

RULE CHANGE 2020(30)

COLORADO RULES OF PROFESSIONAL CONDUCT

Rule 1.5. Fees

(a) – (b) [NO CHANGE]

~~(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is otherwise prohibited. A contingent fee agreement shall meet all of the requirements of Chapter 23.3 of the Colorado Rules of Civil Procedure, “Rules Governing Contingent Fees.” A “contingent fee” is a fee for legal services under which compensation is to be contingent in whole or in part upon the successful accomplishment or disposition of the subject matter of the representation.~~

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

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

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

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

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

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

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

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

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

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

- (2) A contingent fee agreement must be signed by the client and the lawyer.
- (3) The lawyer shall retain a copy of the contingent fee agreement for seven years after the final resolution of the case, or the termination of the lawyer's services, whichever first occurs.
- (4) No contingent fee agreement may be made
- (i) for representing a defendant in a criminal case,
- (ii) in a domestic relations matter, where payment is contingent on the securing of a divorce or upon the amount of maintenance or child support, or property settlement in lieu of such amounts,
or
- (iii) in connection with any case or proceeding where a contingency method of a determination of attorney fees is otherwise prohibited by law.
- (5) Upon conclusion of a contingent fee matter, the lawyer shall provide the client a written disbursement statement showing the amount or amounts received, an itemization of costs and expenses incurred in handling of the matter, sums to be disbursed to third parties, including lawyers in other law firms, and computation of the contingent fee.
- (6) No contingent fee agreement shall be enforceable unless the lawyer has substantially complied with all of the provisions of this Rule.
- (7) The form Contingent Fee Agreement following the comment to this Rule may be used for contingent fee agreements and shall be sufficient to comply with paragraph (c)(1) of this Rule. The authorization of this form shall not prevent the use of other forms consistent with this Rule. Nothing in this Rule prevents a lawyer from entering into an agreement that provides for a contingent fee combined with one or more other types of fees, such as hourly or flat fees, provided that the agreement complies with this Rule insofar as the contingent fee is concerned.

(d) – (h) [NO CHANGE]

COMMENT

[1] – [2] [NO CHANGE]

~~**[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.**~~ Repealed.

~~**[3A] Repealed.**~~

[4] – [5] [NO CHANGE]

Contingent Fees

~~[6] [No Colorado comment.]~~ Contingent fees, whether based on the recovery or savings of money, or on a nonmonetary outcome, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. *E.g.*, 28 U.S.C. § 2678 (limiting percentage of fees in Federal Tort Claims Act cases); C.R.S. § 8-43-403 (limiting percentage of contingent fee in certain worker's compensation cases). The prohibition on contingent fees in certain domestic relations matters does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support, maintenance or other financial orders because such contracts do not implicate the same policy concerns.

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

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

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

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

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

[6F] A conversion clause is a provision in a contingent fee agreement that notifies clients they may be liable for attorney fees in quantum meruit or on another alternate basis if the contingent fee agreement is terminated before the occurrence of the contingency. See, form Contingent Fee

Agreement, ¶ (4). A conversion clause that requires payment of the alternate fee immediately upon termination, and regardless of the occurrence of the contingency, would discourage most clients from discharging their lawyer. Few clients have the financial means to pay a contingent fee from their own resources, with no guarantee of replenishment by a recovery from a third party. Therefore, a conversion clause that requires payment of the alternate fee immediately upon termination may be appropriate only if (a) the client is sophisticated in legal matters, has the means to pay the fee regardless of the occurrence of the contingency, and has specifically negotiated the conversion clause; and (b) the contingent fee agreement expressly requires payment of the alternate fee immediately upon termination.

[7] – [18] [NO CHANGE]

FORM CONTINGENT FEE AGREEMENT

Dated _____, 20____

_____ (Client), retains _____ (Lawyer) to perform the legal services described in paragraph (1) below. The Lawyer agrees to perform them faithfully and with due diligence.

(1) _____ The claim, controversy, and other matters with reference to which the services are to be performed are: _____. The representation (will) (will not) [indicate which] include the handling of counterclaims, third-party claims to amounts recovered, and appeals.

(2) _____ The contingency upon which compensation is to be paid is the Client's recovery of funds by settlement or judgment.

(3) _____ The Client will pay the Lawyer _____ percent of the (gross amount collected) (net amount collected) [indicate which]. ("Gross amount collected" means the amount collected before any subtraction of expenses and disbursements) ("Net amount collected" means the amount of the collection remaining after subtraction of expenses and disbursements [including] [not including] costs or attorney fees awarded to an opposing party and against the Client.) [indicate which]. "The amount collected" (includes) (does not include) [indicate which] specially awarded attorney fees and costs awarded to the Client and against an opposing party.

