Document: Colo. RPC 1.5

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CO - Colorado Court Rules PAW ETTOC **Colorado Rules of Civil Procedure** **Appendix to Chapters 18 to 20** **The Colorado Rules of Professional Conduct** **Client-Lawyer Relationship**

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) 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) A "contingent fee" is a fee for legal services under which compensation is to be contingent in whole or in part upon the successful accomplishment or disposition of the subject matter of the representation.

(1) The terms of a contingent fee agreement shall be communicated in writing before or within a reasonable time after commencing the representation and shall include the following information:

(i) The names of the lawyer and the client;

(ii) A statement of the nature of the claim, controversy or other matters with reference to which the services are to be performed, including each event triggering the lawyer's right to compensation;

(iii) The method by which the fee is to be determined, including the percentage or amounts that will accrue to the lawyer in the event of settlement, trial or appeal, or other final disposition, and whether the contingent fee will be determined before or after the deduction of (A) costs and expenses advanced by the lawyer or otherwise incurred by the client, and (B) other amounts owed by the client and payable from amounts recovered;

(iv) A statement of the circumstances under which the lawyer may be entitled to compensation if the lawyer's representation concludes, by discharge, withdrawal or otherwise, before the occurrence of an event that triggers the lawyer's right to a contingent fee;

(v) A statement regarding expenses, including (A) an estimate of the expenses to be incurred, (B) whether the lawyer is authorized to advance funds for litigation-related expenses to be reimbursed to the lawyer from the recovery, and, if so, the amount of expenses the lawyer may advance without further approval, and (C) the client's obligation, if any, to pay expenses if there is no recovery;

(vi) A statement regarding the possibility that a court will award costs or attorney fees against the client;

(vii) A statement regarding the possibility that a court will award costs or attorney fees in favor of the client, and, if so, how any such costs or attorney fees will be accounted for and handled;

(viii) A statement informing the client that if the lawyer wishes to hire a lawyer in another firm to assist in the handling of a matter ("associated counsel"), the lawyer will promptly inform the client in writing of the identity of the associated counsel, and that (A) the hiring of associated counsel will not increase the contingent fee, unless the client otherwise agrees in writing, and (B) the client has the right to disapprove the hiring of associated counsel and, if hired, to terminate the employment of associated counsel; and

(ix) A statement that other persons or entities may have a right to be paid from amounts recovered on the client's behalf, for example when an insurer or a federal or state agency has paid money or benefits on behalf of a client in connection with the subject of the representation.

(2) A contingent fee agreement must be signed by the client and the lawyer.

(3) The lawyer shall retain a copy of the contingent fee agreement for seven years after the final resolution of the case, or the termination of the lawyer's services, whichever first occurs.

(4) No contingent fee agreement may be made

(i) for representing a defendant in a criminal case,

(ii) in a domestic relations matter, where payment is contingent on the securing of a divorce or upon the amount of maintenance or child support, or property settlement in lieu of such amounts, or

(iii) in connection with any case or proceeding where a contingency method of a determination of attorney fees is otherwise prohibited by law.

(5) Upon conclusion of a contingent fee matter, the lawyer shall provide the client a written disbursement statement showing the amount or amounts received, an itemization of costs and expenses incurred in handling of the matter, sums to be disbursed to third parties, including lawyers in other law firms, and computation of the contingent fee.

(6) No contingent fee agreement shall be enforceable unless the lawyer has substantially complied with all of the provisions of this Rule.

(7) The form Contingent Fee Agreement following the comment to this Rule may be used for contingent fee agreements and shall be sufficient to comply with paragraph (c)(1) of this Rule. The authorization of this form shall not prevent the use of other forms consistent with this Rule. Nothing in this Rule prevents a lawyer from entering into an agreement that provides for a contingent fee combined with one or more other types of fees, such as hourly or flat fees, provided that the agreement complies with this Rule insofar as the contingent fee is concerned.

(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 1.15B(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 1.15A(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.

(h) A "flat fee" is a fee for specified legal services for which the client agrees to pay a fixed amount, regardless of the time or effort involved.

(1) The terms of a flat fee shall be communicated in writing before or within a reasonable time after commencing the representation and shall include the following information:

(i) A description of the services the lawyer agrees to perform;

(ii) The amount to be paid to the lawyer and the timing of payment for the services to be performed;

(iii) If any portion of the flat fee is to be earned by the lawyer before conclusion of the representation, the amount to be earned upon the completion of specified tasks or the occurrence of specified events; and

(iv) The amount or the method of calculating the fees the lawyer earns, if any, should the representation terminate before completion of the specified tasks or the occurrence of specified events.

