

**LEGAL PROFESSION ACT
(CHAPTER 132)**

LEGAL PROFESSION (CONTINGENCY FEES) RULES

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SUBSIDIARY LEGISLATION

LEGAL PROFESSION (CONTINGENCY FEES) RULES

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SUBSIDIARY LEGISLATION

Rules made under section 65

LEGAL PROFESSION (CONTINGENCY FEES) RULES

*Commencement: 1st July 1994***Citation**

1. These Rules may be cited as the Legal Profession (Contingency Fees) Rules.

Application

2. (1) These Rules apply to any proceedings in which contingency fees may be taken, whether the cause of action arose before or after the date of commencement of these Rules.

- (2) Notwithstanding subrule (1), these Rules apply only to proceedings in which the plaintiff has signed an agreement for the payment by him of contingency fees, in such manner as may be prescribed by these Rules.

Interpretation

3. In these Rules, unless the context otherwise requires —

“advocate” means any person who is qualified to practise under the Legal Profession Act (Chapter 132) at the time of the agreement and any representative of the advocate;

“agreement” means an agreement for the payment of contingency fees entered into in accordance with these Rules;

“awarded” means awarded to a client by a Court or paid to the client under a settlement;

“client” is the plaintiff or claimant or prospective plaintiff or claimant in any action, summons, petition, motion or counterclaim;

“specified proceedings” means proceedings in which an agreement may be entered under rule 6.

Definition of contingency fees

4. In these Rules, the phrase “contingency fees” means an agreement, entered by an advocate and client, in relation to specified proceedings, whereby —

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(a) the advocate will receive no payment from his client if no damages or other monetary sum is awarded to the client;

(b) the advocate will receive such proportion of the amount awarded to the client as is contained in the agreement;

(c) if a sum is awarded to the client, the advocate shall be paid his disbursements by the client, in addition to any sum due to the advocate under paragraph (b);

(d) if there is an award of costs to the client, the advocate shall be permitted to retain them, if the agreement so provides, in addition to any sum due to the advocate under paragraph (b);

(e) if there is no award of costs to the client, the advocate shall not be entitled to be paid by the client.

Proceedings in which contingency fees apply

5. An agreement may apply to any specified proceedings in which contingency fees are permissible under these Rules.

Type of proceedings where contingency fees permissible

6. An agreement may be entered only when the client wishes to claim —

(a) for defamation, which includes both libel and slander;

(b) for personal injury, which includes death and any impairment of the physical or mental condition of the plaintiff;

(c) on behalf of another person who has suffered death or any impairment of his physical or mental condition;

(d) in respect of any commercial action;

(e) damages, or other financial relief, for any pecuniary loss;

(f) in such other proceedings as the Chief Justice may prescribe.

When contingency fees will not apply

7. (1) For the removal of doubt, it is declared that an agreement may not be entered into in relation to —

(a) any criminal proceedings;

- (b) any family matters, including divorce, nullity, separation, custody, guardianship and maintenance; or
- (c) any case in which legal aid is made available to a plaintiff.

(2) Where a grant of legal aid is made after an agreement has been entered, the proceedings shall cease to be specified proceedings under rule 6.

Definition of commercial action

8. A commercial action shall, for the purposes of these Rules, be deemed to be any cause which, wholly or partly, arises from or is connected with —

- (a) the ordinary transactions of merchants and traders, including the sale of goods;
- (b) the construction of a mercantile document;
- (c) the export or import of merchandise;
- (d) affreightment, mercantile agency or mercantile usage;
- (e) contracts relating to ships and shipping;
- (f) insurance and reinsurance;
- (g) banking, negotiable instruments and international credit;
- (h) the international carriage of goods;
- (i) any application made under Order 69 of the Rules of the Supreme Court (R 1 of Chapter 5).

Counterclaims included

9. These Rules apply so as to permit an agreement to be entered by a client bringing a counterclaim, if such client would be entitled to enter such an agreement if his counterclaim were a claim.

Courts where possible

10. An agreement may be entered in proceedings which are, or may become, contentious, in any of the following Courts —

- (a) Court of a Magistrate;

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- (b) Intermediate Court;
- (c) High Court;
- (d) Court of Appeal;
- (e) Judicial Committee of the Privy Council;
- (f) such other Court or tribunal as the Chief Justice may specify by notification in the Government *Gazette*;
- (g) any combination of Courts in paragraphs (a) to (f).

Agreement not to be disclosed

11. If an agreement has been entered, this fact shall not be mentioned to any Court or Judge before which or whom any proceedings covered by the agreement are brought.

Form of agreement

12. (1) No agreement shall be of any effect unless the client enters into an agreement in the form set out in the Schedule, or in a form which conforms substantially to it.

(2) The form shall be signed by the client and the advocate or the representatives of each such parties.

(3) An agreement such as is mentioned in subrule (1), may be entered by a client at any time before a sum is awarded to the client in the proceedings covered by the agreement.

