143 FOUNDATIONS OF A FEE AGREEMENT

(Revised April 2022)

Introduction and Scope

This opinion examines a lawyer's ethical obligations and best practices for fee agreements.[1] For purposes of this opinion, best practices are those practices which may be beneficial to the lawyer and client, and which the Committee encourages lawyers to consider, but are not ethical obligations pursuant to the Colorado Rules of Professional Conduct, nor are these best practices intended to establish the standard of care. This opinion addresses the foundational components of a fee agreement. Depending on the lawyer's practice area and facts of the legal matter, additional provisions in a fee agreement may be beneficial, but are beyond the scope of the foundational focus of this opinion. This opinion also includes an Addendum 1 with a checklist to provide quick guidance on items that must be included in a fee agreement and items to include as best practices. This opinion also includes an Addendum 2 with references to additional resources that may be of assistance in tailoring a fee agreement to a specific practice area.

Syllabus

The Colorado Rules of Professional Conduct (Colo. RPCs or the Rules) "are rules of reason."[2] While some Rules are cast as imperatives, others are permissive and define areas where the lawyer has discretion.[3] Fee agreements are one area where a lawyer has discretion because the

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1 "Fee agreement" as used throughout the opinion is the generic term for the various types of written contracts between lawyers and clients detailing the terms of representation, also referred to as engagement letters and retention, representation, or retainer agreements.

2 Colo. RPC, Preamble and Scope, cmt. [14].

3 *Id.*

Rules only require a written communication under certain circumstances, but do not specifically require a fee agreement.[4] The Committee encourages lawyers to use a written fee agreement, however, because such a document is an opportunity for a lawyer to establish client expectations regarding the representation, including: client identity, the scope of the representation, communication, other professionals who may work on the case, file maintenance and return, issues unique to the representation, termination of the lawyer-client relationship, and of course, the terms of the fee arrangement.

Analysis

I. ELEMENTS OF THE FEE AGREEMENT

A. Requirements of Colo. RPC 1.5(b)

While a fee agreement is not required by the Rules per se, a lawyer is required to communicate the basis or rate of the fee and expenses, and the scope of the representation, in writing to the client.[5] Colo. RPC 1.5(b) provides:

> (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.

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4 *See* Colo. RPC 1.5, cmt. [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.").

5 There is nothing in the Rule or its comments that excludes from this requirement situations in which the client is not paying a fee, such as with pro bono fee representation or payment by the state or other third party on behalf of the client. *See* CBA Ethics Opinion 114 Responsibilities of Respondent Parents' Attorneys in Dependency and Neglect Proceedings (2010).

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

Accordingly, even if a lawyer determines not to include other provisions in writing regarding the terms of the representation, Colo. RPC 1.5(b) requires the basis or rate of the fees and expenses, and the scope of the representation, be communicated, in writing, before or within a reasonable time after the representation begins when the lawyer has not regularly represented the client. The basis or rate of the fee charged for other lawyers and legal staff who will work on the case must also be promptly communicated in writing. Likewise, any changes to the basis or rate of fees or expenses must also be communicated in writing.[6]

As explained in Comment 2 to Rule 1.5, changes to the scope of the representation are not required to be communicated in writing, but may help to avoid misunderstandings between the client and lawyer.[7] A lawyer may wish to utilize a fee addendum to document changes to the agreement in lieu of modifying or entering into a new fee agreement. The addendum is an efficient way to memorialize changes while retaining the original terms of the fee agreement.

Another best practice for all fee agreements is to have the client sign and date the agreement.[8] Requiring the client to sign the agreement emphasizes to the client the importance of the document the client is reviewing and safeguards the lawyer in the event there is an allegation

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[6] Colo. RPC 1.5(b)(2); Cmt. [2](“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.”)

[7] Colo. RPC 1.5, cmt. [2](“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.”).

[8] Pursuant to Colo. RPC 1.5(c)(2), a contingent fee agreement must be signed by the client.

the client never reviewed the agreement. To ensure the client pays special attention to specific provisions of the agreement, the lawyer may wish to have the client initial those provisions.

Colo. RPC 1.5 also includes specific additional requirements for certain types of fee arrangements. Colo. RPC 1.5(c) sets forth specific requirements for contingent fee agreements, and Colo. RPC 1.5(h) sets forth specific requirements for flat fee agreements. The requirements for both of those arrangements are discussed below.

B. Plain Language

An often-overlooked consideration with fee agreements is readability. Therefore, a best practice applicable to all fee agreements is to use plain language. Studies show that plain and direct language increases understanding and application of information.[9] Other studies about stress and psychological barriers to understanding emphasize that even for those with high literacy and familiarity with a topic, stress can limit a person's ability to digest and process information.[10] Clients come to lawyers in predicaments that have escalated to the point they need legal advice or action. Plain and direct language can be crafted to overcome these barriers to ensure understanding and accurate completion of the client's responsibilities in the matter. Crafting a fee agreement that a client can easily understand also starts the lawyer-client relationship with transparency and trust.

Another consideration when drafting a fee agreement is the length of the agreement. Some lawyers may feel a lengthy agreement is more complete. In actuality, an unduly long agreement may inhibit a client from reading it in its entirety, thereby defeating the purpose of the fee agreement. Thus, a best practice is to focus on the essential elements as discussed in this opinion and not use the fee agreement to address every possible contingency.

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[9] D. James Greiner, Dalié Jiménez, and Lois Lupica, *Self-Help, Reimagined*, 92 IND.L.J. 1119, 1172 (2017), available at https://www.repository.law.indiana.edu/ilj/vol92/iss3/6/.

[10] Nat'l Ass'n for Ct. Mgmt., PLAIN LANGUAGE GUIDE, at 13 (2019).

