

Effective 5/12/2015

67-5-33 Contingent fee contracts.

- (1) As used in this section:
 - (a) "Contingent fee case" means a legal matter for which legal services are provided under a contingent fee contract.
 - (b) "Contingent fee contract" means a contract for legal services under which the compensation for legal services is a percentage of the amount recovered in the legal matter for which the legal services are provided.
 - (c) "Government attorney" means the attorney general or an assistant attorney general.
 - (d) "Legal matter" means a legal issue or administrative or judicial proceeding within the scope of the attorney general's authority.
 - (e) "Private attorney" means an attorney or law firm in the private sector.
 - (f) "Securities class action" means an action brought as a class action alleging a violation of federal securities law, including a violation of the Securities Act of 1933, 15 U.S.C. Sec. 77a et seq., or the Securities Exchange Act of 1934, 15 U.S.C. Sec. 78a et seq.
- (2) Subsections (3) through (9):
 - (a) do not apply to a contingent fee contract in existence before May 12, 2015, or to any renewal or modification of a contingent fee contract in existence before that date;
 - (b) do not apply to a contingent fee contract with a private attorney that the attorney general hires to collect a debt that the attorney general is authorized by law to collect; and
 - (c) with respect to a contingent fee contract with a private attorney in a securities class action in which the state is appointed as lead plaintiff under Section 27(a)(3)(B)(i) of the Securities Act of 1933 or Section 21D(a)(3)(B)(i) of the Securities Exchange Act of 1934 or in which any state is a class representative, or in any other action in which the state is participating with one or more other states:
 - (i) apply only with respect to the state's share of any judgment, settlement amount, or common fund; and
 - (ii) do not apply to attorney fees awarded to a private attorney for representing other members of a class certified under Rule 23 of the Federal Rules of Civil Procedure or applicable state class action procedural rules.
- (3)
 - (a) The attorney general may not enter into a contingent fee contract with a private attorney unless the attorney general or the attorney general's designee makes a written determination that the contingent fee contract is cost-effective and in the public interest.
 - (b) A written determination under Subsection (3)(a) shall:
 - (i) be made before or within a reasonable time after the attorney general enters into a contingent fee contract; and
 - (ii) include specific findings regarding:
 - (A) whether sufficient and appropriate legal and financial resources exist in the attorney general's office to handle the legal matter that is the subject of the contingent fee contract; and
 - (B) the nature of the legal matter, unless information conveyed in the findings would violate an ethical responsibility of the attorney general or a privilege held by the state.
- (4) The attorney general or attorney general's designee shall request qualifications from a private attorney being considered to provide services under a contingent fee contract unless the attorney general or attorney general's designee:
 - (a) determines that requesting qualifications is not feasible under the circumstances; and
 - (b) sets forth the basis for the determination under Subsection (4)(a) in writing.