(2) If all or any portion of a flat fee is paid in advance of being earned and a dispute arises about whether the lawyer has earned all or part of the flat fee, the lawyer shall comply with Rule 1.15A(c) with respect to any portion of the flat fee that is in dispute.

(3) The form Flat Fee Agreement following the comment to this Rule may be used for flat fee agreements and shall be sufficient to comply with paragraph (h) of this Rule. The authorization of this form shall not prevent the use of other forms consistent with this Rule.

FORM CONTINGENT FEE AGREEMENT *[C.R.S. § 6-1-737 or other law may require lawyers to add other language to the following form agreement.]*

Display Image

[C.R.S. § 6-1-737 or other law may require lawyers to add other language to the above form agreement.]

FORM FLAT FEE AGREEMENT *[C.R.S. § 6-1-737 or other law may require lawyers to add other language to the following form agreement.]*

Display Image

[C.R.S. § 6-1-737 or other law may require lawyers to add other language to the above form agreement.]

History

(b) and Comment amended April 20, 2000, effective July 1, 2000; (d) amended and adopted April 18, 2001, effective July 1, 2001; entire rule and Comment amended and adopted May 30, 2002, effective July 1, 2002; entire Appendix repealed and readopted April 12, 2007, effective January 1, 2008; Comment [7] amended and effective November 6, 2008; (b) amended and Comment [3A] repealed March 10, 2011, effective July 1, 2011; (f) and Comment [7] and [8] amended, effective April 6, 2016; (h) and Form Flat Fee Agreement added and Comment [2], [5], [11], [12], and [14] to [16] amended, effective January 31, 2019; (c) amended, Comment [3] repealed, Comment [6] amended, and Form Contingent Fee Agreement added, October 1, 2020, effective January 1, 2021; (b) and Comment [2] amended and adopted September 9, 2021, effective January 1, 2022 (Rule Change 2021(18)); (h) amended, Comment (3) added, Form Contingent Fee Agreement and Form Flat Fee Agreement amended and adopted December 18, 2025, effective January 1, 2026 (Rule Change 2025(29)).

Annotations

Commentary

COMMENT

Reasonableness of Fee and Expenses

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

Basis or Rate of Fee

[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

Relationship to Other Law

[3] A lawyer offering services, including an offer of services through a fee agreement, may be required to comply with other law pertaining to the offer of services. E.g., C.R.S. § 6-1-737 (addressing requirements to disclose certain pricing information).

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the

cause of action or subject matter of the litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

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

Contingent Fees

[6] Contingent fees, whether based on the recovery or savings of money, or on a nonmonetary outcome, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. E.g., 28 U.S.C. § 2678 (limiting percentage of fees in Federal Tort Claims Act cases); C.R.S. § 8-43-403 (limiting percentage of contingent fee in certain worker's compensation cases). The prohibition on contingent fees in certain domestic relations matters does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, maintenance or other financial orders because such contracts do not implicate the same policy concerns.

[6A] The scope of representation in a contingent fee agreement should reflect whether the representation includes the handling of counterclaims, third-party claims to amounts recovered, and appeals.

[6B] A lawyer may include a provision in a contingent fee agreement setting forth the lawyer's agreement to reimburse the client for any attorney fees and costs awarded against the client. A provision in a contingent fee agreement in which the client must reimburse the lawyer for any attorney fees or costs awarded against the lawyer may be improper.

[6C] Nothing in this Rule prohibits a lawyer from arranging, in the contingent fee agreement or otherwise, for a third party to guarantee some or all of the financial obligations of the client in the contingent fee agreement.

[6D] Third parties often hold claims to amounts recovered by the lawyer on behalf of the client. The lawyer may be required, as a matter of professional ethics, to pay these amounts from the proceeds of a recovery and not to disburse them to the client.

[6E] A tribunal may award attorney fees to the client under a fee-shifting provision of a contract or statute or as a sanction for discovery violations or other litigation misconduct. The fee agreement may provide for a different allocation of such an award of fees as between the client and the lawyer depending on the circumstances giving rise to the award, such as whether the fees are awarded as a sanction for improper conduct that necessitated additional effort by the lawyer, or whether the fees are awarded under a contractual or statutory fee-shifting provision. This rule does not limit the ways in which clients and lawyers may contract to allocate awards of attorney fees; however, the lawyer must comply with the reasonableness standard of paragraph (a) of this Rule.

