

(4 October 2019 – to date)

LEGAL PRACTICE ACT 28 OF 2014

(Government Notice 740 in Government Gazette 38022 dated 22 September 2014. Refer to Act for commencement dates.)

RULES BY LEGAL PRACTICE COUNCIL IN TERMS OF SECTION 6 OF THE CONTINGENCY FEE ACT

*General Notice 525 in Government Gazette 42739 dated 4 October 2019. Commencement date:
4 October 2019.*

I refer to the above matter.

The Legal Practice Council has been established on 1 November 2018 in terms of the Legal Practice Act no 28 of 2014 and is the regulatory body of all legal practitioners in South Africa.

Section 6 of the Contingency Fees Act states that: “any professional controlling body may make such rules as such professional controlling body may deem necessary in order to give effect to this act”.

Herewith a copy of the Rules made by the Legal Practice Council in terms of Section 6 of the Contingency Fee Act for publication in the Government Gazette.

Yours truly

(Signed)

MS CHARITY NZUZA

EXECUTIVE OFFICER: LEGAL PRACTICE COUNCIL

27 September 2019

RULES MADE IN TERMS OF SECTION 6 OF THE CONTINGENCY FEE ACT 66 OF 1997

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Prepared by:

1. Definitions

In these rules unless the context otherwise indicates:-

- 1.1 Act means the Contingency Fee Act 66 of 1997.
- 1.2 Attorney means a legal practitioner who is admitted and enrolled as such.
- 1.3 The Attorneys Act means the Attorneys Act 53 of 1979.
- 1.4 Advocate means a legal practitioner who is admitted and enrolled as such.
- 1.5 Legal practitioner includes an attorney and an advocate whether practising with or without a fidelity fund certificate.
- 1.6 Day means a court day.
- 1.7 Contingency fee agreement means any agreement entered into in terms of the Act in terms whereof a legal practitioner shall not be entitled to any fees for services rendered in respect of proceedings unless the client is successful in such proceedings.
- 1.8 Proceedings means any proceedings in or before any court of law or any tribunal or functionary having the powers of a court of law or 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 as well as any arbitration proceedings.
- 1.9 The Legal Practice Act means Act 28 of 2014: The Legal practice Act, 2014, as amended from time to time.
- 1.10 The professional controlling body as referred to in the Act means the Legal Practice Council as established and contemplated in terms of the Legal Practice 2014.
- 1.11 Normal Fees means the reasonable fees which may be charged by such practitioner for such work, if such fees are taxed or assessed on an attorney and own client basis, in the absence of a Contingency Fees Agreement, as defined in Section 1 of the Act.
- 1.12 A success fee means a fee contemplated in Section 2(1)(b) read together with Section 2(2) of the Act which is in addition to the normal fee. To be clear: the entire higher fee to be charged, comprising the normal fee together with the additional amount will constitute the successs[sic] fee. The success fee is not just the additional amount, but the total of those two amounts, being the normal fee plus the additional amount.

2. Form and content of a contingency fee agreement

- 2.1 A contingency fee agreement shall be in the form as prescribed by the Minister of Justice under Section 3(1)(a) of the Act, being the form published in Government Notice No R547 of 23 April 1999 (Government Gazette No 20009) as per Form 1 annexed to these rules or any subsequent Form that might be promulgated in terms of Section 3(1) of the Act from time to time.
- 2.2 A contingency fee agreement shall be completed in all respects prior to signature by the client and all the legal practitioners (attorney, correspondent attorney and advocate, if applicable) who are parties to such agreement and any ancillary agreements shall be attached and initialled for the purposes of identification.
- 2.3 The power of attorney referred to in paragraph 3 of the prescribed Form 1 shall describe the specific proceedings in respect whereof the services are to be rendered on contingency and shall be annexed to the contingency fee agreement and initialled for purposes of identification.
- 2.4 A legal practitioner who is party to a contingency fee agreement shall, at the time of the acceptance of the mandate, or within a reasonable period of time thereafter, record in writing, to the client, his or her tariff of normal fees in respect of attendances pertaining to the proceedings for the purposes of Section 3 of the Act and paragraph 5 of Form 1.
- 2.5 After commencement of chapter 3 of the Legal Practice Act, an attorney who is party to contingency fee agreement shall annex to that agreement a copy of the cost estimate notice furnished in terms of Section 35(7) as read with Section 35(12) of the Legal Practice Act 28 of 2014 (the Legal Practice Act).

