***(Sample [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 discussed, Oregon law allows a prevailing party to recover costs in litigation. This includes a so-called “prevailing party fee.” “Prevailing party” usually means the person who wins the case, but sometimes the term refers to the person who receives a favorable final decision on some but not all of the claims in a case. Based on Oregon Revised Statutes 20.190, the prevailing party fee usually ranges from $85 to $640, depending on the type of case and how it is resolved. However, when recovery of money or damages is sought, as opposed to just nonmonetary relief, there can be an additional or “enhanced” prevailing party fee of up to $5,000. Enhanced prevailing party fees are not usually awarded. However, an award of enhanced prevailing party fees depends on the following factors:

(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 provides for an award of attorney fees to the prevailing party. This means that if you sue and you lose, you may be required to pay the attorney fees of the other side, based on certain factors outlined in Oregon Revised Statutes 20.075. These factors should encourage parties to evaluate cases carefully before filing suit. The factors are generally similar to the factors for deciding whether a party will recover an enhanced prevailing party fee (see factors 1 - 8 above); they include the parties’ conduct. These are not the only factors that may be considered. If attorney fees are to be awarded, then certain factors affect the amount of the fees awarded.

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. For attorney fees, especially note that some statutes require an award of attorney fees to the prevailing party, some make such an award discretionary, and some authorize an award just to a prevailing plaintiff, but not to the prevailing party (*e.g.*, ORS 20.080 mandates attorney fees for a prevailing plaintiff in small tort claims, whereas ORS 20.082 authorizes an award of fees to the prevailing party in small contract claims); see generally, 3 OREGON CIVIL PLEADING AND LITIGATION, Ch. 46 (Oregon CLE, 2020) and see especially Section 46.2-3(e), which lists some, but not all, of the statutes whereby the loser in litigation can be made to pay the winner’s attorney fees.

**IMPORTANT NOTICES**

This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics presented. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice.  This information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund except that permission is granted for Oregon lawyers to use and modify these materials for use in their own practices.  © 2023 OSB Professional Liability Fund