[6F] A conversion clause is a provision in a contingent fee agreement that notifies clients they may be liable for attorney fees in quantum meruit or on another alternate basis if the contingent fee agreement is terminated before the occurrence of the contingency. See, form Contingent Fee Agreement, ¶ (4). A conversion clause that requires payment of the alternate fee immediately upon termination, and regardless of the occurrence of the contingency, would discourage most clients from discharging their lawyer. Few clients have the financial means to pay a contingent fee from their own resources, with no guarantee of replenishment by a recovery from a third party. Therefore, a conversion clause that requires payment of the alternate fee immediately upon termination may be appropriate only if (a) the client is sophisticated in legal matters, has the means to pay the fee regardless of the occurrence of the contingency, and has specifically negotiated the conversion clause; and (b) the contingent fee agreement expressly requires payment of the alternate fee immediately upon termination.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (d) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should refer a matter only to a lawyer who the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

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

Disputes over Fees

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

Advances of Unearned Fees and Engagement Retainer Fees

[10] The analysis of when a lawyer may treat advances of unearned fees as property of the lawyer must begin with the principle that the lawyer must hold in trust all fees paid by the client until there is a basis on which to conclude that the lawyer has earned the fee; otherwise the funds must remain in the lawyer's trust account because they are not the lawyer's property.

[11] To make a determination of when an advance fee is earned, the written statement of the basis or rate of the fee, when required by Rule 1.5(b) or (h), should include a description of the benefit or service that justifies the lawyer's earning the fee, the amount of the advance unearned fee, as well as a statement describing when the fee is earned. Whether a lawyer has conferred a sufficient benefit to earn a portion of the advance fee will depend on the circumstances of the particular case. The circumstances under which a fee is earned should be evaluated under an objective standard of reasonableness. Rule 1.5(a).

[12] Advances of unearned fees, including advances of all or a portion of a flat fee, are those funds the client pays for specified legal services that the lawyer has agreed to perform in the future. Pursuant to Rule 1.5(f), the lawyer must deposit an advance of unearned fees in the lawyer's trust account. The funds may be earned only as the lawyer performs specified legal services or confers benefits on the client as provided for in the written statement of the basis of the fee, if a written statement is required by Rule 1.5(b). See also Restatement (Third) of the Law Governing Lawyers §§ 34, 38 (1998). Rule 1.5(f) does not prevent a lawyer from entering into these types of arrangements.

[13] For example, the lawyer and client may agree that portions of the advance of unearned fees are deemed earned at the lawyer's hourly rate and become the lawyer's property as and when the lawyer provides legal services.

[14] A lawyer and client may agree that a flat fee or a portion of a flat fee is earned in various ways. For example, the lawyer and client may agree to an advance flat fee that will be earned in whole or in part based upon the lawyer's completion of specific tasks or the occurrence of specific events, regardless of the precise amount of the lawyer's time involved. For instance, in a criminal defense matter, a lawyer and client may agree that the lawyer earns portions of the flat fee upon the lawyer's entry of appearance, initial advisement, review of discovery, preliminary hearing, pretrial conference, disposition hearing, motions hearing, trial, and sentencing. Similarly, in a trusts and estates matter, a lawyer and client may agree that the lawyer earns portions of the flat fee

upon client consultation, legal research, completing the initial draft of testamentary documents, further client consultation, and completing the final documents.

[15] The portions of the advance flat fee earned as each such event occurs need not be in equal amounts. However, the fees attributed to each event should reflect a reasonable estimate of the proportionate value of the legal services the lawyer provides in completing each designated event to the anticipated legal services to be provided on the entire matter. See Rule 1.5(a); *Feiger, Collison & Killmer v. Jones*, 926 P.2d 1244, 1252-53 (Colo. 1996) (client's sophistication is relevant factor).