II. TERMS OF A FEE AGREEMENT

A. Client Identity

In many cases, the client's identity is readily apparent, as the lawyer is representing one client, in an individual capacity, for one matter. In that case, identifying the client by name in the fee agreement is generally sufficient. When a lawyer represents a client in a specific capacity, however, a best practice is to identify the client and the capacity in which the lawyer represents the client. For example, the lawyer should identify Client A, as personal representative, or Client B, as beneficiary. If the lawyer is representing multiple clients[11] or an entity,[12] the lawyer may also wish to include a provision regarding who has authority to authorize action by the lawyer and bind each client (e.g., individuals, the board of directors, etc.), and who the primary contact person is for the lawyer.

B. Scope of Representation

As discussed above, the scope of the representation must be conveyed in writing before or within a reasonable time after the representation begins, except when the lawyer will perform services that are of the same general kind as previously rendered to a regularly represented client.[13] Comment [2] to Rule 1.5(b) explains "[i]t 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."

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[11] *See* CBA Formal Op. 135, "Ethical Considerations in the Joint Representation of Clients in the Same Matter or Proceeding" (2018).

[12] For specific ethical obligations related to entity representation, see Colo. RPC 1.13.

[13] Colo. RPC 1.5(b)(2); Cmt. [2]("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.").

When considering the scope of the representation and how the lawyer will recite the scope to the client, it is important for the lawyer to identify whether the lawyer intends to provide full scope representation or limited scope representation. Each type of representation is explained below.

1. Full Scope Representation

The phrase "full scope representation" usually indicates the lawyer intends to provide all services related to the client's matter for the entirety of the case. Generally, these services include gathering facts, advising the client, discovering the facts of the opposing party, performing legal research, drafting correspondence and documents, negotiating, and representing the client in court.[14] For example, where the client wishes to divorce, the full scope of representation would generally include filing the petition, preparing and responding to discovery, preparing for and appearing at court hearings, and drafting relevant pleadings.

Even when the lawyer intends to represent the client regarding all aspects of a matter, there are generally some limitations on the breadth of the representation. Using the divorce example, the lawyer may not intend to represent the client for post-decree matters. For criminal matters, the client may have multiple pending cases and the lawyer may be only representing the client in one or some of the matters. In civil or criminal matters, the lawyer may not intend to represent the client for appellate issues that arise out of the litigation. For transactional matters, the lawyer may wish only to represent the client for the transactional matter and not related litigation that arises from the transaction. Accordingly, a best practice, even where the lawyer intends to provide the

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[14] *See* CBA Formal Op. 101, "Unbundling/Limited Scope Representation" (2016), at 2 (hereinafter *Ethics Op. 101*).

full range of legal services for a specific legal matter, is to identify the extent of the representation, including the legal services the representation does not include.

In many civil matters, there may be insurance coverage for defense costs or third-party indemnification costs. There may also be first-party coverage. By including a provision in the fee agreement that excludes from the representation any duty to investigate whether coverage is available, the lawyer clarifies the scope of the representation and also reminds the client that the client should consider and investigate whether coverage exists. When a lawyer is retained by an insurer to represent the insured, to the extent the representation does not include advice about insurance coverage, a best practice is to state that exclusion.[15]

2. Limited Scope Representation

An increasingly popular alternative to full scope representation is limited scope representation, also called unbundled legal services. Colo. RPC 1.2(c) specifically permits limited scope representation.[16] For example, a client may want to limit the lawyer's representation to a specific task, such as drafting a pleading or representing a client at a status conference.[17] The client may also hire a lawyer for a specific issue, such as an insurer hiring a lawyer to represent an insured for matters only related to the insurance coverage.[18] A client might choose limited scope representation because of cost concerns or limited objectives for wanting representation.[19] A

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15 *See* CBA Formal Op. 91, "Ethical Duties of Attorney Selected by Insurer to Represent its Insured" (1993).

16 The local rules for practicing in the Colorado federal district court permit limited scope representation with somewhat different procedures. D.C.Colo.LAttyR 2 (b)(1). The Colorado Appellate Rules applicable to lawyers practicing in the Colorado appellate courts also permit limited scope representation, again, with somewhat different procedures. *See* C.A.R. 5.

17 C.R.C.P. 121, Section 1-1(5) permits a lawyer to provide limited representation to a pro se party involved in a court proceeding.

18 Colo. RPC 1.2, cmt. [6].

19 *Id.*

lawyer may limit the scope of representation because of time constraints or finding a task repugnant or imprudent.[20]

Under Colo. RPC 1.2(c), the two requirements for limited representation are that the representation is reasonable under the circumstances and that the client gives informed consent to being represented on a limited basis. The reasonableness of the scope of representation is determined by the facts surrounding the case, the client, and the lawyer, and are not generally addressed in the fee agreement.[21]

Ensuring a client is properly informed, however, is a key component to constructing a solid fee agreement for unbundled legal services. Informed consent is defined in Colo. RPC 1.0(e) as "the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."[22] A best practice when drafting a fee agreement for limited scope representation is to include a clause stating that a risk of unbundled legal services is that the client might not fully understand the law relevant to the matter even after being

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[20] *Id.*

[21] Ethics Opinion 101 provides guidance regarding the reasonableness requirement of Rule 1.2(c). *See Ethics Op. 101*, at 4-6.

