

STATE OF MINNESOTA

IN SUPREME COURT

ADM10-8005
(formerly C8-84-1650)

OFFICE OF
APPELLATE COURTS

APR -7 2011

FILED

Order Promulgating Corrective Amendment
to the Rules of Professional Conduct

ORDER

By order filed December 17, 2010, we amended Rules 1.5(b) and 1.15(c)(5) of the Rules of Professional Conduct, effective on July 1, 2011. The order did not properly indicate the deletion of one sentence in Rule 1.5(b).

IT IS HEREBY ORDERED that the attached corrective amendment to Rule 1.5(b) of the Rules of Professional Conduct be, and the same is, prescribed and promulgated to be effective on July 1, 2011.

Dated: April 7, 2011

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Lorie S. Gildea", is written over a horizontal line.

Lorie S. Gildea
Chief Justice

AMENDMENT TO THE RULES OF PROFESSIONAL CONDUCT

(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.