

Colorado Supreme Court

Rules Committees

Notice of Request for Comments: Colorado Rules of Civil Procedure

Deadline for Comments: April 11, 2019 at 5 p.m.

The Colorado Supreme Court requests written public comments by any interested person on the proposed amendments to Rules 26, 106, and 121 §1-14 of the Colorado Rules of Civil Procedure. Written comments should be submitted to Cheryl Stevens, Clerk of the Supreme Court. Comments may be mailed or delivered to 2 East 14th Avenue, Denver, CO 80203 or emailed to cheryl.stevens@judicial.state.co.us and received no later than 5 p.m. on April 11, 2019. The Clerk will post written comments on the Colorado Supreme Court's website.

By the Court:

Richard L. Gabriel
Justice, Colorado Supreme Court

Note: The proposed amendments can be found on the Court's website at https://www.courts.state.co.us/Courts/Supreme_Court/Rule_Changes.cfm

Rule Change 2019(01) Colorado Rules of Civil Procedure

Rule 6. Time

(a) [NO CHANGE]

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an

act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rule 60(b) and may extend the time for taking any action under Rule 59 only as allowed by that rule.

(c)-(e) [NO CHANGE]

COMMENTS

2012

[1] After the particular effective date, time computation in most situations is intended to incorporate the Rule of Seven. Under the Rule of Seven, a day is a day, and because calendars are divided into 7-day week intervals, groupings of days are in 7-day or multiples of 7-day intervals. Groupings of less than 7 days have been left as they were because such small numbers do not interfere with the underlying concept. Details of the Rule of Seven reform are set forth in an article by Richard P. Holme, 41 Colo. Lawyer, Vol. 1, P 33 (January 2012).

[2] Time computation is sometimes "forward," meaning starting the count at a particular stated event [such as date of filing] and counting forward to the deadline date. Counting "backward" means counting backward from the event to reach the deadline date [such as a stated number of days being allowed before the commencement of trial]. In determining the effective date of the Rule of Seven time computation/time interval amendments having a statutory basis, said amendments take effect on July 1, 2012 and

regardless of whether time intervals are counted forward or backward, both the time computation start date and deadline date must be after June 30, 2012. Further, the time computation/time interval amendments do not apply to modify the settings of any dates or time intervals set by an order of a court entered before July 1, 2012.

Rule 57. Declaratory Judgments

(a)-(i) [NO CHANGE]

(j) Parties; Notice to State or Municipality.

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves a challenge to the validity of a municipal ordinance or franchise, the party challenging the ordinance or franchise shall serve the municipality with a copy of the relevant motion or pleading and such municipality shall be made a party, and is entitled to be heard. If a party files a motion or other pleading asserting that a state statute, ordinance, or franchise is unconstitutional, that party shall serve the state attorney general with a copy of the motion or pleading, and the state is entitled to be heard. Notice to the state or municipality required by this subsection (j) shall be made pursuant to Rule 5(b) within 21 days of the date when the motion or pleading challenging validity or constitutionality was filed.

(k)-(m) [NO CHANGE]

Rule 59. Motions for Post-Trial Relief

(a) Post-Trial Motions. Within 14 days of entry of judgment as provided in C.R.C.P. 58 or such greater time as the court may allow pursuant to a request for an extension of time made within that 14-day period, a party may move for post-trial relief including:

- (1) A new trial of all or part of the issues;
- (2) Judgment notwithstanding the verdict;
- (3) Amendment of findings; or
- (4) Amendment of judgment.

Motions for post-trial relief may be combined or asserted in the alternative. The motion shall state the ground asserted and the relief sought.

(b)-(k) [NO CHANGE]

Amended and Adopted by the Court, En Banc, January 10, 2019, effective immediately.

By the Court:

Richard L. Gabriel

Justice, Colorado Supreme Court

**Rule Change 2019(02)
Colorado Rules
of Criminal Procedure**

Rule 5. Preliminary Proceedings

(a) Felony Proceedings.

(1) [NO CHANGE]

(2) Appearance Before the Court. At the first appearance of the defendant in court, it is the duty of the court to inform the defendant and make certain that the defendant understands the following:

(I) The defendant need make no statement and any statement made can and may be used against the defendant;

(II) The right to counsel;

(III) If indigent, the defendant has the right to request the appointment of counsel or consult with the public defender before any further proceedings are held;

(IV) Any plea the defendant makes must be voluntary and not the result of undue influence or coercion;

(V) The right to bail, if the offense is bailable, and the amount of bail that has been set by the court;

(VI) The nature of the charges;

(VII) The right to a jury trial;

(VIII) The right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged was committed by the defendant;

(IX) If currently serving in the United States armed forces or if a veteran of such forces, the defendant may be entitled to receive mental health treatment, substance use disorder treatment, or other services as a veteran.