[16] "[A]n 'engagement retainer fee' is a fee paid, apart from any other compensation, to ensure that a lawyer will be available for the client if required. An engagement retainer must be distinguished from a lump-sum fee [*i.e.,* a flat fee] constituting the entire payment for a lawyer's service in a matter and from an advance payment from which fees will be subtracted (see § 38, Comment g). A fee is an engagement retainer only if the lawyer is to be additionally compensated for actual work, if any, performed." Restatement (Third) of the Law Governing Lawyers § 34 Comment e. An engagement retainer fee agreement must comply with Rule 1.5(a), (b), and (g), and should expressly include the amount of the engagement retainer fee, describe the service or benefit that justifies the lawyer's earning the engagement retainer fee, and state that the engagement retainer fee is earned upon receipt. As defined above, an engagement retainer fee will be earned upon receipt because the lawyer provides an immediate benefit to the client, such as forgoing other business opportunities by making the lawyer's services available for a given period of time to the exclusion of other clients or potential clients, or by giving priority to the client's work over other matters.

[17] Because an engagement retainer fee is earned at the time it is received, it must not be commingled with client property. However, it may be subject to refund to the client in the event of changed circumstances.

[18] It is unethical for a lawyer to fail to return unearned fees, to charge an excessive fee, or to characterize any lawyer's fee as nonrefundable. Lawyer's fees are always subject to refund if either excessive or unearned. If all or some portion of a lawyer's fee becomes subject to refund, then the amount to be refunded should be paid directly to the client if there is no further legal work to be performed or if the lawyer's employment is terminated. In the alternative, if there is an ongoing client-lawyer relationship and there is further work to be done, it may be deposited in the lawyer's trust account, to be withdrawn from the trust account as it is earned.

State Notes

Notes

Editor's note: The provisions of subsection (c) of this rule are similar to several provisions of Chapter 23.3 as it existed prior to January 1, 2021. For a detailed comparison, see the 2020 Court Rules and Rule Changes 2020(30) and 2020(31).

ANNOTATION

Law reviews. For article, "Confirm Attorney Fees in Writing: Court Changes Colo. RPC 1.4, 1.5", see 29 Colo. Law. 27 (June 2000). For article, "Fee Agreements: Types, Provisions, Ethical Boundaries, and Other Considerations -- Part I", see 31 Colo. Law. 35 (Mar. 2002). For article, "Fee

Agreements: Types, Provisions, Ethical Boundaries, and Other Considerations -- Part II", see 31 Colo. Law. 35 (Apr. 2002). For article, "Enforcing Civility: The Rules of Professional Conduct in Deposition Settings", see 33 Colo. Law. 75 (Mar. 2004). For article, "The Duty of Loyalty and Preparations to Compete", see 34 Colo. Law. 67 (Nov. 2005). For article, "Non-Monetary Compensation for Legal Services How Many Chickens Am I Worth?", see 35 Colo. Law. 95 (Jan. 2006). For article, "The New Rules of Professional Conduct: Significant Changes for In-House Counsel", see 36 Colo. Law. 71 (Nov. 2007). For article, "Ethics in Family Law and the New Rules of Professional Conduct", see 37 Colo. Law. 47 (Oct. 2008). For article, "Midstream Fee and Expense Modifications Under the Colorado Ethics Rules", see 40 Colo. Law. 79 (Aug. 2011). For article, "The Rules of Professional Conduct: An Equal Opportunity for Ethical Pitfalls", see 41 Colo. Law. 71 (Oct. 2012). For article, "Formal Opinion 129: Ethical Duties of Lawyer Paid by One Other than the Client", see 46 Colo. Law. 19 (May 2017). For article, "Ethical Duties of an Insurance Defense Lawyer", see 46 Colo. Law. 40 (Oct. 2017). For article, "Ethical Considerations When Using Freelance Legal Services", see 47 Colo. Law. 36 (June 2018). For article, "Accepting Cryptocurrency as Payment for Legal Fees: Ethical and Practical Considerations", see 48 Colo. Law. 12 (May 2019). For article, "Colorado's New Rule 1.5(h): Handling Flat Fees", see 48 Colo. Law. 36 (Nov. 2019). For article, "Artificial Intelligence and Professional Conduct Considering the Ethical Implications of Using Electronic Legal Assistants", see 53 Colo. Law. 20 (Jan.-Feb. 2024).

Annotator's note. Rule 1.5 is similar to Rule 1.5 as it existed prior to the 2007 repeal and readoption of the Colorado rules of professional conduct and to the rules governing contingent fees in former chapter 23.3. Relevant cases construing those provisions have been included in the annotations to this rule.

Supreme court is exclusive tribunal for regulation of the practice of law, including reasonableness of fees, notwithstanding statutory provision allowing the director of the division of workers' compensation to determine reasonableness of fees in a workers' compensation case. In re Wimmershoff, 3 P.3d 417 (Colo. 2000).

