

OREGON LAW PRACTICE MANAGEMENT

Calculating Refunds in Earned Upon Receipt Fee Arrangements

[Earned upon receipt fee agreements](#) offer certainty to lawyers and clients: work will not commence unless the fee is paid and the client knows exactly how much the legal work will cost. But what happens if the services contemplated by the fee are not performed? [Oregon Formal Opinion 2005-151](#) gives this guidance:

A lawyer who does not complete all contemplated work will generally be unable to retain the full fixed fee. This is consistent with *In re Thomas*, 294 Or 505, 526, 659 P2d 960 (1983), in which the court stated: “It would appear that any fee that is collected for services that is not earned is clearly excessive regardless of the amount.” Moreover, Oregon RPC 1.5(c)(3)(ii) requires the lawyer to inform the client in the written fee agreement that the client 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...

Accordingly, even a fee designated as “nonrefundable” is subject to refund if the specified services are not performed. Thus, designation of a prepaid fixed fee as “nonrefundable” may be misleading, if not false, in violation of Oregon RPC 8.4(a)(3) (prohibiting conduct involving “dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law”).

This begs the question: how should the client’s refund be calculated? [Roughly speaking, the fee must be apportioned based on the work completed](#). If you finish half the agreed upon work, return half the agreed upon fee.

Perhaps the best solution is to [address this issue up front in your fee agreement](#). Many lawyers base refunds on time spent multiplied by the lawyer’s hourly rate. When using “time spent” as a basis for calculating a refund, keep in mind that the overall fee must still be reasonable. See Amber Hollister, [How Much Do I Owe You?: “New” Guidelines for Fixed and So-called Nonrefundable Fees](#).

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Originally published June 18, 2012 at <http://oregonlawpracticemanagement.com/2012/06/18/calculating-fee-refunds/>.