3. Disbursements

- 3.1 The contingency fee agreement shall record the manner in which disbursements made or to be incurred by the legal practitioner on behalf of the client shall be dealt with.
- 3.2 If the client is responsible for funding disbursements the legal practitioner shall account to the client from time to time in respect of monies disbursed during the conduct of the proceedings.
- 3.3 If the legal practitioner has undertaken to pay or incur disbursements on behalf of the client pending the conclusion of the proceedings the legal practitioner shall be entitled to charge interest on monies so disbursed, provided that this is done lawfully by the legal practitioner, in particular in accordance with the provisions of the Prescribed Rate of Interest Act 55 of 1975, and/or in compliance with up the provisions of the National Credit Act 34 of 2005.

4. Premature termination of mandate

- 4.1 In the event of a client terminating a mandate to a legal practitioner before the proceedings have been finalised and/or before affording the legal practitioner an opportunity to achieve success or partial success, the client shall be liable to pay to the legal practitioner all fees and disbursements paid or incurred by him or her as at the date of termination of mandate provided however that, before the practitioner is obliged to hand over his or her file, the practitioner will be entitled to demand a written undertaking from the client and/or the new legal practitioner that such fees and disbursements will be paid in accordance with the agreement upon the successful or partially successful conclusion of the proceedings.
- 4.2 The legal practitioner whose mandate has been cancelled shall upon receipt of the termination of mandate cause an attorney and own client Bill of Costs to be prepared in accordance with the agreed tariff as per the contingency fee agreement.
- 4.3 Any legal practitioner who takes over proceedings pursuant to a termination of mandate shall, before doing so, advise the client concerned of the fact that additional costs will be incurred as a result.
- 4.4 Any legal practitioner taking over the further conduct of proceedings pursuant to a termination of mandate shall be obliged to hold the first legal practitioner covered for all reasonable fees and disbursements (if payment of disbursements was deferred by agreement) to be paid as a first charge against the proceeds of the claim.
- 4.5 If the client disputes that he or she is liable to pay any fees to the legal practitioner whose mandate has been terminated, the legal practitioner taking over the proceedings shall be obliged to advise the first legal practitioner that there is a potential dispute regarding fees and/or disbursements before taking possession of the client's file.
- 4.6 In the event of any dispute arising as to the sharing of fees at the conclusion of the proceedings both legal practitioners shall prepare attorney and own client bills for taxation, if necessary, which bills shall form the basis for dividing the allowed fees pro rata between the legal practitioners involved.
- 4.7 In the event of a dispute nevertheless arising as to the sharing of fees, such dispute shall be referred to the Legal Practice Council or relevant Provincial Council or other delegated body for adjudication, which decision shall be final and binding on the parties concerned.

5. Settlement

Any affidavits filed with the Legal Practice Council in terms of Section 4 of the Act shall be accompanied by a complete copy of the contingency fee agreement and, after commencement of section 35(7) of the Legal Practice Act, the prescribed cost estimate.