[22] Colo. RPC 1.0, cmt. [6] explains that the communication necessary to obtain informed consent will vary according to the Rule involved and the circumstances requiring the need for informed consent. The lawyer must make reasonable efforts to ensure that the client receives adequate information to make an informed decision. Ordinarily, this includes "a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct, and a discussion of the client's or other person's options and alternatives." *Id.* However, a lawyer is not required to inform a client "of facts or implications already known to the client or other person." *Id.* Clients know why they are hiring a lawyer. Excluding a discussion of the facts from a fee agreement is generally acceptable and minimizes its length by addressing only the material advantages/disadvantages and options/alternatives for the client for the terms requiring informed consent.

thoroughly advised by the lawyer, and that any misunderstanding of the law, the legal process, or the facts is the responsibility of the client and not the lawyer. This clause sets client expectations from the start regarding their responsibilities, and highlights for the client the importance of paying attention and staying involved in their case.

Another way to demonstrate informed consent in a fee agreement is to have the client initial the paragraphs specifically related to the scope and objectives of the limited representation, thereby underscoring the importance of those sections for the client and any subsequent review of the agreement concerning consent.[23]

A fundamental best practice for a limited scope fee agreement is to not only properly define what will be included in the lawyer's services, but also outline what tasks or services the lawyer will not provide. For example, a lawyer representing a client charged with a DUI may define in the fee agreement that the lawyer will provide services up to the arraignment hearing, but specifically exclude representing the client in any plea negotiations, hearings, or trials after that point.

A final best practice in a limited scope agreement is to include a catchall statement explaining that any task or issue not defined within the lawyer's services is presumed to be the client's responsibility. As matters progress, the lawyer can always agree to provide additional services for the client outside the scope of the original fee agreement in a subsequent fee addendum.

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[23] Colo. RPC 1.0, cmt. [7] suggests an affirmative response by the client evidences informed consent.

C. Fees and Costs

As noted above, Colo. RPC 1.5(b) requires a lawyer to provide the basis or rate of the fee in writing, except when the lawyer will continue to charge a regularly represented client on the same basis or rate.[24] Comment [2] to Colo. RPC 1.5 explains that "[i]t 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." Examples that satisfy the rule include stating that the basic rate is an hourly charge, a fixed amount, or an estimated amount; identifying 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.[25]

This section discusses some commonly used fee arrangements. A lawyer may wish to utilize one type of arrangement or a combination of arrangements, keeping in mind that each part of the combination must comply with the rules applicable to that type of fee.

1. Hourly Fee

When a lawyer intends to bill the client at an hourly rate, pursuant to Colo. RPC 1.5(b), the written basis or rate of the fee must include the amount per hour being charged. A good safeguard for the lawyer is to obtain a retainer from the client in advance to bill against, and to have the client replenish the retainer as it is used. If the lawyer is requiring a retainer, a best practice is to address in the fee agreement the amount of the initial retainer, the amount to replenish the retainer, and when that amount is due. The lawyer may choose to address what will happen if the client fails to

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[24] Colo. RPC 1.5, cmt. [2] ("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.")

[25] *Id.*

make required payments to replenish the retainer. The lawyer may also wish to emphasize that the retainer amount does not represent the entirety of the fees in the matter.

In some cases, a lawyer may choose to bill hourly with a maximum capped fee. Doing so gives the client certainty regarding the maximum amount the client will pay. This arrangement differs from the flat fee arrangement, discussed below, in that the lawyer will bill hourly, but with a set limit on the overall amount of the fees. As a best practice, and to ensure both the lawyer and client understand the billing arrangement, the exact terms of a capped fee arrangement should be explained in the fee agreement, including whether costs are included in the capped amount.

2. Flat Fee

An alternative to billing by the hour is to charge the client a flat fee for the lawyer's services. Effective January 31, 2019, Colo. RPC 1.5(h) provides a definition, writing requirements, and a form for flat fee agreements. A flat fee is defined as "a fee for specified legal services for which the client agrees to pay a fixed amount, regardless of the time or effort involved."[26] Importantly, Colo. RPC 1.5(h)(1) states that the terms of a flat fee must be put in writing either before or within a reasonable time after representation begins. Those terms must include:

> (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.

The Rule specifically addresses two of the most common issues found in flat fee agreements prior to its amendment: the failure to include milestones and the failure to include an

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[26] Colo. RPC 1.5(h).

early termination provision. With respect to milestones, if any portion of the fee is to be earned before the conclusion of the representation, then the agreement must indicate the amount to be earned upon the completion of each of the specified tasks or occurrence of the specified events. With respect to early termination, the agreement must describe how a partial fee would be calculated if the representation terminates midway through the completion of a specified task or event. Both provisions are integral to the lawyer being paid throughout the course of the representation and avoiding potential fee disputes with a client.

Regarding best practices, the Rule not only contains a flat fee agreement form, but specifically declares that the form "shall be sufficient" for compliance with the Rules.[27] This form provides the requirements a flat fee agreement must include, but does not preclude other clauses that strengthen this type of agreement.

For example, a best practice for flat fee agreements is to inform clients about the payment process and a lawyer's duty thereto, such as describing how any payment of the flat fee made in advance is handled. Colo. RPC 1.15B(a)(1) requires lawyers to maintain a trust account to deposit "any advance payment of fees that have not been earned or advance payment of expenses that have not been incurred." This Rule can be complied with by stating in the fee agreement, after the descriptions of services that the lawyer is agreeing to perform, that "any flat fee payment will initially be deposited into a trust account and will be withdrawn upon the completion of the services as follows" and then listing the correlating amount earned per service.

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[27] Colo. RPC 1.5(h)(3).

3. Contingent Fee

Another alternative to hourly billing is to bill the client contingent on the outcome of the case. Effective January 1, 2021, Colo. RPC 1.5(c)[28] governs contingent fee agreements, and includes a contingent fee form agreement that "shall be sufficient" to comply with the requirements of Colo. RPC 1.5(c)(1).[29]

Colo. RPC 1.5(c) provides the following provisions must be included in a contingent fee agreement:

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

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[28] Contingent fees previously were addressed in C.R.C.P. 23.3.