(4) If an agreement is extended to cover further proceedings, the client and the advocate shall enter an amended agreement which shall comply with such requirements as apply to the original agreement.

Requirements before agreement

13. Before any agreement is entered, the advocate shall draw to the client's attention each of the following matters —

- (a) the possibility that the client might be entitled to legal aid and the conditions on which it is available;
- (b) the circumstances, if any, in which the client may be liable to pay the disbursements or costs of the advocate in accordance with the agreement;

- (c) when the client may be liable to pay the costs of any other party;
- (d) when the client may ask for the taxation of the fees and expenses of the advocate and the procedure for so doing.

Requirements of agreement

14. An agreement shall state —

- (a) the proceedings or parts of them to which it relates (including a counterclaim, appeal or proceedings to enforce a judgment or order);
- (b) if and when the advocate's disbursements are payable by the client;
- (c) what payment, if any, is due from the client to the advocate for costs awarded to the client;
- (d) what payment, if any, is due from the client, if costs are awarded against him;
- (e) what costs, if any, are payable by the client to the advocate upon termination of the agreement for any reason.

Limits of agreement

15. No agreement shall provide, and shall be void and of no effect if it seeks to do so, for the payment to, or retention by, the advocate of more than —

- (a) 30 *per cent* of any sum awarded to the client or 40 *per cent* thereof if there is both a trial and an appeal;
- (b) the disbursements of the advocate if no sum is awarded to the client; or
- (c) party and party costs awarded to the client.

Partners and directors

16. An agreement may be entered by a partner, or by the director of a company, if such partner or director is duly authorised to enter it, in the same manner as if such partner or director were an individual client.

Disciplinary offence

17. Any payment of contingency fees, otherwise than in accordance with these Rules, shall constitute a disciplinary offence by the advocate, in relation to which proceedings may be taken under the Legal Profession Act (Chapter 132).

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Duration of scheme

18. (1) When an agreement has been entered, it shall be revocable only if a written agreement is reached between the claimant and his advocate, on the terms contained in that agreement.

(2) The agreement referred to in subrule (1) shall be in writing and shall not otherwise be enforceable by any party to it.

Advocate may sue

19. If any sum is awarded in relation to proceedings covered by an agreement, the advocate who has entered the agreement may sue the client for such part of the sum awarded as is due to him under the agreement and has not been paid to him by the client.

Abolition of maintenance and champerty

20. The doctrines of maintenance and champerty do not apply to any agreement or to any proceedings connected therewith or arising out of it.

Doubts as to agreement

21. (1) Any advocate who is in doubt as to whether or not an agreement should be entered, may seek the ruling of a Judge as to the propriety of the agreement.

(2) The opinion of the Judge shall be final and not subject to any appeal.

(3) An application under this rule shall be in writing. It shall not be necessary for the advocate to appear before the Judge, unless the latter asks for this.

SCHEDULE

(rule 12(1))

FORM OF AGREEMENT

1. I
hereby (name in full of the client) enter a contingency fees agreement with the
following in full of advocates
(name of firm of advocates)
in relation to the following proceedings —
2. This contingency fees agreement shall apply to proceedings in, or proposed to
be taken in, the following Courts —

Court of a Magistrate+
Intermediate Court+
High Court+
Court of Appeal+
Privy Council+

and to any matter relating to such proceedings.
3. I confirm that/legal aid will not be granted to me+/I have not applied for legal
aid+.
4. I agree that
(name of firm of advocates)
shall be entitle to, and may retain, the following from any sums awarded to me
by a Court or payable to me after settlement —

(a) *per cent** of such sums, if the claim is heard, or is to be
heard, in the Court of a Magistrate, the Intermediate Court or the High Court;

(b) *per cent** of such sums if an appeal has been heard by
the High Court or the Court of Appeal;
5. The percentages which shall be entered in paragraph 4 shall not
exceed 30 *per cent* under sub-paragraph (a) and 40 *per cent* under
sub-paragraph (b).
6. I agree that, in addition to the sums payable under paragraph 4, my advocate
may retain such party and party costs as may be awarded to me.

(Delete this paragraph if not applicable).

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SCHEDULE — (continued)

- 7. I agree that if any Court awards costs against the client, I shall be obliged to pay them.
- 8. I agree that my advocate shall be paid by me or may retain, in addition to any sums due under paragraphs 4 and 6, any sums expended by him as disbursements in the proceedings covered by the agreement, if an award is made to me.

Signed by me, as client (or representative of client) —

..... (Signature) (Date)

..... (Witness)

- 9. I agree to enter a contingency fee agreement with
.....
(name of client)
in relation to the proceedings specified in the above agreement.

- 10. I confirm that I have complied with rule 13 of the Legal Profession (Contingency Fees) Rules.

Signed by me, as advocate (or representative) on behalf of the firm of

..... (Signature) (Date)

..... (Witness)

+ Delete if not applicable.
* Fill in amount.