



## Committee on Professional Ethics

Opinion #443 - 9/20/76 (66-76)

Topic: Contingent Fee

Digest: Contingent fee for collection of past due alimony and past due child support is not improper, if reasonable.

Code: EC 2-20, 5-7;  
DR 2-106

### QUESTION

May an attorney ethically be retained, on a contingent basis which is reasonable, for the collection of past due alimony and of past due child support payments?

### OPINION

In N.Y. State 390 (1975) this Committee held that a contingent fee arrangement was not improper provided the "stringent criteria set forth in EC 2-20, EC 5-7 and DR 2-106 are met". That opinion and its rationale are apposite to contingent fee arrangements for the collection of past due alimony and of past due child support payments.

We are not unmindful that EC 2-20 states in part: "Because of the human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relations cases are rarely justified". However, this cautionary language, though applicable to actions affecting the marital status of the parties, does not apply to cases solely for the collection of past due alimony and of past due child support payments. See, N.Y. County 275 (1929) and N.Y. County 533 (1964). In this connection we note that the only specific prohibition in DR 2-106 against a contingent fee is in a criminal case.

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