[29] Colo. RPC 1.5(c)(7).

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

Colo. RPC 1.5(c) imposes other requirements for a contingent fee agreement, including: (1) that the contingent fee agreement must be signed by the client and the lawyer; and (2) that 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.[30]

The Rule also explains: "No contingent fee agreement shall be enforceable unless the lawyer has substantially complied with all of the provisions of this Rule."[31] While lawyers are not required to use the form agreement provided in Rule 1.5, a best practice is to start by reviewing the form agreement to ensure the lawyer's contingent fee agreement includes the required provisions. The Comments to Rule 1.5(c) also provide guidance regarding the contingent fee agreement. Comment [6A] explains that the scope of the representation should reflect whether the

[30] Colo. RPC 1.5(c)(2) and (3).
[31] Colo. RPC 1.5(c)(6).

representation includes the handling of counterclaims, third-party claims to amounts recovered, and appeals.[32] Comment [6B] explains that a lawyer may include a provision setting forth the lawyer's agreement to reimburse the client for any attorney fees and costs awarded against the client.[33] Comment [6F] addresses the use of conversion clauses and when such a clause is permissible.[34]

4. Subscription Billing and Engagement Retainers

Subscription billing is when a client pays a reoccurring fixed fee on a scheduled basis for specified legal services and is another alternative fee arrangement to the traditional billable hour. For example, the owner of a commercial building may pay a fixed monthly amount to a lawyer for drafting up to three leases per month. This type of billing arrangement is permitted under Colo. RPC 1.5(a) as a reasonable fee because, whether or not the client actually utilizes the specified legal services, there is a likelihood that the acceptance of the particular employment will preclude other employment by the lawyer.[35] In other words, whether or not the commercial business owner needs three leases to be drafted each month, the lawyer has set aside the time (thereby precluding other employment) to ensure that three leases could be drafted upon the client's request.

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32 Colo. RPC 1.5, cmt. [6A].

33 Colo. RPC 1.5, cmt. [6B]. Comment [6B] also notes that: "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."

34 Colo. RPC 1.5, cmt. [6F]. The Comment explains that a conversion clause is a provision notifying the client that the client 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. The Comment also explains that because few clients have the financial means to pay an alternate fee immediately upon termination, and because such a provision could discourage a client from discharging a lawyer, 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. *Id.*

35 Colo. RPC 1.5(a)(2).

It is important to note that subscription fees are different from engagement retainer fees. An engagement retainer fee is paid to ensure that a lawyer will be available for the client if required; the lawyer is then to be compensated separately for any work that is actually performed.[36] For example, a celebrity may want a lawyer to be available for any legal matters concerning unwanted publicity that may arise at any time. The celebrity would pay an engagement retainer fee to have that lawyer effectively be "on call." Any actual services provided by the lawyer while on call, such as filing an injunction to stop publication of photos, would be compensated separately.

Although both types of fee arrangements must comply with Colo. RPC 1.5(a) (fees must be reasonable), 1.5(b) (basis or rate of fee must be communicated in writing), and 1.5(g) nonrefundable fees and retainers are prohibited), the best practice is to be very specific in the fee agreement regarding whether it is a subscription fee or an engagement retainer fee. Subscription fees are not earned until the lawyer confers a benefit on the client or performs a legal service for the client.[37] An engagement retainer fee is earned at the time it is received.[38] Therefore, a subscription fee received in advance should be deposited into a client trust account and transferred into the operating account after it has been earned at the end of the subscription period; conversely, an engagement retainer fee should be deposited directly into the operating account when received because it must not be commingled with client property (in a trust account). Clarifying the type of fee arrangement in the fee agreement reduces possible future claims for mismanaged funds.

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[36] Colo. RPC 1.5, cmt. [16]; *see also* Restatement (Third) of the Law Governing Lawyers § 34 (2000), cmt. E (discussing engagement retainers).

[37] Colo. RPC 1.5(f).

[38] Colo. RPC 1.5, cmt. [17].

5. Costs

As with fees, Colo. RPC 1.5(b) requires that expenses be reasonable and that the rate or basis of the expenses be communicated in writing to the client. In addition to costs that the lawyer incurs outside of the firm, such as expert witness fees, investigator fees, transcript costs, and filing fees, the lawyer may incur "in-house" costs. With respect to in-house costs, Comment [1] to Colo. RPC 1.5 explains:

> 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.

Rule 1.5(c) governing contingent fees makes clear a lawyer must explain to the client in the fee agreement whether the fee includes costs.[39] A best practice for non-contingent fee arrangements is to also explain in the fee agreement whether costs are in addition to the lawyer's fees. Particularly with flat fee arrangements, where the client may incorrectly believe the flat fee covers all the expenses for the representation, clearly addressing this topic in the fee agreement will alleviate that potential confusion.

Many times, the lawyer will not know all the costs in the client's matter at the outset of the representation. The lawyer may have the client pay a cost deposit at the beginning of a case for the express purpose of paying costs as the case progresses, or the lawyer may choose to advance costs for the client and collect payment later. In either scenario, the best practice is to explain clearly in the fee agreement how the costs will be handled.

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[39] Colo. RPC 1.5(c)(1)(v).

If the arrangement is for the client to pay a cost deposit, then a best practice is to explain: (1) the costs will be detailed on each billing statement as they are incurred and deducted from the cost deposit; (2) if the costs exceed the original deposit amount, then the client agrees to replenish the cost deposit within a specified period of time; and (3) any unused deposit funds will be returned to the client at the end of the case.