6. Further Provisions

- 6.1 Where a contingency fee agreement provides that upon success a legal practitioner shall be entitled to fees equal to his or her normal fee, such fee is not subject to the limitations and cap set out in Section 2(2) of the Act.
- 6.2 Where a contingency fee agreement provides that upon success a legal practitioner shall be entitled to fees higher than his or her normal fee, such fee is subject to the limitations and cap set out in Section 2(2) of the Act.
- 6.3 Where the attorney acts in a contingency fee matter for an amount equivalent only to the attorney's normal fee then, provided the said written estimate has been furnished, it shall not be necessary to draw a formal bill of costs as a matter of course. However, in the case where an attorney concludes a contingency fee agreement for his normal fee plus an additional amount (i.e the situation referred to above, namely normal fee plus additional amount comprising in total a "success fee"), then it will be necessary in each case for the attorney to draw a formal bill of costs at the conclusion of the matter and to furnish that to the client. It shall not be necessary to tax that bill of costs, however, save in the event that the client requests this or that this is necessary in the event of a complaint lodged by some person with *locus standi*, in which event the bill of costs must be submitted to the appropriate authority for taxation.
- 6.4 In terms of Section 5 of the Act, the Legal Practice Council, Provincial Council or designated Body may review any agreement and set aside any provision of that agreement or fees claimable in terms thereof if it is of the opinion that the provision or the fees are unreasonable or unjust.
- 6.5 In calculating the total amount awarded or obtained for the purposes of Section 2(2) of the Act, no account shall be taken of the value of an undertaking issued by the Road Accident Fund in terms of section 17(4) of the Road Accident Fund Act 56 of 1996 (the RAF Act).
- 6.6 Where costs are recovered in addition to capital, an attorney shall account in full to the client for the costs so recovered in the same manner as for capital. A contingency fee agreement may not provide for party and party costs to be retained in addition to a normal or higher than normal fee.
- 6.7 The "success fee" referred to in Section 2(2) of the Act, is the total of the "normal" fee and the "higher than normal" fee. The limitation and cap referred to in Section 2(2) applies to the total fee charged by a legal practitioner or practitioners in any one claim.
- 6.8 If more than one legal practitioner is entitled to higher than normal fees in terms of a contingency fees agreement, the total of all fees charged shall be subject to the limitation and cap referred to in Section 2(2) of the Act.
- 6.9 If any other legal practitioner is contracted, by the practitioner with whom the client has entered into a contingency fee agreement, to render services on behalf of the client, whether as counsel or as a

correspondent attorney or as an attorney as the case may be, such fees are to be treated as disbursements subject to what is set out in paragraph 6.10 below.

- 6.10 It shall not be permissible to act in terms of a scheme where the use of counsel or a correspondent attorney or attorney is intended to bypass the provisions of the Act such that the instructing attorney does effectively little or no work and the functions are delegated to the counsel, correspondent attorney or attorney. If it is demonstrated that this has occurred then on this ground alone the contingency fee agreement and any fees charged in terms thereof by one or more or all of the practitioners involved may be set aside. Such conduct if established will be treated as an abuse of process and will be ipso facto unprofessional.
- 6.11 If a client is obliged in terms of the rules of any medical scheme or for any other reason, to refund a portion of the total amount awarded or obtained the cap and limitation referred to in Section 2(2) shall apply to the net amount recovered after the refund is deducted.

7. Review of agreement or fees in terms of Section 5 of the Act

- 7.1 A client of a legal practitioner who wishes to refer a contingency fee agreement or fee charged in terms thereof to the Legal Practice Council, Provincial Council or delegated Body for review shall do so in writing or with assistance as contemplated in 7.3 below.
- 7.2 The Legal Practice Council, Provincial Council or delegated Body, shall, within 30 days acknowledge receipt of the complaint, and unless already submitted, provide the complainant with a complaint submission form as may be prescribed by the Legal Practice Council.
- 7.3 If required, the Legal Practice Council, Provincial Council or delegated Body shall appoint an official to assist the complainant to complete Form 2.
- 7.4 Upon receipt of a duly completed Form 2 a copy shall be referred to the legal practitioner referred to therein who must respond in writing within 20 days.
- 7.5 The fee dispute shall be determined in accordance with the applicable fee dispute procedure as stipulated by the Legal Practice Council.
- 7.6 If Council, when considering a complaint and or the decision of a review committee is of the opinion that the conduct of any legal practitioner involved requires further investigation it shall refer the complaint to its disciplinary committee to enable it to conduct formal disciplinary proceedings.

8. Powers of the Court

The provisions of these Rules do not derogate in any way from the power of the Court to adjudicate upon and make orders in respect of matters concerning the conduct of a legal practitioner.

