

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-339
Issued: June 1990

The Rules of Professional Conduct are amended periodically. Lawyers should consult the current version of the rules and comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: What is the proper way to compute the amount of a contingent fee in the context of a structured settlement?

Answer: The contingent fee must be reasonable and the method of computation should be set forth in the fee contract. Rules 1.5(a) and (c). The agreement should specify if the lawyer is to receive the fee in a lump sum or periodically, e.g., as the client receives his or her annual increments. If the lawyer is to receive his fee in a lump sum, then it should be based on a percentage of the discounted present value of future (periodic) payments rather than on a percentage of “total benefits”.

OPINION

The Rules do not attempt to set forth a single method for calculating fees in this context. The standard of “reasonableness” set forth in Rule 1.5(a) (in light of the various factors set forth) obtains. The method of computation should be agreed upon in advance, and expressed in the fee contract to avoid misunderstanding. Rule 1.8(c).

Beyond expressing these generalities, we must refer counsel to the caselaw, since the inquiry involves questions of law as well as ethics.

It has been held that in the absence of an agreement to the contrary the lawyer may have to wait and receive his or her fee periodically, as the client receives annual increments. *See Cardenas v. Ramsey County*, 322 N.W.2d 191 (Minn. 1982); *In re Chow*, 656 P.2d 105 (Haw. 1982). In addition, the courts have announced a rule that the contingent fee percentage should be applied to the discounted present value of future (periodic) payments (majority rule), or in some instances the cost of the annuity funding the payments (minority rule). *See, e.g., Pettiford v. Eskwitt*, 460 A.2d 716 (N.J.Super. 1983); *Florida Bar v. Gentry*, 475 So.2d 678 (Fla. 1985) (disciplinary case in which the court opined that the lawyer did not follow the community standard of charging a percentage of the present value of the settlement and therefore charged an excessive fee).

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.