

FORMAL OPINION NO. 2005-15
Fee Agreements:
Contingent Fees Paid in Installments

Facts:

Lawyer settles a contingent fee case for Client. The settlement provides that payments will be made over time.

Question:

Absent a contrary agreement by Client, may Lawyer ethically take more than the applicable percentage fee from each payment as made?

Conclusion:

No.

Discussion:

Oregon RPC 1.5(a) provides:

A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee or a clearly excessive amount for expenses.

Lawyer's contingent fee agreement provides for Lawyer to get a percentage of any settlement and not for Lawyer to be paid "off the top." Because the Oregon Supreme Court has held that "an illegal or clearly excessive fee" under *former* DR 2-106(A) is present whenever a lawyer charges more than a client has agreed to pay, Lawyer cannot receive more than a prorated portion of each settlement payment that is made. *Cf. In re Sassor*, 299 Or 720, 725, 705 P2d 736 (1985) (applying *former*

DR 2-106(A) which, for purposes of this opinion, is the same as Oregon RPC 1.5(a)); Oregon RPC 1.8(i)(2) (lawyer may “contract with a client for a reasonable contingent fee in a civil case”).

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and other related subjects, see THE ETHICAL OREGON LAWYER §§3.2, 3.5, 3.7, 3.20 (Oregon CLE 2003); RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §§34–35 (2003); and ABA Model Rule 1.5(a). *See also* OSB Formal Ethics Op Nos 2005-69 (lawyer may not receive more than previously agreed-on fee even though lawyer fee award is larger and reasonable under the circumstances), 2005-151 (lawyer may not charge fee in excess of fixed fee unless agreed to beforehand or fee agreement provides notice of possibility of increased fee).