

Committee Opinion  
May 17, 1988

LEGAL ETHICS OPINION 1081

DOMESTIC RELATIONS –  
CONTINGENT FEES.

You have requested an informal, advisory opinion from the Virginia State Bar Standing Committee on Legal Ethics concerning a proposed retainer agreement which was formalized between you and a client on June 12, 1985. Your client, 29 years old, retained you to file a suit against her father for child abuse which occurred when your client was a child. In the retainer agreement, you and your client agreed that your fee would be \$100 per hour and that the client would provide you an initial retainer of \$2,500. It was agreed that the client would continue to pay you, even after the initial retainer was expended, until the matter was settled. In the event of a judgment or a settlement, you would be entitled to one-third of such sums received, but from that proportion it was agreed that all of the hourly fees your client had up to that time paid would be deducted. In the event that your share of such a judgment or settlement was less than the hourly sums received, you would not be entitled to any part of such judgment or settlement, but neither would you be required to forfeit any part of fees due or paid.

Your client's present counsel has accused you of acting unethically by entering into this retainer agreement.

In L E Op. No. 189 the State Bar set forth its reluctance to approve contingent fees in domestic-relations cases. The Committee opined in that opinion that contingent fees are to be approved in domestic-relations cases only in circumstances where the impact on human relationships will clearly not be adversely affected. The Committee does not believe the situation which you described falls under the guidelines of L E Op. No. 189.

Therefore, the Committee refers you to DR:2-105(C), which states "A fee may be contingent on the outcome of the matter for which the services are rendered, except in criminal cases or other matters in which a contingent fee is prohibited by law. A contingent fee agreement shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal, expenses to be deducted from the recovery, and whether expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a closing statement showing the fee and the method of its determination."

The Committee believes that the contingency agreement which you entered into with your client complies with the requirements of DR:2-105(C). The Committee does advise that upon conclusion of the matter, you should provide the client with a closing statement showing the fee and method of determination.

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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.