(4) _____ The Client is not to be liable to pay compensation otherwise than from amounts collected for the Client by the Lawyer, except as follows: In the event the Client terminates this contingent fee agreement without wrongful conduct by the Lawyer which would cause the Lawyer to forfeit any fee, or if the Lawyer justifiably withdraws from the representation of the Client, the Lawyer may ask the court or other tribunal to order that the Lawyer be paid a fee based upon the reasonable value of the services provided by the Lawyer. If the Lawyer and the Client cannot agree how the Lawyer is to be compensated in this circumstance, the Lawyer will request the court or other tribunal to determine: (1) whether the Client has been unfairly or

unjustly enriched if the Client does not pay a fee to the Lawyer; and, if so (2) the amount of the fee owed, taking into account the nature and complexity of the Client's case, the time and skill devoted to the Client's case by the Lawyer, and the benefit obtained by the Client as a result of the Lawyer's efforts. Any such fee shall be payable only out of the gross recovery obtained by or on behalf of the Client and the amount of such fee shall not be greater than the fee that would have been earned by the Lawyer if the contingency described in this contingent fee agreement had occurred.

(5) A court or other tribunal may award costs or attorney fees to an opposing party and against the Client.

(6) The Client will be liable to the lawyer for reasonable expenses and disbursements. Such expenses and disbursements are estimated to be \$ _____. The Client authorizes the Lawyer to incur expenses and make disbursements up to a maximum of \$ _____. The Lawyer will not exceed this limitation without the Client's further written authority. The Client will reimburse the Lawyer for such expenditures (upon receipt of a billing), (in specified installments), (upon final resolution), (etc.) [indicate which].

(7) If the Lawyer wishes to hire a lawyer in another firm to assist in the handling of a matter (called an "associated counsel"), the Lawyer will promptly inform the Client in writing of the identity of the associated counsel and that the hiring of associated counsel will not increase the contingent fee, unless the Client otherwise agrees in writing. The Client has a right to disapprove the hiring of associated counsel and to terminate the employment of associated counsel for any reason.

(8) Other persons or entities may have a right to be paid from amounts recovered on the Client's behalf. The Client (authorizes) (does not authorize) [indicate which] the Lawyer to pay from the amount collected the following: (e.g., all physicians, hospitals, subrogation claims and liens, etc.). The Lawyer may be legally required to pay the claims of third parties out of any monies collected for the Client, and not to disburse them to the Client. However, if the Client disputes the amount or validity of the third-party claim, the Lawyer may deposit the funds into the registry of an appropriate court for determination. Any amounts paid to third parties (will) (will not) [indicate which] be subtracted from the amount collected before computing the amount of the contingent fee under this agreement.

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.

-
(Signature of Client)

-

-

(Signature of Attorney)

-

-

-

-

FINAL DISBURSEMENT STATEMENT FOR CONTINGENT FEE AGREEMENTS

GROSS RECOVERY

\$ _____

-

Itemization of expenses incurred in handling of case:

_____ \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

Total Expenses \$ _____

Amount of Expenses

Advanced by Lawyer

\$ _____

Amount of Expenses

Paid by Client

\$ _____

NET RECOVERY

-

\$ _____

Computation of Contingent Fee:

_____ % of (Net) (Gross)

Recovery = \$ _____

Total Fee

(and expenses advanced

by Lawyer)*

DISBURSEMENT TO CLIENT

\$ _____

-
* (If fee is on "Net Recovery" and Lawyer has advanced expenses which are being reimbursed from the "gross recovery.")

-
(Signature of Lawyer)

-
(Signature of Client)

By signature Client acknowledges receipt of a copy of this disbursement statement.

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FORM FLAT FEE AGREEMENT

[NO CHANGE]

Rule 1.5. Fees

(a) – (b) [NO CHANGE]

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

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

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

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

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

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

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

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

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

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

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

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

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

- (4) No contingent fee agreement may be made
- (i) for representing a defendant in a criminal case,
 - (ii) in a domestic relations matter, where payment is contingent on the securing of a divorce or upon the amount of maintenance or child support, or property settlement in lieu of such amounts, or
 - (iii) in connection with any case or proceeding where a contingency method of a determination of attorney fees is otherwise prohibited by law.
- (5) Upon conclusion of a contingent fee matter, the lawyer shall provide the client a written disbursement statement showing the amount or amounts received, an itemization of costs and expenses incurred in handling of the matter, sums to be disbursed to third parties, including lawyers in other law firms, and computation of the contingent fee.
- (6) No contingent fee agreement shall be enforceable unless the lawyer has substantially complied with all of the provisions of this Rule.
- (7) The form Contingent Fee Agreement following the comment to this Rule may be used for contingent fee agreements and shall be sufficient to comply with paragraph (c)(1) of this Rule. The authorization of this form shall not prevent the use of other forms consistent with this Rule. Nothing in this Rule prevents a lawyer from entering into an agreement that provides for a contingent fee combined with one or more other types of fees, such as hourly or flat fees, provided that the agreement complies with this Rule insofar as the contingent fee is concerned.

