

To whom it may concern:

Regarding the proposed change to Rule 1.5 of the Colorado Rules of Professional Conduct, **I oppose the proposed change.**

I have significant concerns regarding the proposed change to Rule 1.5. The proposed change will have a substantial and serious impact for those who practice personal injury law. In states where referral fees are permitted, there is a trend where lawyers who practice in other areas expand their advertising to include personal injury cases. Consequently, individuals with limited or no experience in personal injury law may advertise for such cases, leading to increased difficulty for potential clients to be able to distinguish between those genuinely skilled in personal injury law and those merely advertising to secure a referral fee. This situation will contribute to heightened consumer confusion.

I believe that the existing rule, which mandates joint responsibility for both lawyers, plays a crucial role in ensuring the best outcome for the client. This rule acts as a safeguard against prioritizing the interests of the referring attorney seeking the most lucrative referral fee over the client's welfare. Maintaining joint liability is essential for securing optimal results for the client.

Sincerely,



Jessica L. Breuer, Esq.

Reg. No. 46288

Regarding the proposed change to rule 1.5 to allow referral fees, **I oppose the proposed change.**

This will impact the practice of personal injury the most. In other states that allow referral fees you see lawyers that practice in all areas start to advertise for personal injury cases. This results in many people with little or no experience advertising for personal injury cases. It will in turn make it more difficult for people looking to hire personal injury lawyers to figure out who really does this work versus who is simply advertising to make a referral fee. This will increase consumer confusion.

I think the current rule where both lawyers must be jointly responsible helps ensure that the work for the client is the best versus who will give the referring attorney the best referral fee. It is important to have joint liability to make sure you have the best result for the client.

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December 6, 2023

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Via Email Only to: [supremecourtrules@judicial.state.co.us](mailto:supremecourtrules@judicial.state.co.us)

**Re: Proposed Changes to Rules of Professional Conduct 1.5 and 1.8**

Dear Justices of the Colorado Supreme Court:

I write in support of the proposed changes to RPC 1.5 and 1.8 regarding fee divisions between attorneys and law firms. In short, I believe the proposed rules will benefit clients with complex legal issues by encouraging members of the bar to limit their practices to those areas in which they are subject matter experts.

Currently, if an attorney receives an inquiry from a potential client in an area they do not regularly practice, they cannot receive a direct benefit from referring that client to another lawyer who is an expert in the practice area. Accordingly, the lawyer faces a choice, refer the case to an expert and enjoy the indirect benefits of establishing relationships with other members of the bar or accepting the representation and learning enough to comply with Rule 1.1's mandate to provide competent representation. And while this sometimes can result in the client receiving good representation and the lawyer developing new skills, it can also result in substandard- or at least non-optimal- representation for the client. Under the proposed rule, the lawyer will have a third option: identify a lawyer who is an expert in the area of law being sought, verify that person's credentials, and obtain a direct benefit for that service in the form of a referral fee (so long as the other requirements of Rule 1.5 are met). I believe this will likely result in more clients being represented by lawyers who are experts in their field and fewer clients receiving non-optimal outcomes for their cases.

Second, the rule change is likely to correct a current distortion in the market for legal services. Lawyers in our community are generally aware of the quality of work performed by our colleagues. The public is less aware. And in many cases, the public perception of good lawyering is at odds with that of the bench and the bar. In addition, lawyers are generally more willing to have frank conversations about the profession with other lawyers than with potential clients. This means that lawyers are in a better

position to identify the best lawyer to refer a particular case to than the public. In this way, allowing lawyers to obtain a benefit by referring cases will motivate the bar to assist clients in finding the best lawyers for their case. Thus, this rule change helps clients, especially those who are not sophisticated consumers of legal services, obtain the best representation available.

The proposed rule change is good for clients. That should be our goal as a profession. The continued prohibition against receiving fees for referring clients to non-legal services in Rule 1.8 is advisable and will continue to protect clients against predatory service providers.

I appreciate you taking to time to review my comments on the rule.

Sincerely,

**CANNON LAW**

*/s/ Sam Cannon*

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December 6, 2023

Colorado Supreme Court Rules Committee

[supremecourtrules@judicial.state.co.us](mailto:supremecourtrules@judicial.state.co.us)

Re: Proposed Rule Changes to Rule 1.5 and Rule 1.8

Dear Colorado Supreme Court Rules Committee:

We write in strong support of the proposed rule changes to C.R.P.C. 1.5 and 1.8 regarding referral fees. We are personal injury lawyers who also spent the beginning of our careers doing criminal defense work.

We believe that this change is in the best interest of both Colorado lawyers and the public at large for several reasons. First, we believe that this ultimately is an access to justice issue. Second, allowing referral fees will lead to more ethical and competent representation. Third, this change will bring Colorado in line with the other 49 states which – to our knowledge – allow some version of referral fees. Finally, we believe the proposed changes strike a proper balance and the negative impact of those changes, if any, will be minor and greatly outweighed by the positive impacts.

Referral fees are an access to justice issue. There are many types of law – criminal defense, family law, tenant-sided landlord/tenant law etc. – where solo and small firm owners struggle to make ends meet and to pay back student loans. We have numerous colleagues in other states practicing in low-income practice areas who routinely supplement 10-40% of their income referring PI cases to PI lawyers. In doing so, they can accept more low-pay or slow-pay clients in their main practice area. That is a win for both the lawyer and the client. It improves access to justice.

