

ADVISORY ETHICS OPINION 91-17

SYNOPSIS:

An attorney may accept employment on a contingency fee basis to represent a client seeking past due temporary total disability payments in a workers' compensation case.

FACTS:

The requesting attorney has a workers' compensation practice in which he standardly accepts employment on a contingency fee basis to secure past due temporary total disability benefits and permanent partial disability benefits. He has read with concern PCB Decision No. 3 dated October 12, 1990, and asks our opinion whether he may enter into contingency fee agreements with clients having workers compensation claims where the contingency fee agreement is limited to a percentage of any temporary total disability recovery secured by the attorney for past due payments.

DISCUSSION:

DR 2-106 addresses the issue of fees for legal services. Contingency fees are recognized under the Code as an acceptable form of fee arrangement (DR 2-106(B)(8)). EC2-20 recognizes that contingent fee arrangements in civil cases have "long been commonly accepted in the United States in proceedings to enforce claims." The EC goes on to note that "in administrative agency proceedings contingency fee contracts should be governed by the same consideration as in other civil cases."

The only code violation cited by the PCB in Opinion No. 3 as the basis for its conclusion of sactionable misconduct is the general prohibition contained in DR 1-102(A)(5) barring an attorney from engaging in conduct prejudicial to the administration of justice. One concern of the PCB appears to have been the hardship imposed on a temporarily disabled wage earner when a percentage of his temporary disability payment check is deducted each week for an attorney's contingency fee. That concern is not present under the facts presented here as the request applies only to contingency fee arrangements for past due temporary total disability payments. The findings in PCB No. 3 also suggest that the attorney there continued to take contingency payments from ongoing temporary total disability checks long after the services to secure the payments had been concluded and on top of the attorney's contingency cut of the lump sum paid for past due temporary disability payments. The payments were also far in excess of the value of the services provided to the client. Here that potential occurrence is not presented as the contingency fee arrangement proposed will cover only past due temporary total benefits which, if claimant is successful, will be paid for a finite period in one lump sum.

The Code of Professional Responsibility does not bar a contingency arrangement for the payment of fees in the circumstances presented by the requesting attorney.