(d) – (h) [NO CHANGE]

COMMENT

[1] – [2] [NO CHANGE]

[3] Repealed.

[4] – [5] [NO CHANGE]

Contingent Fees

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

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

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

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

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

[7] – [18] [NO CHANGE]

FORM CONTINGENT FEE AGREEMENT

Dated _____, 20__

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(2) The contingency upon which compensation is to be paid is the Client's recovery of funds by settlement or judgment.

(3) The Client will pay the Lawyer ___ percent of the (gross amount collected) (net amount collected) [indicate which]. ("Gross amount collected" means the amount collected before any subtraction of expenses and disbursements) ("Net amount collected" means the amount of the collection remaining after subtraction of expenses and disbursements [including] [not including] costs or attorney fees awarded to an opposing party and against the Client.) [indicate which]. "The amount collected" (includes) (does not include) [indicate which] specially awarded attorney fees and costs awarded to the Client and against an opposing party.

(4) The Client is not to be liable to pay compensation otherwise than from amounts collected for the Client by the Lawyer, except as follows: In the event the Client terminates this contingent fee agreement without wrongful conduct by the Lawyer which would cause the Lawyer to forfeit any fee, or if the Lawyer justifiably withdraws from the representation of the Client, the Lawyer may ask the court or other tribunal to order that the Lawyer be paid a fee based upon the reasonable value of the services provided by the Lawyer. If the Lawyer and the Client cannot agree how the Lawyer is to be compensated in this circumstance, the Lawyer will request the court or other tribunal to determine: (1) whether the Client has been unfairly or unjustly enriched if the Client does not pay a fee to the Lawyer; and, if so (2) the amount of the fee owed, taking into account the nature and complexity of the Client's case, the time and skill devoted to the Client's case by the Lawyer, and the benefit obtained by the Client as a result of the Lawyer's efforts. Any such fee shall be payable only out of the gross recovery obtained by or on behalf of the Client and the amount of such fee shall not be greater than the fee that would have been earned by the Lawyer if the contingency described in this contingent fee agreement had occurred.

(5) A court or other tribunal may award costs or attorney fees to an opposing party and against the Client.

(6) The Client will be liable to the lawyer for reasonable expenses and disbursements. Such expenses and disbursements are estimated to be \$ _____. The Client authorizes the Lawyer to incur expenses and make disbursements up to a maximum of \$ _____. The

Lawyer will not exceed this limitation without the Client's further written authority. The Client will reimburse the Lawyer for such expenditures (upon receipt of a billing), (in specified installments), (upon final resolution), (etc.) [indicate which].

(7) If the Lawyer wishes to hire a lawyer in another firm to assist in the handling of a matter (called an "associated counsel"), the Lawyer will promptly inform the Client in writing of the identity of the associated counsel and that the hiring of associated counsel will not increase the contingent fee, unless the Client otherwise agrees in writing. The Client has a right to disapprove the hiring of associated counsel and to terminate the employment of associated counsel for any reason.

(8) Other persons or entities may have a right to be paid from amounts recovered on the Client's behalf. The Client (authorizes) (does not authorize) [indicate which] the Lawyer to pay from the amount collected the following: (e.g., all physicians, hospitals, subrogation claims and liens, etc.). The Lawyer may be legally required to pay the claims of third parties out of any monies collected for the Client, and not to disburse them to the Client. However, if the Client disputes the amount or validity of the third-party claim, the Lawyer may deposit the funds into the registry of an appropriate court for determination. Any amounts paid to third parties (will) (will not) [indicate which] be subtracted from the amount collected before computing the amount of the contingent fee under this agreement.

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.

(Signature of Client)

(Signature of Attorney)

FINAL DISBURSEMENT STATEMENT FOR CONTINGENT FEE AGREEMENTS

GROSS RECOVERY

\$ _____

Itemization of expenses incurred in handling of case:

_____ \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

Total Expenses \$ _____

Amount of Expenses

Advanced by Lawyer

\$ _____

Amount of Expenses

Paid by Client

\$ _____

NET RECOVERY

\$ _____

Computation of Contingent Fee:

_____ % of (Net) (Gross)

Recovery = \$ _____

Total Fee

(and expenses advanced

by Lawyer)*

DISBURSEMENT TO CLIENT

\$ _____

* (If fee is on "Net Recovery" and Lawyer has advanced expenses which are being reimbursed from the "gross recovery.")

(Signature of Lawyer)

(Signature of Client)

By signature Client acknowledges receipt of a copy of this disbursement statement.

FORM FLAT FEE AGREEMENT

[NO CHANGE]

Amended and Adopted by the Court, En Banc, October 1, 2020, effective January 1, 2021.

By the Court:

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