provided to the client under Rule 1.4(a) should include information concerning fees charged, costs, expenses, and disbursements with regard to the client's matter. Additionally, the lawyer should promptly respond to the client's reasonable requests concerning such matters. It is strongly recommended that all these communications be in writing. As to the basis or rate of the fee, see Rule 1.5.

Withholding Information

In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

COMMITTEE COMMENT

[***NO CHANGE]

Rule 1.5. Fees

- (a) [***NO CHANGE]
- (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) - (e) [***NO CHANGE]

COMMENT

Basis or Rate of Fee

In a new client-lawyer relationship, the basis or rate of the fee must be promptly communicated in writing to the client.

When the lawyer has regularly represented a client, they ordinarily will have ~~evolved~~reached an understanding concerning the basis or rate of the fee; but, when there has been a change from their previous understanding, the basis or rate of the fee should be promptly communicated in writing. 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 written communication must disclose the basis or rate of the lawyer's fees, but it need not take the form of a formal engagement letter or agreement, and it need not be signed by the client. In a new client-lawyer relationship, however, an understanding as to the fee should be promptly established. ~~Moreover, it is not necessary to recite all the factors that underlie the basis 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, or 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 developments occur during the representation that render an earlier ~~estimated~~disclosure substantially inaccurate, a revised ~~estimate~~written disclosure should be provided to the client.

A written statement concerning the fee reduces the possibility of misunderstanding. Lawyers are well-advised to use written disclosures even when they are not required. Moreover, it is preferable, although not mandatory, to obtain the client's signature acknowledging the basis or rate of the fee. ~~Furnishing the client with a simple memorandum or a copy of the lawyer's customary fee schedule is sufficient if the basis or rate of the fee is set forth.~~

In setting a fee, a lawyer should also consider the inability of the client to pay a reasonable fee. Persons unable to pay all or a portion of a reasonable fee should be able to

obtain necessary legal services, and lawyers should support and participate in ethical activities designed to achieve that objective.

[**NO CHANGE TO REST OF COMMENT]

Amended and Adopted by the Court, En Banc, April 20, 2000, effective July 1, 2000.

BY THE COURT:

Gregory J. Hobbs, Jr.
Justice, Colorado Supreme Court