

## FEES AND FEE AGREEMENT CHECKLIST

**Except in circumstances where a lawyer has previously represented a client, a lawyer is required to communicate to a client the base and rate of a fee in writing. *Colo. RPC 1.5* It is in the interest of both the lawyer and client to have this communication take the form of a formal written fee agreement signed by both. This protects both the client and the lawyer. In considering what provisions such an agreement should contain, counsel should considering addressing the following questions:**

- Have I identified the client properly?
  - If the client is an entity, does the person with whom I am dealing have the authority to bind the client?
  - If someone other than the client is paying my fee, have I a separate understanding reduced to writing with that person? And has the client consented? Does the separate understanding make it clear that only the client controls the representation?
  - Does the client have guidelines or policies that require in house approval of my fee agreement?
- Have I identified the client properly?
- If I have represented the client before, is there a good reason not to have a new fee agreement for the new matter?
- Have I adequately described the scope of the representation?
  - In a litigation matter, have I excluded my obligation to appeal a matter or engage in post-conviction or post-dismissal litigation in a criminal matter?
  - Have I limited the scope of my representation, e.g., in an entity formation am I going to be giving tax or securities advice?
  - If I am doing an unbundled representation, are my responsibilities clearly defined?
- Are my fees clearly explained?
  - If my fees may be recoverable from another party, does my agreement make it clear to the client whether they are still responsible?

- Have I avoided any interpretation of a fee as an unearned fee such as a signing bonus?
- If the agreement involves a retainer, have I explained how unearned fees will be held in trust prior to being earned?
  - If a COLTAF account is to be employed, have I explained that the client will not earn interest on the funds?
- For flat fee agreements, have I clearly defined how I earn my fee?
  - Have I set milestones for earning increments?
  - And, have I appropriately provided for what happens if the representation is terminated before the goal of the representation is accomplished?
  - Make sure I have not included any “non-refundable” fee language.
- For a contingent fee agreement, have I complied with Chapter 23.3 of the Civil Rules of Procedure?
  - Does my contingent fee agreement clearly define the gross recovery that is subject to the percentage I earn?
  - Is it clear that my client is responsible for costs and expenses even if the client recovers nothing?
- Have I clearly described costs and expenses?
  - If I am advancing costs or expenses, when is my client obligated to reimburse me?
  - Is it clear that the client is responsible for certain costs like postage, copying, depositions, transcripts, service of process?
  - Have I considered a cost retainer to insure that persons providing services will be paid since it would otherwise be my responsibility.
- Is it clear what is expected of client?
  - Truthful information, timely communication, updated address?
- Have I described how I will communicate with client, and have I attempted to manage their communication expectations well?

- Will the client need to designate someone else with whom I can communicate on their behalf and are there any confidentiality problems that can be anticipated?
  - Does the fee agreement permit communicating by email or text as a confidential method of communication in the client's circumstances?
  - Have I addressed special confidentiality issues in the fee agreement, such as permission to communicate with or disclose confidences to family, parents or guardians?
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- Have I been careful not to promise results, or guarantee an outcome?
  - If I am working with an attorney on the case who is outside my firm, has the attorney consented, and are the responsibilities of each lawyer been clearly defined?
  - In the agreement, do I reserve the right to consult with other attorneys or authorities, arrange for coverage by other attorneys, or enter into co-counsel relationships with other attorneys as I deem necessary.
  - Have I described how other lawyers or paralegals who work on the matter be compensated?
  - Have I explained how the client's file will be handled at the end of the representation?
  - If my client has the proposed fee agreement for consideration, have I stated when I must have a signed fee agreement in order to commence work?
    - Is time of the essence? If I must have money before work begins, have I made this clear to the potential client?
    - Do I have a system to track outstanding proposed fee agreement that have not been signed by the client?
    - If I must have money before commencing work, have I made this clear?
  - Have both my client and I signed the fee agreement?

- Do I have an appropriate arbitration clause in my fee agreement?
- Do I adequately explain to my client the circumstances under which I may be forced to ask the court for permission to withdraw, or when I have to do so in a non-litigation matter?
- Does the fee agreement explain the rights the client and I have to withdraw from or terminate the relationship based on certain events or conduct, such as non-payment or non-cooperation?
- Does the fee agreement grant permission to disclose confidential information the client may provide me when I reasonably believe that such disclosure would assist in achieving a satisfactory result in the case?