

(23 April 1999 - to date)

CONTINGENCY FEES ACT 66 OF 1997

*(Government Notice 1563 in Government Gazette 18452, dated 21 November 1997. Commencement date:
23 April 1999 [Proc. R 48, Gazette No. 20009, dated 23 April 1999])*

CONTINGENCY FEES AGREEMENT IN TERMS OF THE CONTINGENCY FEES ACT, 1997 (ACT NO. 66 OF 1997)

*Government Notice R547 in Government Gazette 20009 dated 23 April 1999. Commencement date:
23 April 1999*

It is hereby notified that the Minister of Justice has, under section 3(1)(a) of the Contingency Fees Act, 1997 (Act No. 66 of 1997), prescribed the form of a contingency fees agreement, as set out in the Schedule.

SCHEDULE

CONTINGENCY FEES AGREEMENT IN TERMS OF THE CONTINGENCY FEES ACT, 1997 (ACT NO. 66 OF 1997)¹

Done and entered into between

.....

.....

(*full name and address/name of business, full name of authorised representative and address)

hereinafter called "the Client", and

.....

.....

(full name of attorney, name of practice and address)

hereinafter called "the Attorney",

in terms of which the Client shall pay the fees agreed to herein to the Attorney for services rendered², if the Client is successful in such proceedings to the extent set out in this agreement.

Prepared by:

1. It is recorded that in the opinion of the Attorney there are reasonable prospects that the Client may be successful in the proceedings mentioned hereunder and the Attorney therefore undertakes to recover no fees from the Client unless -

1.1 the Client is successful in such proceedings; or

1.2 the Attorney, as set out hereunder, becomes entitled to a fee in the event of partial success in such proceedings or in the event of the premature termination of this agreement.

* Delete whichever is not applicable

** Delete if not applicable

2. It is further recorded that, before the signing of this agreement and in terms of section 3(3) of the Contingency Fees Act, 1997 (Act No. 66 of 1997), the Client was -

2.1 advised of any other ways of financing the litigation and of their respective implications, namely

2.2 informed of the normal rule that in the event of the Client being unsuccessful in the proceedings, he/she/it may be liable to pay the taxed party and party costs of his/her/its opponent in the proceedings; and

2.3 informed that he/she/it will be liable to pay the success fee in the event of success,

by the Attorney.

3. The Client acknowledges that he/she/it gave a written power of attorney to the Attorney to -

** conduct proceedings in/before the..... (court of law/tribunal/ functionary) having the power of a court of law to , on his/her/its behalf.

** conduct proceedings in/before the (court of law/tribunal/ functionary) having the power to , on his/her/its behalf.

** render professional services, namely , to him/her/it.

** conduct arbitration proceedings in/before the for the purpose of , on his/her/its behalf.

Nota bene: No contingency fees agreement may be entered into in respect of professional services to be rendered in any criminal proceedings or any proceedings in respect of any family law matter.³

* Delete whichever is not applicable

** Delete if not applicable

4. The parties agree that the Client -

4.1 shall be deemed to be successful in the aforementioned proceedings if.....
..... ; and

4.2 shall be deemed to be partially successful in the aforementioned proceedings if
..... .

5. The Attorney hereby warrants that the normal fees on an attorney and own client basis to perform work in connection with the aforementioned proceedings are calculated on the following basis:

..... .

(set out hourly, daily and/or applicable rates)

6. The parties agree that if the Client is successful in the aforementioned proceedings-

** an amount of R..... shall be payable to the Attorney;

** an amount shall be payable to the Attorney, calculated according to the following method:

..... .

Nota bene: If the success fee is higher than the Attorney's normal fees, such higher fee may-

* not exceed the Attorney's normal fees by more than 100 per cent; and

* in the case of a claim sounding in money, not exceed 25 per cent of the total amount awarded or any amount obtained by the Client in consequence of the proceedings.

For purposes of calculating the higher fee, costs are not included.

* Delete whichever is not applicable

** Delete if not applicable

7. The parties agree that -

7.1 if the Client is partially successful in the aforementioned proceedings-

7.1.1 the Client -

** shall owe the Attorney an amount of R..... ; or

** shall owe the Attorney an amount to be calculated according to the following method:
..... ; and

7.1.2 the following consequences will follow in terms of this agreement:
..... ; and

7.2 in the event of the premature termination of this agreement for any reason-

7.2.1 the Client -

** shall owe the Attorney an amount of R..... ; or

** shall owe the Attorney an amount to be calculated according to the following method
..... ; and

7.2.2 the following consequences will follow in terms of this agreement:
.....

8. Disbursements by the Attorney relating to the matter -

** made on behalf of the Client shall be dealt with in the following manner:
..... ; and/or

** incurred on behalf of the Client shall be dealt with in the following manner:
.....

* Delete whichever is not applicable

** Delete if not applicable

9.1 The Client has a period of 14 days, calculated from the date of signing this agreement, during which he/she/it will have the right to withdraw from the agreement by giving notice to the Attorney in writing.