Where the lawyer intends to advance the costs, a best practice is to include a provision authorizing the lawyer to incur costs in the client's matter up to a certain amount without prior approval from the client. For costs that exceed that amount, the provision should explain that the lawyer will seek authorization. With this arrangement, costs would either be billed against the retainer or billed separately to the client.

6. Billing

With respect to billing, a best practice is to state in the fee agreement the frequency with which the lawyer will provide invoices.[40] Pursuant to the Colo. RPC 1.15C, a lawyer is required to reconcile the client ledgers to the trust account statements no less than quarterly. A best practice, however, is to complete the reconciliation monthly and invoice the client accordingly. Monthly billing keeps the client updated regarding the client's fees. It also enables the lawyer to better understand whether there are any issues with the client timely paying the fees and costs billed. Monthly billing also generally is consistent with how the client is billed for other services.

Another best practice to address in the fee agreement regarding billing is the client's obligation to timely pay the lawyer's bill and to raise promptly with the lawyer any concerns regarding the bill. The lawyer may also wish to explain in the fee agreement that failure to pay the

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[40] For flat fee agreements and contingent fee matters, while periodic invoices may not be practical for tracking fees, a lawyer may wish to consider sending invoices to advise the client of what work was completed.

bill within a specified period of time is a basis for the lawyer moving to withdraw from the case or terminating the lawyer-client relationship pursuant to the Rules.[41]

If a lawyer intends to charge interest for unpaid fees and expenses, the client must receive notice of the lawyer's intent to do so and the amount charged must be reasonable.[42] A best practice is for the lawyer to include a disclosure in the fee agreement explaining that interest will be charged, the amount of interest charged, and the period for which interest will be imposed, so the issue of delinquent or missed payment is addressed before it arises.

7. Prohibitions

While management of client funds is outside the scope of this opinion, it is important to note provisions regarding funds handling that could relate to fee agreements and are prohibited by the Rules. Pursuant to Colo. RPC 1.5(f), fees are not earned until the lawyer confers a benefit on the client or performs a legal service for the client. A lawyer may not contract around this requirement in a fee agreement by having the client agree otherwise. Likewise, nonrefundable fees and nonrefundable retainers are prohibited by Colo. RPC 1.5(g) so lawyers also may not contract around this prohibition. In accordance with Rules 1.5(f) and (g), a best practice for all fee arrangements is to explain in the fee agreement that any unearned funds in the possession of the lawyer will be deposited in a trust account[43] until earned, and that any unearned portion will be returned.[44]

Other provisions that can be problematic are those that limit the lawyer's liability for malpractice to a client. Colo. RPC 1.8(h) forbids a lawyer from prospectively limiting a lawyer's

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[41] Colo. RPC 1.16(b)(5).

[42] Colo. RPCs 1.4 and 1.5; *see also* CBA Formal Op. 66, "Imposition of Interest or Finance Charges on Client Accounts," (2016) (providing guidance on charging interest on unpaid fees and communicating to the client when the lawyer intends to charge interest on unpaid fees).

[43] Colo. RPC 1.15A.

[44] Colo. RPC 1.16(d).

liability to a client for malpractice unless the client is independently represented when entering the fee agreement. A fee agreement also may not bar a client from filing a request for investigation with the Office of Attorney Regulation Counsel.

D. Communication

Colo. RCP 1.4 enumerates a lawyer's duties to communicate effectively with a client. The fee agreement can be instrumental in defining this duty for the client, thereby setting reasonable expectations at the outset for the lawyer-client relationship. As a best practice, the fee agreement is a good place to establish the client's understanding of the mode and frequency of communication with the lawyer. For example, the fee agreement may address the extent the lawyer will primarily email or text with the client, or if the lawyer prefers not to use these modes of communication.

The fee agreement is also a good place to discuss the frequency the client will be communicating with the lawyer's staff. A best practice is to emphasize to the client that although the lawyer is prepared to be available to discuss the client's matter and to answer the client's questions, the client will be charged for these communications. Another best practice is to include a provision that explains the client's obligations to promptly respond to the lawyer's requests for information and to keep the lawyer informed about developments in the matter.

Yet another best practice is to address both the lawyer and client's obligations regarding confidentiality of their communications. This ensures the client understands the lawyer's duty of confidentiality pursuant to Colo. RPC 1.6, as well as the consequences of the client revealing attorney-client privileged communications to third persons.

E. File Retention, Return, and Destruction

With respect to how the file will be maintained during the representation, a best practice is to explain the lawyer's file retention process in the fee agreement, including whether the file is

stored electronically and how the lawyer may wish to receive documents from the client, such as in paper or electronically.

Regarding returning the client's file, a lawyer has an ethical obligation to surrender papers and property to which the client is entitled, as set forth in Colo. RPC 1.16(d):

> Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect the client's interests, such as … surrendering paper and property to which the client is entitled….

Thus, the file belongs to the client, not the lawyer.[45] As such, a best practice is to address the process for returning the client file in the fee agreement, including what documents comprise the file and the format in which the file will be provided.[46] Although Rule 1.16(d) specifies that the file belongs to the client, Rule 1.16A requires the lawyer to retain a copy of the file to comply with the lawyer's professional obligations for file retention.

As such, a best practice regarding file retention is to address how long the lawyer will maintain the file after the representation ends. Colo. RPC 1.16A sets forth specific parameters for file retention following the conclusion of the representation for both civil and criminal matters, including the circumstances in which the lawyer may destroy the file. The Rule also explains that the lawyer may satisfy the lawyer's duties pertaining to file destruction by providing notice of the lawyer's policy to the client through a writing, such as in the fee agreement.[47] Accordingly, a best practice is to include a provision in the fee agreement advising the client of the circumstances in which the lawyer intends to destroy the file.

