

## BOG Resolution No. 2

### Amend Oregon RPC 1.5(c) and 1.15-1(c) to change the language used to refer to prepaid legal fees in Oregon.

**Whereas**, the Legal Ethics Committee and the Board of Governors formulated the following amendments to the Oregon Rules of Professional Conduct 1.5(c) and 1.15(c);

**Whereas**, the House of Delegates must approve any changes in the rules of professional conduct before they are presented to the Oregon Supreme Court for adoption pursuant to ORS 9.490(1); now, therefore, be it

**Resolved**, that the amendment of Oregon Rules of Professional Conduct 1.16(a) as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

#### RULE 1.5 FEES.

\* \* \*

(c) A lawyer shall not enter into an arrangement for, charge or collect:

\* \* \*

(3) a fee denominated as “earned on receipt,” “nonrefundable,” or ~~in~~ similar terms; ~~unless it is pursuant to a written agreement signed by the client which explains that: (i) the funds will not be deposited into the lawyer trust account, and (ii) the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed.~~

(4) a fee described as a “prepaid fee” or similar terms, unless it is pursuant to a written agreement signed by the client which explains that

(i) the nature of the fee arrangement and the scope of the services to be provided;

(ii) the total amount of the fee and the terms of payment;

(iii) the fee will not be deposited into a lawyer trust account;

(iv) the client may terminate the services of the attorney at any time for any reason or no reason; and

(v) the client may be entitled to a refund of all or part of a fee if the services for which the fee was paid are not completed and how any such refund would be calculated.

## **RULE 1.15-1 SAFEKEEPING PROPERTY.**

\* \* \*

(c) A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the fee ~~is denominated as “earned on receipt,” “nonrefundable”-or similar terms and~~ complies with Rule 1.5(c)(~~4~~)(3).

### **Background**

Currently, Oregon Rule of Professional Conduct 1.5(c) uses the language “earned on receipt” or “nonrefundable,” for fixed fees. Fixed fees provide legal services at a set cost to the client. Such fees are not kept in a lawyer’s trust account, but placed into a lawyer’s operating account. Paradoxically, fixed fees, even though denoted as “nonrefundable” under Oregon RPC 1.5, are still refundable under RPC 1.5.<sup>1</sup> Oregon RPC 1.5(c)(3) even requires notice that a “nonrefundable fee” is refundable. The language in the current rule confuses clients and the public. The ABA Model Rules and ABA Formal Op. 505 strongly disfavor the language “earned on receipt” and “nonrefundable,” noting that it simply sidesteps an attorney’s ethical obligations.<sup>2</sup>

In June of 2022, the Client Security Fund (CSF) Committee requested that the Legal Ethics Committee (LEC) review the current rules regarding fees denoted as “nonrefundable” or “earned on receipt.” The CSF Committee noted that approximately 25 percent of all claims paid by the CSF arose from the failure to refund unearned fixed fees. The CSF Committee relayed that the legal fiction of “nonrefundable” and “earned on receipt” required by RPC 1.5(c)(3) discouraged many clients from seeking a refund from the attorney.

---

<sup>1</sup> See Or. Formal Op. 2005-151 *citing In re Thomas*, 294 Or 505, 526, 659 P2d 960 (1983)(“It would appear that any fee that is collected for services that is not earned is clearly excessive regardless of the amount.”).

<sup>2</sup> Quoting *In re Long*, 368 Or. 452, 455-56, 474-75 (2021), ABA Formal Op. 505 notes that this language creates unnecessary risks for the client (ABA Formal Op. 505 at 7 n. 24). ABA Formal Op. 505 perceives this type of language as simply “sidestepping” an attorney’s ethical obligation to safeguard client funds (ABA Formal Op. 505 at 5).

The LEC developed proposed amendments to address the CSF Committee concerns. It shared its proposal with a number of legal practitioners, including a former member of the CSF Committee and immigration attorney, a practitioner that used prepaid fees in their prior criminal practice, a professional responsibility attorney, and a practitioner who utilized prepaid fees in their transactional practice. These practitioners expressed concerns that the proposed amendments would be an undue burden and therefore have an adverse impact on their ability to charge fixed fees at all. They suggested revisions to the LEC proposal to address their concerns. The LEC agreed with the revisions and presented the revised proposal to the Board of Governors in April 2025. The Board of Governors approved submitting the amendments to the House of Delegates.

The proposed amendments simplify the language used by practitioners in fixed fee arrangements, and avoid confusion by the public about the fixed fee arrangement. The use of terms such as "earned on receipt" or "nonrefundable" would be prohibited, and the amendment would require the use of "prepaid fee," or similar terms to refer to fixed fees. The new rules integrate additional consumer protection in the form of disclosures to the client. The amendment is not intended to be restrictive to legal practitioners, however. The broad language assists legal practitioners in crafting a fee agreement that clients can easily understand and will not be an undue burden to comply with.

Subsection (i) requires that the fee agreement clearly contains the scope of the representation. Subsection (ii) requires the fee agreement to state the total amount of the fee charged to the client along with the terms of payment. The combination of these two provisions provides clients with a clear understanding of the scope of the representation, including the services included in the prepaid fee.

Subsection (iii) informs the client that the prepaid fee will not be held in a lawyer's trust account. The LEC debated whether to provide clients with the option to hold the prepaid fee in a lawyer trust account. The concern raised by practitioners was that a single client's request to hold funds in trust may force a practitioner to incur the burden and cost of opening a trust account for a single client. The LEC opted instead to allow the client to have notice that fixed fees are not held in a trust account.

Subsection (iv) and (v) notify the client that the client may terminate the representation at any time. It also provides the client with notice that a refund may be available. This provision, along with the removal of "nonrefundable" or "earned on receipt," informs the client that they can terminate their attorney's services and seek a partial refund if services are not completed or satisfactory.

Under the revised rules, the fee agreement clearly defines the scope, amount, and refund process. If a representation ends prematurely, the attorney has a clear, ethical path to resolve the issue promptly and amicably, preserving both professional integrity and client satisfaction.

## **Financial Impact**

None stated.