Public policy of protecting a client's right to control settlement will be better served by not treating a clause in a representation agreement that restricts the client's right to control settlement as severable from the provision for calculating fees. Where representation agreement provided alternate method of calculating the fees payable if the client unreasonably refused to settle, court refused to enforce either provision and allowed only reasonable value of services rendered by law firm. Jones v. Feiger, Collison & Killmer, 903 P.2d 27 (Colo. App. 1994), rev'd on other grounds, 926 P.2d 1244 (Colo. 1996).

Reasonableness of an attorney's fee depends on various factors, no one of which is determinative. The existence of a contingent fee contract is determinative only to the extent that it

sets the maximum amount permitted. Beeson v. Indus. Claim Appeals Office, 942 P.2d 1314 (Colo. App. 1997).

Lawyer's bills proper under this rule when lawyer billed attorney and secretarial services separately. Newport Pac. Capital Co. v. Waste, 878 P.2d 136 (Colo. App. 1994).

Charging a client for time spent responding to a grievance by that client is an excessive fee as a matter of law. People v. Abrams, 459 P.3d 1228 (Colo. O.P.D.J. 2020), aff'd, 2021 CO 44, 488 P.3d 1043.

Court may scrutinize contingent fee contracts. Under its general supervisory power over attorneys as officers of the court, a court may and should scrutinize contingent fee contracts and determine the reasonableness of the terms thereof. Anderson v. Kenelly, 37 Colo. App. 217, 547 P.2d 260 (1975).

Rules imposed upon an attorney the absolute burden to ensure that a proper contingent fee agreement is in place. This rule allows for no exception for instances in which an attorney does not comply with the requirement of the rules but simply relies on the client's representation. Fasing v. LaFond, 944 P.2d 608 (Colo. App. 1997); Hansel-Henderson v. Mullens, 39 P.3d 1200 (Colo. App. 2001), rev'd on other grounds, 65 P.3d 992 (Colo. 2002).

Contract unenforceable where it is silent as to liability when either the attorney unilaterally terminates the agreement or the attorney and the client mutually terminate the agreement, thus failing to expressly include a contingency as required by the rule. Elliott v. Joyce, 889 P.2d 43 (Colo. 1994).

Under rules 5(d) and 6, chapter 23.3 limits recovery to situations in which the contingent fee agreement specifically sets forth circumstances under which the client will be liable. Elliott v. Joyce, 889 P.2d 43 (Colo. 1994) (decided prior to 2020 repeal of chapter 23.3).

The rules governing contingent fees do not apply to attorney fees recovered pursuant to the common fund doctrine. In a common fund case, the court takes on the role of fiduciary for the beneficiaries of the fund when awarding attorney fees; thus, the court's oversight provides protection to the beneficiaries comparable to the rules governing contingent fee agreements. Brody v. Hellman, 167 P.3d 192 (Colo. App. 2007).

Lack of a written agreement does not preclude an attorney from recovering fees based on the theory of quantum meruit. Beeson v. Indus. Claim Appeals Office, 942 P.2d 1314 (Colo. App. 1997).

Attorney may proceed on a quantum meruit claim if outlined in the contingency fee agreement, even if the agreement contains other deficiencies and is unenforceable for purposes of the contingency. As long as the client has some notice of the possibility of equitable recovery should the contingency fail, the agreement cannot prohibit the attorney from seeking such recovery. Language in a contingent fee agreement notifying the client that, upon termination, the attorney may seek recovery based on a predetermined hourly rate provides insufficient notice of the possibility of equitable relief. Dudding v. Norton Frickey & Assocs., 11 P.3d 441 (Colo. 2000).

The proper criteria for evaluating whether a lawyer's wrongful conduct rises to a level that forfeits the lawyer's right to recover for work performed under a contingent fee agreement that has been terminated are the gravity and timing of the violation, its willfulness, its effect on the value of the lawyer's work for the client, any other threatened or actual harm to the client, and the adequacy of other remedies. No single factor is controlling, but each of the factors must be examined under the totality of the circumstances to determine whether the wrongful conduct was so clear and serious that a complete forfeiture was warranted. Estate of McClain v. Killmer, Lane & Newman, 2024 COA 50, 554 P.3d 29.

The term "joint responsibility" in section (d)(1) involves two components: financial responsibility and ethical responsibility. Scott R. Larson, P.C. v. Grinnan, 2017 COA 85, 488 P.3d 202.

