

FORMAL OPINION NO 2005-25

[REVISED 2022]

Fee Agreements:

Suspended and Disbarred Lawyers, Fees and Division of Fees

Facts:

Lawyer *A* has been suspended or disbarred. When the suspension or disbarment order took effect, Lawyer *A* had several open matters, including both hourly and contingent-fee cases, which were subsequently taken over by Lawyer *B*. The suspension or disbarment was unrelated to the work that Lawyer *A* had done on behalf of any of the clients whose work was taken over by Lawyer *B*.

Questions:

1. Is Lawyer *A* entitled to be paid for the work done by Lawyer *A* before the suspension or disbarment took effect?
2. May Lawyer *B* share fees with Lawyer *A* in the contingent-fee case?

Conclusions:

1. Yes, qualified.
2. Yes, qualified.

Discussion:

Oregon RPC 1.5(a) states that “[a] lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses.” The mere fact that Lawyer *A* was suspended or disbarred would not mean that the collection of a fee would automatically violate this rule, and it would be proper for Lawyer *A* to seek to collect an ethically appropriate fee for past work.

The matter of the sharing of fees between Lawyer *A* and Lawyer *B* is covered by Oregon RPC 1.5(d):

A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the client gives informed consent to the fact that there will be a division of fees, and

(2) the total fee of the lawyers for all legal services they rendered the client is not clearly excessive.

Also relevant is Oregon RPC 5.4(a), which provides:

A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) a lawyer may share legal fees awarded by a tribunal with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter; and

(5) a lawyer may pay the usual charges of a bar-operated not-for-profit lawyer referral service, including fees calculated as a percentage of legal fees received by the lawyer from a referral.

During the period of suspension or disbarment, a suspended or disbarred lawyer is a nonlawyer within the meaning of Oregon RPC 5.4(a).¹ *Cf. Parquit Corp. v. Ross*, 273 Or 900, 901, 543 P2d 1070 (1975)

¹ See, e.g., *State ex rel. Oregon State Bar v. Lenske*, 284 Or 23, 31, 34–35, 584 P2d 759 (1978) (employment of disbarred or suspended lawyer is permitted under same unauthorized-practice limitations that govern nonlawyers generally).

(treating suspended lawyer as nonlawyer); OSB Formal Ethics Op No 2005-24. Consequently, Lawyer *B* could not share any fee for Lawyer *B*'s own work with Lawyer *A*. On the other hand, there is no prohibition against Lawyer *B* forwarding to Lawyer *A* the portion of any fee to which Lawyer *A* was entitled by reason of work performed before the suspension or disbarment. *Cf. In re Griffith*, 304 Or 575, 748 P2d 86 (1987), *reinstatement granted sub nom Application of Griffith*, 323 Or 99, 913 P2d 695 (1996) (refusing to find violation of *former* DR 3-102(A) when nonlawyer simply acted as conduit for payment of fees to counsel).

Approved by Board of Governors, November 2022.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 3.5-5 to § 3.5-6(c) (payments between lawyers and payments to others) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* § 10 (2000); ABA Model RPC 1.5(e); and ABA Model RPC 5.4.

