

You have indicated that an attorney which represents a minor child who was struck by an automobile in Virginia has instituted a personal injury action against the driver. You further indicate that the child's parent has an auto insurance policy which provides medical compensation payments. The parent's insurance carrier has agreed to reimburse all medical expenses and the attorney has sent the pertinent bills to the carrier. You also indicate that the attorney's contract with the client states that the attorney is to receive one-third of all money recovered. Finally, you advise that client could have obtained the reimbursement without the attorney's assistance, but that the attorney encouraged the client to have no direct dealings with other insurers.

You have asked the Committee to opine whether, under the facts of the inquiry, it is proper for the attorney to receive his one-third contingent fee out of this medical compensation payment.

The appropriate and controlling disciplinary rules relative to your inquiry are DR:2-105(A) which requires in pertinent part that a lawyer's fees shall be reasonable; and DR:2-105(C) which permits fees to be contingent on the outcome of the matter for which the service is rendered, except in criminal cases or other matters in which a contingent fee is prohibited by law. Further guidance is available through Ethical Consideration 2-20 which articulates several criteria by which a determination may be made as to the reasonableness of a fee, including the time required, the lawyer's experience, ability, and reputation, the nature of the employment, the responsibility involved, and the results obtained; and Ethical Consideration 2-22 [EC:2-22] which indicates that one of the historical bases for the acceptability of contingent fee arrangements in civil cases is that "a successful prosecution of the claim produces a res out of which the fee can be paid". See also LE Op. 189.

The Committee is of the view that tasks involved in securing the payments you describe on contractual obligations due the client under the client's insurance policy are merely ministerial in nature. Thus, the Committee opines that where such payments could be obtained by the client without the services of an attorney, a contingent fee for securing those payments would be per se unreasonable. Should there be extenuating circumstances, however, which render the pursuit of such payments to be a complex task, requiring specialized legal knowledge or experience, a contingent fee might be appropriate. The Committee believes that one purpose of a contingent fee arrangement is to encourage a lawyer to accept a case which carries inherent risks of nonpayment of legal fees. Conversely, matters which carry no such risk to the lawyer are not usually matters in which a contingent fee arrangement is appropriate. See, e.g., *Anderson v. Kenelly*, 547 P.2d 260, 261 (Colo. 1976); *The Florida Bar v. Moriber*, 314 So.2d 145, 148 (Fla. 1975); *In re Teichner*, 104 Ill.2d 150, 160 (1984).

Committee Opinion
April 13, 1992