(3) through (5) [NO CHANGE]

(b) [NO CHANGE]

(c) through (c)(1) [NO CHANGE]

(2) Appearance Before the Court. At the first appearance in the county court the defendant shall be advised in accordance with the provisions set forth in subparagraphs (a)(2)(I) through (VII) and (IX) of this Rule. (3) Appearance in the County Court Not Issuing the Warrant. If the defendant is taken before a county court which did not issue the arrest warrant, the court shall inform the defendant of the matters set out in subsection (a)(2) (I through VII and IX) of this Rule and, allowing time for travel, set bail returnable not less than 14 days thereafter before the court which issued the arrest warrant, and shall transmit forthwith a transcript of the proceedings and all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the

county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

Amended and Adopted by the Court, En Banc, January 24, 2019, effective immediately.

By the Court:

Carlos A. Samour, Jr.

Justice, Colorado Supreme Court

**Rule Change 2019(03)
Rules Governing Admission
to the Practice of Law
in Colorado**

Rules 203.1, 203.2, 203.3, 203.4, 204.1, 204.2, 204.3, 204.4, 204.5, 204.6, 205.3, 205.5, 205.6, 211.2, 211.3, and 227



The Office of the Child's Representative (OCR) is accepting applications in March 2019 for contract attorneys to serve as Guardians *ad litem* in all 22 of Colorado's Judicial Districts in a variety of case types (Dependency, Delinquency, Adoption, Paternity, Mental Health, Truancy, and Probate).

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- A young client

Rule 203. Colorado License To Practice Law

203.1. General Provisions

(1)–(7) [NO CHANGE]

(8) Mandatory Professionalism Course. All applicants under these rules, unless otherwise exempted, must complete the required course on professionalism presented by the Office of Attorney Regulation Counsel in cooperation with the Colorado Bar Association - CLE. Continuing legal education credit will be applied to the attorneys' first compliance period pursuant to C.R.C.P. 250.2(1). Any fees received for the course shall be divided equally between the Colorado Bar Association - CLE and the Office of Attorney Regulation Counsel to pay for administering the course and to fund the attorney regulation system. Credit for completion of the professionalism course will be valid for eighteen months following completion of

the course. Applicants under C.R.C.P. 205 temporary practice rules are not required to take this course.

Rule 203.2. Applications for Admission on Motion by Qualified Out-of-State Attorneys

(1)–(5) [NO CHANGE]

(6) Professionalism Course. All applicants under this rule must complete the course on professionalism as described in C.R.C.P. 203.1(8), within six months following admission.

Rule 203.3. Applications for Admission on Motion Based upon UBE Score Transfer

(1)–(3) [NO CHANGE]

(4) Professionalism Course. All Colorado UBE score transfer applicants must complete the course on professionalism as described in C.R.C.P. 203.1(8), within six months following admission.

Rule 203.4. Applications for Admission by Colorado Bar Examination

(1)–(5) [NO CHANGE]

(6) Professionalism Course. All successful Colorado bar examination applicants must complete the course on professionalism, as described in C.R.C.P. 203.1(8), prior to and as a condition of admission. Credit for completion of the professionalism course will be valid for eighteen months following completion of the course.

(7) [NO CHANGE]

Rule 204. Certifications/Limited Admissions To Practice Law

Rule 204.1. Single-Client Counsel Certification

(1)–(3) [NO CHANGE]

(4) Pro Bono Practice. Notwithstanding the provisions of subsection (1)(e) above, an attorney certified under this rule may provide pro bono legal services under the auspices of an entity described in C.R.C.P. 250.9(2), in accordance with Colo. RPC 6.1.

(5)–(6) [NO CHANGE]

(7) Registration, Fees, and Continuing Legal Education. An attorney certified under this rule must pay annual registration fees and comply with all other provisions of C.R.C.P. 227, as well as the mandatory legal education requirements of C.R.C.P. 250.

(8)–(9) [NO CHANGE]

(10) Professionalism Course. All attorneys certified under this rule must complete the course on professionalism as described in C.R.C.P. 203.1(8), within six months following certification.

Rule 204.2. Foreign Legal Consultant Certification

(1)–(12) [NO CHANGE]

(13) Professionalism Course. All attorneys certified under this rule must complete the course on professionalism as described in C.R.C.P. 203.1(8), within six months following certification.

