

CONTINGENT FEES - DIVORCE ACTIONS

The Committee has been requested to consider the following question:

Is it ethical for a lawyer to attempt to procure a marriage settlement agreement on a contingency basis in which the attorney is to receive 40% of the proceeds; framing the settlement agreement in a manner so as to make the attorney a party thereto and requiring the checks to be payable jointly to himself and to his client?

Canon 13 provides:

"A contract for a contingent fee where sanctioned by law, should be reasonable under all the circumstances of the case, including the risk and uncertainty of the compensation, but should always be subject to the supervision of a court, as to its reasonableness."

Neither Canon 13 nor any other canon of professional ethics is helpful in determining whether a contingent fee contract in a divorce action is "sanctioned by law." The overwhelming weight of authority is to the effect that a contingent fee contract in divorce actions is contrary to public policy and is for that reason void.

Public policy is interested in maintaining the family relations and the interests of society require that those relations shall not be lightly severed and that families shall not be broken up for inadequate causes or from unworthy motives. Where differences have arisen and threaten disruption, public welfare and the good of society demand a reconciliation, if practicable or possible. A contingent fee contract tends directly to prevent such reconciliation, and, if they were legal and valid would tend directly to bring about an alienation of husband and wife by offering a strong inducement, amounting to a premium, to induce and advise the dissolution of the marriage ties as a method of obtaining relief from real or fancied grievances, which otherwise would pass unnoticed. A contingent fee contract cannot help but involve the personal interest of the attorney in preventing a reconciliation between the parties.

This rule is applied where the percentage fee is related to the award of alimony. It is also applied where the percentage fee is related to the distribution of property, and whether or not there has been a property settlement agreement. The rule is also followed where the contingent fee is a lump sum agreed upon in advance.

The rule also equally applies whether the contract involves the plaintiff in a divorce action or the defendant and also governs whether a contract was entered into before the divorce action was instituted or during its pendency. Where, however, the contingent fee contract calls for legal proceedings between husband and wife to settle property rights, but no divorce action is contemplated, the contract is valid.

A lawyer may accept a percentage for collecting overdue alimony or child support, but not a percentage of that to accrue subsequently.

In fixing the amount and time of payment of support and alimony, the court is entitled to have all the facts which would influence its decision. It is also entitled to be free from side agreements which would frustrate the court's effort to make ample provision for the wife without undue burden on the husband.

An excellent discussion of the foregoing rule and its application will be found in the case of In Re Smith, 42 Wash.2d 188, 254 P.2d 464.

The question submitted is answered in the negative.

DATED this 8th day of December, 1959.