The test for financial responsibility is joint and several or vicarious liability for the trial specialist's legal malpractice. Scott R. Larson, P.C. v. Grinnan, 2017 COA 85, 488 P.3d 202.

Attorney assumed financial responsibility for case when he and another attorney entered into a joint venture for the purposes of representing clients and sharing in the fee. Vicarious malpractice liability flows from that arrangement. Scott R. Larson, P.C. v. Grinnan, 2017 COA 85, 488 P.3d 202.

To assume ethical responsibility, a referring lawyer must: (1) actively monitor the progress of the case; (2) make reasonable efforts to ensure that the firm of the lawyer to whom the case was referred has in effect measures giving reasonable assurance that all lawyers in the firm conform to the rules of professional conduct; and (3) remain available to the client to discuss the case and provide independent judgment as to any concerns the client may have that the lawyer to whom the case was referred is acting in conformity with the rules of professional conduct. Scott R. Larson, P.C. v. Grinnan, 2017 COA 85, 488 P.3d 202.

Agreement for the division of fees between a firm and an attorney separating from the firm is valid and not against public policy. Where an attorney enters into a separation

agreement with his or her firm upon departure and the agreement specifies the division of fees for clients continuing legal services with the departing attorney, the agreement is enforceable and does not implicate the policies behind this rule. Norton Frickey, P.C. v. James B. Turner, P.C., 94 P.3d 1266 (Colo. App. 2004).

Further, clients benefit from separation agreements between a departing attorney and the firm because the client is not charged additional fees as a result of the agreement, nor is the client deceived or misled. Norton Frickey, P.C. v. James B. Turner, P.C., 94 P.3d 1266 (Colo. App. 2004).

Withdrawn co-counsel may pursue quantum meruit claim against former co-counsel. But no action is permitted against the client who entered into the contingency-fee agreement with the attorneys. Claim accrues when the withdrawn attorney knows or should know of the settlement or judgment that results in the payment of the attorney fees. Melat, Pressman & Higbie v. Hannon Law Firm, 2012 CO 61, 287 P.3d 842.

Attorney's engagement agreement authorizing reversal of "discretionary write offs" if clients terminated the representation before completion violated section (g). A lawyer may not penalize a client for choosing to terminate the relationship. Section (g) encompasses not only agreements that in fact restrict termination but also agreements that purport to restrict termination. People v. Piccone, 459 P.3d 136 (Colo. O.P.D.J. 2020).

Stipulated agreement and recommendation of public censure with certain conditions and monitoring based upon conditional admission of misconduct were warranted for attorney who required that his associates sign a covenant that allowed his firm to collect 75 to 100 percent of the total fee generated by a case in which his firm did less than all the work. People v. Wilson, 953 P.2d 1292 (Colo. 1998).

Public censure and restitution were appropriate in case of attorney who unilaterally charged client $1,000 in addition to previously agreed contingent fee. In re Wimmershoff, 3 P.3d 417 (Colo. 2000).

Conduct violating this rule in conjunction with other disciplinary rules, where mitigating factors were present, warrants public censure. People v. Davis, 950 P.2d 596 (Colo. 1998).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify public censure. People v. Muscato, 555 P.3d 1076 (Colo. O.P.D.J. 2024).

