

Nebraska Ethics Advisory Opinion for Lawyers  
No. 76-10

IT IS NOT UNETHICAL FOR AN ATTORNEY TO REPRESENT THE PLAINTIFF IN A CONTESTED PATERNITY CASE UNDER A REASONABLE CONTINGENT FEE ARRANGEMENT.

FACTS

Reference is made to your inquiry as to whether or not an attorney can represent the plaintiff in a contested paternity case under a contingent fee arrangement.

DISCUSSION

Courts and ethical opinions generally disapprove of fee arrangements based upon the amount of alimony or property settlements achieved in a divorce action. It is felt that contingent fee arrangements in such cases might tend to discourage reconciliation and are, therefore, contrary to public policy.

On the other hand, the Courts which have dealt with the problem hold that contingent fee arrangements in obtaining support in a paternity case are not only proper but are supported by public policy.

The leading case on this point is probably *Costigan v. Stewart*, 91 P. 83 (1907). In holding that an attorney was entitled to the one-third contingent fee provided for in the agreement, the Court stated at page 84:

". . . She agreed to pay him as an attorney's fee one-third of the amount recovered. . . . "

"Courts have never doubted their authority to allow nor hesitated to give to an attorney a lien for his fees upon a fund which his labors have created or assisted to bring into existence, unless some considerations of public policy or other

special reason stood in the way of such an equitable allowance. There is nothing analogous in the doctrine of the cases which refuse an attorney a lien upon money paid for alimony as his fees for procuring the allowance. . . ."

The Supreme Court of Oklahoma in *State of Oklahoma v. Jack W. Cosby*, 285 P.2d 210, followed the above decision and held a contingent fee arrangement entirely proper, stating:

"The view of the Kansas Court is wholesome. A mother, in a destitute condition with an infant, who has been abandoned by its father who has few worldly goods if not completely judgment proof, is in dire need of the services of a competent attorney. The representation is far from attractive, involving as it does the prospects of prolonged and harassing litigation of distasteful factual situations with little prospect of even a meager fee. Although an attorney accepts such employment only because of a charitable inclination and a devotion to public service, he should not be forever barred from sharing reasonably in a possible recovery resulting from his tireless and patient efforts. To so hold would be tantamount to destroying all possibility the infant has of securing the services of a lawyer when its need for such services is greatest. . . ." (page 215)

#### CONCLUSION

In view of the foregoing, it is our opinion that a reasonable contingent fee in such a case is proper and that the statement in E. C. 2-20 to which you refer is not applicable to this situation.

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