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[45] *See* CBA Formal Op. 104, "Surrender of File to the Client Upon Termination of the Representation" (2018) (explaining what constitutes a client's file) (hereinafter *Ethics Op. 104*); *see also In re Estate of Rabin*, 2020 CO 77, ¶ 23 (Nov. 2, 2020) (explaining the duty to provide the client with the file pursuant to Colo. RPC 1.16(d) is grounded in ethics and not property law).

[46] *Ethics Op. 104*, p. 11, n. 15.

[47] Colo. RPC 1.16A(d).

F. Termination

Colo. RPC 1.16(d) explains a lawyer's duty when representation terminates, and provides that "[u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect the client's interests…"

With respect to terminating the representation, a best practice for fee agreements is to inform the client of the client's right to terminate the lawyer-client relationship at any time.[48] Because the client cannot be penalized for terminating the representation, a lawyer should avoid any provisions that act to penalize the client for ending the representation, such as increasing the fees should the client elect to terminate the lawyer.[49]

Another best practice is for the lawyer to explain that the lawyer also may terminate the representation or move to withdraw. The lawyer may wish to give the client notice of specific reasons the lawyer may terminate the lawyer-client relationship or move to withdraw, such as the client's failure to pay,[50] the client's lack of candor, the client's lack of cooperation, or the client insisting the lawyer engage in unethical conduct.

With respect to termination and fees, as noted above, for both flat fees and contingent fees, the Rules governing those fee arrangements require the lawyer to address in the fee agreement how

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[48] Colo. RPC 1.16, cmt. [4] ("A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services."); *see also Olsen and Brown v. City of Englewood*, 889 P.2d 673, 676-677 (Colo. 1995) (discussing client's right to discharge lawyer).

[49] Colo. RPC 1.5(g); *see also People v. Piccone,* 459 P.3d 136, 152 (Colo. O.P.D.J. 2020) (finding fee agreement that allowed lawyer to reverse discretionary write-offs if client terminated lawyer's services violated Colo. RPC 1.5(g) because it purported to restrict the client's right to terminate the lawyer's representation).

[50] *See* Colo. RPC 1.16(b)(5); *see also* Colo. RPC 1.16*,* cmt. [8] ("A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.").

fees will be calculated if the representation ends before the specified tasks or events occur,[51] or before the contingency occurs.[52] With respect to other fee arrangements, a best practice is to explain the client will be responsible for all costs and fees incurred up to the point of termination, and further, that any unearned fees or unused cost monies will be returned to the client.

G. Third Party Considerations

There are many instances for which the fee agreement must address individuals or entities other than the people actually signing the agreement. These third parties can be associated with either the lawyer or the client. The general principle behind identifying third parties in fee agreements is to evidence the client's informed consent as to the roles, effects, and limitations third parties may have upon the lawyer-client relationship covered by the fee agreement. While not an exhaustive list, common scenarios requiring mention of third parties in fee agreements are discussed below. When third parties are involved, a lawyer also should consider issues related to Colo. RPC 1.6 (confidentiality of information) and Colo. RPC 1.7 (conflicts of interest).

1. Third Party Payment

It is not uncommon for lawyers to be paid, in whole or in part, by third parties. These parties could be a client's relative, friend, indemnitor (such as an insurance company) or a co-client (such as a corporation and one or more of its employees being sued together). Third-party payers, however, may have interests that differ from the client, including minimizing the cost of representation and in learning how the representation is progressing. To safeguard the client in third-party payer situations, Colo. RPC 1.8(f) specifies that proper receipt of payment from third parties is contingent upon a client giving informed consent, there being "no interference with the

[51] Colo. RPC 1.5(h)(iv).
[52] Colo. RPC 1.5(c)(1)(iv).

lawyer's independence of professional judgment or with the client-lawyer relationship," and confidential information is protected from disclosure.[53] Although these contingencies are not required to be in writing, a best practice is to memorialize the lawyer's compliance with Rule 1.8(f) in the fee agreement.

A fee agreement may sufficiently show that a client has given informed consent about third-party payments by simply referencing the fact that the payment is being made by a third party and the identity of the third-party payer.[54] Other best practices pertaining to the requirements of Colo. RPC 1.8(f) include defining the scope of the duties owed to and services provided to the client, the absence of professional duties owed to the third party, and the specific terms of the fee arrangement with the third party.[55]

While addressing third party payments in the fee agreement demonstrates informed consent, an alternative best practice to avoid third party payment issues is to have the third party give the money to the client so that payment comes directly from the client. Similarly, a best practice is to state in the fee agreement that all communication regarding billing, including any refunds of fees or costs, will be made directly to the client, regardless from whom payment originated.

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[53] These requirements are defined in Colo. RPC 1.0(e) (informed consent) and established by Colo. RPC 5.4(c) (independent judgment) and Colo. RPC 1.6 (confidentiality).

[54] If, however, the third-party payment may create a conflict of interest for the lawyer under Colo. RPC 1.7 (for example, when the third party is a co-client), then the lawyer must obtain informed consent, confirmed in writing, from each affected client. A best practice for memorializing informed consent regarding a conflict is to address the issue in a separate agreement, both to highlight the issue for the client and to preserve the confidentiality of the terms of the fee arrangement.

[55] *See* CBA Formal Op. 129, "Ethical Duties of Lawyer Paid by One Other Than the Client," (2017) (providing additional guidance on a lawyer's ethical duties when lawyer's fees are paid by a third party).

2. *Succession Planning*

Colo. RPC 1.3 indicates that the duty of diligence may require solo practitioners to engage in succession planning in the event of the lawyer's death or disability.[56] A main component of succession planning is to designate another lawyer to review client files and notify each client of the lawyer's death or disability. Because a third-party lawyer may be contacting another lawyer's clients under these circumstances, a best practice is to prepare clients of this possible contact in the fee agreement, including the third-party lawyer's name.