Conduct violating this rule sufficient to justify public censure. In re Green, 11 P.3d 1078 (Colo. 2000); People v. Dalton, 367 P.3d 126 (Colo. O.P.D.J. 2016).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify suspension. People v. Crews, 901 P.2d 472 (Colo. 1995); People v. Hohertz, 926 P.2d 560 (Colo. 1996); People v. Sather, 936 P.2d 576 (Colo. 1997); People v. Kotarek, 941 P.2d 925 (Colo. 1997); People v. Johnson, 946 P.2d 469 (Colo. 1997); People v. Cochrane, 296 P.3d 1051 (Colo. O.P.D.J. 2013); People v. Snyder, 418 P.3d 550 (Colo. O.P.D.J. 2018); People v. Hyde, 470 P.3d 772 (Colo. O.P.D.J. 2016); People v. Al-Haqq, 470 P.3d 885 (Colo. O.P.D.J. 2016); People v. Morris, 470 P.3d 988 (Colo. O.P.D.J. 2016); People v. Taggart, 470 P.3d 699 (Colo. O.P.D.J. 2017); People v. Levings, 470 P.3d 1096 (Colo. O.P.D.J. 2017); People v. Layton, 494 P.3d 693 (Colo. O.P.D.J. 2021); People v. Fry, 501 P.3d 846 (Colo. O.P.D.J. 2021); People v. Fulton, 501 P.3d 857 (Colo. O.P. D. J. 2021); People v. Stern, 522 P.3d 762 (Colo. O.P.D.J. 2022).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to justify disbarment. People v. Jenks, 910 P.2d 688 (Colo. 1996); People v. Jamrozek, 921 P.2d 725 (Colo. 1996); People v. Sousa, 943 P.2d 448 (Colo. 1997); People v. Clyne, 945 P.2d 1386 (Colo. 1997); People v. Roybal, 949 P.2d 993 (Colo. 1997); People v. Valley, 960 P.2d 141 (Colo. 1998); People v. Tolentino, 285 P.3d 340 (Colo. O.P.D.J. 2012); People v. Lindley, 349 P.3d 304 (Colo. O.P.D.J. 2015); People v. Palmer, 349 P.3d 312 (Colo. O.P.D.J. 2015); People v. Ross, 350 P.3d 327 (Colo. O.P.D.J. 2015); People v. Doherty, 354 P.3d 1150 (Colo. O.P.D.J. 2015); People v. Sherer, 452 P.3d 218 (Colo. O.P.D.J. 2019); People v. Topper, 470 P.3d 821 (Colo. O.P.D.J. 2016); People v. Keil, 470 P.3d 872 (Colo. O.P.D.J. 2016); People v. Ward, 470 P.3d 1053 (Colo. O.P.D.J. 2017); People v. Heupel, 470 P.3d 1101 (Colo. O.P.D.J. 2017); People v. Fillerup, 520 P.3d 211 (Colo. O.P.D.J. 2022); People v. Lund-Brown, 530 P.3d 661 (Colo. O.P.D.J. 2023); People v. Romero, 536 P.3d 353 (Colo. O.P.D.J. 2023).

Cases Decided Under Former DR 2-103.

Law reviews. For article, "The Lawyer's Duty to Report Ethical Violations", see 18 Colo. Law. 1915 (1989). For formal opinion of the Colorado Bar Association Ethics Committee on Collaboration with Non-Lawyers in the Preparation and Marketing of Estate Planning Documents, see 19 Colo. Law. 1793 (1990).

Attorney's conduct in paying inmates for referrals to attorney for the provision of legal services justifies 60-day suspension. People v. Shipp, 793 P.2d 574 (Colo. 1990).

Attorney's conduct in allowing company selling living trust packages to provide his name, exclusively, to customers upon sale, in conjunction with other violations and aggravating factors justifies six-month suspension. People v. Cassidy, 884 P.2d 309 (Colo. 1994).

Cases Decided Under Former DR 2-106.

Law reviews. For article, "Conflicts in Settlement of Personal Injury Cases", see 11 Colo. Law. 399 (1982). For article, "Attorney's Fees", see 11 Colo. Law. 411 (1982). For article, "Providing Legal Services for the Poor: A Dilemma and an Opportunity", see 11 Colo. Law. 666 (1982). For article, "Reduced Malpractice and Augmented Competency: A Proposal", see 12 Colo. Law. 1444 (1983). For article, "Ethical Problem Areas for Probate Lawyers", see 19 Colo. Law. 1069 (1990). For formal opinion of the Colorado Bar Association Ethics Committee on Collaboration with Non-Lawyers in the Preparation and Marketing of Estate Planning Documents, see 19 Colo. Law. 1793 (1990). For formal opinion of the Colorado Bar Association Ethics Committee on Recovery of Attorney Fee by Lender Using In-House Counsel, see 20 Colo. Law. 697 (1991).

Where an attorney makes a uniform practice of imposing charges that exceed the statutory standards, such violates Canon 2. People v. Radinsky, 176 Colo. 357, 490 P.2d 951 (1971).

Attorney's charges for probate proceeding considered excessive on facts of case. People ex rel. Goldberg v. Gordon, 199 Colo. 296, 607 P.2d 995 (1980).

Attorney who assessed excessive legal fees and attempted to retain improperly charged fees, neglected clients' interests to their detriment, and made misrepresentations as to services actually performed on clients' cases was properly suspended for thirty days. Although attorney previously found to have engaged in professional misconduct, attorney suffered personal tragedy prior to misconduct and subsequently improved by engaging in activities beneficial to legal and professional community. People v. Brenner, 764 P.2d 1178 (Colo. 1988).