9.2 The Attorney shall, in the event of withdrawal by the Client, be entitled to fees and disbursements in respect of any necessary or essential work done to protect the interests of the Client during such period, calculated on an attorney and client basis.

10. If the Client feels aggrieved by any provision of this agreement or any fees chargeable in terms of this agreement, the agreement or the fees may be referred for review to the Law Society of which the Attorney is a member and, if an advocate has been appointed, also to the Bar Council in the area in which the advocate practises. The professional controlling body concerned may set aside any provision

of this agreement or any fees claimable in terms of this agreement if in its opinion such provision or fees are unreasonable or unjust.

11.1 Any amendment or other agreements ancillary to this agreement (including any amendments to such agreements) shall be in writing and comply with the requirements laid down in the Contingency Fees Act, 1997 (Act No. 66 of 1997).

11.2 A copy of any such amendment or other agreements ancillary to this agreement shall be delivered to the Client upon the date on which such amendment or ancillary agreement is signed.

* Delete whichever is not applicable

** Delete if not applicable

**12. In the event of an advocate being appointed, the following shall be completed:

12.1 On this day of 19..., the Attorney briefed

.....

.....,

(full names and address of advocate)

(hereinafter called "the Advocate") to act as advocate in the proceedings mentioned in paragraph 3 above.

12.2 By his/her signature hereto the Advocate warrants that in his/her opinion there are reasonable prospects that the Client may be successful in such proceedings and that he/she accepts the brief on the understanding that he/she will be entitled to the payment of fees only if the Client is successful or partially successful in the proceedings as agreed upon in paragraph 4 above and in the event of the premature termination for any reason of this agreement.

12.3 The parties agree that -

(a) if the Client is successful in the aforementioned proceedings -

** an amount of R.....: shall be payable to the Attorney as advocates' fees; or

** an amount shall be payable to the Attorney as advocates' fees, to be calculated according to the following method; or

* Delete whichever is not applicable

** Delete if not applicable

(b) if the Client is partially successful in the aforementioned proceedings-

** an amount of R..... shall be payable to the Attorney as advocates' fees; or

** an amount shall be payable to the Attorney as advocates' fees, to be calculated according to the following method ; or

(c) in the event of the premature termination of this agreement for any reason -

** an amount of R..... shall be payable to the Attorney as advocates' fees; or

** an amount shall be payable to the Attorney as advocates' fees, to be calculated according to the following method :
.....

THE CLIENT HEREBY WARRANTS THAT HE/SHE/IT UNDERSTANDS THE MEANING AND PURPOSE OF THIS AGREEMENT.

Signed at this day of.....19.....⁴

.....
(Signature of the *Client/
authorised representative
of juristic person)

.....
(Signature of the Attorney)

**
(Signature of the Advocate)

* Delete whichever is not applicable

** Delete if not applicable

¹ A copy of the contingency fees agreement must be delivered to the Client on the date on which the agreement is signed. (Section 3(4) of the Contingency Fees Act, 1997 (Act No. 66 of 1997))

² In terms of section 2 of the Contingency Fees Act, 1997, a legal practitioner is, when he/she enters into a contingency fees agreement with a client, not entitled to any fees for services rendered in respect of any proceedings unless the client is successful in such proceedings to the extent set out in such agreement.

The agreement may stipulate that the legal practitioner shall be entitled to fees equal to or higher than his/her normal fees.

Fees which are higher than the normal fees of the legal practitioner concerned (hereinafter referred to as the "success fee") may not exceed such normal fees by more than 100 per cent.

In the case of claims sounding in money, the total of the success fee payable by the client to the legal practitioner, may not exceed 25 per cent of the total amount awarded to or any amount obtained by the client in consequence of the proceedings concerned, which amount may not, for purposes of calculating such excess, include any costs.

³ A contingency fees agreement may be entered into in respect of-

(a) any proceedings in or before any court of law or any tribunal or functionary having the powers of a court of law;

(b) any proceedings in, or before any court of law or any tribunal or functionary having the power to issue, grant or recommend the issuing of any licence, permit or other authorisation for the performance of any act or the carrying on of any business or other activity;

(c) any professional services rendered by the legal practitioner concerned; and

(d) any arbitration proceedings,

but not in respect of any criminal proceedings or any proceedings in respect of any family law matter.

(Section 2 of the Contingency Fees Act, 1997, read with section (1)(v))

⁴ A contingency fees agreement must be signed by the client concerned or, if the client is a juristic person, by its duly authorised representative, and by the attorney representing such client. Where an advocate is briefed, the contingency fees agreement must be countersigned by the advocate, who will thereby become a party to the agreement.
(Section 3(2) of the Contingency Fees Act, 1997)