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Where's My Money? Compensation for Past Work

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In today's mobile market, lawyers who begin work on a case are not always around when it settles. The reasons vary. Sometimes clients have hired replacement counsel along the way. In others, the lawyers have moved on from their old firms and are left wondering about compensation due from cases under partnership, shareholder, or other employment agreements. Regardless of the scenario, lawyers are often left with a lingering question: "Where's my money?"

In this column, we'll survey this question from the two perspectives just noted: attorney liens over settlement funds created in part through a lawyer's past work; and the division of future case revenue through partnership, shareholder, or other employment agreements.

Before we do, however, four qualifiers are in order.

First, while these two scenarios are common, they are not the universe of situations that can lead to the "where's my money?" question. For example, lawyers using Oregon's very general fee-split rule, RPC 1.5(d), may find that if they did not clearly memorialize the fee division between firms over an anticipated contingent fee, a court may conclude they were joint venturers by operation of law and split the fee involved down the middle as was the case in *Fitzgibbon v. Carey*, 70 Or. App. 127, 688 P.2d 1387 (1984).

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Second, although we will approach these questions from the perspective of the lawyer who worked on the case involved, these situations can also produce difficult issues later for lawyers holding funds in trust over which a former lawyer claims an interest. RPC 1.15-1(e) and OSB Formal Opinion 2005-52 address this sensitive area and generally counsel that a firm must hold disputed funds in trust or implead them into a court for resolution of the parties' conflicting claims to the money. *Davis & Galm, LLC v. Neve*, 325 Or. App. 123, 528 P.3d 1165 (2023), in turn, discusses interpleader in this context under ORCP 31.

Third, we'll focus on situations where the firms involved are ongoing. *Platt v. Henderson*, 227 Or. 212, 361 P.2d 73 (1961), illustrates how partnership statutes can come into play to account for revenue collected during a law firm dissolution.

Finally, while these issues can occur for hourly fee matters, they are often in sharpest relief for contingent fee cases because work has been invested but the fee for that work may not be recovered until much later. We'll focus on the contingent fee context today.

Attorney Liens

There are several flavors of attorney liens under ORS 87.430-.490. ORS 87.445 addresses liens on “actions and judgments” and ORS 87.450 outlines the procedural steps necessary to enforce an attorney lien over a money judgment. Both should be reviewed closely for their procedural nuances. For example, the Oregon Supreme Court in *Potter v. Schlessor Co, Inc.*, 335 Or. 209, 63 P.3d 1172 (2003), clarified that a notice does not necessarily need to be filed for a lien to be enforced over funds arising from an “action”—when, among other reasons, a money judgment may not have been entered. More recently, the Oregon Court of Appeals parsed the distinction between liens over “actions” and “judgments” further in *Jones v. Bhattacharyya*, 305 Or. App. 503, 471 P.3d 135, *modified*, 307 Or. App. 200, 474 P.3d 464 (2020), in a case involving a money judgment.

Attorney liens in most circumstances are measured using a *quantum meruit* standard and recovery is neither automatic nor necessarily controlled by a prior fee agreement. In *Robinowitz v. Pozzi*, 127 Or. App. 464, 872 P.2d 993 (1994), for example, the Court of Appeals found that an initial attorney was not entitled to compensation when his handling of a plaintiff’s claim resulted in a defense summary judgment, the plaintiff discharged the initial lawyer, a

replacement firm was able to turn the result around on appeal, and the second firm concluded the case successfully for the plaintiff.

Contractual Agreements

When a lawyer has worked on a contingent fee case and then leaves a firm, contract law usually controls the entitlement to fees. If the lawyer has taken the client, the lawyer's "old" firm will ordinarily have an attorney lien over a later settlement or judgment for work performed at the "old" firm prior to departure. As just discussed, however, attorney liens can have their own practical twists. If the lawyer has not taken the client, the lawyer does not have a "personal" attorney lien for the lawyer's individual contribution. Absent other arrangements, the individual lawyer in this scenario would have been compensated through salary or ownership income received while associated with the firm involved.

Firms and individual lawyers, therefore, often find more certainty by agreeing contractually in advance on how to divide contingent fees collected after a lawyer has left a firm that contributed materially to the eventual recovery. Firms that do contingent fee work generally address this in their partnership or shareholder agreements for owner-level lawyers—with *Gray v. Martin*, 63 Or. App. 173, 663 P.2d 1285 (1983), addressing partnerships and *Hagen v. O'Connell, Goyak & Ball, P.C.*, 68 Or. App. 700, 683 P.2d 563 (1984), addressing

professional corporations. Post-employment compensation for non-owner lawyers—whether employee associates or contract lawyers—is generally controlled by their employment agreements under *In re Williams, Love, O’Leary, & Powers, P.C.*, 2012 WL 400278 (Bankr. D. Or. Feb. 7, 2012) (unpublished).

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Mark J. Fucile of Fucile & Reising LLP advises lawyers, law firms, and corporate and governmental legal departments throughout the Northwest on professional ethics and risk management. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark has served on the Oregon State Bar Legal Ethics Committee and is a member of the Idaho State Bar Section on Professionalism & Ethics. Mark writes the Ethics Focus column for the Multnomah (Portland) Bar’s *Multnomah Lawyer*, the Ethics & the Law column for the WSBA *Bar News* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is the editor-in-chief and a contributing author for the WSBA *Legal Ethics Deskbook* and a principal editor and contributing author for the OSB *Ethical Oregon Lawyer* and the WSBA *Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark’s telephone and email are 503.860.2163 and Mark@frllp.com.