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SCRU-11-0001047

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

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In the Matter of the

HAWAI‘I RULES OF PROFESSIONAL CONDUCT

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ORDER AMENDING THE HAWAI‘I RULES OF PROFESSIONAL CONDUCT

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

IT IS HEREBY ORDERED that Rule 1.5 and Comment [2] of the Hawai‘i Rules of Professional Conduct are amended, effective as of July 1, 2019, as follows (deleted material is bracketed and stricken; new material is underscored):

**Rule 1.5. FEES.**

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**(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, or if it is reasonably foreseeable that the total cost of representation to the client, including attorney's fees, will be \$250.00 or less. 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.

**(c) Special Duties Regarding Flat Fees.** A lawyer may charge a flat fee for specified legal services, which constitutes complete payment for such services. If a lawyer charges a flat fee that, in total, exceeds \$1,500.00 for the entire representation, the lawyer shall create a written fee agreement, signed by the client (or the person paying the lawyer to render services for another), that provides notice of the following:

- (1) the nature and scope of the services to be provided;
- (2) the total amount of the fee and the terms of payment;
- (3) the basis or rate at which the flat fee may be incrementally earned before completion of the representation, either by reference to milestones in the contemplated representation or expressed as a specific hourly rate;
- (4) that the fee will be held in a trust account until earned;
- (5) the client is entitled, upon request, to an accounting of the tasks performed by the lawyer during the course of the representation; and
- (6) if the engagement is terminated before completion of the representation, the client will be entitled to a refund of the unearned portion of the flat fee, if any, in accordance with the terms of the written fee agreement.

In accordance with the written fee agreement, upon attainment of a discrete milestone of the representation or when a certain portion of the flat fee has been earned on an hourly basis, the lawyer shall withdraw the earned amount, make reasonable effort to notify the client of the disbursement, and, if requested by the client, provide an accounting.

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**COMMENTS:**

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***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. Pursuant to Rule 1.5(b), however, [I]n a new client-lawyer relationship[; however], an [understanding] agreement 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 (if applicable); 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.~~] A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.*

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DATED: Honolulu, Hawai'i, June 7, 2019.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

