

FORMAL OPINION NO. 102*

The Ethics Committee of the Idaho State Bar has been requested for an informal opinion on the following facts:

An attorney and client agree on a fee arrangement of one-third of any "recovery", after first deducting medical expenses and filing fee costs. The medical expenses total \$11,900, while costs are \$100. Judgment is rendered for \$17,000, with an additional award of \$5,000 attorney fees. Client contends the fee should be computed as follows:

\$17,000	Damages
+ 5,000	Attorney fees
<u>22,000</u>	
- 12,000	Medical expenses and costs
<u>10,000</u>	
- 3,333	To attorney
<u>\$ 6,667</u>	To client

Attorney contends his fee should be \$5,000 and his client should take:

\$17,000	
- 12,000	Medical expenses and costs
<u>\$ 5,000</u>	To client

The question presented is:

How is the attorney's fee computed in accordance with the Code of Professional Responsibility?

It is the opinion of the committee that by virtue of the contract providing for "one-third of any recovery" between the attorney and client that the attorney fee is limited to \$3,333 between the attorney and client.

Contingent fees are and have been permitted in the practice of law both under the Canons and under the Code of Professional Responsibility and once the contract is entered into between the attorney and client, it should govern.

It is further the opinion of the committee that it is incumbent upon the attorney to draft for his client a contract that provides for fees in the event of various results. This is particularly true in view of attorney fees being awarded in various cases such as contract actions and under Idaho Code §§ 12-120 and 12-121. It is the duty of the attorney to provide a clear, understandable and fair contract governing the method of compensation of the attorney in the particular case.

Common sense dictates such an arrangement as well as the Code of Professional Responsibility.

*This is an undated opinion.