

State Bar of South Dakota

Ethics Opinion 95-8

July 28, 1995

- **Rules: 1.5**
- **Subject: Contingent fee agreements; Child support arrearages**
- **Summary: An attorney may try to collect child support arrearages on behalf of a client under a contingent fee agreement as long as: (1) the divorce is final, (2) the fee arrangement is in writing, (3) the client is indigent and no practical fee arrangement is practicable, (4) the attorney makes full disclosure regarding child support arrearages, and (5) the fee is reasonable and fair.**

FACTS

A prospective new client spoke to you regarding collection of child support arrearages. The couple had one child, who has now reached the age of majority. The support obligor failed to pay child support for several years and a significant arrearage has accrued. The prospective client is unemployed, but has a spouse who is employed.

Based upon these facts, the question you posed to this Committee is whether or not a lawyer may permissibly collect child support arrearages under a contingent fee agreement.

OPINION

It is the opinion of this Committee that, subject to certain conditions, a contingent fee agreement may be entered into to collect child support arrearages. Rule 1.5(d)(1) prohibits in “domestic relations matter[s]” any fee “which is contingent upon the securing of a divorce or upon the amount of alimony or support... .” This Rule does not specifically prohibit the use of a contingent fee to collect past due child support. It is the opinion of this Committee that a contingent fee may be used to collect past due child support subject to the following conditions:

- (1) The divorce must be final;
- (2) The fee agreement must be in writing;
- (3) No alternative fee arrangement must be practicable because of the client’s indigency;
- (4) The lawyer must disclose all of the options available to the client for collecting child support arrearages and the client must have no other means of obtaining the payments;
- (5) The fee must be reasonable and fair;
- (6) The percentage charged must reflect the difficult~ and risks of non-recovery.

A contingent fee agreement may be used to collect past due child support if those conditions are met.

Michael S. McKnight
Chair, Ethics Committee
State Bar of South Dakota