

Nebraska Ethics Advisory Opinion for Lawyers  
No. 78-8

IT IS NOT IMPROPER FOR AN ATTORNEY TO UNDERTAKE REPRESENTATION ON A CONTINGENT FEE BASIS TO COLLECT ACCRUED AND UNPAID CHILD SUPPORT OR ALIMONY.

FACTS

The Committee has been asked if an attorney may ethically represent a divorced wife to collect back child support on a contingent fee basis; and is the answer to the question affected by the client's ability to pay or by which party suggested the fee arrangement.

DISCUSSION

There is no Disciplinary Rule in the Code of Professional Responsibility as adopted in Nebraska which prohibits contingent fees except in the case of representation of a defendant in a criminal case (DR 2-106(C)). E.C. 2-20 contains an enlightening discussion on the subject of contingent fees in the following statement:

"Contingent fee arrangements in civil cases have long been commonly accepted in the United States in proceedings to enforce claims. The historical bases of their acceptance are that (1) they often, and in a variety of circumstances, provide the only practical means by which one having a claim against another can economically afford, finance, and obtain the services of a competent lawyer to prosecute his claim, and (2) a successful prosecution of the claim produces a res out of which the fee can be paid. Although a lawyer generally should decline to accept employment on a contingent fee basis by one who is able to pay a reasonable fixed fee, it is not necessarily improper for a lawyer, where

justified by the particular circumstances of a case, to enter into a contingent fee contract in a civil case with any client who, after being fully informed of all relevant factors, desires that arrangement. Because of the human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relation cases are rarely justified. In administrative agency proceedings contingent fee contracts should be governed by the same consideration as in other civil cases. Public policy properly condemns contingent fee arrangements in criminal cases, largely on the ground that legal services in criminal cases do not produce a res with which to pay the fee."

In [Opinion No. 76-10](#) this Committee ruled that it was proper for an attorney to represent a plaintiff in a contested paternity suit under a contingent fee arrangement. In the body of the Opinion the statement was made that:

"Courts and ethical opinions generally disapprove of fee arrangements based upon the amount of alimony or property settlements achieved in a divorce action. It is felt that contingent fee arrangements in such cases might tend to discourage reconciliation and are, therefore, contrary to public policy."

#### CONCLUSION

It is apparent that the public policy considerations present in a prospective divorce action involving alimony and child support or a property settlement do not exist in the situation where the award has been made but is uncollected, and it is the opinion of this Committee that an attorney may properly undertake representation on a contingent fee basis to collect back alimony or support payments if he cares to do so.

This conclusion is shared by recognized authorities.

Drinker, for example, in his recognized work on "Legal Ethics" states at Page 177: "A lawyer may accept a percentage for collecting overdue alimony, but not a percentage of that to accrue subsequently."

As to the supplemental questions, in this view it is immaterial whether the attorney or the client suggests a contingent fee arrangement; similarly, the conclusion is not affected by the client's ability to pay although, as indicated in E.C. 2-20, it is preferable to avoid the contingent fee arrangement in such a case.

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