FORMAL OPINION NO 2005-63

Fee Agreements:
Interim Payment to Lawyer before Probate Completed

Facts:

Lawyer represents Personal Representative in connection with the administration of an estate.

Questions:

1. May Lawyer receive a partial payment before the completion of the estate?
2. Would the answer differ if Lawyer were also the personal representative?

Conclusions:

1. Yes, qualified.
2. 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.

Legal fees and personal representative fees must be approved by order of the court before they can be paid from estate funds. ORS 116.183. It follows that Lawyer may receive an interim payment from estate funds only if an appropriate court order is first entered. See In re Altstatt, 321 Or 324, 334, 897 P2d 1164 (1995), cert dismissed, 517 US 1129 (1996) (it is impermissible to collect attorney fees from estate in probate without prior court approval; any such attorney fee collected is “illegal” and in violation of former DR 2-106(A)); In re Weidner, 320 Or 336, 338–39, 341, 883 P2d 1293 (1994); In re Coe, 302 Or 553, 561, 731 P2d 1028 (1987).
By contrast, an interim payment from Personal Representative’s own funds, rather than from estate funds, appears to be permitted without court approval.

**Approved by Board of Governors, August 2005.**

**COMMENT:** For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* § 3.2-3 (fees requiring court approval) (OSB Legal Pubs 2015); and ABA Model RPC 1.5.