

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8005
(formerly C8-84-1650)

Order Promulgating Amendments to
Rules of Professional Conduct

ORDER

The Minnesota State Bar Association and the Lawyers Professional Responsibility Board have proposed amendments to Rules 1.5(b) and 1.15(c)(5) of the Rules of Professional Conduct. By order filed October 4, 2010, we solicited comments on the proposed amendments, to be filed no later than November 22, 2010. No comments were filed.

The court has reviewed the proposed amendments and is fully advised in the premises.

IT IS HEREBY ORDERED THAT:

1. The attached amendments to the Rules of Professional Conduct be, and the same are, prescribed and promulgated to be effective on July 1, 2011.

Dated: December 17, 2010

BY THE COURT:

/s/

Lorie S. Gildea
Chief Justice

AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT

(New material is indicated by underlining;
deleted material is indicated by strikethrough.)

RULE 1.5. FEES

....

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client. ~~All agreements for the advance payment of nonrefundable fees to secure a lawyer's availability for a specific period of time or a specific service shall be reasonable in amount and clearly communicated in a writing signed by the client.~~ Except as provided below, fee payments received by a lawyer before legal services have been rendered are presumed to be unearned and shall be held in a trust account pursuant to Rule 1.15.

(1) A lawyer may charge a flat fee for specified legal services, which constitutes complete payment for those services and may be paid in whole or in part in advance of the lawyer providing the services. If agreed to in advance in a written fee agreement signed by the client, a flat fee shall be considered to be the lawyer's property

upon payment of the fee, subject to refund as described in Rule 1.5(b)(3). Such a written fee agreement shall notify the client:

- (i) of the nature and scope of the services to be provided;
- (ii) of the total amount of the fee and the terms of payment;
- (iii) that the fee will not be held in a trust account until earned;
- (iv) that the client has the right to terminate the client-lawyer relationship; and
- (v) that the client will be entitled to a refund of all or a portion of the fee if the agreed-upon legal services are not provided.

(2) A lawyer may charge a fee to ensure the lawyer's availability to the client during a specified period or on a specified matter in addition to and apart from any compensation for legal services performed. Such an availability fee shall be reasonable in amount and communicated in a writing signed by the client. The writing shall clearly state that the fee is for availability only and that fees for legal services will be charged separately. An availability fee may be considered to be the lawyer's property upon payment of the fee, subject to refund in whole or in part should the lawyer not be available as promised.

(3) Fee agreements may not describe any fee as nonrefundable or earned upon receipt but may describe the advance fee payment as the lawyer's property subject to refund. Whenever a client has paid a flat fee or an availability fee pursuant to Rule 1.5(b)(1) or (2) and the lawyer-client relationship is terminated before the fee is fully earned, the lawyer shall refund to the client the unearned portion of the fee. If a client

disputes the amount of the fee that has been earned, the lawyer shall take reasonable and prompt action to resolve the dispute.

RULE 1.15. SAFEKEEPING PROPERTY

....

(c) A lawyer shall:

(1) promptly notify a client or third person of the receipt of the client's or third person's funds, securities, or other properties;

(2) identify and label securities and properties of a client or third person promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;

(3) maintain complete records of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them;

(4) promptly pay or deliver to the client or third person as requested the funds, securities, or other properties in the possession of the lawyer which the client or third person is entitled to receive; and

(5) except as specified in Rule 1.5(b)(1) and (2), deposit all fees received in advance of the legal services being performed into a trust account and withdraw the fees as earned, unless the lawyer and the client have entered into a written agreement pursuant to Rule 1.5(b).