

**ATTORNEY FEE AND PREVAILING PARTY FEE
CLIENT DISCLOSURE LETTER**

*(Sample **B** Modify as appropriate)*

Re: [Subject]

Dear [Name]:

Enclosed you will find a copy of the fee agreement you recently signed. We will be representing you on [discuss scope of engagement].

As we recently discussed, Oregon law allows judges to award costs to the prevailing party. This award is generally called a prevailing party fee. The fee ranges from \$60 to \$575, depending on the type of case and how it is resolved. The prevailing party may also request an enhanced prevailing party fee of up to \$5,000 in addition to the standard fee of \$60 to \$575. The court must consider certain factors in determining whether to allow an enhanced prevailing party fee. The factors are:

- (1) The conduct of the parties in the transactions or occurrences that gave rise to the litigation, including any conduct of a party that was reckless, willful, malicious, in bad faith, or illegal;
- (2) The objective reasonableness of the claims and defenses asserted by the parties;
- (3) The extent to which an award of a larger prevailing party fee in the case would deter others from asserting good faith claims or defenses in similar cases;
- (4) The extent to which an award of a larger prevailing party fee in the case would deter others from asserting meritless claims and defenses;
- (5) The objective reasonableness of the parties and the diligence of the parties and their attorneys during the proceedings;
- (6) The objective reasonableness of the parties and the diligence of the parties in pursuing settlement of the dispute;
- (7) Any award of attorney fees made to the prevailing party as part of the judgment; and
- (8) Such other factors as the court may consider appropriate under the circumstances.

In addition to the possibility you may have to pay a prevailing party fee or an enhanced prevailing party fee, you should also be aware that the legal action you wish to bring against [enter name]** is an action that can be filed because of your rights under ORS [enter statute]**. This statute includes a provision that also allows the court to award attorney fees to the prevailing party. This means that if you sue and you lose, the court can require you to pay the attorney fees of the other side. The court must consider certain factors in determining whether to award attorney fees against you. These laws were made to encourage parties to evaluate cases carefully before filing suit. These statutes require the court to view the conduct of the parties in determining whether to require you to pay the other side's attorney fees if you lose your case. The factors viewed by the

court when requiring you to pay the attorney fees of the other side are similar to those viewed by the court when considering whether to award an enhanced prevailing party fee. (See #1 - #6 above.) These are only a few factors the court may consider. If the court determines that attorney fees are to be awarded, the court is then to consider certain factors in determining the amount of an award of those fees.

The possibility of prevailing party fees and the award of the other side's attorney fees represent a large financial risk. It is a financial risk faced by you, and by the other side. It is important that you know this information and understand it. Please ask me any questions that you have about these, or other issues.

Truly yours,

[Attorney]

[Firm]

I have read, and I understand this letter.

[Client]

[Date]

[NOTE: This is a sample form only. Use of this letter will help to establish clear expectations and avoid misunderstandings between you and your client. It will not, however, provide absolute protection against a malpractice action.]

**Can be adapted depending on type of case, and party involved. See ORS 20.190 for more information on prevailing party fees.

IMPORTANT NOTICES

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