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.