

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.

