

# GR 9 COVER SHEET

## Suggested Amendment RULES OF PROFESSIONAL CONDUCT (RPC)

### RPC 1.5 FEES

Submitted by the Board of Governors of the Washington State Bar Association

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A. **Name of Proponent:** The Washington State Bar Association.

B. **Spokespersons:**

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**Purpose:** In 1990 the Board of Governors of the Washington State Bar Association approved Formal Ethics Opinion No. 186, entitled “The Proper Handling of Advance Fee Deposits and Retainers.” it was withdrawn following the Supreme Court’s decision in In re Discipline of DeRuiz, 152 Wn.2d 558, 99 P.3d 881 (2004). The withdrawal of Formal Opinion 186 created a void in guidance for lawyers with respect to advanced fee payments which these suggested amendments to RPC 1.5 seeks to address.

The suggested amendments create two exceptions to the general rule that fees paid in advance of services remain the property of the client and must be kept in trust. The exceptions are: (1) availability retainers, and (2) flat fees for specified services. The rule, for both types of fee agreements, requires a writing signed by the client. Flat fees require an additional disclosure substantially similar to the form set out in the rule, the purpose of which is to advise the client that the fee will immediately be placed into the

lawyer's operating account and that payment of a flat fee in advance does not impair the client's right to terminate the client-lawyer relationship nor does it extinguish the possibility that the client may, or may not, have the right to a refund. The rule also contains a dispute resolution mechanism, and prohibits the use of the terms "nonrefundable," "earned upon receipt," and "minimum.

**C. Hearing.** A hearing is not requested.

**D. Expedited Consideration:** Expedited consideration is not requested.

**E. Supporting Material:**

- Suggested rule amendment.
- Report to the Board of Governors, July 10, 2007.