- (5)
- (a) The attorney general may not enter into a contingent fee contract with a private attorney that provides for the private attorney to receive a contingent fee, exclusive of reasonable costs and expenses, that exceeds:
 - (i)
 - (A) 25% of the amount recovered, if the amount recovered is no more than \$10,000,000;
 - (B) 25% of the first \$10,000,000 recovered, plus 20% of the amount recovered that exceeds \$10,000,000, if the amount recovered is over \$10,000,000 but no more than \$15,000,000;
 - (C) 25% of the first \$10,000,000 recovered, plus 20% of the next \$5,000,000 recovered, plus 15% of the amount recovered that exceeds \$15,000,000, if the amount recovered is over \$15,000,000 but no more than \$20,000,000; and
 - (D) 25% of the first \$10,000,000 recovered, plus 20% of the next \$5,000,000 recovered, plus 15% of the next \$5,000,000 recovered, plus 10% of the amount recovered that exceeds \$20,000,000, if the amount recovered is over \$20,000,000; or
 - (ii) \$50,000,000.
 - (b) A provision of a contingent fee contract that is inconsistent with a provision of this section is invalid unless, before the contract is executed, the contingent fee contract provision is approved by a majority of the attorney general, state treasurer, and state auditor.
 - (c) A contingent fee under a contingent fee contract may not be based on the imposition or amount of a penalty or civil fine.
 - (d) A contingent fee under a contingent fee contract may be paid only on amounts actually recovered by the state.
- (6)
- (a) Throughout the period covered by a contingent fee contract, including any extension of the contingent fee contract:
 - (i) the private attorney that is a party to the contingent fee contract shall acknowledge that the government attorney retains complete control over the course and conduct of the contingent fee case for which the private attorney provides legal services under the contingent fee contract;
 - (ii) a government attorney with supervisory authority shall oversee any litigation involved in the contingent fee case;
 - (iii) a government attorney retains final authority over any pleading or other document that the private attorney submits to court;
 - (iv) an opposing party in a contingent fee case may contact the lead government attorney directly, without having to confer with the private attorney;
 - (v) a government attorney with supervisory authority over the contingent fee case may attend all settlement conferences; and
 - (vi) the private attorney shall acknowledge that final approval regarding settlement of the contingent fee case is reserved exclusively to the discretion of the attorney general.
 - (b) Nothing in Subsection (6)(a) may be construed to limit the authority of the client regarding the course, conduct, or settlement of the contingent fee case.
- (7)
- (a) Within five business days after entering into a contingent fee contract, the attorney general shall post on the attorney general's website:
 - (i) the contingent fee contract;
 - (ii) the written determination under Subsection (3) relating to that contingent fee contract; and
 - (iii) if applicable, any written determination made under Subsection (4)(b) relating to that contingent fee contract.

- (b) The attorney general shall keep the contingent fee contract and written determination posted on the attorney general's website throughout the term of the contingent fee contract.
- (8) A private attorney that enters into a contingent fee contract with the attorney general shall:
 - (a) from the time the contingent fee contract is entered into until three years after the contract expires, maintain detailed records relating to the legal services provided by the private attorney under the contingent fee contract, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that relate to the legal services provided by the private attorney; and
 - (b) maintain detailed contemporaneous time records for the attorneys and paralegals working on the contingent fee case and promptly provide the records to the attorney general upon request.
- (9)
 - (a) After June 30 but on or before September 1 of each year, the attorney general shall submit a written report to the president of the Senate and the speaker of the House of Representatives describing the attorney general's use of contingent fee contracts with private attorneys during the fiscal year that ends the immediately preceding June 30.
 - (b) A report under Subsection (9)(a) shall:
 - (i) identify:
 - (A) each contingent fee contract the attorney general entered into during the fiscal year that ends the immediately preceding June 30; and
 - (B) each contingent fee contract the attorney general entered into during any earlier fiscal year if the contract remained in effect for any part of the fiscal year that ends the immediately preceding June 30;
 - (ii) for each contingent fee contract identified under Subsection (9)(b)(i):
 - (A) state the name of the private attorney that is a party to the contingent fee contract, including the name of the private attorney's law firm if the private attorney is an individual;
 - (B) describe the nature of the legal matter that is the subject of the contingent fee contract, unless describing the nature of the legal matter would violate an ethical responsibility of the attorney general or a privilege held by the state;
 - (C) identify the state agency which the private attorney was engaged to represent or counsel; and
 - (D) state the total amount of attorney fees approved by the attorney general for payment to a private attorney for legal services under a contingent fee contract during the fiscal year that ends the immediately preceding June 30; and
 - (iii) be accompanied by each written determination under Subsection (3) or (4)(b) made during the fiscal year that ends the immediately preceding June 30.
- (10) Nothing in this section may be construed to expand the authority of a state department, division, or other agency to enter into a contract if that authority does not otherwise exist.

Enacted by Chapter 362, 2015 General Session