3. *Third Party Lawyers*

a. Consulting Lawyers

"A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation."[57] However, Colo. RPC 1.6(b) lists circumstances when a lawyer may reveal client information to the extent that a lawyer reasonably believes is necessary without the client's consent. One such instance is "to secure legal advice about the lawyer's compliance with these Rules, other law or a court order."[58] For example, Colo. RPC 1.6(b)(5) authorizes disclosures that a lawyer reasonably believes are necessary to seek advice involving the lawyer's duty to provide competent representation under Colo. RPC 1.1.[59]

For new lawyers or lawyers seeking to expand into new practice areas, mentorship is vital to providing the client competent representation. Commentary to Colo. RPC 1.6 indicates that disclosing information for the purpose of advice is impliedly authorized in most situations.

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56 Colo. RPC 1.3, cmt. [5].
57 Colo. RPC 1.6, cmt. [2].
58 Colo. RPC 1.6(b)(5).
59 Colo. RPC 1.6, cmt. [9].

Nonetheless, a best practice for newer lawyers is to include a provision in the fee agreement explaining that to provide the client with the highest quality of representation, the possibility exists of seeking advice from other counsel.

b. Fee Splitting

Colo. RPC 1.5(d) mandates that a client must agree in writing if lawyers who are not in the same firm are to divide a fee.[60] The Rule provides:

> (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.

These requirements only apply, however, when the third-party lawyer (the lawyer who did not generate the fee agreement) is to be paid in conjunction with the lawyer entering into the fee agreement with the client.

"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."[61] The fee is literally split between the lawyers; not paid to one lawyer who then pays the other lawyer as a contractor. For example, if lawyers from different firms were to split a fee in a personal injury case proportionally, then the client's agreement to such a fee arrangement must be addressed in the fee agreement. Likewise, if two solo practitioners are co-counsel on a medical malpractice case, then the client's consent should be included in the fee agreement.

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60 Colo. RPC 1.5(d)(2).
61 Colo. RPC 1.5, cmt. [7].

c. Contract Lawyers

Contrary to a fee splitting arrangement, when the compensation of the third-party lawyer is independent from the payment of the fee by the client, then Colo. RPC 1.5(d) is not applicable and client consent is not required. For example, a client's consent is not required for a lawyer performing contract work on a case for an hourly rate because the contracting lawyer's compensation is not dependent upon the client's payment of the client's bill.[62] Payment for the contract lawyer is an expense to the client; not income to the lawyer. As with other overhead costs, the contract lawyer should get paid regardless of whether the client pays the client's bill. Nonetheless, for the sake of transparency, a best practice is to reference the possible use of contracted assistance in the fee agreement, including the contracting lawyer's name, if known.

Conclusion

Many clients have never worked with a lawyer before. The written fee agreement can be an integral part of establishing a strong lawyer-client relationship. Best practices are to go beyond addressing the basic fee arrangement with the client and to include the foundational elements discussed in this opinion.

[62] *See In re Marriage of Ziemann*, 574 N.E.2d 767, 770 (Ill. App. 1991); ABA Comm. on Ethics and Prof. Resp., Formal Op. No. 88-356, "Temporary Lawyers," (1988).

Addendum 1:
FEE AGREEMENT CHECKLIST

Must Do:

- ☑ Communicate the basis or rate of fee in writing, specifying the amount per hour or per service for:
  - o Primary lawyer
  - o Other lawyers and staff
  - o Changes to the basis or rate of fee or expenses
- ☑ Communicate the basis or rate of costs and expenses in writing
- ☑ Communicate the scope of the representation in writing
- ☑ For flat fee agreements, include the following terms in writing:
  - o Description of the services the lawyer agrees to perform
  - o The amount to be paid to the lawyer and the timing of payment for the services to be performed
  - o 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
  - o 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
- ☑ For contingent fee agreements, include the following terms in writing:
  - o The names of the lawyer and the client
  - o 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
  - o 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
  - o 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
  - o 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

    - A statement regarding the possibility that a court will award costs or attorney fees against the client
    - 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
    - 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
    - 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
    - Indicate whether the scope of representation includes the handling of counterclaims, third-party claims to amounts recovered, and appeals
    - Signed by the client and the lawyer
- ☑ Obtain client's consent in writing to divide a fee between lawyers who are not in the same firm

Best Practices:

- ☑ Create a written fee agreement
    - Have client sign and date fee agreement
    - Write separate fee addendum for modifications to original fee agreement (rather than rewriting original fee agreement)
- ☑ Use plain language
- ☑ Identify the client
    - Specify capacity of representation (personal representative, beneficiary, entity, etc.)
- ☑ When describing the scope of representation:
    - Identify what services are included in the representation
    - Identify what services are not included in the representation
- ☑ With limited scope representation:
    - Have client initial terms demonstrating informed consent
    - Identify what services or tasks are included in the limited scope
    - Identify what services or tasks are not included in the limited scope
    - Include clause explaining the inherent risks of limited scope representation
    - Include catch-all clause explaining any service or task not defined in the fee agreement is presumed to be the client's responsibility
- ☑ Outline terms for retainer
    - Amount of initial retainer