Referral fees also will lead to more competent and ethical representation. As it stands currently, we hear horror stories where non-PI lawyers have accepted a PI case without knowing the applicable law and ended up settling that case for pennies on the dollar, harming the client. While this is unethical on its face and shouldn't happen, the reality is that it does. And the reason it does is because those lawyers know they cannot get a referral fee for only referring it out, so they choose to work on it alone. While referral fees won't completely fix this issue, it will drastically reduce it.

While we are not experts in the other 49 states' ethics rules, it appears that Colorado is the only state that has a blanket prohibition on all referral fees. Some states, like CA, allow "pure" referral fees without joint and several liability for malpractice and ethical decisions. Others allow referral fees with joint and several ethical and malpractice liability. But all of them allow referral fees in some form. While the logic behind Colorado's prohibition may have made sense at the time that rule was written, practical experience and the experience of other jurisdictions has proven it is time for Colorado to join the other states.

Finally, we acknowledge there is some risk in allowing referral fees. It is possible that lawyers will send cases to those who pay the highest fee percentage without regard to the competency of that lawyer. But the proposed rule change strikes the right balance to limit that by requiring, if proportionality of the work is not to be considered, joint and several financial and ethical liability. While CA's system may be the simplest for all involved, it does have a higher risk for clients. The system proposed here would almost always include joint and several liability, which is the more consumer-friendly method of allowing referral fees and the method used by the majority of jurisdictions. When we balance the positives of the rule change, and the safeguards contained within it, the positives greatly outweigh the negatives.

Thank you for proposing this rule change in the first place. If there is anything else we can do to support it, or if you have any questions about our views, please do not hesitate to reach out to us.

Kind regards,

/s/ Kevin Cheney

Kevin Cheney

*Attorney at Law*

CHENEY GALLUZZI & HOWARD, LLC

/s/ Tim Galluzzi

Tim Galluzzi

*Attorney at Law*

CHENEY GALLUZZI & HOWARD, LLC

Dear Colorado Supreme Court,

I oppose the proposed change to Rule 1.5 of the Colorado Rules of Professional Conduct.

If this change takes place, there will be a huge increase in “advertising lawyers” who will seek only to sign up clients for the sole purpose of selling their cases to a different lawyer for the highest price. These “advertising lawyers” won’t be providing real legal services, but instead acting as middle-men for their own personal profit.

The “advertising lawyers” will spend huge sums on digital, media, and pay-per-click advertising to dupe Coloradoans into hiring them, thinking they will actually be the lawyers handling the case. Instead, the consumer has only hired someone with a bar number who then intends to sell the case to a different lawyer who is willing to pay for it. That is deceptive.

The proposed change to allow “referral fees” will substantially harm Coloradoans in need of qualified legal counsel. An “advertising lawyer” can have no expertise in the area of law that a potential clients needs help with, but can advertise for every imaginable type of case, knowing that the case can be quickly sold to a qualified lawyer. Coloradoans will wind up hiring the lawyer who is the best advertiser, not the most qualified.

I believe Rule 1.5 should be kept as-is because it requires co-counsel lawyers to remain jointly responsible for the representation. This gives clients more protection and better representation. Changing the rule to allow middle-men to simply gather clients and then sell off their cases for a referral fee, and then do nothing further, is an outcome that this Court should not allow.

Sincerely,

David Crough (CO Reg. No. 47528)

Regarding the proposed change to rule 1.5 to allow referral fees, **I oppose the proposed change.**

The current Rule works well to protect the client and provide the best representation to the client in all circumstances.

I believe the proposed change will be adverse to the best interests of our community of (particularly personal injury) clients. Injured individuals will be inundated with confusing and misleading advertising by lawyers who have no intention or ability to represent the client. Lawyers who are not intending to handle the client's case will attempt to obtain their case through advertising, and then pass the client off to an unknown lawyer to actually do the work. I believe this added layer of misinformation will decrease, rather than increase, the quality of legal representation provided to clients. While allowing referral fees will encourage lawyers to observe their obligation of competence, they have that obligation anyway, and it is not the ethical lawyers who will be most impacted by this Rule change. Allowing "naked" referral fees is likely to make it more difficult for people looking to hire (predominately personal injury) lawyers to figure out who really does this work versus who is simply advertising to make a referral fee. This will increase consumer confusion and decrease the quality of client representation.

I believe the current rule (where both lawyers must be jointly responsible in order to share the fee) helps ensure that the work for the client is the highest quality, rather than just a question of who will give the referring attorney the largest referral fee. It is important to have joint liability to make sure lawyers pursue the best result for the client. Alternatively, if a lawyer is not competent to practice in a given area, s/he is able to make a referral to a competent lawyer without taking a fee, which also benefits the client.

Over the years Colorado lawyers have utilized the current requirements of the Rule to the benefit of the clients. Changing the Rule will, in my opinion (as someone who receives and provides a number of referrals every year – some of which allow me to participate in a fee and some of which do not), decrease, rather than increase, the quality of representation clients in our community receive.

Please feel free to contact me with any questions.

<dph

**David P. Hersh**

**Trial Lawyer**

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