Charging client for costs of defending grievance proceeding violates DR 2-106(A) where disciplinary charges are not unfounded and there is no prior agreement to pay such costs. People v. Brown, 840 P.2d 1085 (Colo. 1992).

Lawyer who billed client for the costs of defending a grievance violated this rule. There was no agreement between the attorney and the client to justify the billing, and the attorney's claim that the billing stemmed from the attorney's independent duty to protect the client was found by the grievance panel to be false. Therefore, the billing based on such a theory is deceptive and dishonest in violation of this rule. The appropriate sanction for the lawyer's conduct is public censure. People v. Brown, 840 P.2d 1085 (Colo. 1992).

Attorney's professional misconduct involving the improper collection of attorney's fees in six instances justified 45-day suspension. People v. Peters, 849 P.2d 51 (Colo. 1993).

Where attorney enters into a fee arrangement basing his compensation directly on royalties his client might receive from oil and gas wells, it is clear that the arrangement is not intended as compensation for legal services provided and therefore constitutes conduct violating this rule sufficient to justify suspension. People v. Nutt, 696 P.2d 242 (Colo. 1984).

Contingent fee agreement in a probate proceeding is not unconscionable or unreasonable where it was openly made and supported by adequate consideration. In re Estate of Reid, 680 P.2d 1305 (Colo. App. 1983).

Excessive fees are basis for indefinite suspension of attorney. People v. Radinsky, 176 Colo. 357, 490 P.2d 951 (1971).

Contract held not to violate prohibition against maintenance. Northland Ins. Co. v. Bashor, 177 Colo. 463, 494 P.2d 1292 (1972).

Evidence insufficient to establish excessive fee in violation of paragraph (A). People v. Lanza, 660 P.2d 881 (Colo. 1983).

Suspended or disbarred attorney does not lose right to assert a claim for fees earned prior to suspension or disbarment. Rutenbeck v. Grossenbach, 867 P.2d 36 (Colo. App. 1993).

Suspended attorney was entitled to collect one-third share of contingency fee under an agreement to divide the fee with two other attorneys where the agreement was based on a good faith division of services and responsibility at the time it was entered into. Rutenbeck v. Grossenbach, 867 P.2d 36 (Colo. App. 1993).

Public censure warranted where attorney kept the first lump sum check obtained in settlement as a lump sum payment of his contingency fee and reimbursement of costs even though he knew the settlement might later be reduced by the social security disability award and the client's union award. People v. Maceau, 910 P.2d 692 (Colo. 1996).

Suspension for one year and one day warranted where attorney billed for time that was not actually devoted to work contemplated by contract and for time not actually performed. People v. Shields, 905 P.2d 608 (Colo. 1995).

Conduct violating this rule in conjunction with other disciplinary rules is sufficient to

justify suspension. People v. Schmad, 793 P.2d 1162 (Colo. 1990); People v. Sullivan, 802 P.2d 1091 (Colo. 1990); People v. Dunsmoor, 807 P.2d 561 (Colo. 1991); People v. Koeberle, 810 P.2d 1072 (Colo. 1991); People v. Kardokus, 881 P.2d 1202 (Colo. 1994); People v. Johnson, 881 P.2d 1205 (Colo. 1994); People v. Banman, 901 P.2d 469 (Colo. 1995); People v. Dickinson, 903 P.2d 1132 (Colo. 1995); People v. Mills, 923 P.2d 116 (Colo. 1996).

Conduct violating this rule sufficient to justify suspension. People v. Fleming, 716 P.2d 1090 (Colo. 1986).

Conduct violating this rule sufficient to justify disbarment. People v. Dwyer, 652 P.2d 1074 (Colo. 1982); People v. Golden, 654 P.2d 853 (Colo. 1982); People v. Franks, 791 P.2d 1 (Colo. 1990); In re Bilderback, 971 P.2d 1061 (Colo. 1999).

Applied in Hartman v. Freedman, 197 Colo. 275, 591 P.2d 1318 (1979); People v. Meldahl, 200 Colo. 332, 615 P.2d 29 (1980); People ex rel. Cortez v. Calvert, 200 Colo. 157, 617 P.2d 797 (1980); Mau v. E.P.H. Corp., 638 P.2d 777 (Colo. 1981); Heller v. First Nat'l Bank, 657 P.2d 992 (Colo. App. 1982); People v. Franco, 698 P.2d 230 (Colo. 1985); People v. Coca, 732 P.2d 640 (Colo. 1987).

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