
**E-91-2 Attorney's fees, sufficiency of
communication of fees to the client**

Facts

A law firm proposes sending to each of its new clients an engagement letter, which recites the following:

“Our fees will be based upon the ethical rules governing our practice. The amount of our statement will be the fair value of the services provided taking into account the time spent by the lawyers involved, the type of service we are being asked to perform, any special level of expertise required, the size and scope of the matter, the results obtained and other relevant considerations.”

Question

Does the foregoing engagement letter comply with SCR 20:1.5(b) in setting forth the basis or rate of the fee to the client?

Opinion

“It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, *or* to identify the factors that may be taken into account in finally fixing the fee.” SCR 20:1.5, *Comment*, “Basis or Rate of Fee.” [Emphasis added.]

If only the basis but not the rate of the fee is communicated to a new client, the lawyer or law firm should identify the factors that may be taken into account in a manner reasonably anticipated to be meaningful to the new client. SCR 20:1.5, *Comment*, “Basis or Rate of Fee.” *See also* SCR 20:1.2(a), SCR 20:1.4(b), and SCR 20:8.4(c). Because the factors relevant to establishing the basis for a fee for a particular client in a particular matter reasonably may be expected to vary, a lawyer or law firm should reflect these variances in its communications with its new clients. However, the proposed engagement letter

above may sufficiently communicate the basis of a fee, particularly when dealing with new clients who have significant experience in using lawyers' services.

SCR 20:1.5(b) does not require a lawyer or law firm to state an hourly rate. However, when hourly rates are included in the engagement agreement, the client should be notified regarding: a) whether the hourly rate may be increased prior to concluding the representation; and b) what the hourly rates or range of rates are for the various law firm personnel who may be involved in working on the representation. In addition, the client shall be informed in the engagement communication of his or her liability for costs and expenses relating to the representation and shall be consulted throughout the representation regarding any anticipated significant costs and expenses. *See* SCR 20:1.2(a), SCR 20:1.4(b) and SCR 20:1.8(e).

This opinion does not address the propriety of the above engagement letter in domestic relations and criminal matters under SCR 20:1.5(d).