- Amount to replenish retainer
  - When payments are due
  - Consequences of not replenishing retainer
  - Emphasize retainer does not represent the entirety of the fee in the matter
- ☑ Identify the exact terms for fee arrangement
  - Hourly rate
  - Retainer
  - Contingent fee
  - Flat fee
  - Expenses
  - Invoicing (frequency and process)
  - Interest charged
  - Unearned fees or cost deposits will be returned to the client
- ☑ For flat fee agreements:
  - Use (or review) the form included in Colo. RPC 1.5(h)
  - Explain payment process (funds deposited into trust until earned)
- ☑ For contingent fee agreements:
  - Use (or review) the form included in Colo. RPC 1.5(c)
- ☑ With fee agreements where payment for a specific service is collected on a reoccurring schedule, specify whether the fee is being paid for a subscription service or whether it is being paid as an engagement retainer
- ☑ Specify how costs and expenses will be handled, including whether:
  - Costs are in addition or included in fee for services
  - Costs are paid out of a cost deposit or retainer
  - Replenishing a cost deposit
  - No prior approval necessary for costs up to a certain amount
- ☑ Set communication expectations
  - Mode and frequency of communication with lawyer and staff
  - Cost of communication
  - Response time from lawyer and client
  - Sharing of information and developments
  - Confidentiality
- ☑ Address file retention, return, and destruction processes
  - File storage (paper, electronic)
  - What documents are considered part of the client file
  - Length of file retention
  - Circumstances triggering file destruction
  - Manner in which the file will be returned
- ☑ Explain termination rights
  - Client may end representation at any time for any reason
  - Lawyer may end representation under specified circumstances
  - Client responsible for all fees and costs up to the time of termination
- ☑ When receiving payments from third parties:

  - Identify the third party as the source of payment
  - Define the scope of duties owed to and services provided to the client
  - Clarify the absence of professional duties owed to the third party
  - Specify terms of the fee arrangement with the third party
  - Consider having the third party give the money to the client so that payment comes directly from the client
  - State that all communication regarding billing will be made directly to the client regardless of the source of payment
- ☑ Name the lawyer who is designated in the lawyer's succession plan
- ☑ Identify the other lawyer with whom the lawyer may consult
- ☑ Reference the possible use of contracted assistance with case and identify the contracted lawyer, if known

Do not:

- ☒ With flat fee agreements:
  - Fail to include milestones
  - Fail to include early termination provision
- ☒ Include provision that fees may be earned before a benefit is conferred upon the client
- ☒ State that a fee or a retainer in nonrefundable
- ☒ Penalize the client for discharging the lawyer
- ☒ Prospectively limit the lawyer's liability
- ☒ Threaten to withhold client file

Addendum 2
USEFUL RESOURCES

Cases

Olsen and Brown v. City of Englewood, 889 P.2d 673 (Colo. 1995).

People v. Piccone, 459 P.3d 136 (Colo.O.P.D.J. 2020)

In re Marriage of Ziemann, 574 N.E.2d 767, 770 (Ill. App. 1991).

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ABA Comm. on Ethics and Prof. Resp., Formal No. 02-425, "Retainer Agreement Requiring Arbitration of Fee Disputes and Malpractice Claims" (2002).

CBA Formal Op. 66, "Imposition of Interest or Finance Charges on Client Accounts,: (Oct. 1984) (Revised Oct. 2016).

CBA Formal Op. 85, "Release and Settlement of Legal Malpractice Claims," (May 1990) (addenda issued 1995 and 1998).

CBA Formal Op. 91, "Ethical Duties of Attorney Selected by Insurer to Represent its Insured," (Jan. 1993) (addendum issued 2013).

CBA Formal Op. 100, "Use of Conversion Clauses in Contingent Fee Agreements," (June 1997).

CBA Formal Op. 101, "Unbundling/Limited Scope Representation," (May 2016).

CBA Formal Op. 104, "Surrender of Papers to the Client Upon Termination of the Representation," (April 1999) (Revised Sept. 2018).

CBA Formal Op. 114, "Responsibilities of Respondent Parents' Attorneys in Dependency and Neglect Proceedings," (Oct. 2006) (Revised June 2010) .

CBA Formal Op. 129, "Ethical Duties of Lawyer Paid by One Other Than the Client," (March 2017).

CBA Formal Op. 134, "Ethics of Preparing Agreements for Jointly Represented Clients in Litigation to Make Collective Settlement Decisions," (Jan. 2018).

CBA Formal Op. 135, "Ethical Considerations in the Joint Representation of Clients in the Same Matter or Proceeding," (Feb. 2018).

CBA Formal Ethics Opinion 139, "Division of Fees Between Firms and Lawyers who are 'Of Counsel,'" (Dec. 2019).

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James Greiner, Dalié Jiménez, and Lois Lupica, *Self-Help, Reimagined*, 92 IND. L. J. 1119, 1172 (2017).

Helen Gunnarsson, *Avoiding Withdrawal Pains*, ILL. BAR J. (May 2010).

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Marian Rice, *Engagement Letters: Beginning a Beautiful Relationship*, L. PRAC. MAG. (May/June 2013).

Alec Rothrock, *Engagement Retainers: Handle with Care*, THE DOCKET (Sept. 22, 2015).

Restatement (Third) of the Law Governing Lawyers § 34 (2000) cmt. e.

Practice Guides

ACTEC Guide to Engagement Letters, available at http://www.actec.org/assets/1/6/ACTEC_2017_Engagement_Letters.pdf

CBA's Successful Business Planning for the Modern Law Practice, available at: https://www.cobar.org/For-Members/Modern-Law-Practice-Initiative/Successful-Business-Planning-for-the-Modern-Law-Practice-Chapter-Download

Colorado Lawyer Self-Assessment, Section 7, Charging appropriate fees and making appropriate disbursements, available at: http://coloradosupremecourt.com/AboutUs/LawyerSelfAssessmentProgram.asp

Fee Agreements: Best Practice Guide for Lawyers in Massachusetts, available at: https://www.masslomap.org/fee-agreement-best-practice-guide-lawyers-templates/