

Committee Opinion
October 26, 1988

LEGAL ETHICS OPINION 1174

CONTINGENT FEE: OBTAINING
JUDGMENT AGAINST THE ESTATE OF
THE DECEASED MATERNAL PARENT
FOR CHILD SUPPORT ARREARAGES.

You advise that you represented the maternal grandmother in an action to obtain custody of her two illegitimate infant grandchildren from their mother in July, 1986. Parental support was ordered in the amount of \$250 per child per month and approximately \$300 in total support payments were made by the mother until her untimely death as a result of an automobile accident, which occurred on November 5, 1987. There are several claims pending against the estate, one of which is a judgment for child support payments which you filed on July 14, 1988, in the amount of \$6,964 which was returned in favor of your client.

You originally accepted employment on a contingency fee basis and after discussion of this matter with other attorneys, you wish to know whether accepting employment for the collection of child-support arrearages against the estate of a deceased on a contingency fee basis is in violation of the Virginia Code of Professional Responsibility.

The Committee would direct your attention to L E Op. No. 667 and L E Op. No. 850 in which the Committee previously opined that it is ethically improper for an attorney to accept employment on a contingent fee arrangement based on a percentage of the amounts recovered in an action for child-support arrearages, except under the following conditions: (1) the child involved will soon reach the age of maturity; (2) the attorney is convinced that the contingent fee arrangement would not undermine the noncustodial parent's relationship with the minor child; (3) the client is indigent or in a financial position which otherwise would not allow her to obtain adequate counsel on an hourly fee basis; and (4) the fee arrangement is fair and reasonable.

Under the limited facts as you have outlined them in your inquiry, the Committee opines that the aforementioned legal ethics opinions are dispositive of your inquiry. The Committee is of the view that the propriety of the contingent fee arrangement could not be affected by the children's ages as the noncustodial parent with whom a relationship would have been enjoyed is deceased, nor is it possible that a contingent fee agreement would undermine this relationship. (Under the facts, there is no evidence that a biological, paternal relationship exists that could be undermined or diminished.) Therefore, the determination of whether the contingent fee arrangement is ethically permissible depends on whether the client would not be in a financial position to obtain adequate counsel on an hourly fee basis and whether the fee is fair and reasonable.

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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.