Rule 204.3. Judge Advocate Certification

(1)–(6) [NO CHANGE]



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(7) Registration, Fees, and Continuing Legal Education. An attorney certified under this rule shall be required to pay annual registration fees and comply with all other provisions of C.R.C.P. 227, as well as the mandatory legal education requirements of C.R.C.P. 250.

(8)–(9) [NO CHANGE]

(10) Professionalism Course. All attorneys certified under this rule must complete the course on professionalism as described in C.R.C.P. 203.1(8), within six months following certification.

Rule 204.4. Military Spouse Certification

(1)–(6) [NO CHANGE]

(7) Registration, Fees, and Continuing Legal Education. An attorney certified under this rule shall be required to pay annual registration fees and comply with all other provisions of C.R.C.P. 227, as well as the mandatory legal education requirements of C.R.C.P. 250.

(8)–(9) [NO CHANGE]

(10) Professionalism Course. All attorneys certified under this rule must complete the course on professionalism as described in C.R.C.P. 203.1(8), within six months following certification.

Rule 204.5. Law Professor Certification

(1)–(6) [NO CHANGE]

(7) Registration, Fees, and Continuing Legal Education. An attorney certified under this rule shall be required to pay annual registration fees and comply with all other provisions of C.R.C.P. 227, as well as the mandatory legal education requirements of C.R.C.P. 250.

(8)–(9) [NO CHANGE]

(10) Professionalism Course. All attorneys certified under this rule must complete the course on professionalism as described in C.R.C.P. 203.1(8), within six months following certification.

**Rule 204.6. Pro Bono
Counsel Certification**

(1) General Statement and Eligibility. In its discretion, the Supreme Court may certify attorneys not otherwise authorized to practice law in Colorado to provide pro bono legal services under the auspices of an entity described

in C.R.C.P. 250.8(2), in accordance with Colo. RPC 6.1.

(a) To act in such a capacity, the applicant for pro bono counsel certification must be either:

(i) An attorney, including a retired attorney, admitted to practice law in Colorado who:

(A) Is now on inactive status;

(B) Is a member in good standing of the bar of all courts and jurisdictions in which he or she has been admitted to practice;

(C) Has no pending formal disciplinary or disability proceeding; and

(D) Limits his or her practice to acting as pro bono counsel as set forth in this rule and, notwithstanding the reduced fee provisions of Colo. RPC 6.1(b), will not receive or expect compensation or other direct or indirect pecuniary gain for the legal services rendered; or

(ii) An out-of-state attorney domiciled in Colorado but not admitted to practice law in Colorado who:

(A) Is licensed to practice law and is on active, inactive, or equivalent status in another jurisdiction in the United States;

(B) Is a member in good standing of the bar of all courts and jurisdictions in which he or she is admitted to practice;

(C) Has no pending formal disciplinary or disability proceeding;

(D) Agrees to be subject to the Colorado Rules of Professional Conduct and the Rules of Procedure Regarding Attorney Discipline and Disability Proceedings; and

(E) Limits his or her practice to acting as pro bono counsel as set forth in this rule and, notwithstanding the reduced fee provisions of Colo. RPC 6.1(b), will not receive or expect compensation or other direct or indirect pecuniary gain for the legal services rendered.

(b) This rule shall not preclude a nonprofit entity from receiving court-awarded attorney fees for representation provided by a certified pro bono counsel and shall not preclude a certified pro bono counsel from receiving reimbursement for otherwise recoverable costs, but not including fees, incurred in representing a pro bono client.

(2)–(8) [NO CHANGE]

(9) Professionalism Course; Continuing Legal Education. All attorneys certified under this rule are exempt from taking the professionalism course described in C.R.C.P. 203.1(8) and are exempt from the continuing legal education requirements under C.R.C.P. 250.

**Rule 205. Other Authorizations
to Practice Law**

**Rule 205.3. Pro Hac Vice Authority Before
State Courts — Out-of-State Attorney**

(1)–(6) [NO CHANGE]

(7) Discipline and Disability Jurisdiction. Any attorney authorized to appear under this rule shall be subject to all applicable provisions of the Colorado Rules of Professional Conduct, except for the provisions of Colo. RPC 1.15A through 1.15E that require an attorney to have a business account and a trust account in a financial institution doing business in Colorado; and the Colorado Rules of Civil Procedure, except C.R.C.P. 227 (general registration fees) and C.R.C.P. 250 (mandatory continuing legal education).

