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* § 3.2-1 (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).