

Final

Rhode Island Supreme Court Ethics Advisory Panel  
Opinion No. 2006-03 Request No. 918  
Issued October 12, 2006

FACTS:

The inquiring attorney represented Wife (W) in a divorce. Pursuant to the marital settlement agreement (MSA), W was to receive one-half of the value of certain stock options owned by Husband (H). At the time the MSA was signed, there were a number of stock options, and H was at various stages of vesting for the options.

Subsequent to the final divorce decree, H's employer was purchased by a large company, resulting in an immediate vesting of all H's stock options. H exercised the options realizing about \$500,000. However, H only paid W about \$50,000, claiming that he was only required to pay W one-half of the value of the options as of the date the MSA was signed. W contends that the MSA requires H to pay her one-half of \$500,000, the value of the stock on the date H exercised the options. W further contends that H intentionally withheld inside information regarding the sale of H's employer and the effect of the sale on H's vesting.

W has requested that the inquiring attorney, together with co-counsel, represent her in this dispute. The inquiring attorney proposes to represent W on a contingency-fee basis against H for H's alleged breach of the MSA.

ISSUE PRESENTED:

May the inquiring attorney represent W on a contingency-fee basis in a dispute between W and H about the value of stock options to which W is entitled under the MSA, and in the collection of amounts W contends she is owed?

OPINION:

A contingent fee is proper in a post-divorce action in which the value of the stock to which W is entitled pursuant to the MSA, is in dispute. However, a contingency fee would not be permissible if the divorce action is re-opened on the basis of W's claim that H misrepresented or withheld facts during the divorce proceedings.

REASONING:

Rule 1.5(d)(1) is applicable to this inquiry. It states:

- (d) A lawyer shall not enter into an arrangement for, charge, or collect:
- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the original amount of alimony or support, or property settlement in lieu thereof;

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The Panel has stated that contingent fee arrangements are proper in regard to the collection of past due alimony as well as past due child support, but that such arrangements are not permitted when seeking to obtain increased alimony or increased child support. Rhode Island Supreme Court Ethics Advisory Op. 91-78 (1991).

The Panel concludes that in the instant inquiry, a contingent fee would be proper in a post-divorce action on the contract in which the value of stock to which W is entitled pursuant to the MSA is in dispute. See Kansas Bar Assoc. Prof. Ethics Comm., Op. LEO 97-4 (1997)(permitting contingency fee arrangement in independent post-divorce action on value of corporate stock acquired from divorce.) However, a contingency fee would not be permissible if the divorce action is re-opened on the basis of W's claim that H misrepresented or withheld facts during the divorce proceedings.