



ILLINOIS STATE
BAR ASSOCIATION

ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED** by the Board of Governors in January 2010. Please see the 2010 Illinois Rule of Professional Conduct 1.5. See also ISBA Ethics Advisory Opinion 90-10. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

Opinion Number 723
April 30, 1981

Topic: Contingent-fee agreements;
limitation by court award of fees.

Digest: If not limited by a statutory prohibition, attorney's fees can be in excess of the amount recovered in lawsuit where a contingent-fee agreement has been entered into between client and attorney.

Ref: Illinois Supreme Court Code of Professional Responsibility Rule 2-106 (c) (1); Former ISBA Code of Professional Responsibility Dr 2-107; Illinois Bar Journal Volume 67, No. 10, Page 618.

QUESTION

Can an attorney enter into a contingent fee agreement so he will be compensated out of the judgment obtained to the extent necessary to bring his fees up to one-third of the total amount recovered despite an award of attorney's fees by the court which is smaller than the agreed upon contingent fee?

OPINION

Although the former ISBA Code of Professional Responsibility did not cover contingent fee

agreements except to prohibit them in criminal cases, the new Supreme Court Rule 2-106(c)(1) of the Code states:

"For the purposes of this rule a contingent fee agreement shall be deemed to be any agreement for the provision of legal services by a lawyer under which the amount of the lawyer's compensation is contingent in whole or in part upon the successful accomplishment (by settlement or litigation) of the subject matter of the agreement regardless of whether the fee is established by formula or in fixed amount."

Paragraph (c)(2) and (3) of Rule 2-106 require that contingent-fee agreements be in writing, set forth the method by which the fee will be determined and provide for a closing statement enabling a definite statement of the applications of the contingent-fee agreement in the action. Paragraph (c) (4) prohibits contingent-fee agreements in criminal cases as did the former ISBA rule Dr 2-107, but exempts such agreements from the provisions of (c) (2) and (3) from arrangements concerning the collection of commercial accounts and of insurance company subrogation claims made in accordance with usual practices in respect to such cases.

It is the opinion of this Committee that a contingent-fee agreement may be entered into by an attorney and his client for a fee in excess of the amount recovered in a lawsuit if there is no statutory prohibition against such agreement. Likewise, if the awarded fee is greater than the agreed upon fee, the attorney is limited to the contract amount. The award is the property of the client and not the attorney.

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