

INFORMATION SHEET

Please read before you sign the attached Agreements.

CONTINGENCY FEE AGREEMENTS

Contingency fee agreements is a tool to assist clients who cannot finance litigation in real time, to access quality legal assistance.

In general what is agreed is that legal fees will only be payable to one's own attorney if and when the claim is successful.

A contingency fee agreement has several advantages:

- No up-front fees. You don't have to pay upfront or fork out large bills while the case is ongoing.
- Incentivised attorney. An attorney doesn't get paid unless the case is won, so you can be assured that she will be highly motivated to get the best result possible
- Speedy Assistance. Your attorneys doesn't get paid until you get paid so you can be assured that she shares your sense of urgency to finalise the matter.
- No costs for loss. If you don't win the case, you don't have to worry about hefty attorney fees from your own attorney.

These agreement are strictly regulated by the Contingency Fees Act (the “CFA”), 66 of 1997 which prescribes that only agreements included in the Regulations of the Act are lawful.

The law makes provision for two kinds of agreements, (1) a “no win, no fee” agreement where normal fees are charged when the case is successful, and (2) a “success fee” agreement whereby fees are charged at a rate higher than the normal fee if the claim is successful.

The first agreement entitles your attorney to her normal fees for services rendered, if the claim is successful. In this case there is no cap on the fees.

The second agreement entitles the attorney to a fee higher than her normal fees, if successful. In this case, however the fees are limited to twice her normal fee or 25% of the claim, whichever is the lesser.

In both the above named agreements, expenses are not included in the calculations.

A valid contingency fee agreement must be in writing and an agreement prescribed within the Regulations of the CFA.

Generally, it must state the following:

- The proceedings to which the agreement relates must be described in detail;
- Before the agreement was entered into, the client must be advised that:
 - there are other ways of financing the litigation and of their implication;
 - In the event of him/her being unsuccessful, he/she may be liable to pay the taxed party and party costs of his/her opponent in the proceedings;
 - That he/she will also be liable to pay the success fee in the event of success; and
 - That he/she has understood the meaning of the agreement.

When an offer of settlement is made to a client who has entered into a contingency fee agreement, such settlement may only be accepted after the attorney has filed an affidavit with court, if the matter is before court, or has filed an affidavit with the relevant legal practice counsel, if the matter is not before court.

Such affidavit must state the following:

- The full terms of the settlement;
- An estimate of the amount that may be obtained if the matter is taken to trial;
- An estimate of the chance of success or failure at trial;
- An outline of the attorney's fees if the matter is settled as opposed to taking the matter to trial;
- Reasons why settlement is recommended;
- That all the factors have been explained to client, and the steps taken to ensure that the client understands the explanation; and
- That the client informed the attorney that he/she understands and accepts the terms of the settlement.

A second affidavit, this one by the client must be deposed that states:

- That he/she was notified in writing of the terms of the settlement;
- That the terms of the settlement were explained to him/her
- That he/she understands the terms
- That he/she agrees to the terms; and
- His/her attitude to the settlement.

If you have any questions regarding the afore mentioned, please feel free to contact us for more information.

LEGAL COSTS

Anyone who seeks legal representation will be concerned about the potential costs. Often, there is a lot of confusion surrounding the subject.

- What are party and party costs?
- What are attorney and client costs?
- What are attorney and own client costs?
- Will I recover my legal costs if I win my case?
- Does the type of court that hears my case affect my legal costs?

Diffrent classes of legal costs in South Africa

Generally, legal costs fall into three classes.

1. Party and Party Costs

These are legal costs that a court may typically order the “losing party” to pay to the “winning party” in a court case. This doesn’t mean that if you win your case, all your legal fees will be paid by the other side. Unfortunately it is not that simple.

Party and party costs entail only those costs that were necessarily incurred in the course of the specific court case, anything else is attorney and client costs. Also they don’t include legal costs incurred before a summons or notice of motion has been issued and served and don’t include costs related to attendances between you and your attorney.

Party and party costs are regulated by law and these fixed tariffs are published in legislation. If you would like copies of these tariffs we will gladly forward same to you.

Please note that the tariffs mentioned differ between courts and according to the nature and size of the action.

2. Attorney and Client Costs

Attorney and client costs are calculated according to the same tariff structure and party and party costs. However, they refer to those additional items that fall outside of the scope of party and party costs, such as attendances between you and your attorney.

In some rare cases, the Courts may award attorney and client costs, or a portion of these costs, to the successful litigant in a case.

3. Attorney and Own Client costs

These costs refer to actual fees payable by a client to an attorney, in terms of a separate fee agreement which stipulates the fee structure to be used to calculate the fees owed. The fees are not regulated by the same statutes as the first two classes of fees but are subject to review by the Legal Practice Counsel. In other words, if you feel that the attorney’s attorney and own client fee is not reasonable then you may approach the Legal Practice Counsel who will review the fee structure and see if it is reasonable in the circumstances.

Magistrate court and High Court fees.

The prescribes fee and fee structure for these two courts are not the same and are regulated by seperate pieces of legislation.

Generally magistrate court matters are smaller more simple matters of no more than R400 000.00. High court matters deal with cases that are more complex and/or deal with cases worth more than R400 000.00.

Taxation of Bills of Cost

Party and Party bills of costs and sometimes Attorney and Client bills of costs are subject to taxation. This means that an itemised bill of costs is prepared (normally by a cost consultant) which lists each piece of work done and the date upon which it was done.

This Bill of Costs is then presented to the opposing party and a “taxing master” who is appointed by the court. The opposing party is given an opportunity to argue items it does not agree with in front of the taxing master who reviews the bill and makes a final determination of which items are reasonable and which not.

The taxing master's final decision on the amount that is recoverable is called an “allocatur” which is then the final amount payable.

Amount payable by the client

Clients will be liable for the total amount of the Attorney and Own Client Bill, when and if the case is successful, to Collins Attorneys.

BUT

This amount is reduced by whatever amount the losing party is ordered to pay by the court at the end of the case.

So, typically, if the losing party is ordered to pay taxed party and party costs then the client is liable to pay, out of his/her settlement amount:

Attorney and own client amount – Taxed party and party amount = Amount deducted from settlement amount.

If you have any further questions, please feel free to contact us at anelda.collinsattorneys@gmail.com and we will gladly address any further queries you may have.