

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-364
Issued: March 1994

The Rules of Professional Conduct are amended periodically. Lawyers should consult the current version of the rules and comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: May a lawyer take a divorce case on contingent fee?

Answer: No. See Rule 1.5(d)(1).

Question: May a lawyer take a contingent fee in a divorce case if the only remaining issues involved are property settlement issues?

Answer: No. See Rule 1.5 (d)(1). There are conflicting views on this issue. Members of the Hotline Committee have given conflicting opinions, and the law is different from state to state. However, the Committee is persuaded by the reasoning in Meyers v. Handlon, 479 N.E.2d 106 (Ind. App. 1984) that contingent fees in this context are unnecessary and undesirable.

Question: May a lawyer take a contingent fee in a case arising from a divorce case, (1) involving the recovery of money or property the payment of which is in arrears, or (2) in a case in which marital assets are newly discovered after the action is final.

Answer: Yes. (1) A contingent fee may be paid in a case involving the recovery of liquidated sums in arrearage which have been or are capable of being reduced to judgment. Rule 1.5(d)(1). (2) If this can fairly be described as a new case, then a reasonable contingent fee may be appropriate.

Question: May a lawyer take a contingent fee to recover past due child support?

Answer: Yes. Rule 1.5(d)(1). If these are liquidated sums in arrearage, which have been or are capable of being reduced to judgment, then this may be appropriate.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.