

Opinion 485
March 1994
Tex. Comm. on Professional Ethics, Op. 485, V. 57 Tex. B.J. 304 (1994)

FACTS

A Texas attorney contemplates entering into an employment contract regarding child support arrearage lawsuits with the client based on a (contingency fee) percentage of the amount of arrearage recovered for the client.

QUESTIONS PRESENTED

1. Is accepting these cases on a contingency fee in violation of the Texas Disciplinary Rules of Professional Conduct Rule 1.04?
2. Does the use of Power of Attorney from the client and the depositing of full arrearage into the attorney's escrow account prior to disbursement violate any Rule of Professional Conduct?

DISCUSSION

The proposed fee agreement provides for a client to pay for attorney's fees based on money that will be paid to the client in the future.

Handling a child support arrearage case does not violate the spirit of Rule 1.04, Comment No. 9 of the State Bar Rules of Texas because that Comment discusses that contingent and percentage fees promote divorce and may be inconsistent with a lawyer's obligation to encourage reconciliation. Child support arrearage cases are between parties who are already divorced. Since sworn testimony at the final divorce hearing has previously been given that, at least as to one party, there is no reasonable hope of reconciliation, the attorney's obligation to encourage reconciliation is alleviated.

An attorney is obligated to quote a reasonable percentage in such a case. A fee is unconscionable if a competent attorney could not form a reasonable belief that the fee is reasonable.

The attorney is obligated to fully disclose all options to the client. The client should be informed of options such as the Texas Attorney General's office handling child support arrearage cases free of charge to the client. Other options should be discussed and the pros and cons of such options may be discussed.

The attorney is further obligated to meet the fee guidelines as established by the State Bar Rules of Texas in Rule 1.04.

The use of a power of attorney and depositing of the arrearage moneys collected into the attorney's escrow account does not appear to violate any Rule of Professional Conduct so long as a proper accounting is made, the client is promptly paid, and the moneys placed in escrow are arrearage only. All dealings should comply, with Rule 1.14.

CONCLUSION

Accepting a child support arrearage case on a contingency basis would not violate Rule 1.04 of the State Bar Rules of Texas provided a reasonable percentage is quoted to the client according to the fee guidelines established by the State Bar Rules of Texas and provided the attorney discloses all of the options available to the client in collecting child support arrearage. All

dealings should comply with Rule 1.14 while handling clients' money. Lastly, this opinion is neither addressing the questions of law nor the role of the Court nor the propriety of demand letters.