

RE: Proposal to Amend Rule 1.5 of the Hawai'i Rules of Professional Conduct

FEE AGREEMENTS IN WRITING

The Supreme Court of Hawai'i seeks public comment regarding a proposal to amend Rule 1.5 of the Hawai'i Rules of Professional Conduct and an accompanying Comment. The proposal would require all fee agreements with new clients, and amended fee agreements with current clients, to be in writing. The proposal is attached hereto.

Comments about the proposed amendments should be submitted, in writing, **no later than Monday, December 24, 2018**, to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the Judiciary's website.

Attachment

**PROPOSED AMENDMENTS TO
HAWAII RULES OF PROFESSIONAL CONDUCT**
(Deleted material is bracketed and stricken; new material is underlined)

Rule 1.5. FEES.

(b) Manner In Which Fees are Earned. 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 the rates of the fee or expenses shall also be communicated to the client in writing. 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 of these Rules.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee, and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to the fee and expenses must be promptly established in writing, for example by ~~[. Generally, it is desirable to]~~ furnishing the client with at least a simple memorandum or a copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided; the basis, rate, or total amount of the fee; and whether and to what extent the client will be responsible for any costs, expenses, or disbursements in the course of the representation. When developments occur that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client in writing. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.