**Rule 205.5. Pro Hac Vice Authority—
Foreign Attorney**

(1)–(6) [NO CHANGE]

(7) Discipline and Disability Jurisdiction. Any foreign attorney authorized to appear under this rule shall be subject to all applicable provisions of the Colorado Rules of Professional Conduct, except for the provisions of Colo. RPC 1.15A through 1.15E that require an attorney to have a business account and a trust account in a financial institution doing business in Colorado; and the Colorado Rules of Civil Procedure, except C.R.C.P. 227 (general registration fees) and C.R.C.P. 250 (mandatory continuing legal education).

Rule 205.6. Practice Pending Admission

(1) General Statement and Eligibility. An attorney who currently holds an active license to practice law in another jurisdiction in the United States, and who has been engaged in the active practice of law for three of the last five years, may provide legal services in Colorado through an

office or other place for the regular practice of law in Colorado for no more than 365 days, provided that the attorney:

- (a) Is a licensed attorney in good standing in all courts and jurisdictions in which he or she is admitted to practice;
- (b) Is not currently subject to an order of attorney discipline or the subject of a pending formal disciplinary or disability investigation in any jurisdiction;
- (c) Has not previously been denied admission to practice law in Colorado, has not failed the Colorado bar examination within the last three years, and has never been denied admission on character and fitness grounds in any jurisdiction;
- (d) Has first submitted a complete application for admission on motion by qualified out-of-state attorney (C.R.C.P. 203.2), on motion based upon UBE score transfer (C.R.C.P. 203.3), or by examination (C.R.C.P. 203.4);
- (e) Reasonably expects to fulfill all of Colorado's requirements for that form of admission;
- (f) Associates with and is supervised by an attorney who is admitted to practice law in Colorado, and discloses the name, address, and membership status of that attorney;
- (g) Provides a signed verification form from the Colorado attorney certifying the applicant's association with and supervision by that attorney;
- (h) Affirmatively states in all written communications with the public and clients the following language: "Practice temporarily authorized pending admission under C.R.C.P. 205.6"; and
- (i) Files an application for practice pending admission and pays a fee in an amount fixed by the Supreme Court. The fee must be paid when the application is submitted. The application and fee will be collected by the Office of Attorney Registration. The fee should be made payable to the Clerk of the Supreme Court.

(2)-(4) [NO CHANGE]

(5) Discipline and Disability Jurisdiction. Any attorney practicing under this rule shall be subject to all applicable provisions of the Colorado Rules of Professional Conduct, except for the provisions of Colo. RPC 1.15A through 1.15E that require an attorney to have a business account

and a trust account in a financial institution doing business in Colorado; and the Colorado Rules of Civil Procedure, except C.R.C.P. 227 (general registration fees) and C.R.C.P. 250 (mandatory continuing legal education).

(6)-(8) [NO CHANGE]

Rule 211. Other Provisions

Rule 211.2. Reapplication for Admission

(1) [NO CHANGE]

(2) Repealed.

Rule 211.3. Oath of Admission

(1) [NO CHANGE]

(2) Length of Time to Take Oath. No on-motion applicant pursuant to C.R.C.P. 203.2 or 203.3 will be permitted to take the oath more than eighteen months after the date on which the Supreme Court approved his or her application. No written examination applicant pursuant to C.R.C.P. 203.4 shall be permitted to take the oath more than eighteen months after the date of the announcement by the Supreme Court that he or she has passed the examination. Nothing herein shall preclude reapplication for admission.

(3) [NO CHANGE]

Rule 227. Registration Fee

(A)(1)-(A)(8) [NO CHANGE]

B. Registration Fee of Non-Attorney Judges

(1) Every non-attorney judge who is subject to the jurisdiction of the Commission on Judicial Discipline shall pay an annual fee of \$10.00. The annual fee shall be collected by the Clerk of the Supreme Court of Colorado, who shall send and receive, or cause to be sent and received, the notices and fees provided for hereafter. The ten-dollar fee shall be used to pay the costs of establishing and administering the mandatory continuing legal education requirement. The clerk shall account for and forward these receipts to the Office of Continuing Legal and Judicial Education.

(2) Any non-attorney judge who fails to timely pay the fee required under subparagraph (1) above shall be reported to the Commission on Judicial Discipline, provided a notice of delinquency has been issued by the Clerk and mailed to the non-attorney judge by certified

mail addressed to the county court in the respective county seat at least 28 days prior to such reporting, unless an excuse has been granted on grounds of financial hardship.

