

Committee Opinion
April 8, 1988

LEGAL ETHICS OPINION 1062

CONTINGENT FEE - DOMESTIC
RELATIONS.

You advise that your client and his wife entered into a property settlement agreement for the purpose of resolving all property matters between them subsequent to their separation in 1986. In 1987, the parties were divorced and the property settlement agreement was ratified, affirmed and incorporated into the final decree of divorce. The divorce was based upon a six-month separation since there were no children born of the marriage. Approximately one year after the entry of the final decree of divorce, your client requested that you represent him with regard to a valuable asset that belonged to the parties that was not contemplated by the settlement agreement. Not only was this asset not contemplated by the parties in the agreement, its existence had been forgotten by the client and, therefore, was also unknown to counsel at the time the property settlement agreement was negotiated. You also advise that no spousal support is paid pursuant to the final decree, any agreement or otherwise. Your client does not have sufficient funds to pay you a fee if based on a reasonable hourly rate.

You wish to know whether or not a contingent fee arrangement would be proper in this situation.

L E Op. No. 189 sets forth the reluctance of the State Bar to approve contingent fees in domestic relations cases. In LE Op. 189 the Committee opined that contingent fees are to be approved in domestic relations cases only in rare circumstances where the impact on human relationships will clearly not be adversely affected.

In L E Op. No. 405, however, the Committee found that a contingent fee was appropriate under the narrow facts of that situation. The Committee based its opinion on the fact that (1) the lengthy period during which payment of alimony had not been made precluded the continuing existence of any meaningful relationship which might be undermined by litigation handled on a contingency fee basis; (2) the client was unable to pay reasonable attorney's fees charged on an hourly basis; (3) attorney's fees awarded by the court would be credited against the contingent fee; and (4) the contingent fee was fair and reasonable under the circumstances.

In L E Op. No. 568, however, the Committee could not opine that the situation was one of those rare circumstances when a contingent fee would be appropriate. The Committee based this decision on the fact that the parties had been married 25 years and had only recently been divorced. Also taken into consideration was the fact that there was a possibility of reconciliation with the wife due to the fact that it might be shown that the husband perpetrated a fraud on the court and, therefore, the divorce would be set aside.

In this situation, because the parties are divorced and no children are involved, it does not appear that any human relationships would be adversely affected. Furthermore, the

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Committee relies on your statement that the husband is unable to pay reasonable hourly fees.

Based upon the facts as set forth in your letter, the Committee opines that it would not be improper in this situation for you to accept this case on a contingent fee basis, provided the contingent fee is fair and reasonable under the circumstances.

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Legal Ethics Committee Notes. – Rule 1.5(d)(1) and Comment [3a] codify the circumstances in which lawyers may handle family law matters on a contingent fee basis.