

An attorney represents the mother of a partially retarded child to recover child support arrearages. The parents were divorced in Ohio in 1972. The Ohio divorce decree established the father's obligation to support the partially retarded child for life and two other children until maturity. The father discontinued support 12 years ago. The mother, a resident of Mississippi, is indigent. The mother contracted with a Mississippi attorney to recover child support arrearages, with that attorney receiving 50% of recovery. The Mississippi attorney, in turn, has contacted a Virginia attorney to assist in the case, since the husband is a resident of Virginia, and has proposed a 25% contingent fee arrangement with the Virginia attorney.

This situation is governed by LE Op. 667 which sets forth three requirements which must be met in order for a contingent fee arrangement to be used in a child support arrearage case. LE Op. 667 states that a contingent fee arrangement in collecting child support arrearages is unethical unless the following factors are satisfied:

1. Children involved have or will soon achieve the age of maturity;
2. The attorney involved has objectively satisfied himself that the contingent fee arrangement would not likely, in any way, undermine the noncustodial parent's relationship with the minor child or children;
3. The prospective client is indigent and no other type of fee arrangement is practical;
4. The fee arrangement is fair and reasonable under the circumstances.

The committee determined that the partially retarded child should be considered a minor due support for life under the specific terms of the contractual obligation entered into 14 years earlier. The committee determined that seeing the parent by coincidence twice in ten years, and receiving one phone call in ten years and a \$50.00 check each Christmas does not constitute a parent/child relationship which would be undermined by a contingent fee arrangement.

The committee did not feel able to approve or disapprove the 50% contingent fee contract originally arranged in Mississippi. The committee does not opine as to the 25% contingent fee proposed for the Virginia attorney. Therefore, the committee finds this situation within the restrictions of LE Op. 677.

Under the circumstances, it is not improper for an attorney to represent the client for a percentage of the child support recovered. [ EC:2-22; LE Op. 667]

Committee Opinion  
November 10, 1986

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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.