

## FORMAL OPINION NO 2005-45

### Fee Agreements: Client to Pay More If Finances Change

#### Facts:

Lawyer proposes to represent Client, who is presently indigent. Lawyer would like to propose to Client, although while Lawyer would work for Client at a reduced or no-fee basis, Client would be obligated to pay Lawyer if Client's financial circumstances change within a prescribed period of time and Client is able to pay Lawyer.

#### Question:

May Lawyer enter into a fee agreement at the commencement of the representation that provides that Lawyer will be paid if Client's financial circumstances change?

#### Conclusion:

Yes, qualified.

#### Discussion:

Oregon RPC 1.5(a) provides:

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.

On the facts as stated, there is no reason to believe that the proposed arrangement would violate this rule. *Cf. Eagle Indus., Inc. v. Thompson*, 321 Or 398, 900 P2d 475 (1995) (initial fee agreement covering lawyer's representation of clients in prior litigation was modified after entry of verdict in favor of clients but before entry of judgment; court neither approved nor disapproved modification as excessive).<sup>1</sup>

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<sup>1</sup> Compare *Sabin v. Terrall*, 186 Or 238, 250, 206 P2d 100 (1949) (contract for fees, entered into after commencement of lawyer-client relationship, is not *per se* void but it will be closely scrutinized by courts), with *Perez v. Pappas*, 98 Wash

Oregon RPC 1.5(c) also provides, however, that

[a] lawyer shall not enter into an arrangement for, charge or collect:

- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support or a property settlement; or
- (2) a contingent fee for representing a defendant in a criminal case . . . .

If the change in financial circumstances contemplated by the fee agreement was expected to be the result of matters covered by Oregon RPC 1.5(c) because, for example, Lawyer would be representing Client in a marital dissolution action pursuant to which Client would be seeking spousal support, the fee arrangement described above would be unethical. *Cf.* OSB Formal Ethics Op No 2005-13; ORS 20.340.

**Approved by Board of Governors, August 2005.**

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2d 835, 659 P2d 475 (1983) (once lawyer-client relationship is established, any modification of fee agreement becomes subject to fiduciary obligations; particular attention and scrutiny will be given to fee contracts made or altered during lawyer-client relationship); *Ward v. Richards & Rossano, Inc., P.S.*, 51 Wash App 423, 754 P2d 120 (1988).

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* chapter 3 (attorney fees and fee agreements) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 34–35 (2000) (supplemented periodically); and ABA Model RPC 1.5.