

## 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

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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.**

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COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 3.2-1 (excessive or unreasonable fees), § 3.2-4 (contingent-fee agreements), § 3.3-2 (value of reaching an agreement regarding fees), § 3.4-8 (timing of payment of fees and costs) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 34–35 (2000) (supplemented periodically); and ABA Model RPC 1.5(a). *See also* OSB Formal Ethics Op No 2005-69 (lawyer may not receive more than previously agreed-on fee even though lawyer fee award is larger and reasonable under the circumstances); OSB Formal Ethics Op No 2005-151 (rev 2011) (lawyer may not charge fee in excess of fixed fee unless agreed to beforehand or fee agreement provides notice of possibility of increased fee).