

FORMAL OPINION NO 2005-78

Fee Agreements: Increasing Fee Because of Dispute

Facts:

Lawyer bills Client for work performed in accordance with the agreement between Lawyer and Client. Client protests the amount of the bill.

Question:

May Lawyer, in response to Client's protest, submit a higher bill for the same work to Client?

Conclusion:

No.

Discussion:

Based on the facts as described above, we assume that the increased billing is not the result of any clerical error or other mistake discovered in the prior bill but is simply the result of a desire on Lawyer's part to retaliate against Client for challenging the bill. 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.

In the present circumstances, any upwardly revised fee would be excessive. *Cf. In re Potts*, 301 Or 57, 718 P2d 1363 (1986) (adding further charges to bill for firm's time in defending against client's objection to lawyer's fees violates rule); *In re Gruber*, 12 DB Rptr 81 (1998); *In re Barber*, 322 Or 194, 904 P2d 620 (1995); *In re Boothe*, 303 Or 643, 740 P2d 785 (1987) (lawyer's failure to account to client for funds withheld as "war chest" in order to defend against anticipated claim by client held to be in violation of *former* DR 9-101(B) (*current* Oregon RPC 1.15-1(d)). *See also* OSB Formal Ethics Op No 2005-69; OSB Formal Ethics

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Op No 2005-15. It would also be improper for Lawyer to charge Client for the time that Lawyer spends responding to or resolving Client's dispute over the fees. *In re Bennett*, 331 Or 270, 14 P3d 66 (2000).

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 3.1 to § 3.2 (limitations on attorney fees), § 3.3-3 (amendments to fee agreement), § 3.4-9 (security for payment), § 3.4-18 (arbitration of fee disputes), § 3.5-1(b) (statutory lien), § 3.5-4 (fee disputes) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 34, 42 (2000) (supplemented periodically); ABA Model RPC 1.5; and ABA Model RPC 1.15(d). See also Washington Advisory Op No 1385 (1991) (available at <www.wsba.org/resources-and-services/ethics/advisory-opinions>).