(3) If any non-attorney judge who is reported to the Commission on Judicial Discipline under the provisions of subparagraph (2) above subsequently makes payment of arrearages, such payment shall be reported to the Commission by the Clerk.

(4) On or before January 31 of each year, all non-attorney judges shall file any affidavit required by Rule 250.7 and shall pay the annual fee required by this rule.

(5) Within 21 days after the receipt of each fee in accordance with the provisions of subparagraph (4) above, receipt thereof shall be acknowledged on a form prescribed by the Clerk.

Amended and Adopted by the Court, En Banc, January 24, 2019, effective immediately.

By the Court:

Monica M. Márquez
Justice, Colorado Supreme Court

Rule Change 2019(04) 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 250.7, 251.31, and 252.5

Rule 250. Mandatory Continuing Legal and Judicial Education

Rule 250.7. Compliance

(1)-(3) [NO CHANGE]

(4) Statement of Noncompliance. If any registered lawyer or judge fails to comply with these rules, or C.R.C.P. 203.1(8), the CLJE Office will promptly provide a statement of noncompliance to the registered lawyer or judge. The statement will advise the registered lawyer or judge that

within 14 days of the date of the statement, either the noncompliance must be corrected, or the registered lawyer or judge must request a hearing before the CLJE Committee. Upon failure to do either, the CLJE Office will file the statement of noncompliance with the Court, which may impose the administrative remedies set forth in paragraph (8) of this rule.

(5)–(9) [NO CHANGE]

(10) Reinstatement. Any lawyer who has been suspended for noncompliance pursuant to C.R.C.P. 250.7(8) may be reinstated by order of the Court upon a showing that the lawyer’s CLE deficiency has been corrected. The lawyer must file with the CLJE Office a petition seeking reinstatement by the Court. The petition must state with particularity the CLE activities that the lawyer has completed, including dates of completion, which correct the deficiency that caused the lawyer’s suspension. The petition must be accompanied by a reinstatement filing fee as determined by the CLJE Committee. The CLJE Office will file a properly completed petition with its recommendation with the Clerk of the Court within 14 days after receipt.

(11) [NO CHANGE]

Rule 251.31. Access to Information Concerning Proceedings Under These Rules

(a)–(q) [NO CHANGE]

(r) For matters that are confidential under subsection (b) of this rule and that involve allegations of sexual harassment, Regulation Counsel’s investigation records regarding the sexual harassment allegations, not otherwise privileged or protected by court rule or court order, shall be available to the complainant and respondent, subject to the provisions of C.R.C.P. 251.33.

Rule. 252. Colorado Rules of Procedure Regarding Attorneys’ Fund for Client Protection

Rule 252.5. Composition and Officers of the Board

(a) The Board of Trustees shall consist of five member Trustees, a Chair and a Vice Chair.
(1) The Board shall be composed of five attorneys and two public members appointed by the Su-

preme Court. Diversity shall be a consideration in making the appointment.

(2) Trustees may serve one term of seven years but may be dismissed from the Board at any time by order of the Supreme Court.

(3) The terms of the Trustees shall be staggered to provide, so far as possible, for expiration each year of the term of one Trustee. Trustees may resign at any time. In the event of a vacancy on the Board, the Supreme Court shall appoint a successor to serve the remainder of the unexpired term.

(4) The Chair and Vice-Chair shall be members of the Bar of Colorado. The Supreme Court shall appoint the Chair and Vice-Chair. The Chair and Vice-Chair may be appointed to a second seven-year term.

(b) Trustees shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the discharge of their duties.

Amended and Adopted by the Court, En Banc, January 24, 2019, effective immediately.

By the Court:

*Monica M. Márquez
Justice, Colorado Supreme Court*

**Rule Change 2019(05)
Colorado Rules of Professional
Conduct**

Rule 1.5. Fees

(a)–(g) [NO CHANGE]

(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. The authorization of this form shall not prevent the use of other forms consistent with this Rule.

COMMENT

Reasonableness of Fee and Expenses

[1] [NO CHANGE]

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible, 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, 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. When developments occur during the representation that render an earlier communication substantially inaccurate, a revised written communication should be provided to the client. 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]–[4] [NO CHANGE]

[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.

[6]–[10] [NO CHANGE]

[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] [NO CHANGE]

[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]–[18] [NO CHANGE]

Amended and Adopted by the Court, En Banc, January 31, 2019, effective immediately. This applies only to flat fee agreements entered into on or after the effective date.

By the Court:

Monica M. Márquez

Justice, Colorado Supreme Court 

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