

Committee Opinion
April 25, 1989

LEGAL ETHICS OPINION 1229

ADVERTISEMENT AND
SOLICITATION-CONTINGENT FEES-
DOMESTIC RELATIONS PRACTICE:
ADVERTISEMENT FOR CHILD
SUPPORT ARREARAGES
COLLECTIONS ON A CONTINGENT
FEE BASIS.

You have asked the Committee to consider the propriety of an advertising brochure directed to those members of the general public in need of legal advice for the collection of child or spousal support arrearages. You are particularly interested in knowing the appropriateness of the language contained in the final paragraph of the brochure, which states:

Under some circumstances, if you are unable to afford a lawyer to represent you in collecting what is owed, you may be able to qualify for a contingent fee arrangement which would allow a lawyer to represent you for a percentage of the funds which are recovered.

The Disciplinary Rules governing public advertisement and solicitation of professional employment are DR:2-101 and DR:2-103, which provide that a lawyer shall not participate in the use of any form of public communication nor shall he solicit employment from a nonlawyer who has not sought his advice regarding employment if such communication or solicitation contains a false, fraudulent, misleading or deceptive statement or claim, or if such communication has a substantial potential for or involves the use of coercion, duress, intimidation, unwarranted promises of benefits, over persuasion, or harassing conduct in light of the sophistication of the legal matter, and the physical, emotional, and mental state of the person to whom it is directed. (See L E Op. No. 862) In addition, DR:2-105 states that a lawyer's fees shall be reasonable and adequately explained to the client.

As for the final paragraph of the brochure, the Committee would opine that the language indicating circumstances under which the contingency arrangement may be permissible may be misleading, since it has long been established in the legal community that a contingent fee arrangement in domestic relations matters is improper. The Committee would direct your attention to EC:2-22 which states in part that, "because of the human relationships involved and the unique character of the proceedings, contingency arrangements in domestic relations cases are rarely justified." The Committee opined in LE Op. 423 that it was ethically improper to enter into a fee arrangement where the legal fee would be based on a percentage of the court awarded sum or the lump sum property settlement to the client.

The Committee is of the view, however, that the advertisement would not be improper if it clearly indicates that a contingency fee is generally permissible in cases where child support arrearages have been reduced to judgment. An advertisement which suggests that

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contingency fees are common or permissible in most other domestic relations cases is likely to be misleading because, in fact, contingency fee arrangements are only rarely proper. The Committee would direct your attention to LE Op. 667 and L E Op. No. 850, which enumerate the special circumstances under which a contingency fee arrangement for the collection on a judgment of child support arrearages is acceptable.

Notwithstanding the foregoing of disclosure, the Committee would advise that an attorney is still required to explain to the individual clients prior to accepting employment that the client is not relieved of liability for any costs and expenses in connection with the litigation and case file. Furthermore, the Committee believes the attorney also must be mindful that the contingency fee arrangement must be a reasonable one and must be adequately explained to the client.

The Committee cannot opine as to the veracity of the statistical information presented in the scenario recited in the brochure and will assume the information contained therein to be true and in compliance with DR:2-101 and DR:2-103 for the purposes of this inquiry. However, the Committee would caution an attorney to guard against generalized statements regarding predictions of outcomes which tend to be deceptive or misleading and produce unrealistic expectations in particular cases. That is the type of advertisement which may bring about distrust of the law and lawyers as well as undermine the public confidence in the legal system. (See EC:2-10 and EC:2-11)

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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.