

RULE CHANGE 2021(18)
COLORADO RULES OF PROFESSIONAL CONDUCT

Rule 1.5. Fees

(a) [NO CHANGE]

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

(1) the basis or rate of the fee and expenses for which the client will be responsible, except when the lawyer will continue to charge a regularly represented client on the same basis or rate; and

(2) the scope of the representation, except when the lawyer will perform services that are of the same general kind as previously rendered to a regularly represented client.

The lawyer shall communicate promptly to the client in writing a ~~Any changes in the basis or rate of the fee or expenses shall also be promptly communicated to the client, in writing.~~

(c) – (h) [NO CHANGE]

COMMENT

[1] [NO CHANGE]

[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. Moreover, 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. Similarly, it is not necessary to recite all the anticipated services that comprise, or the exclusions from, the scope of representation, so long as the communication accurately conveys the agreement with the client.

When ~~at~~ the lawyer has regularly represented a client, and the lawyer will continue to charge the client on the same basis or rate, the lawyer is not required to communicate the basis or rate of the fee and expenses. In such circumstances, the lawyer and client ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible;

When a lawyer will perform services for a regularly represented client that are of the same general kind as previously rendered, the lawyer is not required to communicate the scope of the new representation. Whether services are of “the same general kind as previously rendered”

depends on consideration of the totality of the circumstances surrounding the services previously rendered and those that will be rendered. Circumstances that may be relevant include, but are not limited to, the type of the services rendered (e.g., litigation or transactional), the subject matter of the services rendered (e.g., breach of contract or patent infringement), and the sophistication of the client.

Whether the client-lawyer relationship is new or one where the lawyer has regularly represented the client, but when there has been a change from their previous understanding any changes in the basis or rate of the fee or expenses should must 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, 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, 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. 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, other rules of professional conduct may require additional communications and 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 revised subsequent written communication should be provided to the 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.

[3] – [18] [NO CHANGE]

Form Flat Fee Agreement [NO CHANGE]

Rule 1.5. Fees

(a) [NO CHANGE]

(b) Before or within a reasonable time after commencing the representation, the lawyer shall communicate to the client in writing:

(1) the basis or rate of the fee and expenses for which the client will be responsible, except when the lawyer will continue to charge a regularly represented client on the same basis or rate; and

(2) the scope of the representation, except when the lawyer will perform services that are of the same general kind as previously rendered to a regularly represented client.

The lawyer shall communicate promptly to the client in writing any changes in the basis or rate of the fee or expenses.

(c) – (h) [NO CHANGE]

COMMENT

[1] [NO CHANGE]

[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. Similarly, it is not necessary to recite all the anticipated services that comprise, or the exclusions from, the scope of representation, so long as the communication accurately conveys the agreement with the client.

When a lawyer has regularly represented a client and the lawyer will continue to charge the client on the same basis or rate, the lawyer is not required to communicate the basis or rate of the fee and expenses. In such circumstances, the lawyer and client ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible.

When a lawyer will perform services for a regularly represented client that are of the same general kind as previously rendered, the lawyer is not required to communicate the scope of the new representation. Whether services are of “the same general kind as previously rendered” depends on consideration of the totality of the circumstances surrounding the services previously rendered and those that will be rendered. Circumstances that may be relevant include, but are not

limited to, the type of the services rendered (e.g., litigation or transactional), the subject matter of the services rendered (e.g., breach of contract or patent infringement), and the sophistication of the client.

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, other rules of professional conduct may require additional communications and 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.

[3] – [18] [NO CHANGE]

Form Flat Fee Agreement [NO CHANGE]

Amended and Adopted by the Court, En Banc, September 9, 2021, effective January 1, 2022.

By the Court:

**Monica M. Márquez
Justice, Colorado Supreme Court**